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MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1201 and 1208

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or Board) hereby amends its rules of practice and procedure in order to correct several minor errors inadvertently introduced into the Board's regulations during a recent comprehensive revision of the Board's adjudicatory regulations.

DATES: Effective April 19, 2013.

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419; phone (202) 653–7200; fax (202) 653–7130; or email *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION: On June 7, 2012, the Merit Systems Protection Board (MSPB or Board) proposed amendments to its regulations following a lengthy internal review of all MSPB adjudicatory regulations. 77 FR 33663. On October 12, 2012, the MSPB published a final rule that made numerous amendments to the Board's regulations. 77 FR 62350. The MSPB has determined that it inadvertently included several minor drafting errors in the regulatory language of the final rule. These errors affect four paragraphs in the following regulations:

§ 1201.74(a)—This final rule amends 5 CFR 1201.74(a) to correct certain references to 1201.73 contained therein. The MSPB's recent amendments to its adjudicatory regulations resulted, in part, in the transfer of provisions previously set forth at 1201.73(e)(1) and (f)(4) to 1201.73(c)(1) and (d)(3). The final rule therefore amends 1201.74(a) to insert corrected citations to 1201.73.

§ 1201.112(a)(4)—The amendment to this subparagraph was intended to make clear that a judge's authority to vacate an initial decision to accept a settlement agreement into the record extended to a situation where the settlement agreement was filed by the parties prior to the deadline for filing a petition for review but not received by the judge until after the date when the initial decision would become the Board's final decision. However, the language employed in this amendment can be read as limiting a judge's authority to vacate an initial decision in order to accept a settlement into the record to an instance where the settlement agreement was filed by the parties prior to the deadline for filing a petition for review and not received by the MSPB until after the initial decision became final. This was not the Board's intent. This subparagraph has thus been amended to make clear that an administrative judge may vacate an initial decision in order to accept into the record a settlement agreement that is filed prior to the deadline for filing a petition for review, and that the judge has the authority to act even if the settlement agreement is not received until after the date when the initial decision becomes final under § 1201.113 of this part.

§ 1201.114(k)—The final sentence in this regulatory provision states that ''[o]nce the record closes, no additional evidence or argument will be accepted unless the party submitting it shows that the evidence was not readily available before the record closed.'' To ensure the greatest possible clarity, the MSPB believes that this sentence should be modified to note the requirement that new evidence and argument must be material as defined in 1201.115(d). The MSPB also has amended the final sentence to make clear that it applies to evidence ''or argument'' that was not readily available before the record closed.

§ 1208.22(c)—This regulatory provision is amended to correct a drafting error that inadvertently identified a 60-day deadline for filing a Veterans Employment Opportunities Act of 1998 (VEOA) appeal. The applicable filing deadline is 15 days. 5 U.S.C. 3330a(d)(1)(B).

The amendments contained in this final rule are intended to correct minor non-substantive drafting errors that were inadvertently introduced into MSPB's regulations during the Board's recent comprehensive revision of its adjudicatory regulations. The MSPB is foregoing the use of notice and comment rulemaking and is instead publishing these amendments in a final rule.

The rulemaking process must involve the notice-and-comment procedures outlined in the Administrative Procedure Act (APA) unless the proposed rule falls into the category of an interpretative rule, general statement of policy, or rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(3)(A). Three of the minor changes contained in this final rule address MSPB procedures and practices for the conduct of discovery, the filing of petitions for review, and the authority granted to a judge to reopen an initial decision. The remaining amendment merely corrects a typographical error in a regulation discussing the extraordinary circumstances under which the doctrine of equitable estoppel may apply to an untimely filed VEOA appeal. Accordingly, pursuant to 5 U.S.C. 553(b)(3)(A), MSPB may proceed without following the APA's notice and comment procedures.

In addition, an exemption from notice and comment rulemaking requirements exists under 5 U.S.C. 553(b)(3)(B) where an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The ''unnecessary'' prong of the agency's good cause inquiry is ''confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' *Mack Trucks, Inc.* v. *Environmental Protection Agency,* 682 F.3d 87, 94 (DC Cir. 2012) (citation omitted). Here, the amendments contained in the final rule are insignificant and amount to little more than routine technical corrections to a 25-page final rule that became effective on November 13, 2012. Accordingly, MSPB finds that its decision to exempt the regulatory changes set forth herein from notice and comment rulemaking requirements is supported by good cause in that the amendments contained herein are routine determinations, insignificant in

nature and impact, and inconsequential to federal employees and the public.

Finally, MSPB also elects to make the amendments set forth herein effective immediately upon publication of this final rule. Under 5 U.S.C. 553(d)(3), ''the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' For the reasons identified above, and in light of the importance of promptly removing and correcting any inconsistent, incorrect, and confusing material inadvertently introduced into MSPB's adjudicatory regulations, the Board finds that good cause exists to waive the 30-day publication requirement.

List of Subjects in 5 CFR Parts 1201 and 1208

Administrative practice and procedure, Government employees.

Accordingly, for the reasons set forth in the preamble, the Board amends 5 CFR parts 1201 and 1208 as follows:

PART 1201—PRACTICES AND PROCEDURES

■ 1. The authority citation for 5 CFR part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

■ 2. In § 1201.74, revise paragraph (a) to read as follows:

§ 1201.74 Orders for discovery.

(a) *Motion for an order compelling discovery.* Motions for orders compelling discovery and motions for the appearance of nonparties must be filed with the judge in accordance with § 1201.73(c)(1) and (d)(3). An administrative judge may deny a motion to compel discovery if a party fails to comply with the requirements of 5 CFR 1201.73(c)(1) and (d)(3).

* * * * *

■ 3. In § 1201.112, revise paragraph (a)(4) to read as follows:

§ 1201.112 Jurisdiction of judge.

(a) * * *

(4) Vacate an initial decision to accept into the record a settlement agreement that is filed prior to the deadline for filing a petition for review, even if the settlement agreement is not received until after the date when the initial decision becomes final under § 1201.113 of this part.

* * * * *

■ 4. In § 1201.114, revise paragraph (k) to read as follows:

§ 1201.114 Petition and cross petition for review—content and procedure.

* * * * *

(k) *Closing the record.* The record closes on expiration of the period for filing the reply to the response to the petition for review or on expiration of the period for filing a response to the cross petition for review, whichever is later, or to the brief on intervention, if any, or on any other date the Board sets for this purpose. Once the record closes, no additional evidence or argument will be accepted unless it is new and material as defined in § 1201.115(d) and the party submitting it shows that the evidence or argument was not readily available before the record closed.

* * * * *

PART 1208—PRACTICES AND PROCEDURES FOR APPEALS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT AND THE VETERANS EMPLOYMENT OPPORTUNITIES ACT

■ 5. The authority citation for 5 CFR part 1208 continues to read as follows:

Authority: 5 U.S.C. 1204(h), 3330a, 3330b; 38 U.S.C. 4331.

■ 6. In § 1208.22, revise paragraph (c) to read as follows:

§ 1208.22 Time of filing.

* * * * *

(c) *Equitable tolling; extension of filing deadline.* In extraordinary circumstances, the appellant's 15-day deadline for filing an appeal with the MSPB is subject to the doctrine of equitable tolling, which permits the Board to extend the deadline where the appellant, despite having diligently pursued his or her rights, was unable to make a timely filing. Examples include cases involving deception or in which the appellant filed a defective pleading during the statutory period.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2013–09223 Filed 4–18–13; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0306; Directorate Identifier 2013–NM–049–AD; Amendment 39–17417; AD 2013–07–13]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 7X airplanes. This AD requires revising the aircraft flight manual (AFM); performing operational tests of the oxygen mask oxygen assembly; and replacing affected stowage boxes, which terminates the AFM revision and operational tests. This AD was prompted by failure of the flight crew oxygen supply due to a potentially defective flight crew mask oxygen assembly. We are issuing this AD to prevent failure to supply oxygen upon demand to the flight crew in flight in ''100%'' and ''Emergency'' modes, which, in an emergency, may result in incapacitation of the flight crew.

DATES: This AD becomes effective May 6, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 6, 2013.

We must receive comments on this AD by June 3, 2013.

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

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

Examining the AD Docket

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

Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued emergency EASA Airworthiness Directive 2013–0059–E, dated March 8, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During an aeroplane delivery flight test, the flight crew oxygen supply failed. The technical investigations carried out by the flight crew oxygen mask and stowage box manufacturer identified potentially defective flight crew mask oxygen assembly part number (P/N) MSE30–005–3–8 including stowage box P/N CSD 30–005–3–8.
>
> This condition, if not detected and corrected, may cause failure to supply oxygen upon demand to the flight crew in flight in ''100%'' and ''Emergency'' modes which, in case of an emergency, may result in incapacitation of the flight crew.
>
> To address this potential unsafe condition, Dassault Aviation (DA) issued Service Bulletin (SB) F7X–241, containing instructions to identify and replace the affected flight crew oxygen masks and stowage boxes.
>
> For the reasons described above, this [EASA] AD requires [revision of the aircraft flight manual and] accomplishment of operational tests of each flight crew oxygen mask and replacement of the affected stowage boxes with serviceable parts. Replacement constitutes terminating action for the [AFM revision and] repetitive operational tests.

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

Relevant Service Information

Dassault Aviation has issued Mandatory Service Bulletin 7X–241, dated March 7, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

Explanation of Compliance Times

The MCAI requires revising the AFM before further flight. This AD, however, provides a compliance time of 14 days, which will provide an adequate level of safety without unnecessarily grounding airplanes.

Replacing affected oxygen mask stowage boxes terminates the requirement to revise the AFM. The MCAI requires replacing the stowage boxes within a specified time after the effective date. This AD, however, requires compliance within the specified time after the AFM revision to avoid potentially conflicting compliance times that could require operators to replace the stowage box before revising the AFM.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failure to supply oxygen upon demand to the flight crew in flight in ''100%'' and ''Emergency'' modes in an emergency may result in incapacitation of the flight crew. Therefore, 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 fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0306; Directorate Identifier 2013–NM–049–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.

Costs of Compliance

We estimate that this AD will affect 9 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be up to $3,060, or $340 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

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:

2013–07–13 Dassault Aviation: Amendment 39–17417. Docket No. FAA–2013–0306; Directorate Identifier 2013–NM–049–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 6, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model Falcon 7X airplanes, certificated in any category, all serial numbers (S/Ns).

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by failure of the flight crew oxygen supply due to a potentially defective flight crew mask oxygen assembly. We are issuing this AD to prevent failure to supply oxygen upon demand to the flight crew in flight in ''100%'' and ''Emergency'' modes which, in an emergency, may result in incapacitation of the flight crew.

(f) Compliance

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

(g) Airplanes Excluded from Certain Requirements

Airplanes equipped with flight crew mask oxygen assembly part number (P/N) MSE30–005–3–8 and a stowage box P/N CSD 30–005–3–8 with S/N 1013 or higher, or serial number below 1013 with the suffix ''-A,'' are not subject to the requirements of paragraphs (h), (i), and (l) of this AD.

(h) Revision of Aircraft Flight Manual (AFM)

Within 14 days after the effective date of this AD, revise the Normal Procedures and Limitations sections of the Dassault Falcon Aircraft Flight Manual (AFM) to include the statement provided in Figure 1 to paragraph (h) of this AD, and thereafter operate the airplane accordingly. The AFM revision may be done by inserting a copy of this AD into the AFM.

Figure 1 to Paragraph (h) of this AD

Quick Donning Oxygen Mask Additional Test

NOTE

The O2 mask additional test is designed to verify the ability to breathe with the O2 mask donned.

It has to be performed after completion of the oxygen mask test as described in QRH1 « Power On » section 15-20.

O2 MASK ADDITIONAL TEST PROCEDURE:
Make sure that the PRESS TO TEST knob is on the 100% position

- Remove the mask from the stowage box
- Depress the inflation controls (red tabs) to inflate the harness
- Position the mask onto the head
- Take a few breaths
- **If the test is successful:**
  - Breathing is free and unrestricted
  - The pneumatic blinker (yellow cross) appears and disappears according to the breathing frequency
- Store the mask in the stowage box when test is completed

NOTE

Refer to CODDE 1 ATA 35 subchapters 02-35-10 and 02-35-40 for quick donning mask operation and stowage

Note 1 to paragraph (h) of this AD: When a statement identical to that in Figure 1 to paragraph (h) of this AD has been included in the Normal Procedures and Limitations sections of the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(i) Operational Test

After revising the AFM as required by paragraph (h) of this AD: At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, do an operational test of the flight crew mask oxygen assembly, using the procedure in the ''Quick Donning Oxygen Mask Additional Test'' specified in Figure 1 to paragraph (h) of this AD.

(1) For any flight crew mask oxygen assembly that has accumulated less than 50 total flight hours: Do the operational test before each flight.

(2) For any flight crew mask oxygen assembly that has accumulated 50 or more total flight hours: Do the operational test one time, before further flight.

(j) Corrective Actions

If any operational test specified in paragraph (i) of this AD is not successful: Before further flight, replace the affected stowage box with a serviceable stowage box, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin 7X–241, dated March 7, 2013, except dispatch of the airplane with the third crew oxygen mask inoperative is allowed as specified in the Master Minimum Equipment List (MMEL) Item 35–3.

(k) Definition

For purposes of this AD, a serviceable stowage box has P/N CSD 30–005–3–8 with any S/N 1013 or higher, or any serial number below 1013 with the suffix ''–A.''

(l) Terminating Action

Except as required by paragraph (j) of this AD, at the applicable time specified in paragraph (l)(1) or (l)(2) of this AD, replace any non-serviceable stowage box with a serviceable stowage box, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin 7X–241, dated March 7, 2013. Replacement of all affected stowage boxes terminates the requirements of paragraphs (h) and (i) of this AD, and the AFM revision required by paragraph (h) of this AD may be removed from the AFM.

(1) For a stowage box that has accumulated less than 50 total flight hours as of the effective date of this AD: Replace the stowage box within 8 days after the AFM revision required by paragraph (h) of this AD.

(2) For a stowage box that has accumulated 50 or more total flight hours as of the effective date of this AD: Replace the stowage box within 65 days after the AFM revision required by paragraph (h) of this AD.

(m) Parts Installation Prohibition

As of the effective date of this AD, no person may install a non-serviceable flight crew oxygen mask stowage box any airplane.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically refer to this AD.

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

(o) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) emergency European Aviation Safety Agency (EASA) Airworthiness Directive 2013–0059–E, dated March 8, 2013; and Dassault Mandatory Service Bulletin 7X–241, dated March 7, 2013; for related information.

(p) Material Incorporated by Reference

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

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

(i) Dassault Mandatory Service Bulletin 7X–241, dated March 7, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com*.

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

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

Issued in Renton, Washington, on April 3, 2013.

Ali Bahrami,

Manager,Transport Airplane Directorate,Aircraft Certification Service.

[FR Doc. 2013–09108 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0307; Directorate Identifier 2012–SW–079–AD; Amendment 39–17410; AD 2013–07–06]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting an airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS332C, AS332L, and AS332L1 helicopters and superseding an AD for Model AS332L2 and EC225LP helicopters. This AD requires inspecting the chip detector and modifying the chip collector, both installed on the main gearbox (MGB). This AD is prompted by an investigation which showed a failure within the epicyclic reduction gear module (epicyclic module) resulted in the rupture of the MGB case and separation of the main rotor head of a Model AS332L2 helicopter. These actions are intended to prevent failure of the MGB and subsequent loss of control of the helicopter.

DATES: This AD becomes effective May 6, 2013.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of May 6, 2013.

We must receive comments on this AD by June 18, 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 service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, Texas 75052, telephone (972) 641–0000 or (800) 232–0323, fax (972) 641–3775, or at *http://www.eurocopter.com/techpub*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Rao Edupuganti, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd.,

Fort Worth, Texas 76137; telephone: (817) 222–4389; fax: (817) 222–5961, email *rao.edupaganti@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

On December 28, 2011, we issued AD 2012–01–03, Amendment 39–16914 (77 FR 5991, February 7, 2012) for Eurocopter Model AS332L2 and EC225LP helicopters. AD 2012–01–03, Amendment 39–16914 requires determining whether the ''CHIP'' detector light illuminated because of a metal particle on the chip detector of the epicyclic module, and whether the ''CHIP'' detector light stayed illuminated after the ''CHIP'' detector switch was turned to the ''CHIP PULSE'' setting. If so, or if the maintenance records do not indicate which ''CHIP'' detector caused the ''CHIP'' detector light to illuminate or whether the detector light stayed illuminated after the switch was turned, AD 2012–01–03 requires replacing the epicyclic module before further flight. AD 2012–01–03 also requires replacing the epicyclic module if, thereafter, the ''CHIP'' detector light illuminates, stays illuminated after the switch is turned, and there is a metal particle on the epicyclic module chip detector. Lastly, AD 2012–01–03 requires removing, modifying, re-identifying, and reinstalling the chip collector within 50 hours time-in-serivce (TIS) and before installing a MGB on any applicable helicopter.

AD 2012–01–03, Amendment 39–16914 (77 FR 5991, February 7, 2012) was prompted by an investigation of an accident that showed a failure within the epicyclic reduction gear module of the MGB resulted in the rupture of the MGB case, which allowed the main rotor head to separate from the helicopter. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, had issued EASA AD 2009–0099–E, dated April 23, 2009 (2009–0099–E) to correct an unsafe condition for Eurocopter Model AS332L2 and EC225LP helicopters, and notified us of the unsafe condition in its AD. The actions of AD 2012–01–03 are intended to prevent failure of the MGB and subsequent loss of control of the helicopter.

Actions Since Existing AD Was Issued

Since we issued AD 2012–01–03, Amendment 39–16914 (77 FR 5991, February 7, 2012), EASA issued EASA AD No. 2012–0129–E, dated July 13, 2012 (2012–0129–E), which superseded EASA AD 2009–0099–E, to correct an unsafe condition for Eurocopter Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters. EASA advises that, based on the final accident report following investigation of the accident that prompted its original AD, it is necessary to standardize the inspection intervals for all electrical and non-electrical chip detectors, require the inspection for all models of the ''Super-Puma'' helicopter family, and expand the inspection to all rotor drive system gear boxes (the intermediate gearbox (IGB) and the tail gear box (TGB), in addition to the MGB. EASA AD 2012–0129–E retains the modification of the MGB epicyclic reduction gear module requirement of EASA AD 2009–0099–E, but expands the applicability and requires a recurring inspection of all electrical and non-electrical chip detectors installed on the MGB, IGB, and TGB.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. 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 helicopters of these same type designs.

Related Service Information

Eurocopter has issued Emergency ASB No. 05.00.81, Revision 3, dated July 13, 2012 (EASB 05.00.81), for Model AS332L2 helicopters and Emergency ASB No. 05A017, Revision 3, dated July 13, 2012 (EASB 05A017) for Model EC225LP helicopters. Both Emergency ASBs specify procedures for checking the chip detector on the MGB epicyclic module, modifying the main module chip collector, reidentifying the chip collector, and installing the chip detector.

Eurocopter has also issued Alert Service Bulletin (ASB) No. AS332–05.00.94, Revision 0, dated July 13, 2012 (ASB AS332–05.00.94), for Model AS332 C, C1, L, L1, and L2 helicopters and ASB No. EC225–05A29, Revision 0, dated July 13, 2012 (ASB EC225–05A29) for Model EC225 LP helicopters. Both ASBs standardize the time interval between chip detector inspections of the MGB, IGB, and TGB.

EASA classified these ASBs as mandatory and issued EASA AD 2012–0129–E to ensure continued airworthiness of these helicopters.

AD Requirements

This AD retains the inspection and modification requirements of AD 2012–01–03, Amendment 39–16914 (77 FR 5991, February 7, 2012), and adds the following requirements:

- For AS332 helicopters with non-electrical chip detectors and electrical chip detectors without a caution light on the instrument panel, within 25 hours TIS and thereafter at intervals not exceeding 25 hours TIS, inspecting the MGB, IGB, and TGB chip detectors for a chip or magnetic particle.
- For AS332 helicopters with electrical chip detectors with a caution light on the instrument panel, within 50 hours TIS and thereafter at intervals not exceeding 50 hours TIS, inspecting the MGB, IGB, and TGB chip detectors for a chip or magnetic particle.
- For EC225 helicopters, within 50 hours TIS and thereafter at intervals not exceeding 50 hours TIS, inspecting the MGB, IGB, and TGB chip detectors for a chip or magnetic particle. If there is a chip or magnetic particle, verifying that the ''CHIP'' caution light illuminates on the ''Vehicle'' page of the Vehicle Management System.

Costs of Compliance

We estimate that this AD will affect 6 helicopters of U.S. Registry. Based on an average labor rate of $85 per work hour, we estimate that operators may incur the following costs in order to comply with this AD:

• Inspecting maintenance records to determine if a ''CHIP'' light illuminated within the past 200 hours TIS will take about 1.0 work-hour, for a total cost per helicopter of $85;

• Removing, inspecting, and replacing an affected epicyclic module will require about 10 work-hours and required parts would cost approximately $512,318, for a total cost per helicopter of $513,168;

• Removing, modifying, and reidentifying the ''CHIP'' collector will require about 14 work-hours, for a total cost per helicopter of $1,190; and

• Inspecting the module magnetic chip detector circuit and the MGB, IGB, and TGB chip detectors will require about 2 work-hours, for a total cost per helicopter of $170 per inspection cycle.

FAA's Justification and Determination of the Effective Date

The short compliance time involved is required because the previously-described unsafe condition can adversely affect both the structural integrity and controllability of the helicopter. Therefore, because these helicopters are primarily used for long-range offshore transportation and the inspection of the MGB, IGB, and TGB chip detectors is required within 25 hours TIS, a very short time period based on the average flight-hour utilization rate of these helicopters, 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 removing airworthiness directive (AD) 2012–01–03, Amendment 39–16914 (77 FR 5991, February 7, 2012) and adding the following new AD:

2013–07–06 Eurocopter France (Eurocopter): Amendment 39–17410; Docket No. FAA–2013–0307; Directorate Identifier 2012–SW–079–AD.

(a) Applicability

This AD applies to Eurocopter Model AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as degradation of the epicyclic reduction gear module within a rotor drive system gearbox. This condition could result in failure of the main gearbox (MGB), intermediate gearbox (IGB), or tail gearbox (TGB) and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD 2012–01–03, Amendment No. 39–16914 (77 FR 5991, February 7, 2012).

(d) Effective Date

This AD becomes effective May 6, 2013.

(e) 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.

(f) Required Actions

(1) For Model AS332L2 and EC225LP helicopters, before further flight:

(i) Determine from the maintenance records whether, within the last 200 hours time-in-service (TIS), the ''CHIP'' detector light illuminated because of a metal particle on the chip detector of the MGB epicyclic module (module), and if so, whether the ''CHIP'' detector light stayed illuminated after the ''CHIP'' detector switch was turned to the ''CHIP PULSE'' setting to activate the ''fuzz burn-off'' feature.

(A) If the maintenance records indicate that the ''CHIP'' detector light illuminated because of a metal particle on the chip detector of the module, and the ''CHIP'' detector light stayed illuminated after the ''CHIP'' detector switch was turned to the ''CHIP PULSE'' setting, replace the module with an airworthy module before further flight.

(B) If the maintenance records do not indicate which ''CHIP'' detector caused the ''CHIP'' detector light to illuminate, or whether the detector light stayed illuminated after the ''CHIP'' detector switch was turned to the ''CHIP PULSE'' setting, replace the module with an airworthy module before further flight.

(ii) Inspect the module magnetic chip detector electrical circuit and determine whether the system is functioning properly, including whether the ''CHIP'' detector light annunciates on the instrument panel (Vehicle Monitoring System Screen).

(iii) After accomplishing paragraph (f)(1)(i)–(ii) of this AD, thereafter, if the ''CHIP'' detector light illuminates, stays illuminated after the chip detector switch is turned to the ''CHIP PULSE'' setting, and there is a metal particle on the module magnetic chip detector (rather than the main reduction gear (lower MGB), the flared housing (mast assembly), the IGB, or the TGB chip detectors) that caused the ''CHIP'' detector light to illuminate, replace the module with an airworthy module.

(iv) Within 50 hours TIS, remove, modify, reidentify, and reinstall the chip collector as shown in Figures 2 through 5, and in accordance with the Accomplishment Instructions, paragraph 2.B.1.b.1 through 2.B.1.b.5, of Eurocopter Emergency Alert Service Bulletin (EASB) No. 05.00.81, Revision 3, dated July 13, 2012, or Eurocopter EASB No. 05A017, Revision 3,

dated July 13, 2012, for your model helicopter.

(v) Before installing a MGB, modify, reidentify, and reinstall the chip collector in accordance with paragraph (f)(1)(iv) of this AD.

(2) Within 25 hours TIS, and thereafter at intervals not exceeding 25 hours TIS:

(i) For Model AS332C, L, and L1 helicopters with non-electrical chip detectors and electrical chip detectors without a caution light on the instrument panel, inspect the IGB, TGB, tapered housing, and MGB bottom casing chip detectors for a chip or metallic particle.

(ii) For Model AS332L2 helicopters with non-electrical chip detectors and electrical chip detectors without a caution light on the instrument panel, inspect the module, main rotor mast tapered housing, IGB, and TGB chip detectors for a chip or metallic particle.

(3) Within 50 hours TIS, and thereafter at intervals not exceeding 50 hours TIS:

(i) For Model AS332C, L, and L1 helicopters with electrical chip detectors with a caution light on the instrument panel, inspect the MGB bottom casing, TGB, and IGB chip detectors for a chip or metallic particle.

(ii) For Model AS332L2 helicopters with electrical chip detectors with a caution light on the instrument panel, inspect the MGB bottom casing chip detector for a chip or magnetic particle.

(iii) For Model EC225LP helicopters, inspect the MGB, IGB, and TGB chip detectors for a chip or magnetic particle. If there is a chip or magnetic particle, determine whether the ''CHIP'' caution light illuminates on the ''Vehicle'' page of the Vehicle Management System. If the ''CHIP'' caution light does not illuminate on the ''Vehicle'' page, perform a fault analysis.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Rao Edupuganti, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5110; fax: (817) 222–5961, email *rao.edupaganti@faa.gov*.

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

(h) Additional Information

(1) Eurocopter Alert Service Bulletin (ASB) No. AS332–05–00–94, Revision 0, dated July 13, 2012, and ASB No. EC225–05A29, Revision 0, dated July 13, 2012, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, Texas 75052, telephone (972) 641–0000 or (800) 232–0323, fax (972) 641–3775, or at *http://www.eurocopter.com/techpub*. You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety Agency AD No. 2012–0129–E, dated July 13, 2012.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6320: Main Rotor Gearbox and 6520: Tail Rotor Gearbox.

(j) Material Incorporated by Reference

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

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

(i) Eurocopter Emergency Alert Service Bulletin (EASB) No. 05.00.81, Revision 3, dated July 13, 2012.

Note 1 to paragraph (j)(2)(i): Eurocopter EASB No. 05.00.81, Revision 3, dated July 13, 2012, and EASB No. 05.00.58, Revision 3, dated July 13, 2012, were published together as a single document. EASB No. 05.00.58, Revision 3, dated July 13, 2012 is not incorporated by reference.

(ii) Eurocopter EASB No. 05A017, Revision 3, dated July 13, 2012.

Note 2 to paragraph (j)(2)(ii): Eurocopter EASB No. 05A017, Revision 3, dated July 13, 2012, and EASB No. 05A016, Revision 3, dated July 13, 2012, were published together as a single document. EASB No. 05A016, Revision 3, dated July 13, 2012 is not incorporated by reference.

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

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on March 27, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–08459 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0938; Directorate Identifier 2011–NM–271–AD; Amendment 39–17425; AD 2013–08–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–600 series airplanes. This AD was prompted by reports of early fatigue cracks at chem-mill areas on the crown skin panels. This AD requires repetitive inspections for cracking of the fuselage skin at certain locations at chem-mill areas, and repair if necessary. We are issuing this AD to detect and correct fatigue cracking of the skin panel at the specified chem-mill step locations, which could result in rapid decompression of the airplane.

DATES: This AD is effective May 24, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 24, 2013.

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

Examining the AD Docket

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

New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6447; fax: (425) 917–6590; email: *Wayne.Lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on September 18, 2012 (77 FR 57541). That NPRM proposed to require repetitive inspections for cracking of the fuselage skin at certain locations at chem-mill areas, and repair if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 57541, September 18, 2012) and the FAA's response to each comment.

Request To Revise Federal Aviation Regulations Citations

Boeing stated that references to section 129.109(c)(2) of the Federal Aviation regulations (14 CFR 129.109(c)(2)) are incorrect, since that paragraph does not exist in the current revision of the Federal Aviation Regulations and that the correct paragraph reference is section 129.109(b)(2). Boeing noted that this error occurred in the second paragraph of the ''Differences Between the Proposed AD and the Service Information'' section, and in Note 1 to paragraph (k) of the proposed AD (77 FR 57541, September 18, 2012).

We agree that the specified references are incorrect. We agree that the citation in the proposed AD (77 FR 57541, September 18, 2012) is inaccurate, but since that section of the preamble does not reappear in this AD, no corresponding change to this AD is necessary. We have corrected the citation in Note 1 to paragraph (k) of this AD.

Winglet Supplemental Type Certificate (STC) Comment

Aviation Partners Boeing stated that the installation of winglets per STC ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A7862578880060456C?OpenDocument&Highlight=st00830se*) does not affect the actions specified in the NPRM (77 FR 57541, September 18, 2012).

We concur. We have added paragraph (c)(2) to this AD to state that installation of STC ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A78625788800060456C?OpenDocument&Highlight=st00830se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST00830SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 57541, September 18, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 57541, September 18, 2012).

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

Costs of Compliance

We estimate that this AD affects 6 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of chem-mill step locations.	37 work-hours × $85 per hour = $3,145, per inspection cycle.	None	$3,145, per inspection cycle ..	$18,870, per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–08–08 The Boeing Company: Amendment 39–17425 ; Docket No. FAA–2012–0938; Directorate Identifier 2011–NM–271–AD.

(a) Effective Date

This AD is effective May 24, 2013.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–600 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 737–53–1309, dated October 20, 2011.

(2) Installation of Supplemental Type Certificate (STC) ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A7862578880060456C?OpenDocument&Highlight=st00830se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST00830SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of early fatigue cracks at chem-mill areas on the crown skin panels. We are issuing this AD to detect and correct fatigue cracking of the skin panel at the specified chem-mill step locations, which could result in rapid decompression of the airplane.

(f) Compliance

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

(g) Inspections

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1309, dated October 20, 2011, except as required by paragraph (j) of this AD: Do an external detailed inspection and an external nondestructive inspection (a medium frequency eddy current (MFEC), magneto optic imager (MOI), C-scan, or ultrasonic phased array (UTPA) inspection) for cracking in the fuselage skin along the chem-mill steps at certain locations specified in, and in accordance with, the Accomplishment Instructions of Boeing Service Bulletin 737–53–1309, dated October 20, 2011. Repeat the inspections thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1309, dated October 20, 2011.

(h) Repair

If any cracking is found during any inspection required by paragraph (g) of this AD, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (l) of this AD. Accomplishing the repair approved in accordance with the procedures specified in paragraph (l) of this AD terminates the repetitive inspection requirement for that area under the repair only.

(i) Optional Terminating Modification

Modification of an inspection area, including an external detailed inspection and an external nondestructive inspection (MFEC, MOI, C-scan, or UTPA) for cracking of the area to be modified and a high frequency eddy current inspection of all existing holes for cracking, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1309, dated October 20, 2011, terminates the repetitive inspections required by paragraph (g) of this AD for that modified area only. If any cracking is found during any inspection described by this paragraph, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(j) Service Bulletin Exception

Boeing Service Bulletin 737–53–1309, dated October 20, 2011, specifies compliance times ''after the original issue date of this service bulletin.'' However, this AD requires compliance within the specified compliance times ''after the effective date of this AD.''

(k) Post-Modification Inspections

The post-modification inspections specified in Tables 2 and 3 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1309, dated October 20, 2011, are not required by this AD.

Note 1 to paragraph (k) of this AD: The damage tolerance inspections specified in Tables 2 and 3 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1309, dated October 20, 2011, may be used in support of compliance with section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(b)(2)). The actions specified in Part 5 of the Accomplishment Instructions and corresponding figures of Boeing Service Bulletin 737–53–1309, dated October 20, 2011, are not required by this AD.

(l) Alternative Methods of Compliance (AMOCs)

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

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

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

(m) Related Information

For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6447; fax: (425) 917–6590; email: *Wayne.Lockett@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) Boeing Service Bulletin 737–53–1309, dated October 20, 2011.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on April 4, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08905 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0803; Directorate Identifier 2011–NM–214–AD; Amendment 39–17419; AD 2013–08–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to all The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes. That AD currently requires repetitive inspections for cracking of the elevator actuator fittings. This new AD requires, for previously modified airplanes, repetitive inspections for movement of the fittings or fastener heads, and eventual replacement of certain bolts (including related investigative and corrective actions if necessary). For all airplanes, this replacement, with corrected torque values, would terminate the requirements of the existing AD. This new AD also removes certain airplanes from the applicability. This AD was prompted by the manufacturer's development of a modification that was approved as an optional terminating action to the existing AD's required repetitive inspections. We have been advised that the modification procedures include certain incorrect torque values. We are issuing this AD to detect and correct a cracked actuator fitting or incorrectly installed bolts to the actuator fitting, which could lead to the elevator becoming detached and unrestrained, and a consequent unacceptable flutter condition and loss of control of the airplane.

DATES: This AD is effective May 24, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 24, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 22, 2008 (72 FR 71212, December 17, 2007).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Melanie Violette, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 985057–3356; phone: 425–917–6422; fax: 425–917–6590; email: melanie.violette@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007). That AD applies to the specified products. The NPRM published in the **Federal Register** on August 3, 2012 (77 FR 46340). The NPRM proposed to continue to require repetitive dye penetrant or high-frequency eddy current (HFEC) inspections, or detailed inspections for cracking of the elevator actuator fittings, and replacement of any cracked fitting. The NPRM also proposed to require, for previously modified airplanes, repetitive inspections for movement of the fittings or fastener heads, and eventual replacement of certain bolts (including related investigative and corrective actions if necessary). For all airplanes, this replacement, with corrected torque values, would terminate the requirements of the existing AD. The NPRM also proposed to remove certain airplanes from the applicability.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 46340, August 3, 2012) and the FAA's response to each comment.

Support for the NPRM (77 FR 46340, August 3, 2012)

Boeing supports the NPRM (77 FR 46340, August 3, 2012).

Request To Amend Installed Part Number (P/N)

Air New Zealand requested that we revise the NPRM (77 FR 46340, August 3, 2012) to require that the installed part number be amended to reflect accomplishment of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, instead of the current data plate modification. Air New Zealand explained that the benefits of Boeing re-numbering the modified elevator assembly would be to ensure that the airplane shows clear pre/post modification configuration of the elevator assemblies, and also that the part number changes would add clarity. Air New Zealand reasoned that, otherwise, installing a pre-modified elevator and not re-instating the repeat inspection per Boeing Alert Service Bulletin 777–55A0015 would be an unsafe condition and that the airplane would be out of compliance with the NPRM.

Air New Zealand also indicated that accomplishment of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, leaves the elevator assembly part number unaffected, but the elevator data plate has the service bulletin added to it. Air New Zealand also noted that Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, modifies the elevator as a stand-alone component and does not affect the airframe. Further, Air New Zealand stated that the elevator assembly is an interchangeable component, but the current illustrated parts catalog (IPC) does not show a one-way part interchangeability with pre- and post-embodiment of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, terminating action assemblies due to the part number remaining unchanged.

Air New Zealand expressed that, if an operator accomplishes Boeing Alert

Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, the repeat inspections of Boeing Alert Service Bulletin 777–55A0015 are terminated. Air New Zealand stated that the risk is that if an unscheduled maintenance occurs that replaces the elevator, the operator could potentially install a pre-modified elevator and not reinstate the repeat mandatory inspections specified in Boeing Alert Service Bulletin 777–55A0015, because no part number changed and no IPC interchangeability information was available.

We do not agree to revise this AD to require that the installed part number be amended instead of the current data plate modification. The operator is responsible for ensuring that each airplane is maintained in an airworthy condition, and is in compliance with all regulations. FAA Advisory Circular 39–9, ''Airworthiness Directives Management Process,'' Change 2, dated December 7, 2012 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/31573c7680b14363862578a80051646f/$FILE/AC%2039-9%20CHG%202.pdf*), describes acceptable means for complying with Part 39 requirements for ADs. Boeing has amended the elevator part number, effective with airplane line number 718, which had the modified fitting installed in production. The IPC currently shows that the new elevator (P/N 183W0061–17/18) may not be replaced by an older one (*e.g.,* P/N 183W0061–15/16).

However, we have discovered the existence of a P/N 183W0001 elevator interchangeability drawing, internal to Boeing, which potentially could permit parts covered within the scope of this AD to be installed on airplanes beyond the scope of this AD. Therefore, we have added new paragraph (m) to this AD that explicitly prohibits the use of the elevator interchangeability drawing with this AD, to preclude its use in the event that the drawing becomes available to operators.

Request To Allow for Optional Replacement

American Airlines (AA) requested that we revise the NPRM (77 FR 46340, August 3, 2012) to allow for optional replacement of the fittings with new, improved fittings using Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011.

We agree with the request to allow for optional replacement of the fittings with new, improved fittings using Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011. Paragraph (i) of the NPRM (77 FR 46340, August 3, 2012) already allows for the optional replacement of the fittings with new fittings using Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011. No change is necessary in this regard.

Request To Exclude Requirement From Service Bulletin in NPRM (77 FR 46340, August 3, 2012)

AA requested that we revise the NPRM (77 FR 46340, August 3, 2012) to state that the instruction to ''Put the airplane back to serviceable condition,'' which is found in Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, is not required by the NPRM. AA explained that this requirement does not affect the condition that the NPRM seeks to address. AA reasoned that, as most operators will accomplish these modifications as part of a maintenance visit, returning the airplane to a serviceable condition will not be possible in the context of that statement, but would occur instead at a point in time well after this work is complete.

We agree with the request to state that the phrase ''Put the airplane back to serviceable condition,'' which is referenced in the service information specified in this AD, is not mandated by this final rule. Other regulations require restoring the airplane to serviceable condition before further flight. Therefore, we added an exception in a new paragraph (j)(2) of this AD regarding the language in the service information. In addition, we added a reference to paragraph (j)(2) in paragraphs (g)(1), (g)(2), (h), (h)(1)(ii), (h)(2) and (i) of this AD.

Request for Credit for Elevator Installation

United Airlines (UA) requested that we revise the NPRM (77 FR 46340, August 3, 2012) to include terminating action credit for the installation of a new elevator, as specified by Boeing Alert Service Bulletin 777–55A0016, dated October 27, 2009, including the correct torque values specified in Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011. UA explained that paragraph (k) of the NPRM (paragraph (l) of this final rule) does not provide credit for installation of a new elevator that has complied with the actions specified in Boeing Alert Service Bulletin 777–55A0016, dated October 27, 2009, including the correct torque values specified in Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011. UA expressed that, following accomplishment of Boeing Alert Service Bulletin 777–55A0016, dated October 27, 2009, using the higher torque values, it removed both elevators and inspected the fasteners using Boeing procedures. UA stated that damage was found on the right-hand elevator and it elected to replace the existing elevator (–2B) with a new production elevator (–18B), which had the post-service bulletin configuration with the new actuator fittings installed from production using the correct torque values for the fasteners.

We agree to allow replacement of elevators, as an additional method of compliance for this AD. We have added paragraph (k) to this final rule to allow replacement.

Explanation of Change Made to This AD

We have clarified in paragraph (g)(2) of this final rule, that after the effective date of this AD, Boeing Service Bulletin 777–55A0015, Revision 3, dated November 24, 2009, must be used to accomplish the actions required by paragraph (g)(2) of this final rule.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 46340, August 3, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 46340, August 3, 2012)

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

Costs of Compliance

We estimate that this AD affects 139 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (retained actions from AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007)).	10 work-hours × $85 per hour = $850, per inspection cycle.	$0	$850, per inspection cycle	$118,150, per inspection cycle.
Inspection (new action)	14 work-hours × $85 per hour = $1,190, per inspection cycle.	0	$1,190	Up to $165,410, per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Fitting replacement	132 work-hours × $85 per hour = $11,220	$21,643	$32,863
Bolt replacement	105 work-hours × $85 per hour = $8,925	$65	$8,990

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007), and adding the following new AD:

2013–08–02 The Boeing Company: Amendment 39–17419; Docket No. FAA–2012–0803; Directorate Identifier 2011–NM–214–AD.

(a) Effective Date

This airworthiness directive (AD) is effective May 24, 2013.

(b) Affected ADs

This AD supersedes AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007).

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of a cracked left elevator actuator fitting, and the recent determination that certain incorrect torque values had been specified for an alternative method of compliance intended to terminate the requirements of AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007). We are issuing this AD to detect and correct a cracked actuator fitting or incorrectly installed bolts to the actuator fitting, which could lead to the elevator becoming detached and unrestrained, and a consequent unacceptable flutter condition and loss of control of the airplane.

(f) Compliance

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

(g) Retained Inspections and Corrective Actions With Revised Service Information

This paragraph restates the inspections and corrective actions required by paragraph (f) of AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007), with revised service information.

(1) Except as provided by paragraph (j)(2) of this AD: Do all inspections and actions described in paragraphs (g)(1) and (g)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007; or Boeing Service Bulletin 777–55A0015, Revision 3, dated November 24, 2009. At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0015, dated

April 19, 2007, except as provided by paragraph (g)(3) of this AD, do an initial dye penetrant or high frequency eddy current (HFEC) inspection for cracking of the elevator actuator fittings, and, thereafter, do repetitive dye penetrant, HFEC, or detailed inspections at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007. As of the effective date of this AD, Boeing Service Bulletin 777–55A0015, Revision 3, dated November 24, 2009, must be used to accomplish the actions required by this paragraph.

(2) Before further flight, replace any fitting found to be cracked during any inspection required by paragraph (g)(1) of this AD with a new fitting having the same part number, or an optional part number, as identified in Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007; or Boeing Service Bulletin 777–55A0015, Revision 3, dated November 24, 2009; except as provided by paragraph (j)(2) of this AD. Thereafter, do initial and repetitive inspections of the replacement fitting at the time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007. As of the effective date of this AD, Boeing Service Bulletin 777–55A0015, Revision 3, dated November 24, 2009, must be used to accomplish the actions required by this paragraph.

(3) Where Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007, specifies a compliance time after the date on that service bulletin, this AD requires compliance within the specified compliance time after January 22, 2008 (the effective date of AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007)).

(h) New Additional Actions for Certain Airplanes

For airplanes on which the elevator actuator fitting assemblies have been replaced using the fastener torque values specified in Boeing Alert Service Bulletin 777–55A0016, dated October 27, 2009: Within 180 days after the effective date of this AD, do a detailed inspection of the elevator actuator fitting assemblies to detect discrepancies (including indications of fastener head movement and fitting movement along the spar web), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, except as provided by paragraph (j)(2) of this AD.

(1) If no discrepancy is detected, do the actions specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Repeat the inspection thereafter at intervals not to exceed 90 days or 360 flight cycles, whichever occurs first, until the actions specified in paragraph (h)(1)(ii) of this AD are done.

(ii) Within 4,200 flight cycles or 750 days after the effective date of this AD, whichever occurs first, replace the 12 bolts common to the elevator actuator fitting and the spar web, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, except as provided by paragraphs (j)(1) and (j)(2) of this AD. Do all applicable related investigative and corrective actions before further flight. The replacement of all 12 bolts in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, terminates the requirements of paragraphs (g) and (h) of this AD for that fitting only.

(2) If any discrepancy is detected, before further flight, replace the 12 bolts common to the elevator actuator fitting and the spar web using new parts, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, except as provided by paragraphs (j)(1) and (j)(2) of this AD. Do all applicable related investigative and corrective actions before further flight. The replacement of all 12 bolts in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, terminates the requirements of paragraphs (g) and (h) of this AD for that fitting only.

(i) New Optional Replacement of Elevator Actuator Fitting Assembly

For airplanes on which the elevator actuator fitting assemblies have not been replaced as specified in Boeing Alert Service Bulletin 777–55A0016, dated October 27, 2009: Replacement of these fitting assemblies with new parts, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, except as provided by paragraphs (j)(1) and (j)(2) of this AD, terminates the requirements of paragraphs (g) and (h) of this AD.

(j) Exceptions

(1) If any discrepancy or cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(2) Where the service bulletins identified in paragraphs (j)(2)(i), (j)(2)(ii), and (j)(2)(iii) of this AD specify to ''Put airplane back in a serviceable condition,'' this AD does not require that action.

(i) Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007.

(ii) Boeing Service Bulletin 777–55A0015, Revision 3, dated November 24, 2009.

(iii) Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011.

(k) New Optional Replacement of Elevator

Replacing the elevator with a new elevator terminates the requirements of paragraphs (g) and (h) of this AD, provided that the elevator actuator fitting configuration on the new elevator complies with the modification and bolt torque values defined in the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011.

(l) Credit for Previous Actions

This paragraph provides credit for inspecting and replacing actuator fittings, as required by paragraph (g) of this AD, if the inspection and replacement were performed before the effective date of this AD using a service bulletin specified in paragraph (l)(1) or (l)(2) of this AD, and using the correct torque values as specified in Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011.

(1) Boeing Service Bulletin 777–55A0015, Revision 1, dated January 31, 2008, which is not incorporated by reference in this AD.

(2) Boeing Service Bulletin 777–55A0015, Revision 2, dated December 4, 2008, which is not incorporated by reference in this AD.

(m) Parts Installation Prohibition

As of the effective date of this AD, no person may use the interchangeability table on Boeing Elevator Assembly Drawing 183W0001 (Table 1, Sheet 1), to install an elevator or elevator part on any airplane.

(n) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously in accordance with AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007), are not approved as AMOCs for this AD.

(o) Related Information

(1) For more information about this AD, contact Melanie Violette, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 985057–3356; phone: 425–917–6422; fax: 425–917–6590; email: *melanie.violette@faa.gov.*

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

may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 985057–3356. For information on the availability of this material at the FAA, call 425–227–1221

(p) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on May 24, 2013.

(i) Boeing Service Bulletin 777–55A0015, Revision 3, dated November 24, 2009.

(ii) Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011.

(4) The following service information was approved for IBR on January 22, 2008 (72 FR 71212, December 17, 2007).

(i) Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on April 2, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08742 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 130322279–3279–01]

RIN 0694–AF90

Amendments to Existing Validated End-User Authorizations: CSMC Technologies Corporation in the People's Republic of China (PRC)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to revise the existing Authorization Validated End-User (VEU) listing for CSMC Technologies Corporation (CSMC) in the People's Republic of China (PRC). Specifically, BIS amends Supplement No. 7 to part 748 of the EAR to update VEU CSMC's current list of ''eligible destinations.''

DATES: This rule is effective April 19, 2013.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue NW., Washington, DC 20230; by telephone: (202) 482–5991, fax: (202) 482–3991, or email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User

Validated end-users (VEUs) are designated entities located in eligible destinations to which eligible items may be exported, reexported, or transferred (in-country) under a general authorization instead of a license. The names of the VEUs, as well as the date they were so designated, and their respective eligible destinations and items are identified in Supplement No. 7 to part 748 of the EAR. Under the terms described in that supplement, VEUs may obtain eligible items without an export license from BIS, in conformity with Section 748.15 of the EAR. Eligible items vary between VEUs but may include commodities, software, and technology, except those controlled for missile technology or crime control reasons.

VEUs are reviewed and approved by the U.S. Government in accordance with the provisions of Section 748.15 and Supplement Nos. 8 and 9 to part 748 of the EAR. The End-User Review Committee (ERC), composed of representatives from the Departments of State, Defense, Energy and Commerce, and other agencies, as appropriate, is responsible for administering the VEU program. BIS amended the EAR in a final rule published on June 19, 2007 (72 FR 33646) to create Authorization VEU.

Amendment to an Existing Validated End-User Authorization in the PRC

Revisions to the List of Eligible Destinations and Postal Code for CSMC Technologies Corporation

In this rule, BIS amends Supplement No. 7 to part 748 of the EAR to amend CSMC's current list of eligible destinations. Specifically, BIS removes Wuxi CR Semiconductor Wafers and Chips Co., Ltd. from CSMC's list of eligible destinations. BIS is not making this change in response to activities of concern. Rather, BIS is making this change to CSMC's list of VEU-eligible destinations as a result of the merger of Wuxi CR Semiconductor Wafers & Chips Co., Ltd. and CSMC Technologies Fab 1 Co., Ltd., which is also listed as one of CSMC's eligible destinations. In addition, BIS amends CSMC's authorization by updating the postal code for one of CSMC's eligible destinations.

Names and Former Addresses of Facilities

Validated End-User: CSMC Technologies Corporation.

Eligible Destinations:

CSMC Technologies Fab 1 Co., Ltd., 14 Liangxi Road, Wuxi, Jiangsu 214061, China.

CSMC Technologies Fab 2 Co., Ltd., 8 Xinzhou Rd., Wuxi National New Hi-Tech Industrial Development Zone, Wuxi, Jiangsu 214061, China.

Wuxi CR Semiconductor, Wafers and Chips Co., Ltd., 14 Liangxi Road, Wuxi, Jiangsu 214061, China.

Names and Updated Addresses of Facilities

Validated End-User: CSMC Technologies Corporation.

Eligible Destinations:

CSMC Technologies Fab 1 Co., Ltd., 14 Liangxi Road, Wuxi, Jiangsu 214061, China.

CSMC Technologies Fab 2 Co., Ltd., 8 Xinzhou Road, Wuxi National New Hi-Tech Industrial Development Zone, Wuxi, Jiangsu 214028, China.

Since August 21, 2001, the Export Administration Act (the Act) has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

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

2. This rule involves collections previously approved by the Office of Management and Budget (OMB) under Control Number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS–748; and for recordkeeping, reporting and review requirements in connection with Authorization VEU, which carries an estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and OMB Control Number 0694–0088 are not expected to increase significantly as a result of this rule.

Notwithstanding any other provisions 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 PRA, unless that collection of information displays a currently valid OMB Control Number.

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

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because they are unnecessary.

In determining whether to grant VEU designations, a committee of U.S. Government agencies evaluates information about and commitments made by candidate companies, the nature and terms of which are set forth in 15 CFR part 748, Supplement No. 8. The criteria for evaluation by the committee are set forth in 15 CFR 748.15(a)(2).

The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (71 FR 38313 (July 6, 2006) (proposed rule), and 72 FR 33646 (June 19, 2007) (final rule)). Given the similarities between the authorizations provided under the VEU program and export licenses (as discussed further below), the publication of this information does not establish new policy. In publishing this final rule, BIS simply updates the eligible destinations of the named end-user and a portion of their addresses. These changes have been made within the established regulatory framework of the Authorization VEU program. Further, this rule does not abridge the rights of the public or eliminate the public's option to export under any of the forms of authorization set forth in the EAR.

Publication of this rule in other than final form is unnecessary because the authorizations granted in the rule are consistent with the authorizations granted to exporters for individual licenses (and amendments or revisions thereof), which do not undergo public review. In addition, as with license applications, VEU authorization applications contain confidential business information, which is necessary for the extensive review conducted by the U.S. Government in assessing such applications. This information is extensively reviewed according to the criteria for VEU authorizations, as set out in 15 CFR 748.15(a)(2). Additionally, just as the interagency reviews license applications, the authorizations granted under the VEU program involve interagency deliberation and result from review of public and non-public sources, including licensing data, and the measurement of such information against the VEU authorization criteria. Given the nature of the review, and in light of the parallels between the VEU application review process and the review of license applications, public comment on this authorization and subsequent amendments prior to publication is unnecessary. Moreover, because, as noted above, the criteria and process for authorizing and administering VEUs were developed with public comments, allowing additional public comment on this amendment to individual VEU authorizations, which was determined according to those criteria, is unnecessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the **Federal Register**. BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3) because the delay would be contrary to the public interest. BIS is simply amending a VEU authorization by updating the ''eligible destinations'' of the named end-user and a single postal code. Delaying this action's effectiveness could cause confusion with the VEU status of the list of companies identified in this rule due to the changes made to that list. Accordingly, it is contrary to the public interest to delay this rule's effectiveness.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, Part 748 of the EAR (15 CFR parts 730–774) is amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *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).

■ 2. Supplement No. 7 to part 748 is amended by revising the entry for ''CSMC Technologies Corporation'' in ''China (People's Republic of)'' as follows:

Supplement No. 7 to Part 748—Authorization Validated End-User (VEU); List of Validated End-Users, Respective Items Eligible for Export, Reexport and Transfer, and Eligible Destinations

Country	Validated end user	Eligible items (by ECCN)	Eligible destination	**Federal Register** citation
*	*	* *	*	* *
	CSMC Technologies Corporation.	1C350.c.3, 1C350.c.11, 2B230.a, 2B230.b, 2B350.f, 2B350.g, 2B350.h, 3B001.c.1.a, 3B001.c.2.a, 3B001.e, 3B001.h (except for multilayer masks with a phase shift layer designed to produce ''space qualified'' semiconductor devices), 3C002.a, and 3C004.	CSMC Technologies Fab 1 Co., Ltd., 14 Liangxi Road, Wuxi, Jiangsu 214061, China. CSMC Technologies Fab 2 Co., Ltd., 8 Xinzhou Rd. Wuxi National New Hi-Tech Industrial Development Zone, Wuxi, Jiangsu 214028, China.	76 FR 2802, 1/18/11. 76 FR 37634, 6/28/11. 77 FR 10953, 2/24/12. 78 FR [INSERT FR PAGE NUMBER] 4/19/13.
*	*	* *	*	* *

Dated: April 15, 2013.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2013–09289 Filed 4–18–13; 8:45 am]

BILLING CODE 3510–33–P

INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201 and 210

[Docket No. MISC–040]

Rules of General Application and Adjudication and Enforcement

AGENCY: International Trade Commission.

ACTION: Final rule.

SUMMARY: The United States International Trade Commission (''Commission'') amends its Rules of Practice and Procedure concerning rules of general application, adjudication, and enforcement. The amendments are necessary to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission's rules, and to address concerns that have arisen in Commission practice.

DATES: This regulation is effective May 20, 2013.

FOR FURTHER INFORMATION CONTACT: James Worth, Office of the General Counsel, United States International Trade Commission, telephone 202–205–3065. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This rulemaking seeks to update certain outdated provisions and improve other provisions of the Commission's existing Rules of Practice and Procedure. The Commission is amending its Part 201 rules of general application and Part 210 rules covering investigations under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) (''section 337'') in order to increase the efficiency of its section 337 investigations. The Commission published a notice of proposed rulemaking (NOPR) in the **Federal Register** at 77 FR 41120 (July 12, 2012), proposing to amend the Commission's Rules of Practice and Procedure to make certain changes to rules of general application, adjudication, and enforcement.

Although the Commission considers these rules to be procedural rules which are excepted from notice-and-comment under 5 U.S.C. 553(b)(3)(A), the Commission invited the public to comment on all the proposed rules amendments. The NOPR requested public comment on the proposed rules within 60 days of publication of the NOPR. Subsequently, in response to requests to file comments outside the 60 days, the Commission by letter granted extensions of up to two weeks to the ITC Trial Lawyers Association (''the ITC TLA''), the American Intellectual Property Law Association (''AIPLA''), and Innovation Alliance. The Commission received a total of 8 sets of comments, one each from the American Bar Association, Section of Intellectual Property Law (''the ABA''); AIPLA; the law firm of Adduci, Mastriani & Schaumberg LLP (''AMS''); Broadcom; Cisco; Innovation Alliance; the Intellectual Property Owners Association (''IPO''); and the ITC TLA.

The Commission carefully considered all comments received. The Commission's response is provided below in a section-by-section analysis. The Commission appreciates the time and effort the commentators devoted to provide comments on the NOPR.

Regulatory Analysis of Proposed Amendments to the Commission's Rules

The Commission has determined that the final rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking was required under 5 U.S.C. 553(b) or any other statute. Although the Commission chose to publish a notice of proposed rulemaking, these regulations are ''agency rules of procedure and practice,'' and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These final rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.) because the final rules will not result in expenditure in the aggregate by state, local, and tribal governments, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments, as defined in 5 U.S.C. 601(5).

The final rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.). Moreover, they are exempt from

the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3507(d) of the Paperwork Reduction Act (44 U.S.C. 3507(d)).

Overview of the Amendments to the Regulations

Many of the final rules set forth in this notice are identical to the correspondingly numbered proposed rules published on July 12, 2012. For many of the proposed rules, only positive comments were received or no comment was received. The Commission found no reason to change those proposed rules on its own before adopting them as final rules (with the exception of § 210.5, for which the Commission provides a further explanation below). Thus, the preamble to those unchanged final rules is as set forth in the section-by-section analysis of the proposed rules found at 77 FR 41120 (July 12, 2012).

The Commission received comments with forty suggestions for modifications. Those suggestions and the views of the Commission are summarized in the section-by-section analysis of this notice of final rulemaking. The commentary in the July 12, 2012, notice is considered part of the preamble to these final rules, to the extent that such commentary is not inconsistent with the discussion below. The final rules differ from the proposed rules for nine of the rules (for a total of 16 changes from the NOPR). The ways in which the final rules differ from the proposed rules are summarized here.

First, with regard to § 201.16, relating to service of process, the Commission has used the term ''express delivery'' instead of ''overnight delivery'' in certain instances, and added a definition for express delivery. Further, the Commission has eliminated unnecessary language from the provision for electronic service in paragraph (f).

Second, with regard to § 210.5, relating to public versions of documents containing confidential business information, the Commission has concluded that parties must upon request provide support in the record for any proposed redactions that parties may submit to an administrative law judge or the Commission for the preparation of the public version of a document consistent with Commission rules 201.6 and 210.4.

Third, with regard to § 210.8, relating to commencement of preinstitution proceedings, the Commission has allowed parties to submit the public version of public interest comments on the day following submission of the confidential version.

Fourth, with regard to § 210.12, relating to the complaint, the Commission has decided that the newly required statement of accused products in plain English in the complaint will not be included in the notice of investigation as originally proposed.

Fifth, with regard to §§ 210.16 and 210.17, relating to default and failures to act other than statutory forms of default, the Commission has clarified that both rules are affected by the rule change regarding default by notice. If the named respondent has not yet responded to the complaint and notice of investigation, then the default resulting from a notice of intent to default is under § 210.16. If the named respondent has responded to the complaint or notice of investigation, then the default resulting from a notice of intent to default is under § 210.17. The Commission has further clarified that a respondent's filing of a notice of intent to default eliminates the need for an order to show cause why the respondent should not be found in default.

Sixth, with regard to § 210.21, relating to termination of investigations, the Commission has clarified the wording of consent order stipulations and what is required in consent orders; clarified that it is respondents who sign consent order stipulations; codified the existing practice that the administrative law judge may, in the exercise of discretion, limit service of settlement agreements to settling parties and the Commission investigative attorney for good cause shown; retained the language that settling parties must aver that there are no other agreements between parties; made a conforming change to require that with terminations under paragraph (a)(1) for withdrawal of the complaint, as with other paragraphs of § 210.21, the parties must submit any settlement agreements; and combined the prohibition on importation in proposed paragraphs (c)(4)(iii) and (c)(4)(iv).

Seventh, with regard to § 210.28, relating to depositions, the Commission has clarified that each notice for corporate designations would only count as one deposition; clarified that related respondents are treated as one entity for purposes of the rule; and eliminated the need to respond to a notice of deposition other than to make objections.

Eighth, with regard to § 210.29, relating to interrogatories, the Commission has clarified that related respondents are treated as one entity for purposes of the rule.

Ninth, with regard to § 210.50, relating to Commission action, public interest, and bonding by respondents, the Commission has provided that parties may file the public version of public interest submissions on the day following submission of the confidential version.

The following section-by-section analysis includes a comprehensive discussion of all rules for which commentators suggested modifications.

Section-by-Section Analysis

19 CFR Part 201

Subpart B—Initiation and Conduct of Investigations

Section 201.16 Service of Process and Other Documents

The NOPR proposed to amend § 201.16 by adding a paragraph (a)(3) to provide that the Commission may use overnight service to effectuate service. The ABA suggests changing the wording from ''leaving a copy at the office of such attorney'' to ''by serving the attorney by overnight delivery'' or ''by express delivery.'' The Commission adopts the suggested change so that it is clear that the entire paragraph is discussing service by overnight delivery.

The NOPR proposed to further amend § 201.16 by adding a paragraph (a)(4) to provide that service by overnight delivery is complete upon submitting the document to the overnight delivery service or depositing it in the appropriate container for pick-up. The ABA suggests qualifying this by adding ''such that delivery can be accomplished by the next business day.'' The Commission declines to adopt this suggestion. The Commission notes that if a document being served is submitted for delivery after the overnight delivery service's last pick up of the day, it is the Commission's practice to consider the document as being served the following day. As this Commission practice addresses the problem identified by the ABA, the Commission does not adopt the suggestion.

The NOPR proposed to revise § 201.16(e) by adding five calendar days to the response time when overnight delivery is to a foreign country. The ITC TLA suggests using the term ''express delivery'' instead of ''overnight delivery'' and defining ''express delivery'' to be domestic overnight delivery service or the foreign equivalent thereof. Similarly, the ITC

TLA suggests that the Commission use the term ''express delivery'' in its certificates of service rather than ''international'' service. The Commission adopts these changes in recognition that so-called ''overnight delivery'' is not overnight when it is international. In this connection, the Commission substitutes a definition of ''express delivery'' for ''overnight service'' in § 201.16(e), explaining that ''express delivery'' refers to overnight delivery when the delivery is to a location in the United States, and to the equivalent express service when the delivery is to a foreign location.

The NOPR next proposed to amend § 201.16 by revising paragraph (f) to provide that no additional time after service of the document is added for response when electronic service is used. The ABA suggests striking the words ''after the service of the document'' from the proposed rule because the words are unnecessary. The Commission agrees and adopts the suggestion.

Part 210

Subpart A—Rules of General Applicability

Section 210.4 Written Submissions; Representations; Sanctions

The ITC TLA suggests that the Commission move towards eliminating the requirement for duplicate service of paper copies. The Commission has determined that this is beyond the scope of the proposed rule, but agrees that this may be a topic for a future rulemaking.

Section 210.5 Confidential Business Information

The NOPR proposed to amend § 210.5 to provide that, absent good cause for an extension of time, the Commission and ALJs would issue any public versions of confidential documents (*e.g.,* opinions and orders) within 30 days of the issuance of the confidential version. Common practice is for the Commission or the ALJ to solicit proposed redactions from the parties in order to facilitate the preparation of the public version of the document. After deliberation as to whether the proposed rule will allow sufficient time for the preparation of public versions, and in order not to place an undue burden on the ALJs, the final rule explains that, upon request by the Commission (or the presiding ALJ, if the document was issued by an ALJ), parties must provide support pursuant to §§ 201.6 and 210.4 for any proposed redactions that parties may submit to the Commission or an ALJ for the preparation of the public version of a document. The Commission notes that ALJs are free to adjust their ground rules for the provision of proposed redactions, and that parties are expected to comply with the ground rules of the presiding ALJ.

Subpart B—Commencement of Preinstitution Proceedings and Investigations

Section 210.8 Commencement of Preinstitution Proceedings

The NOPR proposed to amend § 210.8 to provide that entities filing submissions on public interest issues raised by the complaint file a public version of the submission along with the confidential version. AIPLA and the ITC TLA suggest that the rules allow entities to file the public version on the following business day. AIPLA argues that requiring a public version on the same day would place additional strain on the already tight timeline of Section 337 investigations. ITC TLA states that this would be consistent with the practice in the Commission's Title VII investigations under Rule 207.3(c).

The Commission adopts the suggested change. In our view, allowing parties to submit a public version the following business day is reasonable, and is consistent with Commission rule 207.3(c).

Subpart C—Pleadings

Section 210.12 The Complaint

The NOPR proposed to amend § 210.12 to revise paragraphs (a)(6)(i) and (ii) to require a detailed statement in the complaint as to whether a domestic industry exists or is in the process of being established (and if the latter, facts showing complainant is actively engaged in steps leading to the exploitation of its intellectual property rights, and that there is a significant likelihood that an industry will be established in the future). The ABA suggests an alternate wording for paragraph (a)(6)(ii), which deals with allegations of violations of section 337(a)(1)(A)(i) and (ii). Specifically, the ABA suggests that the Commission require a detailed description of the ''domestic industry affected.'' The Commission declines to adopt the suggested change. The ABA's suggested language ''domestic industry affected'' is not a sufficient description of the statutory text and the Commission requires specific factual pleading in the cases of domestic industries that exist and also those that are in the process of being established. Moreover, the language of section 337(a)(1)(A)(i) and (ii) speaks in terms of an ''industry in the United States'' and the ''establishment of such an industry.''

The NOPR also proposed to amend § 210.12 by adding a paragraph (a)(12) which requires the complaint to include a statement in plain English of the types of products that are accused. In addition, the NOPR proposed that the notice of investigation published in the **Federal Register** would include this plain English statement. The ABA suggests that the Commission make the further provision that the scope of the investigation will be restricted to those products enumerated in the **Federal Register** notice.

The final rule retains the requirement that the plain English statement must be set forth in the complaint. However, to avoid potential ambiguities regarding the scope of an investigation, the statement in question will not be included in the notice of investigation as originally proposed. The scope of the investigation is defined by the notice of investigation, not by the complaint. The NOPR did not provide adequate notice for public comment purposes that the inclusion of the statement in the notice of investigation would limit the scope of the investigation. As such, the statement will not be listed in the notice of investigation. The Commission proposed that the complaint describe accused products in plain terms for public notice and informational purposes. Therefore, the ABA's suggestion to use this statement to limit the scope of the notice of investigation is beyond the scope of the NOPR and of this rulemaking. The Commission may consider the ABA's suggestion for a future rulemaking.

Section 210.14 Amendments to Pleadings and Notice; Supplemental Submissions; Counterclaims; Respondent Submissions on the Public Interest (Consolidation of Investigations)

The NOPR proposed to amend § 210.14, *inter alia,* to allow the administrative law judges to consolidate investigations. The ITC TLA opposes the proposed rule to the extent that the same limits on discovery under proposed rule 210.28(a) would apply to consolidated investigations. The Commission will consider the comment in the context of § 210.28. As such, the final rule is unchanged from the proposed rule.

Subpart D—Motions

Section 210.16 Default and Section 210.17 Failures To Act Other Than the Statutory Forms of Default

The NOPR proposed to amend § 210.17 to provide that a respondent may file a notice of intent to default.

The ITC TLA supports the proposed rule.

The ABA points out that the consequence of default is different depending on whether the respondent has responded to the complaint and notice of investigation. Section 210.16 is directed to statutory default under Section 337(g) (which provides for default where ''the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice,'' 19 U.S.C. 1337(g)(1)(C)), whereas § 210.17 is directed to failures to act other than the statutory forms of default. The ABA is correct that the proposed rule change regarding default by notice impacts both § 210.16 and § 210.17. The Commission adopts the ABA's suggestion to amend both §§ 210.16 and 210.17 to provide that if the named respondent has not answered the complaint and notice of investigation (thus satisfying Section 337(g)(1)(C)), then the default by notice may be treated as if under § 210.16, but otherwise the default by notice shall be treated in the same manner as any failure to act under § 210.17.

The ABA argues that it is unclear how a named respondent who had not yet responded to the complaint would be treated, and that it is unclear whether the two-step show cause procedure of Commission rule 210.16(b) would be required after the filing of a notice of intent to default. The ABA suggests that the rule indicate that, after the filing of a notice of intent to default, the ALJ shall issue an ID finding such a respondent in default, and that such a default shall be treated ''as if under'' Commission rule 210.16. The Commission adopts the suggested change and amends section 210.16 to provide that the ALJ shall issue an ID finding such a respondent (*i.e.,* a named respondent who has not yet responded to the complaint and notice of investigation when that respondent files a notice of intent to default) in default, thus eliminating the need for the two-step show cause procedure of Commission rule 210.16(b) with the filing of a notice of intent to default. Likewise, a notice of intent to default under Commission rule 210.17 (*i.e.,* by a respondent who has answered the complaint or notice of investigation) will eliminate the need for the two-step show cause procedure.

Section 210.21 Termination of Investigations

The NOPR proposed to amend § 210.21 to require that parties seeking to terminate an investigation by settlement agreement or consent order provide a copy of any agreements between the parties. The ITC TLA supports the proposed rule. AIPLA suggests that the Commission limit access to all documents to only the Commission, stating that it would not be in the interest of the settling parties for non-settling respondents,who would not otherwise have access to the documents, to have access. The Commission declines to accept the proposed change. The Commission believes that the standard procedure generally requires service on all parties under the protective order to encourage transparency. Nevertheless, the Commission concurs that the administrative law judge may, in the exercise of the administrative law judge's discretion, limit service of a settlement agreement to the settling parties and the Commission investigative attorney on motion for good cause shown.

Upon consideration of the proposed rule, the Commission clarifies the wording of the rule as to what a consent order requires, *i.e.,* a statement of the identity of complainant, the respondent, and the subject articles, and a statement of any allegation in the complaint that the respondents sell for importation, import, or sell after importation the subject articles in violation of section 337.

Further, upon consideration of the proposed rule, the Commission changes § 210.21(c)(4)(ii) to refer to respondents who submit a consent order stipulation rather than to ''parties.'' It is only necessary for a respondent to sign a consent order stipulation, even if there is a joint motion with the complainant for termination based on a consent order.

There are four other changes from the proposed rule. The final rule retains the language of the current paragraph (b) that the settling parties must aver that there are no other agreements between the parties. Second, the final rule requires that parties seeking to terminate the investigation under paragraph (a)(1) on the basis of withdrawal of the complaint or good cause must provide any settlement agreements. The proposed rule provided that parties seeking to terminate the investigation by consent order under paragraph (c), as with settlement agreements under paragraph (b), must provide any settlement agreements between the parties. As all other types of termination under section 210.21 would require parties to submit any agreements for review in light of relevant public interest considerations, the final rule recognizes that paragraph (a)(1) should not be a gap or loophole. Thus § 210.21(a)(1) will require submission of any settlement agreements as well. Third, the final rule changes the wording of § 210.21(c)(3) to clarify the type of statements required in a consent order stipulation. Fourth, the final rule changes § 210.21(c)(4) to combine the prohibition on importation of proposed paragraph (iii) and the exceptions for consent of proposed paragraph (iv), and to renumber the remaining paragraphs in the final rule accordingly.

Subpart E—Discovery and Compulsory Process

Section 210.28(a) Depositions (Limit on the Number of Depositions)

The NOPR proposed to amend § 210.28 to limit the number of depositions that parties could take absent stipulation or order for good cause shown, such that complainants would be limited to no more than 5 fact depositions per respondent and no more than 20 total, whichever is greater, respondents as a group would be limited to no more than 20 fact depositions, and if the investigative attorney is a party, he or she could take 10 fact depositions and participate in all depositions taken by any party in the investigation. This proposed rule seeks to prevent an undue burden on parties, consistent with Federal Rule of Civil Procedure 30(a). The Commission notes that ALJs have inherent authority to limit discovery, *e.g.,* depositions, interrogatories, witness statements, and exhibits, in their ground rules, subject only to due process constraints.

Cisco argues that the Federal Circuit bench and bar has favorably looked upon Federal Rules of Civil Procedure 30(a)(2)(A)(i), which limits each side to taking ten depositions total, and that a similar rule should apply to the Commission. Cisco suggests that the proposed rule should be modified to limit the total number of fact depositions that may be taken of any one party or third party and their affiliates to ten, absent a stipulation or order on written motion to the ALJ for good cause shown. AIPLA cautions against applying the Federal Rules of Civil Procedure to Section 337 investigations and suggests keeping the current practice, whereby the ALJs limit discovery through their ground rules. AIPLA also suggests that the rule provide specifically for the case of consolidated investigations.

IPO argues that there is an imbalance, stating that if there are 21 respondents then complainants could take 105 depositions, while the respondents, who may be unrelated to each other, would be limited to 20 depositions. IPO further

argues that there may be more than 20 named inventors for respondents to depose. IPO next states that it is unclear whether it would count as more than one deposition if a party designates more than one person to testify on its behalf. IPO suggests that the Commission enumerate what factors would constitute good cause to increase the number of depositions, and that the Commission clarify whether any deposition in which a person is designated to testify on one or more topics counts as a separate deposition.

The ABA argues that it is unclear whether the maximum for complainants is 20 depositions total or 5 depositions per respondent, that related respondents should be treated as a group, and that it is unclear whether 30(b)(6) notices are counted as one deposition. The ABA suggests that each 30(b)(6) notice be treated as one deposition but that parties be limited to two Rule 30(b)(6) notices of each other party, that the ITC adopt the 30(b)(6) language of the Federal Rules of Civil Procedure, and that each person deposed be subject to a seven hour, one-day limitation present in the Federal Rules absent permission of the ALJ for additional time.

The ITC TLA agrees with the principle of limiting the number of depositions, but suggests that the administrative law judge set limits for depositions in each investigation after the parties confer and each party submits a proposed list of depositions. The ITC TLA argues that the number of necessary depositions will vary from investigation to investigation based on the number of asserted patents, the number of named inventors on the patents, the quantity of prior art that needs to be authenticated, and whether the Commission has delegated the taking of evidence on the public interest to the administrative law judge. Additionally, the ITC TLA argues that the proposed rule would have the unintended consequence of limiting discovery depending on the number of corporate representatives designated to respond to a Rule 30(b)(6) notice. AMS suggests that no limitation should be placed on the number of depositions, but should the Commission decide to adopt the proposed rule, AMS suggests that Rule 30(b)(6) depositions, inventor depositions, and third party depositions be excluded from the proposed limitation.

The rule is unchanged from the proposed rule, with the clarifications that (a) each notice for corporate designations (akin to Rule 30(b)(6) practice under the Federal Rules) would include all corporate representatives designated to respond, and would only count as one deposition for purpose of the rule, and (b) that related respondents would be treated as one entity for purpose of the rule. With regard to the ABA's comment that the rule appears ambiguous with regard to the maximum number of fact depositions permitted for the complainants, the Commission clarifies that the rule provides that the complainants may take a maximum of 20 fact depositions or five fact depositions per respondent, whichever is greater. The Commission does not believe that a special rule is required for consolidated investigations although consolidation of investigations may constitute good cause for an increase in the number of depositions at the discretion of the administrative law judge. While the Commission agrees with the ITC TLA that the number of depositions required may vary from investigation to investigation, the proposed rule allows the administrative law judge to increase the number of allotted depositions for good cause shown. However, the purpose of the rule is to reduce the burdens and costs of discovery by imposing reasonable limits on discovery, and in doing so to avoid excessive motions practice before the ALJs. Adopting the ITC TLA's suggestion that the ALJ set limits in each investigation may not accomplish the purpose of the rule. Thus, the rule sets a reasonable limit on discovery while allowing the ALJs to exercise discretion to modify the limit for good cause shown.

As to IPO's argument that the number of depositions would be excessive if there are many respondents, the Commission notes that if there are different respondents, it may be necessary to take discovery from each respondent (or group of related respondents) to the investigation.

Section 210.28(c) Depositions (Response and Objections to Notice of Deposition)

The NOPR proposed to amend § 210.28 to provide that parties may respond and object to a notice of deposition within ten days of service of the notice of deposition. The ITC TLA suggests that the rule provide that parties may object to a notice within 10 days but suggests eliminating the proposed provision for a response to the notice. The ITC TLA argues that the recipient of the notice of deposition may not be able to identify the corporate designees within 10 days. The Commission adopts the suggestion so that the recipient must make any objections within 10 days, and state the reasons therefor, but the recipient need not identify the corporate designees within this time frame because 10 days may not be enough time to identify the corporate designees.

Section 210.29 Interrogatories (Limit on the Number of Interrogatories)

The NOPR proposed to amend § 210.29 to limit the number of interrogatories that any party may serve on any other party to 175. Cisco agrees with the effort of the rules to limit the number of interrogatories but suggests that the Commission limit the number of interrogatories that may be served on a party to forty. Cisco points to Federal Rules of Civil Procedure 33(a)(i), which limits each party to serving twenty-five interrogatories on any other party absent stipulation or leave of court. Cisco cites several recent Section 337 investigations in which the respondents filed thousands of pages in response to interrogatories. Cisco also suggests that related parties (*i.e.,* parties and their affiliates) be grouped together for purposes of the rule. AIPLA cautions against applying the Federal Rules of Civil Procedure to Section 337 investigations and suggests keeping the current practice, whereby the ALJs limit discovery through their ground rules. AIPLA also suggests that the rule provide specifically for the case of consolidated investigations. IPO suggests a presumptive limit of 50 to 100 interrogatories, which it argues would be higher than the Federal Rules of Civil Procedure and sufficient to allow adequate discovery while helping to limit the cost of responding to written discovery. The ITC TLA and AMS support the proposed rule. The ITC TLA points out that the proposed rule is consistent with the ground rules of the administrative law judges.

The final rule is unchanged from the proposed rule with the clarification that related respondents are treated as one entity for purposes of the rule. The proposed rule is consistent with the ALJ ground rules and allows a change to the number of allowed interrogatories for good cause. The default number of 175 interrogatories (or subparts) has worked well in current practice, allowing parties sufficient discovery while minimizing motions practice. The Commission does not believe that a special rule is required for consolidated investigations, although consolidation of investigations may constitute good cause for an increase in the number of interrogatories at the discretion of the administrative law judge.

Section 210.31 Requests for Admissions

Cisco suggests that the Commission amend § 210.31 to limit each party to 40

requests for admission (or subparts thereof) from any other party (including affiliates thereof).

This proposal is beyond the scope of the Commission's Notice of Proposed Rulemaking. The Commission may consider this topic for a future rulemaking.

Section 210.32 Subpoenas

Broadcom and Cisco suggest that the Commission amend § 210.32 to allocate the burden to the party that is seeking discovery from a third party to move to compel rather than requiring a third party to move to quash a subpoena.

This proposal is beyond the scope of the Commission's Notice of Proposed Rulemaking. The Commission may consider this topic for a future rulemaking.

Subpart G—Determinations and Action Taken

Section 210.43 Petitions for Review [and the Summary Thereof in Appendix A]

The NOPR proposed to amend § 210.43 to make a technical correction to change the time for a response to a petition of a summary determination that would terminate the investigation from 10 business days to 10 calendar days. AIPLA opposes this change, stating that shortening the time period for a response would present difficulties for attorneys. The ITC TLA also opposes the change, stating that it may be prejudicial on foreign parties. This was intended to be a technical correction, as the summary table in Appendix A to the rules already provides for 10 calendar days. The rule is unchanged from the proposed rule because it merely makes the technical correction. The rule provides only two fewer days for a petition for review of a summary determination that would terminate the investigation than are provided for a petition for review of a final ID and there are typically fewer issues in a summary determination ID than in a final ID.

The NOPR further proposed to provide an express statement prohibiting parties from evading the page limits for petitions and responses by incorporating other pleadings by reference. AIPLA argues that it is ''against the interest of the investigation'' to limit pages because arguments not contained in the brief are waived. The ITC TLA points out that parties are required to state their arguments in detail. AIPLA and the ITC TLA suggest that either there should be no page limits or the Commission should allow the parties to petition the Commission for additional pages.

The proposed rule did not revisit the issue of page limits which were provided in the 2008 rulemaking, 73 FR 38319, 38325 (July 7, 2008). The proposed rule merely explained that parties cannot evade these page limits through incorporation of other pleadings by reference. The Commission believes that the existing page limits are adequate for the parties to avoid waiver of arguments not raised in the briefs and views incorporation by reference to be inconsistent with the existing rule.

Section 210.50 Commission Action, Public Interest, and Bonding by Respondents

The NOPR proposed to amend § 210.50 to provide that entities filing submissions on public interest issues raised by the ID file a public version of the submission with the confidential version. AMS points out that this shortens the time for filing a public version from 10 calendar days, which is the default time period for filing public versions provided by Commission rule 210.4(f)(7)(ii)(A)(3). AMS submits that the NOPR does not provide a reason for the requirement of concurrent filing and argues that this would create an undue burden on the party filing. AIPLA and the ITC TLA make a similar argument. The Commission adopts the AIPLA's suggestion to allow parties to file the public version on the next business day following submission of the confidential version. Allowing parties to submit a public version the following day is reasonable, and is consistent with Commission rule 207.3(c).

The ABA further suggests amending Commission rule 210.50(a)(4) to allow 45 days for submission of public interest submissions because, under the proposed Commission rule 210.5, the public version of the initial determination and the recommended determination on remedy would have issued 30 days after the confidential version, and submissions relating to the public interest would be due on the same day. This proposal is beyond the scope of the Commission's Notice of Proposed Rulemaking, but may be revisited in a future rulemaking. The Commission notes that the Commission practice is to publish a notice in the **Federal Register** following the issuance of the recommended determination, soliciting public interest submissions. This notice summarizes the recommended determination in order to provide notice to the public.

Subpart I—Enforcement Procedures and Advisory Opinions

Section 210.75(b) (Formal Enforcement Proceedings) and 210.76 (Modification Proceedings)

The NOPR proposed to amend § 210.75(b) to shorten the period for determining whether to review an enforcement ID in a formal enforcement proceeding from 90 days to 45 days. The NOPR further proposed to amend § 210.75(b) to provide 10 (calendar) days for petitions and to provide 5 business days for responses thereto. Similarly, the NOPR proposed to amend § 210.76 to provide 10 (calendar) days for comments and 5 business days for responses thereto.

The ITC TLA supports expediting final resolution of an enforcement proceeding but suggests 60 days for the period for determining whether to review the ID, stating its concern that 45 days may not be adequate for sufficient consideration by the Commission if the ITC TLA's suggestion for briefing were accepted. Specifically, the ITC TLA proposes 10 business days for petitions for review, as for current rule 210.43. The Commission declines the ITC TLA's suggestion that the Commission set the deadline for determining whether to review an enforcement ID to be 60 days from service of the enforcement ID. There is a statutory mandate to conclude an investigation and make a determination on violation at the earliest practicable time, 19 U.S.C. 1337(b). The Commission believes that, in most enforcement proceedings, 45 days is a sufficient period for its decision on whether to review the enforcement ID, and notes that this time period is comparable to that for determining whether to review a summary determination that would terminate an investigation. These two types of decisions are comparable in terms of the tasks the Commission needs to accomplish. The Commission has found the 45 day limit to be workable in the context of summary determinations that would terminate an investigation, and therefore concludes that the same time limit should be applicable for enforcement proceedings.

List of Subjects

19 CFR Part 201

Administration practice and procedure, Reporting and recordkeeping requirements.

19 CFR Part 210

Administration practice and procedure, Business and industry,

Customs duties and inspection, Imports, Investigations.

For the reasons stated in the preamble, 19 CFR parts 201 and 210 are amended as set forth below:

PART 201—RULES OF GENERAL APPLICATION

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

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

Subpart B—Initiation and Conduct of Investigations

■ 2. Amend § 201.16 by:
■ a. Adding paragraphs (a)(3) and (4);
■ b. Revising paragraph (c)(1);
■ c. Revising paragraph (e); and
■ d. Revising the third sentence of paragraph (f).

The additions and revisions read as follows:

§ 201.16 Service of process and other documents.

(a) * * *

(3) By using an express delivery service to send a copy of the document to the principal office of such person, partnership, corporation, association, or other organization, or, if an attorney represents any of the above before the Commission, by serving the attorney by express delivery.

(4) When service is by mail, it is complete upon mailing of the document. When service is by an express service, service is complete upon submitting the document to the express delivery service or depositing it in the appropriate container for pick-up by the express delivery service.

* * * * *

(c) * * *

(1) Each document filed with the Secretary to the Commission by a party in the course of an investigation (as provided in § 201.8 of this part) shall be served on each other party to the investigation (as provided in § 210.4(i) of this chapter for investigations under 19 U.S.C. 1337).

* * * * *

(e) *Additional time after service by express delivery.* Whenever a party or Federal agency or department has the right or is required to perform some act or take some action within a prescribed period after the service of a document upon it and the document is served by express delivery, one (1) day shall be added to the prescribed period if the service is to a destination in the United States, and five (5) days shall be added to the prescribed period if the service is to a destination outside the United States. ''Service by express delivery'' refers to a method that would provide delivery by the next business day within the United States and refers to the equivalent express delivery service when the delivery is to a foreign location.

(f) * * * If electronic service is used, no additional time is added to the prescribed period. * * *

PART 210—ADJUDICATION AND ENFORCEMENT

■ 3. The authority citation for part 210 continues to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

Subpart A—Rules of General Applicability

■ 4. Amend § 210.3 by adding a definition of *Ancillary proceeding* in alphabetical order to read as follows:

§ 210.3 Definitions.

* * * * *

Ancillary proceeding has the same meaning as *related proceeding.*

* * * * *

■ 5. Amend § 210.4 by revising paragraph (f)(3) to read as follows:

§ 210.4 Written submissions; representations; sanctions.

* * * * *

(f) * * *

(3) Responses to a complaint, briefs, comments and responses thereto, compliance reports, motions and responses or replies thereto, petitions and replies thereto, prehearing statements, and proposed findings of fact and conclusions of law and responses thereto provided for under §§ 210.4(d), 210.13, 210.8, 210.14, 210.15, 210.16, 210.17, 210.18, 210.19, 210.20, 210.21, 210.23, 210.24, 210.25, 210.26, 210.33, 210.34, 210.35, 210.36, 210.38, 210.40, 210.43, 210.45, 210.46, 210.47, 210.50, 210.52, 210.53, 210.57, 210.59, 210.66, 210.70, or 210.71; and submissions filed with the Secretary pursuant to an order of the presiding administrative law judge shall be filed electronically, and true paper copies of such submissions shall be filed by 12 noon, eastern time, on the next business day.

* * * * *

■ 6. Amend § 210.5 by adding paragraph (f) to read as follows:

§ 210.5 Confidential business information.

* * * * *

(f) When the Commission or the administrative law judge issues a confidential version of an order, initial determination, opinion, or other document, the Commission, or the presiding administrative law judge if the administrative law judge has issued the confidential version, shall issue any public version of the document within 30 days, unless good cause exists to extend the deadline. An administrative law judge or the Commission may extend this time by order. Upon request by the Commission, or the administrative law judge if the administrative law judge has issued the confidential version, parties must provide support in the record for their claim of confidentiality, pursuant § 201.6 of this chapter and § 210.4 of this subpart for any proposed redactions that parties may submit to the Commission or the administrative law judge for the preparation of any public version.

■ 7. Revise § 210.6 to read as follows:

§ 210.6 Computation of time, additional hearings, postponements, continuances, and extensions of time.

(a) Unless the Commission, the administrative law judge, or this or another section of this part specifically provides otherwise, the computation of time and the granting of additional hearings, postponements, continuances, and extensions of time shall be in accordance with §§ 201.14 and 201.16(d) and (e) of this chapter.

(b) Whenever a party has the right or is required to perform some act or to take some action within a prescribed period after service of a document upon it, and the document was served by mail, the deadline shall be computed by adding to the end of the prescribed period the additional time allotted under § 201.16(d), unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

(c) Whenever a party has the right or is required to perform some act or to take some action within a prescribed period after service of a Commission document upon it, and the document was served by express delivery, the deadline shall be computed by adding to the end of the prescribed period the additional time allotted under § 201.16(e), unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

■ 8. Amend § 210.7 by revising paragraphs (a)(2) and (c) to read as follows:

§ 210.7 Service of process and other documents; publication of notices.

(a) * * *

(2) The service of all initial determinations as defined in § 210.42, all cease and desist orders as set forth in § 210.50(a)(1), and all documents containing confidential business information as defined in § 201.6(a), issued by or on behalf of the Commission or the administrative law judge on a private party, shall be effected by serving a copy of the document by express delivery, as defined in § 201.16(e), on the person to be served, on a member of the partnership to be served, on the president, secretary, other executive officer, or member of the board of directors of the corporation, association, or other organization to be served, or, if an attorney represents any of the above in connection with an investigation under this subtitle, by serving a copy by express delivery on such attorney.

* * * * *

(c) *Publication of notices.* (1) Notice of action by the Commission or an administrative law judge will be published in the **Federal Register** only as specifically provided in § 201.10, paragraph (c)(2) of this section, by another section in this chapter, or by order of an administrative law judge or the Commission.

(2) When an administrative law judge or the Commission determines to amend or supplement a notice published in accordance with paragraph (c)(1) of this section, notice of the amendment will be published in the **Federal Register**.

■ 9. Amend § 210.8 by:

■ a. Adding a sentence after the first sentence of paragraph (b) introductory text;

■ b. Adding a sentence after the fourth sentence of paragraph (c)(1) introductory text; and

■ c. Adding a second sentence to paragraph (c)(2).

The additions read as follows:

§ 210.8 Commencement of preinstitution proceedings.

* * * * *

(b) * * * If the complainant files a confidential version of its submission on public interest, it shall file a public version of the submission no later than one business day after the deadline for filing the submission. * * *

* * * * *

(c) * * *

(1) * * * If a member of the public or proposed respondent files a confidential version of its submission, it shall file a public version of the submission no later than one business day after the deadline for filing the submission.

* * *

* * * * *

(2) * * * If the complainant files a confidential version of its submission, it shall file a public version of the submission no later than one business day after the deadline for filing the submission.

* * * * *

Subpart C—Pleadings

■ 10. Amend § 210.12 by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising the first sentence of paragraph (a)(6)(i) introductory text;

■ c. Revising paragraph (a)(6)(ii);

■ d. Revising paragraph (a)(11); and

■ e. Adding paragraph (a)(12).

The revisions and addition read as follows:

§ 210.12 The complaint.

(a) *Contents of the complaint.* In addition to conforming with the requirements of §§ 210.4 and 210.5 of this part, the complaint shall—

* * * * *

(6)(i) If the complaint alleges a violation of section 337 based on infringement of a U.S. patent, or a federally registered copyright, trademark, mask work, or vessel hull design, under section 337(a)(1) (B), (C), (D), or (E) of the Tariff Act of 1930, include a statement as to whether an alleged domestic industry exists or is in the process of being established as defined in section 337(a)(2), and include a detailed description of the relevant domestic industry as defined in section 337(a)(3) that allegedly exists or is in the process of being established (*i.e.,* for the former, facts showing significant/substantial investment and employment, and for the latter, facts showing complainant is actively engaged in the steps leading to the exploitation of its intellectual property rights, and that there is a significant likelihood that an industry will be established in the future), and including the relevant operations of any licensees.* * *

* * * * *

(ii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition and unfair acts in the importation or sale of articles in the United States that have the threat or effect of destroying or substantially injuring an industry in the United States or preventing the establishment of such an industry under section 337(a)(1)(A)(i) or (ii), include a detailed statement as to whether an alleged domestic industry exists or is in the process of being established (*i.e.,* for the latter, facts showing that there is a significant likelihood that an industry will be established in the future), and include a detailed description of the domestic industry affected, including the relevant operations of any licensees; or

* * * * *

(11) Contain a request for relief, including a statement as to whether a limited exclusion order, general exclusion order, and/or cease and desist orders are being requested, and if temporary relief is requested under section 337(e) and/or (f) of the Tariff Act of 1930, a motion for such relief shall accompany the complaint as provided in § 210.52(a) or may follow the complaint as provided in § 210.53(a).

(12) Contain a clear statement in plain English of the category of products accused. For example, the caption of the investigation might refer to ''certain electronic devices,'' but the complaint would provide a further statement to identify the type of products involved in plain English such as mobile devices, tablets, or computers.

* * * * *

■ 11. Amend § 210.13 by revising the first sentence of paragraph (b) to read as follows:

§ 210.13 The response.

* * * * *

(b) * * * In addition to conforming to the requirements of §§ 210.4 and 210.5 of this part, each response shall be under oath and signed by respondent or his duly authorized officer, attorney, or agent with the name, address, and telephone number of the respondent and any such officer, attorney, or agent given on the first page of the response.* * *

* * * * *

■ 12. Amend § 210.14 by:

■ a. Revising the section heading;

■ b. Adding a sentence at the end of paragraph (a);

■ c. Adding a sentence after the second sentence of paragraph (b)(1); and

■ d. Adding paragraph (g).

The revision and additions read as follows:

§ 210.14 Amendments to pleadings and notice; supplemental submissions; counterclaims; consolidation of investigations.

(a) * * * If, prior to institution, the complainant seeks to amend a complaint to add a respondent or to assert an additional unfair act not in the original complaint, including asserting a new patent or patent claim, then the complaint shall be treated as if it had been filed on the date the amendment is filed for purposes of §§ 210.8(b) and (c), 210.9, and 210.10(a).

(b) * * *

(1) * * * A motion to amend the complaint and notice of investigation to name an additional respondent after institution shall be served on the proposed respondent.* * *

* * * * *

(g) *Consolidation of investigations.* The Commission may consolidate two or more investigations. If the investigations are currently before the same presiding administrative law judge, he or she may consolidate the investigations. The investigation number in the caption of the consolidated investigation will include the investigation numbers of the investigations being consolidated. The investigation number in which the matter will be proceeding (the lead investigation) will be the first investigation number named in the consolidated caption.

Subpart D—Motions

§ 210.15 [Amended]

■ 13. Amend § 210.15 by removing the second sentence in paragraph (a)(2).

■ 14. Amend § 210.16 by:

■ a. Revising paragraph (b)(1);

■ b. Redesignating paragraph (b)(3) as (b)(4);

■ b. Adding new paragraph (b)(3);

■ c. Adding subject headings to paragraphs (c)(1) and (2); and

■ d. Revising the last sentence of paragraph (c)(2).

The additions and revisions read as follows:

§ 210.16 Default.

* * * * *

(b) * * *

(1)(i) If a respondent has failed to respond or appear in the manner described in paragraph (a)(1) of this section, a party may file a motion for, or the administrative law judge may issue upon his own initiative, an order directing respondent to show cause why it should not be found in default.

(ii) If the respondent fails to make the necessary showing pursuant to paragraph (b)(1)(i) of this section, the administrative law judge shall issue an initial determination finding the respondent in default. An administrative law judge's decision denying a motion for a finding of default under paragraph (a)(1) of this section shall be in the form of an order.

* * * * *

(3) If a proposed respondent has not filed a response to the complaint and notice of investigation pursuant to § 210.13 or § 210.59(c) of this chapter, the proposed respondent may file a notice of intent to default under this section. The filing of a notice of intent to default does not require the administrative law judge to issue the show-cause order of paragraph (b)(1) of this section. The administrative law judge shall issue an initial determination finding the proposed respondent in default upon the filing of a notice of intent to default. Such default will be treated in the same manner as any default under this section.

* * * * *

(c) * * *

(1) *Types of relief available.* * * *

(2) *General exclusion orders.* * * * The Commission may issue a general exclusion order pursuant to section 337(g)(2) of the Tariff Act of 1930, regardless of the source or importer of the articles concerned, provided that a violation of section 337 of the Tariff Act of 1930 is established by substantial, reliable, and probative evidence and that the other requirements of 19 U.S.C. 1337(d)(2) are satisfied, and only after considering the aforementioned public interest factors and the requirements of § 210.50(c).

■ 15. Amend § 210.17 by:

■ a. Revising the section heading;

■ b. Revising paragraph (f);

■ c. Removing paragraph (g);

■ d. Redesignating paragraph (h) as paragraph (g); and

■ e. Adding new paragraph (h).

The revisions and addition read as follows:

§ 210.17 Other failure to act and default.

* * * * *

(f) Failure to respond to a petition for review of an initial determination, a petition for reconsideration of an initial determination, or an application for interlocutory review of an administrative law judge's order; and

* * * * *

(h) *Default by notice.* If a respondent has filed a response to the complaint or notice of investigation under § 210.13 of this chapter, the respondent may still file a notice of intent to default with the presiding administrative law judge at any time before the filing of the final initial determination. The administrative law judge shall issue an initial determination finding the respondent in default upon the filing of a notice of intent to default. Such default will be treated in the same manner as any other failure to act under this section. The filing of a notice of intent to default does not require the administrative law judge to issue an order to show cause as to why the respondent should not be found in default.

* * * * *

■ 16. Amend § 210.21 by:

■ a. Revising the second sentence of paragraph (a)(1);

■ b. Adding a sentence after the third sentence of paragraph (a)(1);

■ c. Revising the second sentence of paragraph (b)(1);

■ d. Adding a sentence at the end of paragraph (b)(1);

■ e. Adding four sentences to the end of paragraph (c) introductory text;

■ f. Revising the third sentence of paragraph (c)(1)(ii);

■ g. Revising paragraph (c)(3); and

■ h. Adding paragraphs (c)(4) and (5).

The revisions and additions read as follows:

§ 210.21 Termination of investigations.

* * * * *

(a) * * *

(1) * * * A motion for termination of an investigation based on withdrawal of the complaint, or for good cause, shall contain a statement that there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation, or if there are any agreements concerning the subject matter of the investigation, all such agreements shall be identified, and if written, a copy shall be filed with the Commission along with the motion. * * * On motion for good cause shown, the administrative law judge may limit service of the agreements to the settling parties and the Commission investigative attorney. * * *

* * * * *

(b) * * *

(1) * * * The motion for termination by settlement shall contain copies of the licensing or other settlement agreements, any supplemental agreements, any documents referenced in the motion or attached agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. * * * On motion for good cause shown, the administrative law judge may limit the service of the agreements to the settling parties and the Commission investigative attorney.

* * * * *

(c) * * * A motion for termination by consent order shall contain copies of any licensing or other settlement agreement, any supplemental agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information

within the meaning of § 201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the motion. On motion for good cause shown, the administrative law judge may limit service of the agreements to the settling parties and the Commission investigative attorney. If there are no additional agreements, the moving parties shall certify that there are no additional agreements.

(1) * * *

(ii) * * * The stipulation shall comply with the requirements of paragraph (c)(3) of this section. * * * * * * * *

(3) *Contents of consent order stipulation.* (i) Every consent order stipulation shall contain, in addition to the proposed consent order, the following:

(A) An admission of all jurisdictional facts;

(B) A statement identifying the asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice, and whether the stipulation calls for cessation of importation, distribution, sale, or other transfers (other than exportation) of subject articles in the United States and/or specific terms relating to the disposition of existing U.S. inventories of subject articles.

(C) An express waiver of all rights to seek judicial review or otherwise challenge or contest the validity of the consent order;

(D) A statement that the signatories to the consent order stipulation will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of this part;

(E) A statement that the enforcement, modification, and revocation of the consent order will be carried out pursuant to subpart I of this part, incorporating by reference the Commission's Rules of Practice and Procedure;

(F) A statement that the signing thereof is for settlement purposes only and does not constitute admission by any respondent that an unfair act has been committed, if applicable; and

(G) A statement that the consent order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and this part for other Commission actions, and the Commission may require periodic compliance reports pursuant to subpart I of this part to be submitted by the person entering into the consent order stipulation.

(ii) In the case of an intellectual property-based investigation, the consent order stipulation shall also contain—

(A) A statement that the consent order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable;

(B) A statement that each signatory to the stipulation who was a respondent in the investigation will not seek to challenge the validity of the intellectual property right(s), in any administrative or judicial proceeding to enforce the consent order

(4) *Contents of consent order.* The Commission will not issue consent orders with terms beyond those provided for in this section, and will not issue consent orders that are inconsistent with this section. The consent order shall contain:

(i) A statement of the identity of complainant, the respondent, and the subject articles, and a statement of any allegation in the complaint that the respondents sell for importation, import, or sell after importation the subject articles in violation of section 337 by reason of asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice;

(ii) A statement that the respondents have executed a consent order stipulation (but the consent order shall not contain the terms of the stipulation);

(iii) A statement that the respondent shall not sell for importation, import, or sell after importation the subject articles, directly or indirectly, and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation except under consent, license from the complainant, or to the extent permitted by the settlement agreement between complainant and respondent;

(iv) A statement, if applicable, regarding the disposition of existing U.S. inventories of the subject articles.

(v) A statement, if applicable, whether the respondent would be ordered to cease and desist from importing and distributing articles covered by the asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice;

(vi) A statement that respondent shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of the Consent Order;

(vii) A statement that respondent shall cooperate with and shall not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's Rules of Practice and Procedure, 19 CFR part 210;

(viii) A statement that Respondent and its officers, directors, employees, agents, and any entity or individual acting on its behalf and with its authority shall not seek to challenge the validity or enforceability of the claims of the asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice in any administrative or judicial proceeding to enforce the Consent Order;

(ix) A statement that when the patent, copyright, trademark, mask work, boat hull design, or unfair trade practice expires the Consent Order shall become null and void as to such;

(x) A statement that if any claim of the patent, copyright, trademark, mask work, boat hull design, or other unfair trade practice is held invalid or unenforceable by a court or agency of competent jurisdiction or as to any articles that has been found or adjudicated not to infringe the asserted right in a final decision, no longer subject to appeal, this Consent Order shall become null and void as to such invalid or unenforceable claim; and

(xi) A statement that the investigation is hereby terminated with respect to the respondent; provided, however, that enforcement, modification, or revocation of the Consent Order shall be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

(5) *Effect, interpretation, and reporting.* The consent order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and this part for other Commission actions. The Commission will not enforce consent order terms beyond those provided for in this section. The Commission may require periodic compliance reports pursuant to subpart I of this part to be submitted by the person entering into the consent order stipulation.

* * * * *

Subpart E—Discovery and Compulsory Process

■ 17. Amend § 210.28 by:

■ a. Adding three sentences at the end of paragraph (a); and

■ b. Adding a sentence after the second sentence of paragraph (c).

The additions read as follows:

§ 210.28 Depositions.

(a) * * * Without stipulation of the parties, the complainants as a group

may take a maximum of five fact depositions per respondent or no more than 20 fact depositions whichever is greater, the respondents as a group may take a maximum of 20 fact depositions total, and if the Commission investigative attorney is a party, he or she may take a maximum of 10 fact depositions and is permitted to participate in all depositions taken by any parties in the investigation. Each notice for a corporation to designate deponents only counts as one deposition and includes all corporate representatives so designated to respond, and related respondents are treated as one respondent for purposes of determining the number of depositions. The presiding administrative law judge may increase the number of depositions on written motion for good cause shown.

* * * * *

(c) * * * A party upon whom a notice of deposition is served may make objections to a notice of deposition and state the reasons therefor within ten days of service of the notice of deposition.* * *

* * * * *

■ 18. Amend § 210.29 by adding three sentences to the end of paragraph (a) to read as follows:

§ 210.29 Interrogatories.

(a) * * * Absent stipulation of the parties, any party may serve upon any other party written interrogatories not exceeding 175 in number including all discrete subparts. Related respondents are treated as one entity. The presiding administrative law judge may increase the number of interrogatories on written motion for good cause shown.

* * * * *

■ 19. Amend § 210.34 by revising paragraphs (b) and (c) to read as follows:

§ 210.34 Protective orders; reporting requirements; sanctions and other actions.

* * * * *

(b) *Unauthorized disclosure, loss, or theft of information.* If confidential business information submitted in accordance with the terms of a protective order is disclosed to any person other than in a manner authorized by the protective order, lost, or stolen, the party responsible for the disclosure, or subject to the loss or theft, must immediately bring all pertinent facts relating to such incident to the attention of the submitter of the information and the administrative law judge or the Commission, and, without prejudice to other rights and remedies of the submitter of the information, make every effort to prevent further mishandling of such information by the party or the recipient of such information.

(c) *Violation of protective order.* (1) The issue of whether sanctions should be imposed may be raised on a motion by a party, the administrative law judge's own motion, or the Commission's own initiative in accordance with § 210.25(a)(2). Parties, including the party that identifies an alleged breach or makes a motion for sanctions, and the Commission shall treat the identity of the alleged breacher as confidential business information unless the Commission issues a public sanction. The identity of the alleged breacher means the name of any individual against whom allegations are made. The Commission or administrative law judge shall allow the parties to make written submissions and, if warranted, to present oral argument bearing on the issues of violation of a protective order and sanctions therefor.

(2) If the breach occurs while the investigation is before an administrative law judge, any determination on sanctions of the type enumerated in paragraphs (c)(3)(i) through (iv) of this section shall be in the form of a recommended determination. The Commission may then consider both the recommended determination and any related orders in making a determination on sanctions. When the motion is addressed to the administrative law judge for sanctions of the type enumerated in paragraph (c)(3)(v) of this section, he shall grant or deny a motion by issuing an order.

(3) Any individual who has agreed to be bound by the terms of a protective order issued pursuant to paragraph (a) of this section, and who is determined to have violated the terms of the protective order, may be subject to one or more of the following:

(i) An official reprimand by the Commission;

(ii) Disqualification from or limitation of further participation in a pending investigation;

(iii) Temporary or permanent disqualification from practicing in any capacity before the Commission pursuant to § 201.15(a) of this chapter;

(iv) Referral of the facts underlying the violation to the appropriate licensing authority in the jurisdiction in which the individual is licensed to practice;

(v) Sanctions of the sort enumerated in § 210.33(b), or such other action as may be appropriate.

* * * * *

Subpart G—Determinations and Actions Taken

■ 20. Amend § 210.42 by revising paragraphs (a)(1)(i) and revising paragraph (c) to read as follows:

§ 210.42 Initial determinations.

(a)(1)(i) *On issues concerning violation of section 337.* Unless otherwise ordered by the Commission, the administrative law judge shall certify the record to the Commission and shall file an initial determination on whether there is a violation of section 337 of the Tariff Act of 1930 in an original investigation no later than 4 months before the target date set pursuant to § 210.51(a)(1).

* * * * *

(c) *On other matters.* (1) The administrative law judge shall grant the following types of motions by issuing an initial determination or shall deny them by issuing an order: a motion to amend the complaint or notice of investigation pursuant to § 210.14(b); a motion for a finding of default pursuant to §§ 210.16 and 210.17; a motion for summary determination pursuant to § 210.18; a motion for intervention pursuant to § 210.19; a motion for termination pursuant to § 210.21; a motion to suspend an investigation pursuant to § 210.23; or a motion to set a target date for an original investigation exceeding 16 months pursuant to § 210.51(a)(1); or a motion to set a target date for a formal enforcement proceeding exceeding 12 months pursuant to § 210.51(a)(2).

(2) The administrative law judge shall grant or deny the following types of motions by issuing an initial determination: a motion for forfeiture or return of respondents' bonds pursuant to § 210.50(d) or a motion for forfeiture or return of a complainant's temporary relief bond pursuant to § 210.70.

* * * * *

■ 21. Amend § 210.43 by:
■ a. Revising the first and third sentences of paragraph (a)(1);
■ b. Removing the Note to Paragraph (b)(1);
■ c. Revising paragraph (b)(2); and
■ d. Revising paragraph (c).

The revisions read as follows:

§ 210.43 Petitions for review of initial determinations on matters other than temporary relief.

(a) * * *

(1) Except as provided in paragraph (a)(2) of this section, any party to an investigation may request Commission review of an initial determination issued under § 210.42(a)(1) or (c), § 210.50(d)(3), § 210.70(c), or § 210.75(b)(3) by filing a petition with

the Secretary.* * * A petition for review of an initial determination issued under § 210.42(c) that terminates the investigation in its entirety on summary determination, or an initial determination issued under § 210.50(d)(3), § 210.70(c) or § 210.75(b)(3), must be filed within 10 days after service of the initial determination. * * *

* * * * *

(b) * * *

(2) The petition for review must set forth a concise statement of the facts material to the consideration of the stated issues, and must present a concise argument providing the reasons that review by the Commission is necessary or appropriate to resolve an important issue of fact, law, or policy. If a petition filed under this paragraph exceeds 50 pages in length, it must be accompanied by a summary of the petition not to exceed ten pages. Petitions for review may not exceed 100 pages in length, exclusive of the summary and any exhibits. Petitions for review may not incorporate statements, issues, or arguments by reference. Any issue not raised in a petition for review will be deemed to have been abandoned by the petitioning party and may be disregarded by the Commission in reviewing the initial determination (unless the Commission chooses to review the issue on its own initiative under § 210.44), and any argument not relied on in a petition for review will be deemed to have been abandoned and may be disregarded by the Commission.

* * * * *

(c) *Responses to the petition.* Any party may file a response within eight (8) days after service of a petition of a final initial determination under § 210.42(a)(1), and within five (5) business days after service of all other types of petitions, except that a party who has been found to be in default may not file a response to any issue as to which the party has defaulted. If a response to a petition for review filed under this paragraph exceeds 50 pages in length, it must be accompanied by a summary of the response not to exceed ten pages. Responses to petitions for review may not exceed 100 pages in length, exclusive of the summary and any exhibits. Responses to petitions for review may not incorporate statements, issues, or arguments by reference. Any argument not relied on in a response will be deemed to have been abandoned and may be disregarded by the Commission.

* * * * *

■ 22. Amend § 210.50 by:

■ a. Revising the third sentence of paragraph (a)(4) introductory text;

■ b. Adding a sentence at the end of paragraph (a)(4)(iii); and

■ c. Revising paragraphs (d)(1)(i) and (ii).

The revisions and addition read as follows:

§ 210.50 Commission action, the public interest, and bonding by respondents.

* * * * *

(a) * * *

(4) * * * Submissions by the parties under this paragraph in response to the recommended determination are limited to 5 pages, inclusive of attachments.

* * * * *

(iii) * * * If a party, interested person, or agency files a confidential version of its submission, it shall file a public version of the submission no later than one business day after the deadline for filing the submission.

* * * * *

(d) * * *

(1)(i) If one or more respondents posts a bond pursuant to 19 U.S.C. 1337(e)(1) or 1337(j)(3), proceedings to determine whether a respondent's bond should be forfeited to a complainant in whole or part may be initiated upon the filing of a motion, addressed to the administrative law judge who last presided over the investigation, by a complainant within 90 days after the expiration of the period of Presidential review under 19 U.S.C. 1337(j), or if an appeal is taken from the determination of the Commission, within 30 days after the resolution of the appeal. If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the chief administrative law judge.

(ii) A respondent may file a motion addressed to the administrative law judge who last presided over the investigation for the return of its bond within 90 days after the expiration of the Presidential review period under 19 U.S.C. 1337(j), or if an appeal is taken from the determination of the Commission, within 30 days after the resolution of the appeal. If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the chief administrative law judge.

* * * * *

■ 23. Amend § 210.51 by revising paragraph (a) to read as follows:

§ 210.51 Period for concluding investigation.

(a) *Permanent relief.* Within 45 days after institution of an original investigation on whether there is a violation of section 337, or an investigation which is a formal enforcement proceeding, the administrative law judge shall issue an order setting a target date for completion of the investigation. After the target date has been set, it can be modified by the administrative law judge for good cause shown before the investigation is certified to the Commission or by the Commission after the investigation is certified to the Commission.

(1) *Original investigations.* If the target date does not exceed 16 months from the date of institution of an original investigation, the order of the administrative law judge shall be final and not subject to interlocutory review. If the target date exceeds 16 months, the order of the administrative law judge shall constitute an initial determination. Any extension of the target date beyond 16 months, before the investigation is certified to the Commission, shall be by initial determination.

(2) *Formal enforcement proceedings.* If the target date does not exceed 12 months from the date of institution of the formal enforcement proceeding, the order of the administrative law judge shall be final and not subject to interlocutory review. If the target date exceeds 12 months, the order of the administrative law judge shall constitute an initial determination. Any extension of the target date beyond 12 months, before the formal enforcement proceeding is certified to the Commission, shall be by initial determination.

* * * * *

Subpart H—Temporary Relief

■ 24. Amend § 210.54 by revising the first sentence to read as follows:

§ 210.54 Service of motion by the complainant.

Notwithstanding the provisions of § 210.11 regarding service of the complaint by the Commission upon institution of an investigation, on the day the complainant files a complaint and motion for temporary relief, if any, with the Commission (see § 210.8(a)(1) and (a)(2) of subpart B of this part), the complainant must serve non-confidential copies of both documents (as well as non-confidential copies of all materials or documents attached thereto) on all proposed respondents and on the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the Complaint. * * *

■ 25. Amend § 210.56 in paragraph (a) by revising the first sentence of the

second undesignated paragraph to read as follows:

§ 210.56 Notice accompanying service copies.

(a) * * *

Upon receipt of the complaint, the Commission will examine the complaint for sufficiency and compliance with 19 CFR 210.4, 210.5, 210.8, and 210.12. * * *

* * * * *

■ 26. Amend § 210.58 by revising the third sentence to read as follows:

§ 210.58 Provisional acceptance of the motion.

* * * Before the Commission determines whether to provisionally accept a motion for temporary relief, the motion will be examined for sufficiency and compliance with §§ 210.52, 210.53(a) (if applicable), 210.54 through 210.56, as well as §§ 210.4 and 210.5. * * *

■ 27. Amend § 210.59 by revising paragraph (b) introductory text and paragraph (c) to read as follows:

§ 210.59 Response to the motion and the complaint.

* * * * *

(b) The response must comply with the requirements of §§ 210.4 and 210.5 of this part, and shall contain the following information:

* * * * *

(c) Each response to the motion for temporary relief must also be accompanied by a response to the complaint and notice of investigation. Responses to the complaint and notice of investigation must comply with §§ 210.4 and 210.5 of this part, and any protective order issued by the administrative law judge under § 210.34 of this part.

■ 28. Amend § 210.60 by:

■ a. Revising the section heading;

■ b. Designating the existing text as paragraph (a) and revising its first two sentences; and

■ c. Adding paragraph (b).

The revision and addition read as follows:

§ 210.60 Designating the temporary relief phase of an investigation more complicated for the purpose of adjudicating a motion for temporary relief.

(a) At the time the Commission determines to institute an investigation and provisionally accepts a motion for temporary relief pursuant to § 210.58, or at any time thereafter, the Commission may designate the temporary relief phase of an investigation ''more complicated'' pursuant to § 210.60(b) for the purpose of obtaining up to 60 additional days to adjudicate the motion for temporary relief. In the alternative, after the motion for temporary relief is referred to the administrative law judge for an initial determination under § 210.66(a), the administrative law judge may issue an order, sua sponte or on motion, designating the temporary relief phase of the investigation ''more complicated'' for the purpose of obtaining additional time to adjudicate the motion for temporary relief. * * *

(b) A temporary relief phase is designated more complicated owing to the subject matter, difficulty in obtaining information, the large number of parties involved, or other significant factors.

Subpart I—Enforcement Procedures and Advisory Opinions

■ 29. Amend § 210.75 by adding a sentence at the end of paragraph (b)(1) and revising paragraph (b)(3) to read as follows:

§ 210.75 Proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders.

* * * * *

(b) * * *

(1) * * * These proceedings are authorized under section 337(b) as investigations on whether there is a violation of section 337 in the same manner as original investigations, and are conducted in accordance with the laws for original investigations as set forth in section 1337 of title 19 and sections 554, 555, 556, 557, and 702 of title 5 of the United States Code and the rules of this part.

* * * * *

(3) The Commission, in the course of a formal enforcement proceeding under this section, may hold a public hearing and afford the parties to the enforcement proceeding the opportunity to appear and be heard. The Commission may delegate the hearing to the chief administrative law judge for designation of a presiding administrative law judge, who shall certify an initial determination to the Commission. A presiding administrative law judge shall certify the record and issue the enforcement initial determination to the Commission no later than three months before the target date for completion of a formal enforcement proceeding. Parties may file petitions for review, and responses thereto, in accordance with § 210.43 of this part. The enforcement initial determination shall become the determination of the Commission 45 days after the date of service of the enforcement initial determination, unless the Commission, within 45 days after the date of such service, shall have ordered review of the enforcement initial determination on certain issues therein, or by order shall have changed the effective date of the enforcement initial determination.

* * * * *

■ 30. Amend § 210.76 by adding paragraph (c) to read as follows:

§ 210.76 Modification or rescission of exclusion orders, cease and desist orders, and consent orders.

* * * * *

(c) *Comments.* Parties may submit comments on the recommended determination within 10 days from the service of the recommended determination. Parties may submit responses thereto within 5 business days from service of any comments.

■ 31. Revise appendix A to read as follows:

Appendix A to Part 210—Adjudication and Enforcement

Initial determination concerning:	Petitions for review due:	Response to petitions due:	Commission deadline for determining whether to review the initial determination:
1. Violation § 210.42(a)(1)	12 days from service of the initial determination.	8 days from service of any petition.	60 days from service of the initial determination (on private parties).
2. Summary initial determination that would terminate the investigation if it became the Commission's final determination § 210.42(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination (on private parties).

Initial determination concerning:	Petitions for review due:	Response to petitions due:	Commission deadline for determining whether to review the initial determination:
3. Other matters § 210.42(c)	5 business days from service of the initial determination.	5 business days from service of any petition.	30 days from service of the initial determination (on private parties).
4. Forfeiture or return of respondents' bond § 210.50(d)(3).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination (on private parties).
5. Forfeiture or return of complainant's temporary relief bond § 210.70(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination (on private parties).
6. Formal enforcement proceedings § 210.75(b).	10 days from service of the enforcement initial determination.	5 business days from service of any petition.	45 days from service of the enforcement initial determination (on private parties).

■ 32. Add appendix B to read as follows:

Appendix B to Part 210–Adjudication and Enforcement

Recommended determination concerning:	Comments due:	Response to comments due:
Modification or Rescission § 210.76(a)(1)	10 days from service of the recommended determination.	5 business days from service of any comments.

Issued: April 11, 2013.

By Order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–08931 Filed 4–18–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9614]

RIN 1545–AM97

Certain Outbound Property Transfers by Domestic Corporations; Certain Stock Distributions by Domestic Corporations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9614) that were published in the **Federal Register** on Tuesday, March 19, 2013 (78 FR 17024). The final and temporary regulations apply to transfers of certain property by a domestic corporation to a foreign corporation in certain nonrecognition exchanges, or to distributions of stock of certain foreign corporations by a domestic corporation in certain nonrecognition distributions. The final regulations also establish reporting requirements for property transfers and stock distributions to which the final regulations apply.

DATES: This correction is effective April 19, 2013 and applicable April 18, 2013.

FOR FURTHER INFORMATION CONTACT: Robert B. Williams, (202) 622–3860 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9614) that are the subject of this correction are under sections 367, 1248, and 6038B of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9614) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the final and temporary regulations (TD 9614), that are the subject of FR Doc. 2013–05700, is corrected as follows:

On page 17029, column 3, in the preamble, under the paragraph heading ''*G. Elimination of Coordination Rule Exception in § 1.367(a)–3(d)(2)(vi)(B)(1)(i)'',* line 24 from the top of the first full paragraph, the language ''or (d)(2)(vi)(b)(*1*)(*ii*) are satisfied. The'' is corrected to read ''or (d)(2)(vi)(B)(*1*)(*ii*) are satisfied. The''.

Alvin Hall,

Assistant Director, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2013–09177 Filed 4–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0253]

Drawbridge Operation Regulation; Columbia River, Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Interstate 5 (I–5) Bridges across the Columbia River, mile 106.5, between Portland, Oregon and Vancouver, Washington. This deviation is necessary to facilitate the movement of heavier than normal roadway traffic associated with the Independence Day fireworks show near the I–5 Bridges. This deviation allows the bridges to remain in the closed position during the event.

DATES: This deviation is effective from 9 p.m. on July 4, 2013 to 11:59 p.m. on July 4, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0253] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington,

DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Randall Overton, Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282, email *Randall.D.Overton@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Oregon Department of Transportation has requested that the I–5 Bridges across the Columbia River remain closed to vessel traffic to facilitate heavier than normal roadway traffic volume associated with a fireworks show on July 4, 2013 near the bridges. The I–5 Bridges cross the Columbia River at mile 106.5 and provide three designated navigation channels with vertical clearances ranging from 39 to 72 feet above Columbia River Datum 0.0 while the lift spans are in the closed position. Vessels which do not require a bridge opening may continue to transit beneath the bridges during this closure period. Under normal operation the bridges operate in accordance with 33 CFR 117.869, which states that the draws shall open on signal except that the draws need not open 6:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday excluding federal holidays. This deviation period is from 9 p.m. on July 4, 2013 to 11:59 p.m. on July 4, 2013. The deviation allows the lift spans of the I–5 Bridges across the Columbia River, mile 106.5, to remain in the closed position and need not open for maritime traffic from 9 p.m. on July 4, 2013 to 11:59 p.m. on July 4, 2013. The lift spans will be required to open, if needed, for vessels engaged in emergency response operations during this closure period. The bridge shall operate in accordance with 33 CFR 117.869 at all other times. Waterway usage on this stretch of the Columbia River includes vessels ranging from commercial tug and tow vessels to recreational pleasure craft. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 9, 2013.

Randall D. Overton,

Bridge Administrator.

[FR Doc. 2013–09282 Filed 4–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0219]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the SR 170 Centerville Turnpike Bridge, across the Atlantic Intracoastal Waterway, mile 15.2, Albemarle and Chesapeake Canal, at Chesapeake, VA. The deviation is necessary to facilitate structural repairs to the superstructure of the SR 170 Centerville Turnpike Draw Bridge. This temporary deviation will allow the drawbridge to change the operating schedule on specific dates and times.

DATES: This deviation is effective from 9 a.m. on April 27, 2013 until 6 p.m. April 28, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0219] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Jim Rousseau, Bridge Administration Branch Fifth District, Coast Guard, telephone (757) 398–6557, email *James.L.Rousseau2@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: The City of Chesapeake, who owns and operates this swing bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.997(i), to facilitate structural repairs.

Under the regular operating schedule, the S.R. 170 Centerville Turnpike Bridge, Albemarle and Chesapeake Canal mile 15.2, at Chesapeake, VA shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials. From 6:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays: Need not open for the passage of recreational or commercial vessels that do not qualify; Need not open for commercial cargo vessels, including tug, and tug with tows, unless 2 hours advance notice has been given to the Centerville Turnpike Bridge at (757) 547–3632; and from 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw need only be opened on the hour and half hour. If any vessel is approaching the bridge and cannot reach the draw exactly on the hour or half hour, the draw tender may delay the opening ten minutes past the hour or half hour for the passage of the approaching vessel and any other vessels that are waiting to pass. It shall open on signal at all other times.

The Centerville Turnpike Bridge has vertical clearances in the open and closed position of unlimited and 4 feet, above mean high water, respectively.

Under this temporary deviation, the drawbridge will be operated under the following schedule to facilitate superstructure repairs, beginning at 9 a.m., on Saturday, April 27, 2013 and ending at 6 p.m., on Sunday, April 28, 2013, the drawbridge will open on signal every three hours on the following schedule: On Saturday, April 27th at 9 a.m., noon, 3 p.m., 6 p.m., 9 p.m., and on Sunday, April 28th at midnight, 3 a.m., 6 a.m., 9 a.m., noon, 3 p.m. and 6 p.m.; will open on signal for hazardous material vessels with a one-hour advance notice by calling (757–547–3632); and will open for an emergency as soon as safely possible. In case of inclement weather, the alternate dates will be rescheduled to weekend of May 4 and May 5, 2013.

The Atlantic Intracoastal Waterway caters to a variety of vessels from tug and barge traffic to recreational vessels traveling from Florida to Maine. The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway users. Additionally, the Coast Guard will inform users of the waterway through our Local and Broadcast Notice to Mariners of the closure periods for the bridge so that vessels can arrange their

transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 9, 2013.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2013–09286 Filed 4–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0087]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating regulation that governs the Tower Drawbridge across Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the community to participate in the Capital City Classic Run. This deviation allows the bridge to remain in the closed-to-navigation position during the event.

DATES: This deviation is effective from 7:30 a.m. to 10 a.m. on April 21, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0087], is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, over Sacramento River, at Sacramento, CA. The Tower Drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 7:30 a.m. to 10 a.m. on April 21, 2013 to allow the community to participate in the Capital City Classic Run. This temporary deviation has been coordinated with waterway users. There are no scheduled river boat cruises or anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised. Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time. In the event of an emergency the drawspan can be opened without delay.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 8, 2013.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2013–09287 Filed 4–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0085]

RIN 1625–AA00

Safety Zone; V.I. Carnival Finale, St. Thomas Harbor; St. Thomas, U.S.V.I.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of St. Thomas Harbor in St. Thomas, U.S. Virgin Islands during the V.I. Carnival Finale, a firework display. The event is scheduled to take place on Saturday, April 27, 2013, and will entail a barge being positioned near the St. Thomas Harbor channel from which fireworks will be lit. The safety zone is necessary to ensure the safety of vessels, spectators, and the public on the navigable waters of the United States during the event. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port San Juan.

DATES: This rule is effective on April 27, 2013, from 5 p.m. until 10 p.m.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0085. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Warrant Officer Anthony Cassisa, Sector San Juan Prevention Department, Coast Guard; telephone (787) 289–2073, email *Anthony.J.Cassisa@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard published a notice of proposed rulemaking (NPRM) on March 14, 2013, in the **Federal Register** (78 FR 16208). The Coast Guard received no public comments in the docket and no requests for public meetings.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because it is impracticable to do so. The Coast Guard did not receive information from the event sponsor early enough to both publish a NPRM

and allow 30 days after publication before making this rule effective. The Coast Guard chose to notify the public and seek comment on this rule by publishing an NPRM. This final rule is necessary to protect the public and commercial traffic during the firework display, and therefore, must be effective by the start of the event on April 27, 2013.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

On April 27, 2013, Fireworks by Grucci and Left Lane Productions are sponsoring the V.I. Carnival Finale, a firework display event. The event will be held on the waters of St. Thomas Harbor, St. Thomas, U. S. Virgin Islands. Fireworks will be launched from a barge stationed near the St. Thomas Harbor channel.

The purpose of the rule is to protect the public from the hazards associated with the launching of fireworks over navigable waters of the United States.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received no comments in the docket for this rulemaking. We made no changes to the regulation as originally proposed.

This safety zone encompasses waters in St. Thomas Harbor. The zone will be enforced from 5 p.m. until 10 p.m. on April 27, 2013. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port San Juan or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The economic impact of this proposed rule is not significant for the following reasons: (1) The safety zone will be enforced for only five hours; (2) persons and vessels may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone during the enforcement period if authorized by the Captain of the Port San Juan or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of St. Thomas Harbor encompassed within the safety zone from 5 p.m. until 10 p.m. on April 27, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone around a barge during a fireworks display will be enforced for five hours. This rule is categorically excluded under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0085 to read as follows:

§ 165.T07–0085 Special Local Regulation; V.I. Carnival Finale, St. Thomas Harbor; St. Thomas, U.S. Virgin Islands.

(a) *Regulated Area.* The following area is established as a safety zone: all waters within a 800 foot radius of 18°20.200N, 64°55.200W. Coordinates are North American Datum 1983. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port San Juan.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated area.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone, unless authorized by the Captain of the Port San Juan or those participating in the firework display.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted, all persons and vessels must comply with the instructions of the Captain of the Port San Juan or a designated representative.

(3) The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced from 5:00 p.m. until 10:00 p.m. on Saturday, April 27, 2013.

Dated: April 5, 2013.

D.M. Flaherty,

Captain, U.S. Coast Guard, Acting Captain of the Port, San Juan.

[FR Doc. 2013–09199 Filed 4–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AB86

National Forest System Land Management Planning; Correction

AGENCY: Forest Service, USDA.

ACTION: Correcting amendment.

SUMMARY: This document contains a technical correction to 36 CFR 219.11(d)(6). This technical correction concerns the estimation of the quantity of timber that can be removed on a sustained yield basis. The final rule was published in the **Federal Register**, on April 9, 2012 (77 FR 21162).

DATES: These corrections are effective April 19, 2013.

ADDRESSES: Written inquiries about this correction document may be sent to the Director, Ecosystem Management Coordination Staff, USDA Forest Service, 1400 Independence Ave. SW., Mailstop Code 1104, Washington, DC 20250–1104.

FOR FURTHER INFORMATION CONTACT: Ecosystem Management Coordination staff's Planning Specialist Regis Terney at (202) 205–1552.

SUPPLEMENTARY INFORMATION:

Background

In volume 77 of the **Federal Register**, page 21162, April 9, 2012, (77 FR 21162) the United States Department of Agriculture (Department) published a final rule setting forth directions for developing, amending, revising, and monitoring land management plans (the planning rule).

The National Forest Management Act (NFMA) at 16 U.S.C. 1604(g)(3)(D) requires planning regulations to specify guidelines for land management plans which ''permit increases in harvest levels based on intensified management practices, such as reforestation, thinning, and tree improvement'' under certain conditions. This provision requires that the planning regulations must permit such increases in harvest levels if ''(i) such practices justify increasing the harvests in accordance with the Multiple-Use Sustained-Yield Act of 1960,'' and ''(ii) if such harvest levels are decreased at the end of each planning period if such practices cannot be successfully implemented or funds are not received to permit such practices to continue substantially as planned.'' *Id.* Because the planning rule did not explicitly include this mandated requirement, the Department is making a technical amendment at 36 CFR 219.11(d)(6), to explicitly include this requirement for intensified management practices. Accordingly, section 219.11(d)(6) now contains, in an introductory paragraph and paragraphs (i) and (iii), the regulatory text that appeared in the planning rule upon its issuance in April, and paragraph (ii), which contains new text tracking the text of 16 U.S.C. 1604(g)(3)(D) of the NFMA. This clarification does not have any substantive legal effect but it simply makes clear that the planning rule complies with the NFMA's requirement that such rule allow for intensified management practices as set forth in 16 U.S.C. 1604(g)(3)(D).

The Department has also concluded that additional documentation under the National Environmental Policy Act is not necessary to make the decision to make this rule amendment. There is no need to consider the effects of an explicit intensified-management-practices provision among alternatives, because such a provision would be included in every alternative. *See* 16 U.S.C. 1604(g)(3)(D). Therefore, there is no need to supplement the National Forest System Land Management Planning Rule Final Programmatic Environmental Impact Statement of January 2012.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, National forests, Reporting and recordkeeping requirements, Science and technology.

Accordingly 36 CFR part 219 is corrected by making the following correcting amendment:

PART 219—PLANNING

■ 1. The authority citation for part 219 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

■ 2. In § 219.11 revise paragraph (d)(6) to read as follows:

§ 219.11 Timber requirements based on the NFMA.

* * * * *

(d) * * *

(6) The quantity of timber that may be sold from the national forest is limited to an amount equal to or less than that which can be removed from such forest annually in perpetuity on a sustained yield basis. This limit may be measured on a decadal basis.

(i) The plan may provide for departures from this limit as provided by the NFMA when departure would be consistent with the plan's desired conditions and objectives. Exceptions for departure from this limit on the quantity sold may be made only after a public review and comment period of at least 90 days.

(ii) This limit may be based upon increases in harvest levels based on intensified management practices, such as reforestation, thinning, and tree improvement if such practices justify increasing the harvests in accordance with the Multiple-Use Sustained-Yield Act of 1960. The plan must require that such harvest levels be decreased at the end of each planning period if such practices cannot be successfully implemented or funds are not received to permit such practices to continue substantially as planned.

(iii) The Chief must include in the Forest Service Directive System procedures for estimating the quantity of timber that can be removed annually in perpetuity on a sustained-yield basis, and exceptions, consistent with 16 U.S.C. 1611.

* * * * *

Dated: March *13, 2013.*

Thomas L. Tidwell,

Chief.

[FR Doc. 2013–08839 Filed 4–18–13; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2013–0083; FRL–9804–6]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Particulate Matter Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a request submitted by the Indiana Department of Environmental Management (IDEM) on January 30, 2013, to revise the Indiana State Implementation Plan (SIP) for particulate matter under the Clean Air Act (CAA). This submission contains the 24-hour fine particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) promulgated by EPA in 2006, and removes the annual coarse particle (PM_{10}) NAAQS that EPA has previously revoked. The submission also asks EPA to approve into the SIP certain Federally regulated criteria pollutant definitions and abbreviations.

DATES: This direct final rule will be effective June 18, 2013, unless EPA receives adverse comments by May 20, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2013–0083 by one of the following methods:

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

2. *Email: aburano.douglas@epa.gov.*

3. *Fax:* (312) 408–2279.

4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2013–

0083. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang, Environmental Engineer, at (312) 886–0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, *chang.andy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background
A. When and why did the State make this submission?
B. Did the State hold public hearings for this submission?
II. What is EPA's analysis of IDEM's submission?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Background

A. When and why did the State make this submittal?

On January 30, 2013, IDEM submitted as SIP revisions regulatory provisions addressing the NAAQS for nitrogen dioxide (NO_2), sulfur dioxide (SO_2), PM_{10} and $PM_{2.5}$. EPA will be taking separate action on NO_2 and SO_2 in a future rulemaking. In this notice, EPA is addressing the submission with regard to the current primary and secondary 24-hour NAAQS for $PM_{2.5}$,[1] which were published in the **Federal Register** on October 17, 2006 (*see* 71 FR 61144) and codified at 40 CFR 50.13, ''National primary and secondary ambient air quality standards for $PM_{2.5}$.'' In the submission, IDEM has also requested that EPA remove from the SIP the annual PM_{10} NAAQS that EPA revoked on July 1, 2006. At the State level, these provisions regarding $PM_{2.5}$ and PM_{10} became effective on January 18, 2013. IDEM's revisions ensure consistency between the State and Federal definitions of the $PM_{2.5}$ and PM_{10} NAAQS, as well as in the determination of attainment of those NAAQS.

The January 30, 2013, submission also includes a list of the Federally regulated criteria pollutant definitions and abbreviations to be used in a rule that delineates attainment status designations for each county in Indiana. These definitions became effective at the State level on January 18, 2013, and are intended to serve as a key or glossary for the remainder of the rule. In this rulemaking notice, EPA will be taking action on the definitions and abbreviations related to $PM_{2.5}$ and PM_{10}.

B. Did the State hold public hearings for this submission?

A public hearing for these revisions was held on November 7, 2012. No comments were received at this hearing.

[1] Note that on January 15, 2013, the revised primary annual $PM_{2.5}$ NAAQS was published in the **Federal Register** (*see* 78 FR 3086). The State's submissions, as well as today's rulemaking, do not extend to this NAAQS.

II. What is EPA's analysis of IDEM's submission?

On October 17, 2006, revisions to the 24-hour $PM_{2.5}$ NAAQS were published in the **Federal Register** (*see* 71 FR 61144). The primary (health-based) $PM_{2.5}$ NAAQS was strengthened to 35 micrograms per cubic meter ($\mu g/m^3$), measured as a 24-hour average concentration. The secondary (welfare-based) $PM_{2.5}$ NAAQS was revised to be identical to the primary $PM_{2.5}$ NAAQS. EPA codified these revisions at 40 CFR 50.13.

Under 40 CFR 50.13(a), ambient 24-hour average $PM_{2.5}$ concentrations are to be measured by either: (1) A reference method based on appendix L to 40 CFR part 50 (''Reference Method for the Determination of Fine Particulate Matter as $PM_{2.5}$ in the Atmosphere'') and designated in accordance with 40 CFR part 53 (''Ambient Air Monitoring Reference and Equivalent Methods''); or (2) an equivalent method designated in accordance with 40 CFR part 53. In addition, under 40 CFR 50.13(c), determinations as to whether the 24-hour $PM_{2.5}$ standards have been met are to be made in accordance with the data handling conventions and computations in 40 CFR part 50, appendix N (''Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$'').

In IDEM's January 30, 2013, submission, the State requested that EPA approve 326 Indiana Administrative Code (IAC) 1–3–4 (b)(8), as revised to reflect EPA's revised primary and secondary 24-hour $PM_{2.5}$ NAAQS. IDEM's requested revisions are substantively identical to the provisions contained in 40 CFR 50.13. Specifically, the definition of the NAAQS, the calculations for determining attainment of the NAAQS, and the mechanism to measure ambient concentrations of $PM_{2.5}$ are consistent with 40 CFR 50.13.

IDEM's rule contains the primary and secondary 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$, which are achieved when 98th percentile 24-hour average concentration is equal to, or less than, 35 $\mu g/m^3$, as determined in accordance with appendix N to 40 CFR part 50. Indiana has incorporated appendix N by reference into the SIP.

Indiana's submission also incorporates by reference appendix L to 40 CFR part 50, which contains the data handling conventions and computations for determining whether the 24-hour $PM_{2.5}$ NAAQS have been met. It should be noted, however, that a determination of what constitutes a ''Federal Equivalent Method'' under 40 CFR 50.13(a)(2) can only be made by the Administrator of EPA.

On July 1, 2006, EPA revoked the annual PM_{10} NAAQS (*see* 71 FR 61144). Indiana has requested that EPA remove the portions of 326 IAC 1–3–4(b)(7) that contain or make reference to the former annual PM_{10} NAAQS.

Aligning State and Federal ambient air quality standards, calculations for compliance, and ambient concentration collection methods ensure consistency between EPA's and IDEM's $PM_{2.5}$ and PM_{10} NAAQS. Because the State has adopted regulations that are wholly consistent with the Federal NAAQS, EPA concludes that IDEM's requested revision concerning the incorporation of the 24-hour $PM_{2.5}$ NAAQS is approvable. EPA also concludes that IDEM's requested removal of the annual PM_{10} NAAQS is approvable.

Indiana also requests in its submission that EPA approve a list of Federally regulated criteria pollutant definitions and abbreviations into the SIP, specifically at 326 IAC 1–4–1. These terms include ''SO_2'', ''CO'' (carbon monoxide), ''O_3'' (ozone), ''NO_2'', and ''Pb'' (lead). Indiana has requested that ''PM_{10}'' have the meaning set forth in 326 IAC 1–2–52.4 and that ''$PM_{2.5}$'' has the meaning set forth in 326 IAC 1–2–52.2. EPA has previously approved both 326 IAC 1–2–52.2 and 326 IAC 1–2–52.4 into the SIP, and IDEM is not seeking to revise those definitions. Because this list of terms and abbreviations are wholly consistent at the State and Federal levels, and are meant as a clarification for future SIP submissions related to 326 IAC 1–4–1, EPA concludes that this requested revision is approvable.

III. What action is EPA taking?

EPA is approving portions of a submission from IDEM that contains the Federally promulgated 24-hour $PM_{2.5}$ NAAQS codified at 40 CFR 50.13 and removes a portion of Indiana's SIP as it relates to the annual PM_{10} NAAQS, as EPA revoked this particular NAAQS in 2006. Finally, EPA is approving portions of the January 30, 2013, submission from Indiana that add a list of criteria pollutant definitions and acronyms to Indiana's rules that relate to concerning attainment status designations.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective June 18, 2013 without further notice unless we receive relevant adverse written comments by May 20, 2013. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period; therefore, any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective June 18, 2013.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 18, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate

matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 4, 2013.

Susan Hedman,

Regional Administrator, Region 5.

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.*

■ 2. In § 52.770 the table in paragraph (c) is amended by revising the entry for ''1–3–4'' and adding a new entry in numerical order for ''1–4–1'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
Rule 3. Ambient Air Quality Standards				
*	*	*	*	*
1–3–4	Ambient air quality standards	1/18/2013	4/19/2013, [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS].	(b)(7) and (b)(8) only.
*	*	*	*	*
Rule 4. Attainment Status Designations				
1–4–1	Definitions	1/18/2013	4/19/2013, [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS].	
*	*	*	*	*

[FR Doc. 2013–09149 Filed 4–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0073; FRL–9790–4]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Small Container Exemption from VOC Coating Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Illinois State Implementation plan (SIP) submitted by the Illinois Environmental Protection Agency (Illinois EPA) on November 14, 2011. This SIP revision consists of amendments to the Illinois Administrative Code (Ill. Adm. Code) by adding a ''small container exemption'' for pleasure craft surface coating operations in the Chicago and Metro-East St. Louis 8-hour ozone nonattainment areas. These exemptions are approvable because they are consistent with EPA volatile organic compound (VOC) reasonably available control technology (RACT) policy.

DATES: This final rule is effective on May 20, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2012–0073. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What public comments were received on the proposed approval and what is EPA's response?
II. What action is EPA taking today?
III. Statutory and Executive Order Reviews

I. What public comments were received on the proposed approval and what is EPA's response?

A comment was submitted on April 16, 2012, by a Kentucky resident. As a result of this comment, the direct final approval published on April 16, 2012, (77 FR 22497) was withdrawn. His comment is that EPA should determine, pursuant to Clean Air Act (CAA) section 110(l), what impact this exemption will have on St. Louis and Chicago attaining the 2008 National Ambient Air Quality Standard (NAAQS) as soon as

practicable before EPA can approve this revision.

EPA Response

As stated in the direct final approval, and included here as background to EPA's response, EPA previously approved sections 218.208(c) and 219.208(c) which specify that Illinois' surface coating VOC emission limitations shall not apply to touch-up and repair coatings used by a can, coil, vinyl, metal furniture and magnet wire coating operation, provided that the source-wide volume of such coatings used does not exceed 1 quart per 8-hour period or exceed 55 gallons/year for any rolling 12 month period. (61 FR 5511 on February 13, 1996). The SIP revision which is the subject of this action extends the exemption in 218.208(c) and 219.208(c) to the pleasure craft surface coating limits set out in sections 218.204(q)(5) and 219.204(q)(5). Illinois' SIP revision also amends 35 Ill. Adm. Code 218.208(e) and 219.208(e), the recordkeeping and reporting provisions, to add pleasure craft coating operations that are exempted from the limitations in 218.204(q) and 219.204(q) to the coating operations subject to recordkeeping requirements. Sections 218.208(e) and 219.208(e) contain sufficient recordkeeping requirements to establish whether these exemptions have been exceeded.

In 2010 and 2011 Illinois promulgated rules on VOC RACT emission limitations for coating operations (See November 30, 2011 proposed approval at 76 FR 74014). During that rulemaking, the American Coatings Association (ACA) commented to Illinois EPA that many VOC coating regulations include a small container exemption not to exceed a liter or a quart. The ACA stated that the basis for these exemptions is to allow for small repairs and touch ups to existing coatings at the end of the painting line to avoid having to completely recoat the product, thus resulting in lower VOC emissions overall from pleasure craft coating operations.

In direct response to the comment, EPA has determined that this exemption will not interfere with St. Louis and Chicago attaining the 2008 ozone NAAQS for the following reasons:

(1) Illinois EPA is not aware of any subject sources in the Chicago and Metro East (St. Louis) 2008 ozone nonattainment areas.

(2) One quart of touch up coating per day (55 gallons per year) is a de minimis amount.

(3) The exemption is consistent with Illinois RACT rules for similar coating operations, including can, coil, vinyl, metal furniture, and magnet wire coatings.

(4) Illinois EPA and ACA agree that the exemption may reduce VOC emissions by encouraging repairs and touch ups, as opposed to performing complete re-coats.

II. What action is EPA taking

EPA is approving the State's request to add a ''small container exemption'' for pleasure craft surface coating operations in the Chicago and Metro-East St. Louis 8-hour ozone nonattainment areas for the reasons stated above.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 18, 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.

Dated: March 4, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. § 52.720 is amended by adding paragraph (c)(194) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(194) On November 14, 2011, the Illinois Environmental Protection Agency (Illinois EPA) submitted amendments to 35 Illinois Administrative Code 218.208 and 219.208. These sections add a ''small container exemption'' for pleasure craft surface coating operations in the Chicago and Metro-East St. Louis 8-hour ozone nonattainment areas. These exemptions are consistent with EPA volatile organic compound (VOC) reasonably available control technology (RACT) policy.

(i) Incorporation by reference. The following sections of Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, are incorporated by reference.

(A) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart F: Coating Operations, Section 218.208 Exemptions From Emission Limitations; effective October 25, 2011.

(B) Part 219: Organic Material Emission Standards and Limitations for the Metro East Area, Subpart F: Coating Operations, Section 219.208 Exemptions From Emission Limitations; effective October 25, 2011.

[FR Doc. 2013–08948 Filed 4–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2010–0600; FRL–9801–4]

RIN 2060–AQ60

Reconsideration Petition From the National Association of Surface Finishers for the National Emission Standards for Hazardous Air Pollutant Emissions: Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants

AGENCY: Environmental Protection Agency EPA).

ACTION: Notice of Final Action Denying Petition for Reconsideration.

SUMMARY: This action provides notice that on March 28, 2013, the Acting EPA Administrator, Bob Perciasepe, signed a letter denying a petition for reconsideration of the final rule published in the **Federal Register** on September 19, 2012. The rule established new emission limits for hard and decorative chromium electroplating and chromium anodizing tanks, and steel pickling—HCl process facilities and hydrochloric acid regeneration plants.

DATES: *Effective:* April 19, 2013.

Petitions: Any petitions for review of the letter and enclosure denying the petition for reconsideration described in this document must be filed in the Court of Appeals for the District of Columbia Circuit by June 18, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Mulrine, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5289; fax number: (919) 541–3207; email address: *mulrine.phil@epa.gov.*

SUPPLEMENTARY INFORMATION:

Description of Action: The EPA is providing notice that it has denied a petition for reconsideration of a final rule published in the **Federal Register** on September 19, 2012. The rule established new emission limits for hard and decorative chromium electroplating and chromium anodizing tanks, and steel pickling—HCl process facilities and hydrochloric acid regeneration plants, and was issued pursuant to the EPA's authority under sections 112(d)(6) and (f)(2) of the Clean Air Act (CAA). After publication of the rule, the EPA received a petition for reconsideration of the final rule from the National Association of Surface Finishers (NASF). After carefully considering the petition and supporting information, the Acting EPA Administrator, Bob Perciasepe, denied the petition for reconsideration on March 28, 2013, in a letter to the petitioner. The EPA denied the petition because it failed to meet the criteria for reconsideration in CAA section 307(d)(7)(B). The letter and an accompanying enclosure explain in detail the EPA's reasons for the denial.

I. How can I get copies of this document and other related information?

This **Federal Register** notice, the petition for reconsideration and the letter denying the petition for reconsideration are available in the docket that the EPA established under Docket ID No. EPA–HQ–OAR–2010–0600. The document identification number for the petition for reconsideration is: NASF, EPA–HQ–OAR–2010–0600–0693. The document identification number for EPA's response letter is: NASF, EPA–HQ–OAR–2010–0600–0695. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* 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 EPA Docket Center (Air Docket), EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742.

This **Federal Register** notice, the petition for reconsideration and the letter denying the petition can also be found on the EPA's Web site at *http://www.epa.gov/ttn/atw/chrome/chromepg.html.*

II. Judicial Review

Any petitions for review of the letter and enclosure denying the petition for reconsideration described in this Notice must be filed in the Court of Appeals for the District of Columbia Circuit by June 18, 2013.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 12, 2013.

Bob Perciasepe,

Acting Administrator.

[FR Doc. 2013–09304 Filed 4–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0246; FRL–9381–8]

Propiconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends existing tolerances for residues of propiconazole in or on multiple commodities which are identified and discussed later in this document. Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 19, 2013. Objections and requests for hearings must be received on or before June 18, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0246, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Heather Garvie, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; email address: *garvie.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0246 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 18, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any CBI) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0246, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of May 23, 2012 (Volume 77, FR 30481) (FRL–9347–8), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F7975) by Syngenta Crop Protection, LLC, P.O. Box 18300 Greensboro, NC 27419–8300. The petition requested that 40 CFR 180.434 be amended by establishing tolerances for residues of the fungicide propiconazole, 1*H*-1,2,4-Triazole, 1-{[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl}-, and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on barley, hay from 1.4 parts per million (ppm) to 30 ppm; barley, straw from 10 ppm to 20 ppm; barley, grain from 0.3 ppm to 3 ppm; oat, forage from 1.7 ppm to 4 ppm; oat, hay from 1.4 ppm to 15 ppm; oat, grain from 0.3 ppm to 3 ppm; rye, forage from 1.7 ppm to 9 ppm; rye, straw from 10 ppm to 9 ppm; wheat, forage from 1.7 ppm to 15 ppm; wheat, hay from 1.4 ppm to 30 ppm; wheat, straw from 10 ppm to 20 ppm; and grain, aspirated fractions from 30 ppm to 108 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing. Based upon review of the data supporting the petition, EPA is revising the existing tolerance level for barley, bran; and grain, aspirated fractions. Additionally the Agency is maintaining the existing tolerance level for rye, straw. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

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

A. Toxicological Profile

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

Propiconazole has low to moderate toxicity in experimental animals by the oral, dermal, and inhalation routes, is moderately irritating to the eyes, minimally irritating to the skin, and is a dermal sensitizer.

The primary target organ for propiconazole toxicity in animals is the liver. Increased liver weights were seen in mice after subchronic or chronic oral exposures to propiconazole. Liver lesions such as vacuolation of hepatocytes, ballooned liver cells, foci of enlarged hepatocytes, hypertrophy and necrosis are characteristic of propiconazole toxicity in rats and mice. Decreased body weight gain was also seen in subchronic, chronic, developmental and reproductive studies in animal studies. Dogs appeared to be more sensitive to the localized toxicity of propiconazole as manifested by stomach irritations at 6 mg/kg/day and above.

In rabbits, developmental toxicity occurred at a higher dose than the maternally toxic dose, while in rats, developmental toxicity occurred at lower doses than maternal toxic doses. Increased incidences of rudimentary ribs occurred in rat and rabbit fetuses. Increased cleft palate malformations were noted in two studies in rats. In one published study in rats, developmental effects (malformations of the lung and kidneys, incomplete ossification of the skull, caudal vertebrae and digits, extra rib (14th rib) and missing sternbrae), were reported at doses that were not maternally toxic. In the two generation reproduction study in rats, offspring toxicity occurred at a higher dose than the parental toxic dose. Propiconazole was negative for mutagenicity in the *in vitro* BALB/3T3 cell transformation assay, bacterial reverse mutation assay, Chinese hamster bone marrow chromosomal aberration assay, unscheduled DNA synthesis studies in human fibroblasts and primary rat hepatocytes, mitotic gene conversion assay, and the dominant lethal assay in mice. It caused proliferative changes in the rat liver with or without pretreatment with an initiator, like phenobarbital, a known liver tumor promoter. Liver enzyme induction studies with propiconazole in mice demonstrated that propiconazole is a strong phenobarbital type inducer of xenobiotic metabolizing enzymes. Hepatocellular proliferation studies in mice suggest that propiconazole induces cell proliferation followed by treatment-related hypertrophy in a manner similar to the known hypertrophic agent phenobarbital.

Propiconazole was carcinogenic to male mice. Propiconazole was not carcinogenic to rats or to female mice. The Agency classified propiconazole as a possible human carcinogen and recommended that for the purpose of risk characterization the reference Dose (RfD) approach be used for quantification of human risk. Propiconazole produced liver tumors in male mice only at a high dose that was toxic to the liver. At doses below the RfD, liver toxicity is not expected; therefore, tumors are also not expected.

Specific information on the studies received and the nature of the adverse effects caused by propiconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Propiconazole Human Health Risk Assessment for an Amended Section 3 Registration on Sugarcane'' on pages 12–18 in docket ID number EPA–HQ–OPP–2011–0772.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for propiconazole used for human risk assessment is discussed in Unit B of the final rule published in the **Federal Register** of Wednesday, May 11, 2011 (76 FR 27261) (FRL–8873–2).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to propiconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing propiconazole tolerances in 40 CFR 180.434. EPA assessed dietary exposures from propiconazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for propiconazole. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). This dietary survey was conducted from 2003 to 2008. As to residue levels in food, EPA conducted an acute dietary analysis for propiconazole residues of concern using tolerance levels and 100 percent crop treated (PCT) for all existing and proposed uses.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA's NHANES/WWEIA. This dietary survey was conducted from 2003 to 2008. As to residue levels in food, EPA conducted a chronic dietary

analysis for propiconazole residues of concern using tolerance levels for some commodities, average field trial residues for the remaining commodities, and 100 PCT for all existing and proposed uses.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to propiconazole. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *Chronic exposure.*

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

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

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) model, the estimated drinking water concentrations (EDWCs) of propiconazole for acute exposures are estimated to be 55.78 parts per billion (ppb) for surface water and 0.64 ppb for ground water. For chronic exposures EDWCs are 21.61 ppb for surface water and 0.64 ppb for ground water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Propiconazole is currently registered for the following uses that could result in residential exposures: Turf, ornamentals and in paint.

EPA assessed residential exposure using the following assumptions: Short-term risk to toddlers was assessed for incidental oral and dermal exposure. The highest incidental oral and dermal exposure scenarios are expected from residential use on turf. Short-term risk to adults was assessed for dermal and inhalation residential handler exposure as well as from post-application dermal exposure. Adult handlers have some inhalation exposure; however, based on the low vapor pressure of propiconazole, negligible post application inhalation exposure is anticipated to occur. The highest post application exposure from residential use on turf was used to assess risk to short-term aggregate exposures.

The only residential use scenario that will result in potential intermediate-term exposure to propiconazole is dermal and incidental oral post application exposure to children from wood treatment (antimicrobial use).

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

Propiconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found; some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

Propiconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazolylalanine and triazolylacetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including propiconazole, U.S. EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov,* Docket Identification (ID) Number EPA–HQ–OPP–2005–0497.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* In the developmental toxicity study in rats, fetal effects observed in this study at a dose lower than that evoking maternal toxicity are considered to be quantitative evidence of increased

susceptibility of fetuses to in utero exposure to propiconazole. In the developmental toxicity study in rabbits, neither quantitative nor qualitative evidence of increased susceptibility of fetuses to in utero exposure to propiconazole was observed in this study. In the 2-generation reproduction study in rats, neither quantitative nor qualitative evidence of increased susceptibility of neonates (as compared to adults) to prenatal and/or postnatal exposure to propiconazole was observed. There is no evidence of neuropathology or abnormalities in the development of the fetal nervous system from the available toxicity studies conducted with propiconazole. In the rat acute neurotoxicity study, there was evidence of mild neurobehavioral effects at 300 mg/kg, but no evidence of neuropathology from propiconazole administration. Although there was quantitative evidence of increased susceptibility of the young following exposure to propiconazole in the developmental rat study, the Agency determined there is a low degree of concern for this finding and no residual uncertainties because the increased susceptibility was based on minimal toxicity at high doses of administration, clear NOAELs and LOAELs have been identified for all effects of concern, and a clear dose-response has been well defined.

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

i. The toxicity database for propiconazole is complete except for an immunotoxicity study. In the absence of specific immunotoxicity studies, EPA has evaluated the available propiconazole toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. There was no evidence of adverse effects on the organs of the immune system in any propiconazole study. In addition, propiconazole does not belong to a class of chemicals (e.g., the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic. Based on the considerations in this Unit, EPA does not believe that conducting a special Harmonized Guideline 870.7800 immunotoxicity study will result in a POD less than the NOAEL of 10.0 mg/kg/day used in calculating the cPAD for propiconazole, and therefore, an additional safety factor is not needed to account for potential immunotoxicity.

ii. Based on a weight of the evidence approach, EPA has waived the requirement for a subchronic neurotoxicity study for propiconazole. This approach considered all of the available hazard and exposure information for propiconazole, including: (1) The lack of neurotoxicity and neurobehavioral effects seen in the propiconazole toxicity database; (2) the liver is the primary target organ of propiconazole toxicity, and decreased body weight is the most sensitive endpoint in repeated-dose studies; (3) the exposure risk estimates using oral PODs and based on non-neurotoxic endpoints are conservative, health protective, and provide adequate margins of safety despite lacking a subchronic neurotoxicity study; and (4) a subchronic neurotoxicity study is unlikely to provide a lower endpoint than those currently used for risk assessment.

iii. Although an apparent increased quantitative susceptibility was observed in fetuses and offspring, for the reasons noted in this Unit residual uncertainties or concerns for prenatal and/or postnatal toxicity are minimal.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues, while the chronic used average field trial residues and 100 PCT. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to propiconazole in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by propiconazole.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to propiconazole will occupy 85% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to propiconazole from food and water will utilize 24% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of propiconazole is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Propiconazole is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water and with short-term residential exposures to propiconazole. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposure result in an aggregate MOE of 96 for toddlers (1–2 years old).

This assessment is considered very conservative in that the residential incidental oral post-application exposure was calculated by combining three screening level assessments (which by themselves already have conservative estimates). Accordingly, even though this MOE is not as large as the target MOE of 100, the difference is small and is more than offset by the conservative exposure assumptions.

4. *Intermediate-term risk.* The only residential use scenario that will result in potential intermediate term exposure to propiconazole is post application exposure to children from wood treatment (antimicrobial use). The aggregate MOE is 120, which is greater than the target MOE of 100. Therefore, this scenario is not of concern.

5. *Aggregate cancer risk for U.S. population.* EPA considers the chronic aggregate risk assessment to be protective of any aggregate cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, a high performance liquid chromatography with ultraviolet detection method (HPLC/UV Method AG–671A) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex Alimentarius Commission has established several maximum residue limits (MRLs) for propiconazole in/on straw and fodder of barley, rye, and wheat along with a MRL for barley grain at levels different than the U.S. tolerance levels. The reason for this is that the Codex MRLs are expressed in terms of residues of propiconazole alone, i.e., the Codex MRLs do not include residues of the metabolites in the tolerance values, while the U.S. tolerances are expressed in terms of combined residues of propiconazole and its metabolites containing the 2,4-DCBA moiety. In addition, the approved uses for propiconazole in the United States will result in residues that exceed the CODEX MRLs.

C. Revisions to Petitioned-For Tolerances

The petitioner requested a tolerance level of 9.0 ppm for rye, straw and a tolerance level of 108 ppm for grain, aspirated fractions. The petitioner did not request an amended tolerance level for barley, bran. Based on available residue data, the Agency has determined that the currently established tolerance of 10.0 ppm for rye, straw should remain and that no change to this tolerance level should be made. The Agency has revised the tolerance level of 108 ppm for grain, aspirated fractions to 110 ppm. Additionally, the Agency determined that the established tolerance level of 0.6 ppm for barley, bran needed to be increased to 6.0 ppm. The petitioner has subsequently submitted a revised petition to the Agency requesting these changes. The Organization for Economic Cooperation and Development tolerance calculation procedures were utilized in determining the appropriate tolerance level for the requested amended uses. Changes in recommended tolerance are based on the use of these calculation procedures along with rounding of the recommended tolerance.

V. Conclusion

Therefore, tolerances are established for residues of propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole), in or on barley, grain at 3.0 ppm; barley, hay at 30 ppm; barley, straw at 20 ppm; grain, aspirated fractions at 110 ppm; oat, forage at 4.0 ppm; oat grain at 3.0 ppm; oat, hay at 15 ppm; rye, forage at 9.0 ppm; wheat, forage at 15 ppm; wheat, hay at 30 ppm; wheat, straw at 20 ppm. Additionally, EPA is revising the existing tolerance for barley, bran to 6.0 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: April 11, 2013.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

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

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

■ 2. In § 180.434, paragraph (a), revise the following entries in the table to read as follows:

§ 180.434 Propiconazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Barley, bran	6.0
Barley, grain	3.0
Barley, hay	30
Barley, straw	20
* * * * *	
Grain, aspirated fractions	110
* * * * *	
Oat, forage	4.0
Oat, grain	3.0
Oat, hay	15
* * * * *	
Rye, forage	9.0
* * * * *	
Wheat, forage	15
Wheat, hay	30
Wheat, straw	20

* * * * *

[FR Doc. 2013–09271 Filed 4–18–13; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 107

[Docket No. PHMSA–2012–0185 (HM–208I)]

RIN 2137–AE95

Hazardous Materials; Temporary Reduction of Registration Fees

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal hazardous materials transportation law requires DOT to adjust the amount of the annual registration fee to account for any unexpended balance in the Hazardous Materials Emergency Preparedness (HMEP) Fund. Due to an unexpended balance that has accumulated in the Fund, PHMSA is lowering the registration fees for registration year 2013–2014 for all persons, as defined in PHMSA regulations, that transport or offer for transportation in commerce certain categories and quantities of hazardous materials. Specifically, for registration year 2013–2014 the fee for a small business or not-for-profit organization is revised to be $125 (plus a $25 processing fee), and for all other businesses the fee is $1300 (plus a $25 processing fee). After the 2013–2014 registration year, the registration fees will return to 2012–2013 registration year levels.

Additionally, PHMSA is making an editorial change to its regulations to clarify the appropriate fee amounts; there are no substantive changes other than the addition of the fees for 2013–2014 and for 2014–2015 and later.

In order to make the change effective for the 2013–2014 registration year and thus draw down the unexpended balance as soon as possible, PHMSA is issuing this final rule without a prior notice of proposed rulemaking in accordance with good cause exemption specified in the Administrative Procedures Act. Additionally, for good cause this final rule is effective immediately.

DATES: *Effective date:* April 19, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Outreach, Training, and Grants Division (PHH–50), (202) 366–4484, or Ms. Deborah Boothe, Standards and Rulemaking Division (PHH–10), (202) 366–8553, PHMSA, East Building, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The PHMSA Hazardous Materials (HM) Grants Program is designed to enhance the training of the nation's emergency response personnel, and to encourage the development of local emergency planning. The HM Grants Program is comprised of three emergency preparedness grants: Hazardous Materials Emergency Preparedness (HMEP) Grants, Supplemental Public Sector Training (SPST) Grants, and Hazardous Materials Instructor Training (HMIT) Grants. The program is funded by registration fees collected from hazmat shippers and carriers that offer for transportation or transport certain hazmat in intrastate, interstate, or foreign commerce in accordance with 49 CFR part 107, Subpart G.

These fees fund training and planning grants, monitoring and technical assistance, curriculum development, and staffing costs. Registration fees also fund the publication and distribution of the Emergency Response Guidebook (ERG). Planning activities are integral to the implementation of effective emergency preparedness programs. Grantee planning activities are often focused on the identification and assessment of hazmat transportation risks within their communities (e.g., which commodities are shipped, the volume and frequency of those shipments, availability of current emergency response plans, etc.). Training at more advanced levels is essential to assure emergency response personnel are capable of effectively and safely responding to releases of hazardous materials. PHMSA requires the use of the NFPA Standard 472, ''Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents'', available at: *http://www.nfpa.org,* in the development of its PHMSA funded training programs.

In accordance with the ''Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005'' (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act-A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, 119 Stat. 1144, August 10, 2005) an obligation limitation of $28.3 million may be expended each year from the HMEP Fund for the following purposes:

- $21,800,000 to make emergency response planning and training grants to States and Indian tribes (of which at least 75% must be used for planning and training at the local level), under 49 U.S.C. 5116(a) & (b) (HMEP Grants);
- Up to $4,000,000 to make grants to nonprofit hazardous materials employee organizations to train instructors to train hazmat employees and for the instructors to train the hazmat employees, under 49 U.S.C. 5107(c) (HMIT Grants);
- $1,000,000 to make grants to national nonprofit fire service organizations to train instructors to provide hazardous materials response training to emergency responders, under 49 U.S.C. 5116(j) (SPST Grants);
- $150,000 for monitoring emergency response planning and training and coordinating assistance through the National Response Team and Federal

Radiological Preparedness Coordinating Committee, under 49 U.S.C. 5116(f);

- $188,000 to develop and update a national curriculum for training public sector emergency response and preparedness teams, under 49 U.S.C 5115;
- $625,000 to revise, publish, and distribute the Emergency Response Guidebook, under 49 U.S.C. 5116(i)(3); and
- $555,000 for administrative expenses, under 49 U.S.C. 5116(i)(4).

As specified in 49 CFR part 107, subpart G, PHMSA requires persons, as defined in § 171.8 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), that offer or transport certain types and quantities of hazardous materials to file an annual registration statement and pay a fee. Since 2010, the current annual registration fee has been set at $250 (plus a $25 processing fee) for small businesses, as defined by the Small Business Administration (SBA) size standard, and for not-for-profit organizations under 26 U.S.C. 501(a), and $2,575 (plus a $25 processing fee) for all other registrants. (See 49 CFR 107.612(a)).

Three main factors influence both the amount of funds collected and expended in a given year: (1) The number of persons that will register, (2) the total amount of grants requested in applications and for which funds will be obligated, and (3) the activities which will not be actually completed so that funds will later be ''de-obligated.''

II. Statutory Requirement To Adjust Registration Fees

The Federal hazardous materials transportation law (See 49 U.S.C. 5108(g)(2)(B)) requires the Secretary to adjust the amount of the annual registration fee ''to reflect any unexpended balance in the account'' of the HM grants program. During 2009 and 2010, evaluations of the HM Grants Program were performed internally by PHMSA and by an outside audit service.[1] As a result of the findings, PHMSA implemented a comprehensive plan that has established greater accountability of operations, enhanced oversight of grantees, and increased clarification of allowable program expenses, which has encouraged grant applicants to better evaluate their own programs and grant expenditures. In addition, PHMSA has taken a proactive approach to more thoroughly explain the grant program and authorized expenditures to the states and tribes. An intended outcome of this effort is to increase the impact of PHMSA grant funding on local community preparedness and decrease de-obligations.

As of December 31, 2012, the HMEP Grants Fund had an unexpended balance of $13.1 million. The primary reason for the current unexpended balance is due to an accumulation of HMEP grant de-obligations. An initial result of PHMSA's effort to enhanced oversight of grantees has been a reduction in the amount of grant funds actually utilized, as grantees adjust to the changes, which has led to slightly higher than usual de-obligations in recent years. As grantees revise and improve their programs, PHMSA expects to realize a significant reduction in grantee de-obligations. Based on PHMSA's calculations, cutting the fee in half for one year should eliminate the unexpended balance. PHMSA's calculations indicate that, with appropriate oversight, returning to the current fee structure after the one year reduction is appropriate. During the 2011–2012 registration year, PHMSA collected $26,487,806 in registration fees, which is less than the $28,318,000 obligation limitation from Congress.[2] Under the reduced 2013–2014 rates, PHMSA is assuming that roughly the same number of entities will register, so the anticipated collections are roughly $13.4 million. This collection combined with the unexpended balance of $13.1 million will fund the program at or slightly below the obligation limitation level. This rule is a one-year adjustment to the fees, but since the unexpended balance accumulated for several reasons and over several years, PHMSA is dedicated to: (1) working with grantees to more fully explain the HM Grants Program and authorized expenditures in order to decrease de-obligations to the maximum extent possible and (2) monitoring closely, and considering additional actions, as needed, to account for any future unexpended balance.

III. Registration Program Amendments

PHMSA's fundamental goals of the registration fee system are for the system to be simple, straightforward, easily implemented, and enforceable; employ an equity factor reflecting the differences in level of risk to the public and the financial impact associated with the business activities of large and small businesses; and ensure adequate funding for the HM Grants Program (See 65 FR 7302–03). PHMSA has determined adjusting the fee for all entities by an equal proportion for registration year 2013–2014 is the best approach to meet the fundamental goals of the registration fee system. To carry out these goals and eliminate the unexpended balance in the HMEP Fund, PHMSA is reducing the registration fee for the 2013–2014 registration year (July 1, 2013–June 30, 2014) to:

- $125 (plus $25 processing fee) for a small businesses or not-for-profit organizations; and
- $1300 (plus $25 processing fee) for all other businesses.

These amounts represent a 50% reduction in the fee paid by a small business or not-for-profit organization and all other business categories. The one-year reductions are being applied to all registrants at an equal rate because an accumulation of de-obligations is the primary cause of the current unexpended balance in the HMEP Fund.

Additionally, PHMSA is making an editorial change to § 107.612 to clarify the appropriate fee amounts; there are no substantive changes other than the addition of the fees for 2013–2014 and for 2014–2015 and later.

The Administrative Procedure Act provides that notice of a proposed rulemaking need not be published in the **Federal Register** ''when the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' (See 5 U.S.C. 553(b)(3)(B)). For the same reasons, a final rule can become effective immediately (See 5 U.S.C. 553(d)). PHMSA has found that it is unnecessary to provide notice and comment on the regulatory changes adopted in this rule as these amendments limit PHMSA's discretion and simply account for statutory requirements. In addition, it is impracticable to provide notice and comment on the regulatory changes adopted in this rule, as doing so would not permit these amendments to be effective and implemented for the 2013–2014 registration year. Further, it is contrary to the public interest to provide notice and comment because it potentially delays relief to entities that are entitled by statute to lower registration fees. Therefore, PHMSA is issuing this final rule without a prior notice of proposed rulemaking and making it effective immediately.

IV. Multi-Year Registrations

PHMSA permits a person to register for up to three years in one registration statement. See 49 CFR 107.616(c).

[1] Audit findings are available at the following URL: *http://www.oig.dot.gov/library-item/5699.*

[2] Registration statistics are available at the following URL: *http://phmsa.dot.gov/hazmat/library/data-stats/registration.*

PHMSA applies fees according to the fee structure ultimately established by regulation for the registration year rather than according to the fee set at the time of payment. Thus, the temporary decrease in registration fees in this final rule means that lower fees will be applied to any registrations paid in advance at the higher levels in effect at the time of payment. PHMSA will notify each registrant that will be eligible to request a refund for the 2013–2014 registration year and issue refunds.

V. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is issued under the authority of the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 et seq.). Section 5108 of the Federal hazmat law authorizes the Secretary of Transportation to establish a registration program to collect fees to fund the HM Grants Program. The program, as mandated by 49 U.S.C. 5116, authorizes Federal financial and technical assistance to states and Indian tribes to ''develop, improve, and carry out emergency plans'' within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C. 11001 et seq.

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget. This rule is considered non-significant under the Regulatory Policies and Procedures of the Department of Transportation. See 44 FR 11034.

To address the unexpended balance in the HM Fund, PHMSA is temporarily reducing registration fees for the 2013–2014 registration year. After the 2013–2014 registration year, the registration fees will return to 2012–2013 registration year levels. PHMSA will continue to evaluate the registration fee structure and may issue further regulations modifying the fee structure in the future pending the results of this evaluation and our outreach efforts to reduce de-obligations.

The temporary reduction in registration fees adopted by the final rule will amount to a one year, $13.2 million cost savings for industry. A revised fee of $125 (plus a $25 processing fee) for small businesses and not-for-profit organizations and $1300 (plus a $25 processing fee) for all other businesses, collected from 40,375 registrants (33,300 small businesses and not-for-profit organizations and 7,075 other-than-small businesses) for the 2013–2014 registration year will satisfy the statutory requirements. PHMSA considers this reduction equitable, since all registrants subject to the registration program would have their fee decreased by approximately 50 percent. A regulatory evaluation for this rule is available for review in the public docket.

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to identify and consider regulatory approaches that reduce burden and maintain flexibility; and modify and streamline, existing regulations that are unclear. The regulatory approach adopted in this rulemaking will reduce the burden and provide flexibility for our stakeholders by offering a one year reduction of registration fees as well as modifying and simplifying our regulatory text by adding an easily understood fee table into the regulations.

This final rule is designed to eliminate an unexpended balance (surplus) in the HMEP Fund of approximately $13.1 million dollars by reducing registration fees for all persons required to register for registration year 2013–2014. This final rule reduces the registration fee for the 2013–2014 registration year in accordance with Federal law and makes editorial changes to the associated regulatory text. It does not conflict with Executive Order 12866, Executive Order 13563, or DOT Regulatory Policies and Procedures.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (Federalism). There is no preemption of state fees on transporting hazardous materials that meet the conditions of 49 U.S.C. 5125(f). This rule does not impose any regulation having substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Because this final rule does not have adverse tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply, and, a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. The provisions of this rule apply specifically to all businesses required to register. Therefore, PHMSA certifies this rule would not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more, in the aggregate, to any of the following: state, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) do not apply to this final rule.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. Environmental Impact Analysis

The National Environmental Policy Act, of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the

human environment. When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the: risk of release and resulting environmental impact; risk to human safety, including any risk to first responders; longevity of the packaging; and if the proposed regulation would be carried out in a defined geographic area, the resources, especially any sensitive areas, and how they could be impacted by any proposed regulations.

There are no significant environmental impacts associated with this final rule. This final rule reduces the registration fee for the 2013–2014 registration year in accordance with Federal law and makes editorial changes to the associated regulatory text.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) which may be viewed at *http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf*.

K. Executive Order 13609 and International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, 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 any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude 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.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the final rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with E.O. 13609 and PHMSA's obligations.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, we amend 49 CFR part 107 as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.81, 1.97.

■ 2. Section 107.612 is revised to read as follows:

§ 107.612 Amount of fee.

(a) For purposes of determining the applicable annual registration fee specified in paragraph (b) of this section, the following classification applies to each person required to register and pay a registration fee:

(1) *Small business.* A person that qualifies as a small business, under criteria specified in 13 CFR part 121 applicable to the North American Industry Classification System (NAICS) code that describes that person's primary commercial activity.

(2) *Not-for-profit organization.* An organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (a)(1) or (a)(2) of this section.

(b) Each person subject to the requirements of this subpart must pay the processing fee specified in paragraph (c) of this section and the annual registration fee set forth in the following table:

Registration year	Small business	Not-for-profit organization	Other than small business or not-for-profit organization
2014–2015 and later	$250	$250	$2,575
2013–2014	125	125	1,300
2012–2013, 2011–2012, 2010–2011	250	250	2,575
2009–2010, 2008–2009, 2007–2008, 2006–2007	250	250	975
2005–2006, 2004–2005, 2003–2004	125	125	275
2002–2003, 2001–2002, 2000–2001	275	(1)	1,975
1999–2000 and earlier	250	250	250

[1] Fee appropriate for small or other than small business.

(c) Each person submitting a registration statement must pay the following processing fee in addition to the registration fees specified in paragraph (b) of this section:

(1) For registration years 2000–2001 and later, the processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

(2) For registration years 1999–2000 and earlier, the processing fee is $50 for each registration statement filed. A separate statement must be filed for each registration year.

Issued in Washington, DC, on April 15, 2013 under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–09213 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 78, No. 76
Friday, April 19, 2013

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.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Chapter XII

[No. 2013–N–06]

Notice of Regulatory Review

AGENCY: Federal Housing Finance Agency.

ACTION: Request for comment.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a notice of a regulatory review that will be conducted in accordance with the process set forth in the regulatory review plan published by FHFA last year,[1] and requesting comments on how its regulations may be made more effective and less burdensome.

DATES: Written comments on this notice of regulatory review must be received no later than June 18, 2013.

ADDRESSES: You may submit your comments, identified by ''Regulatory Review [No. 2013–N–06]'', by any of the following methods:

- *Email:* Comments to Alfred M. Pollard, General Counsel may be sent by email to *RegComments@fhfa.gov.* Please include ''Regulatory Review [No. 2013–N–06]'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Please include ''Regulatory Review [No. 2013–N–06]'' in the subject line of the message.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/Regulatory Review [No. 2013–N–06], Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW., Washington, DC 20024.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/Regulatory Review [No. 2013–N–06], Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The package should be logged at the FHFA Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

All comments received will be posted without change on FHFA's Web site at *http://www.fhfa.gov,* and will include any personal information provided, such as name, address (mailing and email), and telephone numbers. In addition, copies of all comments received will be available without charge for public inspection on business days between the hours of 10:00 a.m. and 3:00 p.m., at the Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Christopher T. Curtis, Senior Deputy General Counsel, *christopher.curtis@fhfa.gov,* (202) 649–3051 (this is not a toll-free number), Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Establishment of FHFA; Transfer and Review of Regulations

The Housing and Economic Recovery Act of 2008 (HERA) established FHFA on July 30, 2008, as an independent regulatory agency to supervise and regulate the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (collectively, regulated entities), and the Office of Finance of the Federal Home Loan Bank System. HERA transferred to the new agency the employees, functions, and regulations of the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (Finance Board), and the Government-Sponsored Enterprise mission team within the U.S. Department of Housing and Urban Development (HUD).

HERA and, most recently, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) mandate that FHFA issue new regulations on specific matters in connection with FHFA's supervision and regulation of the regulated entities and the Office of Finance. Currently, in determining whether to revise, adopt without change, or repeal transferred OFHEO, Finance Board, and certain HUD regulations, FHFA reviews such regulations to determine the appropriate action and publishes the regulations for comment. Public comments provide additional information to FHFA on how to make the regulations more effective and less burdensome.

Executive Order 13579

Executive Order 13579, ''Regulation and Independent Regulatory Agencies,'' (July 11, 2011), requests that each independent regulatory agency, such as FHFA, analyze its existing regulations and modify, streamline, expand, or repeal them in accordance with the findings of the analysis. Executive Order 13579 also requests each independent regulatory agency to make public a plan under which the agency will periodically review its existing significant regulations to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives.

FHFA's Regulatory Review Plan Under Executive Order 13579

After notice and request for comment,[2] FHFA published its regulatory review plan on February 22, 2012.[3] The plan provides for FHFA to review its regulations for effectiveness and burden every five years, beginning not later than August of this year, applying factors enumerated in the plan. The regulatory review plan is available at the following location: *http://www.fhfa.gov/webfiles/23372/77_FR_10351_Feb_22_2012.pdf.* FHFA regulations published in Chapter XII of Title 12 of the Code of Federal Regulations are available at the following locations: (1)

[1] Regulatory Review Plan, 77 FR 10351 (Feb. 22, 2012).

[2] Notice of Regulatory Review Plan, 76 FR 59066 (Sept. 23, 2011).

[3] Regulatory Review Plan, 77 FR 10351 (Feb. 22, 2012).

The Government-wide public Web site at: *http://www.ecfr.gov/cgi-bin/text-idx?SID=7c0e5ce2b44677c52dbb9e542ffb2d2e&c=ecfr&tpl=/ecfrbrowse/Title12/12cfrv9_02.tpl;* (2) FHFA's Internet Web site at: *http://www.fhfa.gov/Default.aspx?Page=89&ListNumber=5&ListYear=2012&SortBy=#Year_2012;* and (3) *http://www.regulations.gov.* FHFA's Office of General Counsel will conduct the reviews, culminating in a report to the agency's Director.

This Notice initiates the first such review.

II. Request for Comment

FHFA hereby requests comment on its existing regulations for purposes of improving their effectiveness and reducing their burden. Included in the review are all current regulations, including those not yet transferred from the predecessor agencies, but not including rules of agency organization, procedure, or practice, or regulations adopted or substantially amended within the last two years. Members of the public may nonetheless comment on those recently adopted or amended regulations, and FHFA will take those comments into account as appropriate, however, FHFA does not anticipate responding to individual comments.

Factors that FHFA's regulatory review plan identifies as relevant to the review, and which FHFA suggests should guide commenters, include:

(1) Legal or regulatory developments, including new laws, executive orders or judicial decisions that have been adopted since the promulgation of a regulation that make such regulation inefficient, obsolete, contrary to controlling legal precedent, or unduly burdensome;

(2) Marketplace developments, technological evolution, and related changes that may have rendered an existing regulation, in whole or in part, inefficient, outmoded, or outdated;

(3) Whether the provisions of the regulation are written in plain language or otherwise need clarification;

(4) Compelling evidence that a consolidation of two or more regulations, elimination of a duplicative regulation, or other revision to regulatory requirements would facilitate compliance by or supervision of a regulated entity or the Office of Finance;

(5) A demonstrated better alternative method to effect a regulatory purpose or requirement supported by compelling evidence of significantly less intrusive means or of a substantially more efficient method of accomplishing the same supervisory purpose.[4]

[4] 77 FR at 10351–02.

As stated in the regulatory review plan, FHFA's Office of General Counsel will review all comments received, will consult with other FHFA offices and divisions, and will make a report of findings and recommendations to the FHFA Director on a timely basis. The report of findings and recommendations will be privileged and confidential. After receiving the report of findings and recommendations, the FHFA Director will determine what steps may be necessary to relieve any unnecessary burden, including amendment to or repeal of existing regulations or issuance of less formal guidance.

This regulatory review is not a formal or informal rulemaking proceeding under the Administrative Procedure Act and creates no right of action against FHFA. The determination of FHFA to conduct or not to conduct a review of a particular regulation, and any determinations, findings, or recommendations resulting from this review, are not final agency actions and, therefore, are not subject to judicial review.

Dated: April 12, 2013.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2013–09265 Filed 4–18–13; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 660, 801, and 809

[Docket No. FDA–2013–N–0125]

RIN 0910–AG74

Use of Certain Symbols in Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise medical device and biological product labeling regulations to explicitly allow for the inclusion of stand-alone graphical representations of information, or symbols, if the symbol has been established as part of a standard developed by a nationally or internationally recognized standards development organization (SDO) (referred to in this document as a ''standardized symbol'') and such standardized symbol is part of a standard recognized by FDA for use on the labeling of medical devices (or on a subset of medical devices), provided that such symbol is explained in a symbols glossary that contemporaneously accompanies the medical device. FDA is also proposing to revise prescription device labeling regulations to authorize the use of the symbol statement ''Rx only'' on the labeling of prescription devices.

DATES: Submit electronic or written comments on the proposed rule by June 18, 2013. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 (the PRA) by May 20, 2013, (see section VII). See section IX for the proposed effective date of a final rule based on the proposed rule in this document.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2013–N–0125 and/or Regulatory Information Number (RIN) 0910–AG74, by any of the following methods, except that comments on information collection issues under the PRA must be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) (see section VII).

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following way:

- *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name, Docket No. FDA–2013–N–0125, and RIN 0910–AG74 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see section VIII.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael Ryan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New

Hampshire Ave., Bldg. 66, Rm. 1615, Silver Spring, MD 20993, 301–796–6283; or
Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

Medical device labeling [1] is intended to clearly communicate information to end users, including manufacturer identification, intended use, and directions for use. Section 502 of the FD&C Act (21 U.S.C. 352) requires that industry provide clear and understandable labeling for FDA-regulated products. A device is deemed misbranded, among other reasons, if its labeling is false or misleading (section 502(a)), if the required information on the labeling fails to appear in terms that are ''likely to be read and understood by the ordinary individual under customary conditions of purchase and use'' (section 502(c)), or if its labeling does not bear ''adequate directions for use'' (section 502(f) of the FD&C Act).

FDA has further defined labeling requirements for devices by regulation, requiring, in part 801 (21 CFR part 801), that ''[a]ll words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear thereon in the English language* * *'' (§ 801.15(c)(1)). The regulation goes on to allow for use of foreign language under certain circumstances, but does not mention the use of graphics, pictures, or symbols to communicate information. Under the current regulation, graphics, pictures, or symbols in labeling that represent required information must be accompanied by explanatory English text adjacent to the symbol in order to ''appear thereon in the English language.''

Under § 801.119, labeling for in vitro diagnostic (IVD) devices has adequate directions for use if it meets the requirements of § 809.10 (21 CFR 809.10), which prescribes the statements, declarations, and other information that IVD devices must display on their labeling. Although § 809.10 does not explicitly authorize the use of symbols, the Agency has interpreted this regulation generally to allow graphics, pictures, or symbols to meet the labeling requirements of this regulation except where this regulation specifies particular labeling language.

The FD&C Act also applies to biological products defined in section 351(i)(1) of the Public Health Service Act (PHS Act) (42 U.S.C 262(i).[2] See, specifically, PHS Act section 351(j) (42 U.S.C. 262(j)). Accordingly, biological products that are also medical devices are subject to the labeling requirements of section 502 of the FD&C Act (applicable to any ''word, statement or other information required by or under authority of [the FD&C] Act to appear on the label or labeling'' of a medical device), as well as the regulations of part 801, including § 801.15. The part 660 (21 CFR part 660) labeling regulations applicable to certain biologic diagnostic substances for laboratory tests refer to the labeling requirements of § 809.10. See §§ 660.2 (for Antibody to Hepatitis B surface Antigen), 660.28 (for Blood Grouping Reagent), 660.35 (for Reagent Red Blood Cells), § 660.45 (for Hepatitis B Surface Antigen), and 660.55 (for Anti-Human Globulin).

The Food and Drug Administration Modernization Act (FDAMA) added section 514(c) to the FD&C Act (21 U.S.C. 360d(c)). This provision authorizes FDA to ''recognize all or part of an appropriate standard established by a nationally or internationally recognized standard development organization,'' for which a person may then submit a declaration of conformity in order to meet a premarket submission or other requirement under the FD&C Act when the standard applies to and satisfies the requirement, including a labeling requirement. Section 514(c)(2) of the FD&C Act also authorizes FDA to withdraw recognition of a standard through publication of a notice in the **Federal Register** if FDA determines that the standard is no longer appropriate for meeting a device requirement under the FD&C Act. Congress noted with approval the past work of SDOs, such as the American National Standards Institute (ANSI), the International Organization for Standardization (ISO), and the International Electrotechnical Commission in the field of medical device products from ''[l]ong before the enactment of the Medical Device Amendments of 1976'' (S. Rep. No. 43, 105th Cong., 1st Sess. 23 (1997)).

Section 514(c) of the FD&C Act requires FDA to publish in the **Federal Register** the names of all standards to which recognition has been given. See the Center for Devices and Radiological Health's (CDRH's) public database at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm* for the most recent FDA listing of recognized consensus standards. In ''Guidance for Industry and FDA Staff: CDRH Standard Operating Procedures for the Identification and Evaluation of Candidate Consensus Standards for Recognition,'' FDA set forth its procedures for recognition of consensus standards. This guidance is available at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm077322.pdf.* Further information about the recognition of consensus standards can be found in FDA's ''Guidance for Industry and FDA Staff: Frequently Asked Questions on Recognition of Consensus Standards,'' available at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm075064.pdf.* FDA published the initial list of recognized consensus standards in the **Federal Register** of February 25, 1998 (63 FR 9561).

Modifications to the initial and previous lists of recognized standards—announcing the addition, withdrawal, and revision of such standards—are published in the **Federal Register.** Changes in a recognized standard, including changes to a standardized symbol recognized in such standard, do not retroactively affect a product's clearance or approval status. The most recent modifications to the list of recognized standards, including a complete list of the 29 previous modifications, was published in the **Federal Register** on January 15, 2013 (78 FR 2998). In addition, the Agency maintains hypertext markup language and portable document format (PDF) versions of the list of ''FDA Recognized Consensus Standards.'' Both versions are publicly accessible at the Agency's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm.*

[1] Under section 201(m) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321(m)), the term ''labeling'' means all labels and other written, printed, or graphic matter: (1) Upon any article or any of its containers or wrappers or (2) accompanying such article. Under section 201(k) of the FD&C Act, the term ''label'' means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of the FD&C Act that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

[2] ''The term 'biological product' means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition of human beings.'' (42 U.S.C 262(i))

Interested persons should review the supplementary information sheet (SIS) published for the standard to understand fully the extent to which FDA recognizes the standard.

While section 503(b)(4) of the FD&C Act (21 U.S.C. 353(b)(4)) allows the labels of prescription drug products to contain the symbol statement ''Rx only,'' this provision is not applicable to prescription devices. In order to give manufacturers, repackers, relabelers, and distributors more labeling options for prescription devices, CDRH issued the guidance, ''Alternative to Certain Prescription Device Labeling Requirements'' on January 21, 2000, which is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm085404.htm.* It announced CDRH's intent to exercise enforcement discretion with respect to the use of the symbol statement ''Rx only'' on prescription medical device labeling as an alternative to the prescription use statement in § 801.109.

II. Proposed Revision to Parts 660, 801, and 809

FDA is proposing to revise parts 660, 801, and 809 to expressly allow for the use in medical device labeling of certain ''stand-alone'' symbols (not accompanied by explanatory text adjacent to the symbol) contained in a standard that FDA recognizes under its authority under section 514(c) of the FD&C Act, as long as a ''symbols glossary'' contemporaneously accompanies the device. The term ''symbols glossary'' means a compiled listing of each symbol used in the labeling of the device and of the meaning of or explanatory text for the symbol. As discussed previously, the current regulations do not mention the use of symbols. The medical device industry has requested permission to use stand-alone symbols in device labeling in order to make the label more user-friendly by replacing small, difficult-to-read text with pictorial information and to harmonize the labeling requirements of U.S. and foreign regulatory bodies.

Various symbols with accompanying text have been used in health product labeling for several years, both on package labels and within other labeling documents, such as the instructions for use. The proposed rule will continue to allow the use of symbols, including standardized symbols, on device labeling when the symbols are accompanied by explanatory adjacent text. For IVD devices intended for health professional use, CDRH and the Center for Biologics Evaluation and Research have interpreted applicable labeling requirements to allow the use of certain symbols contained in a standard recognized by FDA in labeling without explanatory text adjacent to the symbol. See FDA guidance entitled ''Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use,'' issued November 30, 2004. Additionally, CDRH has exercised enforcement discretion with respect to the prescription use symbol statement ''Rx Only'' (without accompanying explanatory text). See FDA guidance entitled ''Alternative to Certain Prescription Device Labeling Requirements,'' issued January 21, 2000, available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm072747.htm.*

In the international community, voluntary standards such as ISO 15223, originally published in 2000, have standardized, commonly-used symbols that are often used in U.S. device labeling with adjacent explanatory text, and in limited instances, without adjacent text for IVD devices.

In Europe, the widespread use of symbols in medical device labeling is in response to the European Commission's 1993 Medical Device Directive, which states that any text present on a medical device label must be present in all languages so that it can be understood by end users in multiple countries. The Medical Device Directive 93/42/EEC states in Annex I: ''Where appropriate, this information should take the form of symbols. Any symbol or identification colour used must conform to the harmonized standards. In areas for which no standards exist, the symbols and colours must be described in the documentation supplied with the device.'' Thus, manufacturers may produce medical device labels that include symbols without accompanying text for the European market. At present, that same label must be revised to either remove the symbol or add accompanying explanatory text, in English, to enter the U.S. market. This regulatory difference has created confusion and generated industry complaints that manufacturers have to develop different labels for each market.

Under our proposed rule revising parts 660, 801, and 809, FDA seeks to harmonize U.S. regulatory requirements with those of the European Commission by allowing stand-alone standardized symbols recognized by FDA to be used in medical device labeling when a symbols glossary contemporaneously accompanies the medical device.

Based on the process of recognizing consensus standards under section 514(c) of the FD&C Act and taking into consideration FDA's allowance of symbols on some medical devices for nearly a decade, FDA believes that certain symbols contained in national or international standards are ''likely to be read and understood by the ordinary individual under customary conditions of purchase and use'' (section 502(c) of the FD&C Act). Thus, FDA is proposing to allow for the use of certain stand-alone symbols, contained in standards recognized by FDA, on device labeling (including labels) in the United States, so long as a symbols glossary contemporaneously accompanies the medical device. FDA's Web site will contain up-to-date information on which standardized symbols are recognized by FDA. One example of an international symbols standard is the Association for the Advancement of Medical Instrumentation (AAMI)/ANSI/ISO 15223–1:2012, *Medical Devices—Symbols to be Used With Medical Device Labels, Labeling and Information to be Supplied,* Part 1, *General Requirements.* This standard is currently recognized in part by FDA as a standard containing medical device-specific symbols that may be used without accompanying text on labeling for IVD devices intended for use by health professionals.

FDA is issuing this regulation to permit the use of stand-alone symbols in device labeling under certain circumstances. FDA intends to describe its policy for the appropriate use of symbols in device labeling in a separate guidance document and to identify the specific standardized symbols recognized and the scope of devices affected through its standards recognition process. Generally, FDA will consider recognizing symbols included in standards if the Agency determines that the device user, under customary conditions of purchase and use, will understand the meaning of the symbol and the message it was intended to convey. (See section 502(c) of the FD&C Act.). This understanding can be demonstrated by applying a validation process that complies with an appropriate symbol validation standard, such as AAMI/ANSI/ISO 15223–2:2010 (Part 2), *Symbol Development, Selection and Validation.* Under this process, studies need to demonstrate end-user comprehension of the symbol in context and validation data may be submitted to the SDO for its review.

On its own initiative and in response to requests received from the public, FDA expects to assess standardized symbols from time to time as part of its

consensus standards recognition process. FDA will consider recognizing symbols contained in standards developed by SDOs that follow a process where the standard development is transparent (i.e., open to public scrutiny), where the participation is balanced, where an appeals process is included, where the standard is not in conflict with any statute, regulation, or policy under which FDA operates, and where the standard is national or international in scope.

Ordinarily, only standardized symbols that have undergone the SDO's written procedures for approval/issuance and validation will be recognized. FDA does not intend to recognize symbols that have not been validated through SDO procedures nor does FDA intend to recognize proprietary symbols. Under FDA's consensus standards recognition process, the SDO, not FDA, would review validation data supporting the use of each standardized symbol. On the SIS for each standard it recognizes, FDA will include a list of device types or categories affected by the recognition. This standards recognition process will not be changed by the proposed rule.

It is important to note that any stand-alone symbol that conveys information that is required to appear on the labeling of a device would be subject to the requirements under the proposed amendment to § 801.15(c)(1) that the symbol would have to be recognized by FDA, used within any parameters of such recognition, and be explained in a symbols glossary that contemporaneously accompanies the device. Under section 502(f)(1) of the FD&C Act, device labeling is required to provide adequate directions for use to the user of a device. See §§ 801.5 and 801.109. Therefore, any stand-alone symbol on the labeling of a device that conveys directions for use would be subject to the symbols glossary requirements under the proposed amendment to § 801.15(c)(1).

FDA is proposing to revise § 801.109(b)(1), as well as § 801.15(c)(1), to include language that affirmatively permits use of the symbol statement ''Rx only,'' without accompanying explanatory text, as an alternative to the prescription device label statement ''Caution: Federal law restricts this device to sale by or on the order of a (licensed healthcare practitioner).'' It is important to note that the word ''only'' needs to immediately follow the symbol ''Rx.'' However, the symbol statement ''Rx only'' does not necessarily need to be bracketed in quotation marks, and the word ''only'' may appear in upper or lower case letters, for example, Rx only, Rx Only, or Rx ONLY. As in the case of labels for prescription drugs, the new label statement for prescription medical devices may be printed as either ''Rx only'' or ''℞ only.'' (See 67 FR 4904; February 1, 2002.) The ℞ symbol in the symbol statement ''Rx only'' or the symbol statement ''Rx only'' in its entirety may be printed in bold or in regular type.

The proposed amendments to §§ 801.15 and 809.10 would also cover biological products regulated as devices. This rule also proposes to amend the specific labeling requirements applicable to biological products in part 660 to allow for the labeling use of standardized symbols that FDA recognizes under its authority under section 514(c) of the FD&C Act, as long as there is a ''symbols glossary'' in the labeling that contemporaneously accompanies the product. We have also proposed changes in part 660 to describe more uniformly the labeling requirements applicable to licensed products subject to this part: diagnostic substances for laboratory tests.

III. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Legal Authority for the Proposed Rule

Section 514(c)(1)(A) of the FD&C Act authorizes FDA to recognize, by publication in the **Federal Register**, ''all or part of an appropriate standard established by a nationally or internationally recognized standard development organization for which a person may submit a declaration of conformity in order to meet a premarket submission requirement or other requirement under the FD&C Act to which such standard is applicable.'' Section 514(c)(2) of the FD&C Act allows FDA to withdraw recognition of a standard through publication of a notice in the **Federal Register** if FDA determines that the standard is no longer appropriate for meeting a device requirement under the FD&C Act. In addition, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) authorizes the Agency to issue regulations for the efficient enforcement of the FD&C Act.

A device is misbranded under section 502(a) of the FD&C Act if its labeling is false or misleading in any particular. Additionally, a device is misbranded under section 502(c) of the FD&C Act if ''any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.'' A device is also misbranded under section 502(f) of the FD&C Act unless its labeling bears adequate directions for use.

Under section 201(m) of the FD&C Act (21 U.S.C. 321(m)), the term ''labeling'' means all labels and other written, printed, or graphic matter: (1) Upon any article or any of its containers or wrappers or (2) accompanying such article. Under section 201(k) of the FD&C Act, the term ''label'' means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of [the FD&C Act] that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule imposes no new burdens, the Agency proposes to certify that the final rule would not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written

statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $139 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

Summary: The proposed rule would provide medical device manufacturers with the option to use certain stand-alone symbols contained in a standard recognized by FDA to communicate information to end users as an alternative way to use these standardized symbols on device labeling without explanatory adjacent text as long as the device is contemporaneously accompanied by an explanatory symbols glossary.

Medical device manufacturers would only adopt the proposed rule if they expect a positive net benefit (estimated benefits minus estimated costs). Hence, the rule is expected to provide a non-negative net benefit to each adopting manufacturer. Choosing to adopt the rule would potentially reduce the costs associated with designing and re-designing the labels on medical devices that are currently sold in the United States and the European Union. The estimated annual benefits range from $8.1 million to $26.1 million at a 3 percent discount rate, and $7.9 million to $25.6 million at a 7 percent discount rate. Adopting the rule would incur one-time administrative costs, which we estimate to range from $2.4 million to $9.5 million. Annualized over 20 years, the estimated net benefits associated with adopting the proposed rule range from $7.8 million to $25.5 million at a 3 percent discount rate, and $7.6 million to $24.6 million at a 7 percent discount rate. The costs and benefits accrue to the same entities, however, so any firm making the change to symbols would, on net, reduce costs.

FDA also examined the economic implications of the proposed rule as required by the Regulatory Flexibility Act. If a rule will have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires Agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. We approximately estimated the proposed rule's impact on small entities using the percent costs per Universal Products Code (UPC): The ratio between unit labeling costs and revenues among small entities. Our estimates indicate that the average percent costs per UPC ranges from 0 to 48 percent. Because companies can choose to use symbols, the Agency concludes that this rule would not have a significant adverse impact on any small entities. Furthermore, our analysis suggests that companies could reap moderate cost savings via switching to using symbols. On average, companies who switch to using symbols could expect to receive an average annual cost savings ranging from $1,000 to $4,000 per UPC. As a result, it is possible that providing medical device manufacturers with the option to use symbols may encourage companies, including small entities, to either start exporting products or export more products

The full discussion of the economic impacts (Ref. 1) is available in docket FDA–2013–N–0125 and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given in the *Description* section of this document with an estimate of the annual third-party disclosure burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each 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.

Title: Medical Devices: Use of Certain Symbols in Labeling—Glossary to Support the Use of Symbols in Labeling.

Description: FDA is proposing to revise medical device and biological product labeling regulations to explicitly allow for the use in medical device labeling of certain stand-alone symbols contained in a standard that FDA recognizes under its authority under section 514(c) of the FD&C Act.

In particular, FDA will allow the inclusion of certain stand-alone graphical representations of information, or symbols, if the symbol has been established as part of a standard developed by a nationally or internationally recognized SDO and such standardized symbol is part of a standard recognized by FDA for use on the labeling of medical devices, provided that such symbol is explained in a symbols glossary that contemporaneously accompanies the medical device.

As such the requirement to submit to FDA and disclose to third-parties a symbols glossary, which means ''a compiled listing of (i) each symbol used in the labeling of the device, and (ii) the meaning of or explanatory text for the symbol,'' is subject to the PRA.

Description of Respondents: The likely respondents for this collection of information are domestic and foreign device manufacturers who plan to use stand-alone symbols on the labels and/or labeling of their devices.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Glossary	3,000	1	3,000	1	3,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—THIRD PARTY DISCLOSURE BURDEN [1]

Activity	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Glossary	3,000	1	3,000	4	12,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated burden is based on the data in a similar collection *for recommended glossary and educational outreach* approved under OMB control number 0910–0553 (Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use).

In addition to the proposed third-party disclosure requirements referenced previously, this proposed rule refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subpart B have been approved under OMB control number 0910–0231; the collections of information under part 801 and § 809.10 have been approved under OMB control number 0910–0485; and the collections of information in §§ 660.2, 660.28, 660.35, 660.45, and 660.55 have been approved under OMB control number 0910–0338.

To ensure that comments on information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the title ''Use of Symbols in Labeling.''

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3407(d)), the Agency has submitted the information collection provisions of this proposed rule to OMB for review. These requirements will not be effective until FDA obtains OMB approval. FDA will publish a notice concerning OMB approval of these requirements in the **Federal Register**.

VIII. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). 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*.

IX. Proposed Effective Date

FDA is proposing that any final rule based on this proposal become effective 90 days after the date of its publication in the **Federal Register** or at a later date if stated in the final rule.

X. Reference

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at *http://www.regulations.gov*.

1. Use of Symbols in Medical Device Labeling: Preliminary Regulatory Impact Analysis; Initial Regulatory Flexibility Analysis; Unfunded Mandates Reform Act Analysis.

List of Subjects

21 CFR Part 660

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 809

Labeling, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.,* as amended), the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 660, 801, and 809 be amended as follows:

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

■ 1. The authority citation for 21 CFR part 660 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372; 42 U.S.C. 216, 262, 263, 263a, 264.

■ 2. Amend § 660.2 by revising paragraph (c) introductory text to read as follows:

§ 660.2 General requirements.

* * * * *

(c) *Labeling.* In addition to the applicable labeling requirements of §§ 610.62 through 610.65 and § 809.10 of this chapter, and in lieu of the requirements in §§ 610.60 and 610.61 of this chapter, the following information shall be included. The applicant may provide the labeling information referenced in this subsection in the form of a symbol, *provided that* such symbol is either accompanied by explanatory text adjacent to the symbol or is contained in a standard that FDA recognizes under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act and is explained in a symbols glossary that contemporaneously accompanies the biological product. The term ''symbols glossary'' means a compiled listing of each symbol used in the labeling of the biological product and of the meaning of or explanatory text for the symbol.

* * * * *

■ 3. Amend § 660.28 by revising the introductory text to read as follows:

§ 660.28 Labeling.

In addition to the applicable labeling requirements of §§ 610.62 through 610.65 and § 809.10 of this chapter, and in lieu of the requirements in §§ 610.60 and 610.61 of this chapter, the following requirements shall be met. The applicant may provide the labeling information referenced in this section in the form of a symbol, *provided that* such symbol is either accompanied by explanatory text adjacent to the symbol or is contained in a standard that FDA recognizes under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act and is explained in a symbols glossary that contemporaneously accompanies the biological product. The term ''symbols glossary'' means a compiled listing of each symbol used in the labeling of the biological product and of the meaning of or explanatory text for the symbol.

* * * * *

■ 4. Amend § 660.35 by revising the introductory text to read as follows:

§ 660.35 Labeling.

In addition to the applicable labeling requirements of §§ 610.62 through 610.65 and § 809.10 of this chapter, and in lieu of the requirements in §§ 610.60 and 610.61 of this chapter, the following requirements shall be met. The applicant may provide the labeling information referenced in this section in the form of a symbol, *provided that* such symbol is either accompanied by explanatory text adjacent to the symbol or is contained in a standard that FDA recognizes under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act and is explained in a symbols glossary that contemporaneously accompanies the biological product. The term ''symbols glossary'' means a compiled listing of each symbol used in the labeling of the biological product and of the meaning of or explanatory text for the symbol.

* * * * *

■ 5. Amend § 660.45 by revising the introductory text to read as follows:

§ 660.45 Labeling.

In addition to the applicable labeling requirements of §§ 610.62 through 610.65 and § 809.10 of this chapter, and in lieu of the requirements in §§ 610.60 and 610.61 of this chapter, the following information shall be included. The applicant may provide the labeling information referenced in this section in the form of a symbol, *provided that* such symbol is either accompanied by explanatory text adjacent to the symbol or is contained in a standard that FDA recognizes under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act and is explained in a symbols glossary that contemporaneously accompanies the biological product. The term ''symbols glossary'' means a compiled listing of each symbol used in the labeling of the biological product and of the meaning of or explanatory text for the symbol.

* * * * *

■ 6. Amend § 660.55 by revising the introductory text to read as follows:

§ 660.55 Labeling.

In addition to the applicable labeling requirements of §§ 610.62 through 610.65 and § 809.10 of this chapter, and in lieu of the requirements in §§ 610.60 and 610.61 of this chapter, the following requirements shall be met, The applicant may provide the labeling information referenced in this section in the form of a symbol, *provided that* such symbol is either accompanied by explanatory text adjacent to the symbol or is contained in a standard that FDA recognizes under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act and is explained in a symbols glossary that contemporaneously accompanies the biological product. The term ''symbols glossary'' means a compiled listing of each symbol used in the labeling of the biological product and of the meaning of or explanatory text for the symbol.

* * * * *

PART 801—LABELING

■ 7. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

■ 8. Amend § 801.15 by revising the section heading and paragraph (c)(1) to read as follows:

§ 801.15 Medical devices; prominence of required label statements; use of symbols in labeling.

* * * * *

(c)(1) All words, statements, and other information required by or under authority of the Federal Food, Drug, and Cosmetic Act to appear on the label or labeling of a device shall appear thereon in one or more of the following formats:

(i) The English language;

(ii) In the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be substituted for English;

(iii) A symbol accompanied by adjacent explanatory English text, or text in the predominant language of the Territory, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English;

(iv) A symbol not accompanied by adjacent explanatory text contained in a standard that FDA recognizes under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act provided that such symbol is explained in a symbols glossary that contemporaneously accompanies the device. FDA may recognize a standardized symbol for all devices or only for certain types or categories of devices. The term ''symbols glossary'' means a compiled listing of each symbol used in the labeling of the device and of the meaning of or explanatory text for the symbol;

(v) The symbol statement ''Rx only'' or ''℞ only'' may be used as provided under § 801.109(b)(1).

* * * * *

■ 9. Amend § 801.109 by revising paragraph (b)(1) to read as follows:

§ 801.109 Prescription devices.

* * * * *

(b) * * *

(1) The symbol statement ''Rx only'' or the statement ''Caution: Federal law restricts this device to sale by or on the order of a _____'', the blank to be filled with the word ''physician'', ''dentist'', ''veterinarian'', or with the descriptive designation of any other practitioner licensed by the law of the State in which he practices to use or order the use of the device; and

* * * * *

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

■ 10. The authority citation for 21 CFR part 809 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 360b, 360c, 360d, 360h, 360i, 360j, 371, 372, 374, 381.

■ 11. Amend § 809.3 by adding paragraph (c) to read as follows:

§ 809.3 Definitions.

* * * * *

(c) The term ''symbols glossary'' means a compiled listing of each symbol used in the labeling of the in vitro diagnostic product and of the meaning of or explanatory text for the symbol.

* * * * *

■ 12. Amend § 809.10 by revising the paragraph (a) introductory text, the first sentence in paragraph (b), and paragraphs (c)(2) introductory text, (d) introductory text, (e)(1) introductory text, and (f) introductory text to read as follows:

§ 809.10 Labeling for in vitro diagnostic products.

(a) The label for an in vitro diagnostic product shall state the following information, except where such information is not applicable, or as otherwise specified in a standard for a particular product class, as provided in paragraph (e) of this section, or in the form of a symbol, *provided that* such symbol is either accompanied by explanatory text adjacent to the symbol or is contained in a standard that FDA recognizes under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act and is explained in a symbols glossary that contemporaneously accompanies the in vitro diagnostic product. FDA may recognize a standardized symbol for all devices or only for certain types or categories of devices. Section 201(k) of the Federal Food, Drug, and Cosmetic Act provides that a requirement made by or under authority of this act that any word, statement, or other information appear on the label shall not be considered to be complied with unless a word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

* * * * *

(b) Labeling accompanying each product, e.g., a package insert, shall state in one place the following information in the format and order specified in this paragraph, except where such information is not applicable, or as specified in a standard for a particular product class, or where such information is provided in the form of a symbol, *provided that* such symbol is either accompanied by explanatory text adjacent to the symbol or is contained in a standard that FDA recognizes under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act and is explained in a symbols glossary that contemporaneously accompanies the in vitro diagnostic product. * * *

* * * * *

(c) * * *

(2) In the case of a shipment or delivery for an investigation that is not subject to part 812 (see § 812.2(c)), if the following conditions are met, including that, where information required by those conditions is provided in the form of a symbol, such symbol must either be accompanied by explanatory text adjacent to the symbol or contained in a standard that FDA recognizes under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act, and explained in a symbols glossary that contemporaneously accompanies the in vitro diagnostic product:

* * * * *

(d) The labeling of general purpose laboratory reagents (e.g., hydrochloric acid) and equipment (e.g., test tubes and pipettes) whose uses are generally known by persons trained in their use need not bear the directions for use required by § 809.10(a) and (b), if their labeling meets the requirements of this paragraph, except where such information is provided in the form of a symbol, *provided that* such symbol is either accompanied by explanatory text adjacent to the symbol or is contained in a standard that FDA recognizes under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act and is explained in a symbols glossary that contemporaneously accompanies the reagent or equipment.

* * * * *

(e)(1) The labeling for analyte specific reagents (e.g., monoclonal antibodies, deoxyribonucleic acid (DNA) probes, viral antigens, ligands) shall bear the following information, except where such information is provided in the form of a symbol, *provided that* such symbol is either accompanied by explanatory text adjacent to the symbol or is contained in a standard that FDA recognizes under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act and is explained in a symbols glossary that contemporaneously accompanies the reagent:

* * * * *

(f) The labeling for over-the-counter (OTC) test sample collection systems for drugs of abuse testing shall bear the following information in language appropriate for the intended users, except where such information is provided on labels in the form of a symbol, *provided that* such symbol is either accompanied by explanatory text adjacent to the symbol or is contained in a standard that FDA recognizes under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act and is explained in a symbols glossary that contemporaneously accompanies the test sample collection system:

* * * * *

Dated: April 15, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–09175 Filed 4–18–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0202]

RIN 1625–AA11; 1625–AA87

Regulated Navigation Areas, Security Zones: Dignitary Arrival/Departure and United Nations Meetings, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes amendments to its regulation establishing security zones that are enforceable in connection with the arrival or departure of international leaders for United Nations meetings in New York, NY. New regulated navigation areas would be established and some security zones would be modified, and the regulation would be rearranged. The proposed amendments would assist the Coast Guard in protecting public safety and visiting dignitaries during these events, and thus promote the Coast Guard's maritime safety and maritime security missions.

DATES: Comments and related material must be received by the Coast Guard on or before May 20, 2013.

Requests for public meetings must be received by the Coast Guard on or before April 26, 2013.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is (202) 366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Coast Guard Sector New York, Waterways Management Division; telephone (718)

354–4195, email *Jeff.M.Yunker@uscg.mil* or Lieutenant Isaac Slavitt, Coast Guard First District Waterways Management Branch, telephone (617) 223–8385, email *Isaac.M.Slavitt@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms
Port

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
SNPRM Supplemental Notice of Proposed Rulemaking
UNGA United Nations General Assembly
RNA Regulated Navigation Area
UN United Nations

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number [USCG–2012–0202] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2012–0202) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before April 26, 2013, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

On September 11, 2012, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY'' in the **Federal Register** (77 FR 55777). We received seven comments on the proposed rule.

One commenter said it would be good to know evacuation routes and protocols during incidents at the United Nations (UN) so the public could avoid the situation. UN evacuation protocols are outside of the purview of this rulemaking.

One commenter said we should consider limiting access to security zone enforcement notifications, to prevent subversives or terrorists from gaining an advantage via these notifications. By law, we must make such notifications public. We disagree that they provide information that would otherwise be unavailable to potential bad actors, because UN meetings and dignitary visits are well publicized in the commercial media and other open sources. This commenter also said we should clarify how a vessel may obtain permission to enter an in-force security zone and whether this permission is temporary or permanent, and that vessels should be able to obtain pre-established clearance to travel through in-force security zones. Our proposed amendments clearly describe how to obtain entry permission, which is for the duration of the enforcement period. Pre-establishing clearance is not advisable since the specific terms on which entry may be authorized will vary depending on the exact nature of each dignitary's visit. Lastly, this commenter said we should develop a contingency plan for emergency scenarios that addresses acute high volume boat traffic and evacuation. This is outside the purview of this rulemaking.

One commenter said our Randalls and Wards Islands coordinates are incorrect. We verified the published coordinates and confirmed they are correct, with no changes necessary.

One commenter said that permanently prohibiting freedom of movement takes a vote of elected officials in place of a regulation. The Coast Guard's legal authority to establish RNAs and security zones is outlined in the Basis and Purpose section.

One commenter said the UN should relocate to Dubai and that the UN building should be converted to apartments or condominiums. This is outside the purview of this rulemaking.

The New York City Water Trail Association Steering Committee stated that last minute changes to security zone activation times of even a few minutes can make adjusting plans difficult or impossible for small, human-powered boats, borne by the tide. Dignitary schedule changes are outside of the Coast Guard's authority. We will provide as much advance information, and publish it as widely, as it is possible for us to do under the circumstances and when practicable. The commenter also raised concerns about the inclusion of the Bronx Kill in the proposed Randalls and Wards Island security

zone and stated we did not include a thorough explanation of the security rationale for closing the Bronx Kill. Inclusion of the Bronx Kill area is necessary to prevent vessels or persons from bypassing the security measures established on shore for the events and engaging in waterborne terrorist actions during the highly-publicized events. The commenter additionally stated that a legal launch site on the northwest corner of Randalls Island on the Bronx Kill would be rendered off limits during activation of this security zone. The New York City Water Trail Map displayed on the NYC Parks Web site did not display a launch site on Randalls Island when checked on November 27, 2012 and on February 4, 2013 at *http://www.nycgovparks.org/facilities/kayak.* The Coast Guard does not control vessel launch activities on the Bronx Kill at the northwest corner of Randalls or Wards Islands. This reported launch site is outside of the boundaries of this security zone. The commenter also stated it can be difficult for paddlers and rowers to communicate requests for on-site permission to transit the security zone. Paddlers and rowers can reach the Coast Guard on VHF–FM radio using handheld radios to communicate requests to transit a security zone. In addition, those mariners solely carrying mobile phones may contact the COTP at (718) 354–4356 to request to transit through the security zone. Furthermore, the commenter states that there should be a provision for passage along the pierhead line on the opposite side of the river and that the Coast Guard should outline specific procedures and standards for obtaining permission to transit the security zone. The commenter also states that small, un-motorized boats pose no threat to targets one half mile away. We reiterate that security measures would be limited to the minimum necessary to mitigate identified risks to safety or security. Lastly, the commenter said we should meet with all harbor stakeholders before creating more security zones. While there may be a number of security zones and regulated navigation areas in place throughout the Captain of the Port New York zone, their purposes and the events for which they are enforced are different and rarely overlapping in time or location. We do not expect more than one of the zones or areas affected by this rulemaking to be enforced at the same time, given the length of the meetings being attended.

C. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C 1226, 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish RNAs and security zones. The purpose of this rulemaking is to regulate navigation in waters near the United Nations (UN) during UN visits by international leaders. The purpose of this supplemental NPRM is to notify the public that we have determined an RNA to be a legally more appropriate tool than a security zone for certain areas described in the NPRM.

D. Discussion of Proposed Rule

The Coast Guard proposes amending the existing security zone regulation relating to the arrival and departure of dignitaries for UN meetings in New York City, 33 CFR 165.164. Our proposals are substantively similar to the proposals contained in our 2012 NPRM, but we are proposing some rearrangement and non-substantive revision of § 165.164, and we are proposing redesignating some existing or proposed security zones as regulated navigation areas. Please see the NPRM for a further discussion of how we have enforced § 165.164 security zones in the past. We have now determined that an RNA is the more appropriate means to regulate the movement of vessels or individuals instead of the security zones originally proposed or already codified at 33 CFR 165.164. We would designate the Wall Street Heliport, Randalls and Wards Islands, and United Nations Full River Closure security zones as RNAs. The Marine Air Terminal, United Nations, and United Nations West Channel Closure security zones would remain designated as security zones as they do not completely restrict vessel traffic on that portion of the Bowery Bay and East River during enforcement of the security zones.

We would reorganize § 165.164 and add descriptive designations to name each of the several locations covered by that regulation.

We propose revising § 165.164(a)(1) relating to the Wall Street Heliport. We would remove a reference to Pier 13, which no longer exists, but otherwise the boundaries of the designated area would not change. The existing security zone would become a regulated navigation area.

We would add new § 165.164(a)(2) and establish an RNA on the waters of the East River and Bronx Kill in the vicinity of Randalls and Wards Islands. The RNA would be approximately 2,150 yards long and 860 yards wide, and would encompass approximately 0.21 square nautical miles. It would be enforced from 30 minutes before a dignitary's arrival until 15 minutes after the dignitary's departure from the area.

We propose no changes to § 165.164(a)(3), other than to designate it as the Marine Air Terminal, La Guardia Airport Security Zone.

We propose designating the security zone created by § 165.164(a)(4) as the United Nations Security Zone, and we propose rewording the description of this zone's boundaries for clarity, without changing its geographical coordinates. In new paragraph (d), we propose stating that this zone is in force at all times.

We propose transferring the security zone described in existing § 165.164(a)(5) to paragraph (a)(6), and designating it the United Nations Full River Closure RNA. The content of existing paragraph (a)(6) would be addressed in new paragraph (d). When enforced, the UN Full River Closure RNA would fully close the East River to vessel traffic within its boundaries. We would create a new security zone in paragraph (a)(5), to be designated the United Nations West Channel Closure Security Zone. When in force, it would close only a portion of the western channel of the river. Vessels capable of transiting the shallower waters of the eastern channel could do so.

The content of existing paragraph (a)(7) would be addressed in new paragraph (d).

We propose adding a new § 165.164(b) to define terms used in the regulation. The content of existing paragraph (b) would be moved to paragraph (c).

We propose adding a new § 165.164(d) to describe how and when each regulated navigation area or security zone would be enforced, and how the public will be notified that enforcement is in effect.

Finally, we propose adding a new § 165.164(e) to describe how vessel operators may obtain permission to enter or operate within a regulated navigation area or security zone.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and

does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This determination is based on the limited time that vessels would be restricted from the Randalls and Wards Islands RNA. The RNA would be activated for approximately 60 minutes approximately six times per year or when necessary. The Coast Guard expects minimal adverse impact to mariners from the RNA's activation based on the limited duration of the enforcement period, the limited geographic area affected and because affected mariners may request authorization from the COTP or the designated on-scene representative to transit the RNA.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the East River or Bronx Kill, in the vicinity of Randalls or Wards Islands, NY during the enforcement periods.

These RNA's will not have a significant economic impact on a substantial number of small entities for the following reasons: The RNA is of limited size and duration. Persons or vessels may request permission to transit the RNA from the COTP or the designated on-scene representative.

Additionally, before and during the enforcement period, the Coast Guard would issue maritime advisories widely available to users of the waterway, including marine information broadcasts, and distribute a written notice online at *http://homeport.uscg.mil/newyork*.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule may be categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An

environmental analysis checklist will be available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

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

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

■ 2. Revise § 165.164 to read as follows:

§ 165.164 Regulated Navigation Areas, Security Zones: Dignitary Arrival/Departure and United Nations Meetings, New York, NY.

(a) *Location.* The following areas are regulated navigation areas (RNA) or security zones:

(1) *Wall Street Heliport RNA.* All waters of the East River within the following boundaries: East of a line drawn between approximate position 40°42′01″ N, 074°00′39″ W (east of The Battery) to 40°41′36″ N, 074°00′52″ W (point north of Governors Island) and north of a line drawn from the point north of Governors Island to the southwest corner of Pier 7 North, Brooklyn; and south of a line drawn between 40°42′14.8″ N, 074°00′20.3″ W (Wall Street, Manhattan), and the northwest corner of Pier 2 North, Brooklyn (NAD 1983).

(2) *Randalls and Wards Islands RNA:* All waters of the East River between the Hell Gate Rail Road Bridge (mile 8.2), and a line drawn from a point at approximate position 40°47′27.12″ N, 073°54′35.14″ W (Lawrence Point, Queens) to a point at approximate position 40°47′52.55″ N, 073°54′35.25″ W (Port Morris Stacks), and all waters of the Bronx Kill southeast of the Bronx Kill Rail Road Bridge (mile 0.6) (NAD 1983).

(3) *Marine Air Terminal, La Guardia Airport Security Zone:* All waters of Bowery Bay, Queens, New York, south of a line drawn from the western end of La Guardia Airport at approximate position 40°46′47″ N, 073°53′05″ W to the Rikers Island Bridge at approximate position 40°46′51″ N, 073°53′21″ W and east of a line drawn between the point at the Rikers Island Bridge to a point on the shore in Queens, New York, at approximate position 40°46′36″ N, 073°53′31″ W (NAD 1983).

(4) *United Nations Security Zone.* All waters of the East River bound by the following points: 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), then east to 40°44′34.5″ N, 073°58′10.5″ W (about 175 yards offshore of Manhattan), then northeasterly to 40°45′29″ N, 073°57′26.5″ W (about 125 yards offshore of Manhattan at the Queensboro Bridge), then northwesterly to 40°45′31″ N, 073°57′30.5″ W (Manhattan shoreline at the Queensboro Bridge), then southerly along the shoreline to the starting point at 40°44′37″ N, 073°58′16.5″ W (NAD 1983).

(5) *United Nations West Channel Closure Security Zone.* All waters of the East River north of a line drawn from approximate position 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), to approximate position 40°44′31.04″ N, 073°58′03.10″ W (approximately 400 yards east of the Manhattan shoreline), all waters west of a line drawn from approximate position 40°44′31.04″ N, 073°58′03.10″ W (approximately 400 yards east of the Manhattan shoreline), to the southern tip of Roosevelt Island at approximate position 40°44′57.96″ N, 073°57′41.57″ W, then along the western shoreline of Roosevelt Island to the Queensboro Bridge, and all waters south of the Queensboro Bridge (NAD 1983).

(6) *United Nations Full River Closure RNA.* All waters of the East River north of a line drawn from approximate position 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), to approximate position 40°44′23″ N, 073°57′44.5″ W (Hunters Point, Long Island City), and south of the Queensboro Bridge (NAD 1983).

(b) *Definitions.* As used in this section—

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on the COTP's behalf. The designated representative may be on a Coast Guard vessel, or onboard a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard.

Dignitary means the President or Vice President of the United States, or visiting heads of foreign states or governments.

(c) *Regulations.* In accordance with the general regulations in 33 CFR part 165, no person or vessel may enter or move within a RNA or security zone created by this section during enforcement periods unless granted permission to do so by the COTP New York or the designated representative. Vessel operators and persons given permission to enter or operate in the RNA or security zone must comply with all directions given to them by the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard or New York City police vessel by siren, radio, flashing lights, or other means, the operator of a vessel must proceed as directed, and follow any instructions to anchor or moor up to a waterfront facility.

(d) *Enforcement.* The security zone described in paragraph (a)(4) of this section is effective and will be enforced at all times. Coast Guard Sector New York will provide actual notice to mariners for the purpose of enforcement for the regulated navigation areas and security zones described in paragraphs (a)(1), (a)(2), (a)(3), (a)(5), and (a)(6). The Captain of the Port will also provide notice to the maritime public regarding the activation of these RNAs and security zones by appropriate means, which may include but are not limited to a Local Notice to Mariners or marine information broadcasts, and at *http://homeport.uscg.mil/newyork.*

(e) *Contact Information.* Vessel operators desiring to enter or operate within a RNA or security zone shall telephone the COTP at (718) 354–4356 or the designated representative via VHF channel 16 to obtain permission to do so.

Dated: April 9, 2013.

D.B. Abel,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2013–09278 Filed 4–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0174]

RIN 1625–AA00

Safety Zone; Atlantic Intracoastal Waterway; Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to extend the temporary safety zone established on the waters of the Atlantic

Intracoastal Waterway at Wrightsville Beach, North Carolina. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance on the US 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina. The safety zone extension will temporarily restrict vessel movement within the designated area from on July 27, 2013, until March 1, 2014.

DATES: Comments and related material must be received by the Coast Guard on or before May 20, 2013.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email CWO4 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number [USCG–2013–0174] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2013–0174) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The Coast Guard is proposing to extend a safety zone established by a temporary final rule published on April 15, 2013, titled, ''Safety Zone, Atlantic Intracoastal Waterway; Wrightsville Beach, NC'' (78 FR 22195, Docket No. USCG–2012–1082). We received no adverse comments on that proposed rule or temporary final rule.

C. Basis and Purpose

North Carolina Department of Transportation has awarded a contract to American Bridge Company of Coraopolis, PA to perform bridge maintenance on the U.S. 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina. The contract provides for cleaning, painting, steel repair, and grid floor replacement which commenced on September 1, 2012. The original completion date was May 1, 2013, however, the contractor was granted an extension on the completion date by North Carolina Department of Transportation to July 27, 2013. Due to concerns from the Town of Wrightsville Beach relating to impacts to vehicular traffic and subsequent impacts to their economy that may result from ongoing construction, topside bridge work has been delayed. The anticipated date to resume topside work is October 1, 2013, with a completion date of March 1, 2014. In the meantime, American Bridge Company will continue to perform bridge mechanical work, electrical work, and the cleaning and painting of the structural steel throughout the months preceding resumption of topside work.

The contractor will utilize a 40 foot deck barge with a 40 foot beam as a work platform and for equipment staging. This safety zone will provide a safety buffer to transiting vessels as bridge repairs present potential hazards to mariners and property due to reduction horizontal clearance.

D. Discussion of Proposed Rule

The proposed temporary safety zone will encompass the waters directly under the U.S. 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina (34°13′07″ N, 077°48′46″ W). All vessels transiting the this section of the waterway requiring a horizontal clearance of greater than 50 feet will be required to make a one hour advanced notification to the U.S. 74/76 Bascule Bridge tender while the safety zone is in effect. The initial safety zone was for these repairs was effective from 8 a.m. on September 1, 2012, until 8 p.m. on May 1, 2013. A subsequent extension of the safety zone commenced at 8 p.m. on May 1, 2013, and is in effect until 8 p.m. July 27, 2013. This proposed extension will be in effect from 8 p.m. July 27, 2013, until 8 p.m. March 1, 2014.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule does not restrict traffic from transiting through the noted portion of the Atlantic Intracoastal Waterway; it only imposes a one hour notification to ensure the waterway is clear of impediment to allow passage to vessels requiring a horizontal clearance of greater than 50 feet.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Atlantic Intracoastal Waterway from 8 p.m. July 27, 2013, until 8 p.m. March 1, 2014.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to the entire width of this section of the Atlantic Intracoastal Waterway, vessel traffic will be able to request passage by providing a one hour advanced notification. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0174 to read as follows:

§ 165.T05–0174 Safety Zone; Atlantic Intracoastal Waterway, Wrightsville Beach, NC.

(a) Regulated Area. The following area is a safety zone: This zone includes the waters directly under and 100 yards either side of the U.S. 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina (34°13′07″ N/ 077°48′46″ W).

(b) Regulations. The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0174. In addition the following regulations apply:

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port North Carolina.

(2) All vessels requiring greater than 50 feet horizontal clearance to safely transit through the U.S. 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina must contact the bridge tender on VHF–FM marine band radio channels 13 and 16 one hour in advance of intended transit.

(3) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port North Carolina or his designated representative by telephone at (910) 343–3882 or on VHF–FM marine band radio channel 16.

(4) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(5) The operator of any vessel within or in the immediate vicinity of this safety zone shall: (i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) Definitions. (1) Captain of the Port North Carolina means the Commander, Coast Guard Sector North Carolina or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) Enforcement. The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone. (e) Enforcement period. This section will be enforced from 8 p.m. July 27, 2013 through 8 p.m. March 1, 2014 unless cancelled earlier by the Captain of the Port.

Dated: March 27, 2013.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port Sector North Carolina.

[FR Doc. 2013–09196 Filed 4–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 294

Idaho Roadless Rule

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to 36 CFR 294.27 the Forest Service, U.S. Department of Agriculture (USDA), is proposing to modify Idaho Roadless Area boundaries for the Big Creek, Grandmother Mountain, Pinchot Butte, Roland Point, Wonderful Peak Idaho Roadless Areas on the Idaho Panhandle National Forests to reflect lands acquired within and/or adjacent to these roadless areas. In addition, modifications to correct mapping errors involving Forest Plan Special Areas in the Salmo-Priest, and Upper Priest Idaho Roadless Areas are addressed. An administrative correction is proposed to § 294.29 to add the Buckhorn Ridge Idaho Roadless Areas to the list under the Kootenai National Forest.

Notice is given pursuant to 36 CFR 294.27(b), that the Chief proposes to issue the modifications after a 45-day public notice and opportunity to comment.

DATES: Comments must be received, in writing, on or before June 3, 2013.

ADDRESSES: Written comments concerning this document should be addressed to Idaho Roadless Area Idaho Panhandle Correction, Northern Regional Office, 200 East Broadway, P.O. Box 7669, Missoula, MT 59807–7669. Comments may also be sent via email to *comments-northern-regional-office@fs.fed.us,* or via facsimile to (406) 329–3314.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at *http://roadless.fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Idaho Roadless Coordinator Anne Davy at (406) 329–3314. Additional information concerning this administrative correction, including the proposed corrected maps, may be obtained on the Internet at *http://*

roadless.fs.fed.us. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following modifications and corrections are proposed to update five roadless areas due to land exchanges that occurred since the Idaho Roadless Rule was finalized; correct two roadless area mapping errors associated with Forest Plan Special Areas; and correct the list at 36 CFR 294.29 becaused an area had been inappropriately shown as only located on the Idaho Panhandle National Forest instead of split between the Idaho Panhandle and Kootenai National Forests. For purposes of this request for comment all of these changes will be referred to as ''modifications''. These modifications were discussed with the State of Idaho Implementation Committee on April 5, 2012, and the Govenor of Idaho has since recommended the Forest Service proceed with these modifications. The modifications are necesasary to update and correct the Idaho Roadless Rule acreages and boundaries and make minor theme adjustments.

Modifications Due to Lands Aquired Through Land Exchanges

The following Idaho Roadless Areas will be modified due to lands acquired through land exchanges that occurred since the Idaho Roadless Rule was finalized in the fall of 2008. These modifications will update the maps with correct ownership and management classifications.

Big Creek Idaho Roadless Area #143. Two parcels of land, 158 acres, will be added to the Big Creek roadless area and will be classified as Backcountry Restoration. These proposed modifications occur in T46N, R2E, section 11; and T47N, R2E, section 35, Boise Meridian and were part of the Spooky Butte Land Exchange.

Grandmother Mountain Idaho Roadless Area #148. Five parcels of land, 1,107 acres, will be added to Grandmother Mountain roadless area and will be classified as Backcountry Restoration. These proposed modifications occur in T43N, R3E, section 26; and T43N, R4E, sections 5, 7, 17, and 31, Boise Meridian and were part of the Grandmother Mountain Land Exchange and an unnamed land exchange with a single party.

Pinchot Butte Idaho Roadless Area #149. One parcel of land, 80 acres will be added to Pinchot Butte roadless area and will be classified as Backcountry Restoration. Bureau of Land Management lands surround this parcel on three sides and are also roadless. These proposed modifications occur in T43N, R4E, section 33, Boise Meridian and were part of the Grandmother Mountain Land Exchange.

Roland Point Idaho Roadless Area #146. One parcel of land, 60 acres, will be added to Roland Point roadless area and will be classified as Backcountry Restoration. These proposed modifications occur in T47N, R6E, sections 29, 31, and 32, Boise Meridian and were part of the Lucky Swede Land Exchange.

Wonderful Peak Idaho Roadless Area #152. One parcel of land, 59 acres, will be added to Wonderful Peak roadless area and will be classified as Backcountry Restoration. These proposed modifications occur in T47N, R6E, sections 19 and 20, Boise Meridian and were part of the Olson Wondeful Land Exchange.

Technical Corrections to Theme Classifications

Salmo-Priest Idaho Roadless Area #981. The Idaho Roadless Rule will be modified to correct a mapping error. A small portion (65 acres) of the Salmo-Priest Idaho Roadless Rule will be changed from a Forest Plan Special Area to Wild Land Recreation. This change reflects the width of the eligible Wild and Scenic River (Hughes Fork) located in this section. These proposed modifications occur in T63N, R5W, sections 5 and 6; T64N, R5W, sections 20, 28 and 29, Boise Meridian.

Upper Priest Idaho Roadless Area #123. The Idaho Roadless Rule will be modified to correct a mapping error. A small portion (112 acres) of the Upper Priest Roadless Area will be changed from Backcountry/Restoration to a Forest Plan Special Area. This change reflects the width of the eligible Wild and Scenic River (Hughes Fork) located in this section. These proposed modifications occur in T62N, R4W, sections 6, 7 and 8; T62N, R5W, section 1; T63N, R5W, sections 12, 13, 16, 21, 28, 33, and 34, Boise Meridian.

List of Subjects in 36 CFR Part 294

National Forests, Navigation (air), Recreation areas, State petitions for inventoried roadless area management.

For the reasons set forth in the preamble, the Forest Service proposes to amend part 294 of Title 36 of the Code of Federal Regulations by making the following technical corrections:

PART 294—SPECIAL AREAS

■ 1. The authority citation for part 294 continues to read as follows:

Authority: 16 U.S.C. 472, 551, and 1131.

Subpart C—Idaho Roadless Area Management

■ 2. Amend the table in § 294.29 by adding a new entry for Kootenai National Forest to read as follows:

§ 294.29 List of designated Idaho Roadless Areas.

* * * * *

Forest	Idaho roadless area	Number	WLR	Primitive	BCR	GFRG	SAHTS	FPSA
Kootenai	Buckhorn Ridge	661			X			

* * * * *

Dated: March 13, 2013.

Thomas L. Tidwell,

Chief.

[FR Doc. 2013–08838 Filed 4–18–13; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2013–0083; FRL–9804–5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Particulate Matter Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request submitted by the Indiana Department of Environmental Management on January 30, 2013, to revise the Indiana State Implementation Plan (SIP) for particulate matter under the Clean Air Act. This submission contains the 24-hour fine particle National Ambient Air Quality Standards (NAAQS) promulgated by EPA in 2006, and removes the annual coarse particle NAAQS that EPA has previously revoked. The submission also asks EPA to approve into the SIP certain Federally regulated criteria pollutant definitions and abbreviations.

DATES: Comments must be received on or before May 20, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2013–0083, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Final Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, *chang.andy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we do not receive any adverse comments in response to this rule, we do not contemplate taking any further action. If EPA receives adverse comments, we will withdraw the direct final rule, and will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule, which is located in the Final Rules section of this **Federal Register**.

Dated: April 4, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–09150 Filed 4–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0143; FRL–9805–1]

Approval and Promulgation of Implementation Plans; North Carolina: Deferral of Carbon Dioxide (CO_2) Emissions From Prevention of Significant Deterioration (PSD) Requirements for Greenhouse Gases (GHG)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), on July 30, 2012. The SIP revision modifies North Carolina's prevention of significant deterioration (PSD) program to incorporate by reference (IBR) the federal deferral of, until July 21, 2014, PSD applicability to biogenic carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources. EPA is proposing to approve North Carolina's SIP revision because the Agency has preliminarily determined that it is consistent with the Clean Air Act (CAA or Act) and EPA's new source review (NSR) permitting regulations.

DATES: Comments must be received on or before May 20, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2013–0143 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4–RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2013–0143, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2013–0143.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the North Carolina SIP, contact Mr. Richard Wong, 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. Mr. Wong's telephone number is (404) 562–8726; email address: *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

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II. What is the background for EPA's proposed action?
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I. What action is EPA proposing?

On July 30, 2012, NC DENR submitted a SIP revision to EPA for approval into the North Carolina SIP to IBR [1] the deferral until July 21, 2014, of the application of PSD permitting requirements to biogenic CO_2 emissions from bioenergy and other biogenic stationary sources as promulgated in the rule entitled ''Deferral for CO_2 Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs,'' Final Rule, 76 FR 43490, (July 20, 2011) (hereafter referred to as the ''CO_2 Biomass Deferral Rule''). The July 30, 2012, SIP submittal revises North Carolina's air quality rule 15A North Carolina Administrative Code (NCAC) 02D.0544—*Prevention of Significant Deterioration Requirements for Greenhouse Gases* to IBR the version of 40 CFR 51.166 as of July 20, 2011.[2] This version of 40 CFR 51.166 includes the July 20, 2011, CO_2 Biomass Deferral Rule revision to the definition of ''subject to regulation'' deferring PSD applicability to biogenic CO_2 emissions from bioenergy and other biogenic stationary sources, until July 21, 2014. Today, EPA is proposing to approve North Carolina's July 30, 2012, SIP revision.

II. What is the background for EPA's proposed action?

A. The GHG Tailoring Rule

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking, entitled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule'' (hereafter referred to as the GHG Tailoring Rule), for the purpose of relieving overwhelming permitting burdens from the regulation of GHG that would, in the absence of the rule, fall on permitting authorities and sources. *See* 75 FR 31514. EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program of the CAA. In particular, EPA established in the GHG Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG emitters.[3] On, May 17, 2011,[4] NC DENR submitted a SIP revision to EPA to IBR into the North Carolina SIP Rule 15 NCAC 02D.0544—the version of 40 CFR 51.166 as of June 3, 2010, and effective August 3, 2010, which included the GHG Tailoring Rule. EPA took final action to approve North Carolina's May 17, 2011, SIP revision on October 18, 2011. *See* 76 FR 64240. Please refer to the GHG Tailoring Rule for specific details on the PSD applicability provisions.

B. EPA's CO_2 Biomass Deferral Rule

In the July 20, 2011, final rulemaking, EPA deferred until July 21, 2014, the consideration of CO_2 emissions from bioenergy and other biogenic sources (hereinafter referred to as ''biogenic CO_2 emissions'') when determining whether a stationary source meets the PSD and title V [5] applicability thresholds, including those for the application of best available control technology (BACT).[6] Stationary sources that combust biomass (or otherwise emit biogenic CO_2 emissions) and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO_2 emissions resulting from those actions. The deferral applies only to biogenic CO_2 emissions and does not affect non-GHG pollutants or other GHG (*e.g.,* methane and nitrous oxide) emitted from the combustion of biomass fuel. Also, the deferral only pertains to biogenic CO_2 emissions in the PSD and title V program and does not pertain to any other EPA programs such as the GHG Reporting Program.

Biogenic CO_2 emissions are defined as emissions of CO_2 from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of ''biogenic CO_2 emissions'' include, but are not limited to:

- CO_2 generated from the biological decomposition of waste in landfills,

[1] Throughout this document IBR means incorporate or incorporates by reference.

[2] The scope of the 15A NCAC 02D.0544 IBR of 40 CFR 51.166 is limited to the aspects of the federal regulation related to CO_2 Biomass Deferral Rule revisions. PSD applicability for all other regulated NSR pollutants, as defined at 40 CFR 51.166 and 52.21, is addressed in the North Carolina SIP by regulation 15A NCAC 02D.0530.

[3] Please refer to the July 12, 2012 (77 FR 41051) rulemaking finalizing GHG Tailoring Rule Step 3.

[4] North Carolina's proposed SIP revision incorporated a new PSD rule into North Carolina's SIP for GHG, at 15A NCAC 02D.0544—*Prevention of Significant Deterioration Requirements for Greenhouse Gases,* to address the thresholds for GHG permitting applicability.

[5] EPA's July 20, 2011, CO_2 Biomass Deferral Rule made changes to the federal PSD and title V permitting programs. North Carolina's July 30, 2012, submission did not revise the state's title V program to adopt the CO_2 deferral rule. Furthermore, the title V permitting program is not part of the North Carolina federally approved SIP.

[6] As with the Tailoring Rule, the CO_2 Biomass Deferral Rule addresses both PSD and title V requirements.

wastewater treatment, or manure management processes;

- CO_2 from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment, or manure management processes;
- CO_2 from fermentation during ethanol production or other industrial fermentation processes;
- CO_2 from combustion of the biological fraction of municipal solid waste or biosolids;
- CO_2 from combustion of the biological fraction of tire-derived fuel; and,
- CO_2 derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

The deferral is intended to be a temporary measure, in effect for no more than three years, to allow the Agency time to conduct detailed examination of the science and technical issues related to accounting for biogenic CO_2 emissions, and determine what, if any, treatment of biogenic CO_2 emissions should be in the PSD and title V program. The biomass deferral rule is not EPA's final determination on the treatment of biogenic CO_2 emissions in those programs. The Agency plans to complete its science and technical review and any follow-on rulemakings within the three-year deferral period and further believes that three years is ample time to complete these tasks. It is possible that the subsequent rulemaking, depending on the nature of EPA's determinations, would supersede the biomass deferral rulemaking and become effective in fewer than three years. In that event, North Carolina may revise its SIP accordingly.

EPA's final biomass deferral rule is an interim deferral for biogenic CO_2 emissions only and does not relieve sources of the obligation to meet the PSD and title V permitting requirements for other pollutant emissions that are otherwise applicable to the source during the deferral period or that may be applicable to the source at a future date pending the results of EPA's study and subsequent rulemaking action. This means, for example, that if the deferral is applicable to biogenic CO_2 emissions from a particular source during the three-year effective period and the study and future rulemaking do not provide for a permanent exemption from PSD and title V permitting requirements for the biogenic CO_2 emissions from a source with particular characteristics, then the deferral would end for that type of source and its biogenic CO_2 emissions would have to be appropriately considered in any applicability determinations that the source may need to conduct for future stationary source permitting purposes, consistent with that subsequent rulemaking and the final GHG Tailoring Rule (*e.g.,* a major source determination for title V purposes or a major modification determination for PSD purposes). EPA also wishes to clarify that the Agency does not require that a PSD permit issued during the deferral period be amended or that any PSD requirements in a PSD permit existing at the time the deferral took effect, such as BACT limitations, be revised or removed from an effective PSD permit for any reason related to the deferral or when the deferral period expires.

40 CFR 52.21(w) requires that any PSD permit shall remain in effect, unless and until it expires or it is rescinded, under the limited conditions specified in that provision. Thus, a PSD permit that is issued to a source while the deferral was effective need not be reopened or amended if the source is no longer eligible to exclude its biogenic CO_2 emissions from PSD applicability after the deferral expires. However, if such a source undertakes a modification that could potentially require a PSD permit and the source is not eligible to continue excluding its biogenic CO_2 emissions after the deferral expires, the source will need to consider its biogenic CO_2 emissions in assessing whether it needs a PSD permit to authorize the modification.

Any future actions to modify, shorten, or make permanent the deferral for biogenic sources are beyond the scope of the biomass deferral action and this proposed approval of the deferral into the North Carolina SIP, and will be addressed through subsequent rulemaking. The results of EPA's review of the science related to net atmospheric impacts of biogenic CO_2 and the framework to properly account for such emissions in title V and PSD permitting program based on the study are prospective and unknown. Thus, EPA is unable to predict which biogenic CO_2 sources, if any, currently subject to the deferral as incorporated into the North Carolina SIP would be subject to any permanent exemptions or which currently deferred sources would be potentially required to account for their emissions in the future rulemaking EPA has committed to undertake for such purposes in three or fewer years. Only in that rulemaking can EPA address the question of extending the deferral or putting in place requirements that would have the equivalent effect on sources covered by the biomass deferral. Once that rulemaking has occurred, North Carolina may address related revisions to its SIP.

III. What is EPA's analysis of North Carolina's SIP revision?

North Carolina's PSD program consists of Rule 15A NCAC 2D.0530—*Prevention of Significant Deterioration* and 15A NCAC 02D.0544—*Prevention of Significant Deterioration Requirements for Greenhouse Gases,* both of which IBR the provisions for the preconstruction PSD review process as published at 40 CFR 51.166. Rule15A NCAC 2D.0530 applies to major stationary sources having the potential to emit at least 100-tons per year (tpy) or 250-tpy or more of a regulated NSR pollutant, depending on the type of source or modifications constructing in areas designated attainment or unclassifiable with respect to the national ambient air quality standards. Rule 15A NCAC 02D.0544 (the subject of this proposed rulemaking) only applies to GHG-emitting sources.

In the July 20, 2011, CO_2 Biomass Deferral Rule, similar to the approach with the Tailoring Rule, EPA incorporated the biomass deferral into the federal PSD program by amending the definition of ''subject to regulation'' under 40 CFR 51.166 and 52.21, respectively. North Carolina's July 30, 2012, SIP revision IBR into the North Carolina SIP 40 CFR 51.166 as of July 20, 2011, which includes the CO_2 Biomass Deferral revision to the definition of ''subject to regulation'' deferring, until July 21, 2014, PSD applicability to biogenic CO_2 emissions from bioenergy and other biogenic stationary sources. These changes to North Carolina's Rule 15A NCAC 02D.0544 became state effective on January 28, 2011. EPA is proposing to approve these changes to North Carolina's Rule 15A NCAC 02D.0544 to update the State's existing SIP-approved PSD program to be consistent with federal NSR regulations respecting the CO_2 Biomass Deferral Rule (at 40 CFR 51.166), and the CAA.

IV. Proposed Action

EPA is proposing to approve North Carolina's July 30, 2012, SIP revision to IBR changes to federal PSD regulations at 40 CFR 51.166 promulgated in the June 3, 2010, CO_2 Biomass Deferral Rule. EPA has made the preliminary determination that this SIP revision, with regard to the aforementioned proposed actions, is approvable because it is consistent with section 110 of the CAA and EPA NSR permitting regulations.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 F43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule 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, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: April 8, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–09314 Filed 4–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0194; FRL– 9804–7]

Revisions to the Arizona State Implementation Plan, Maricopa County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Maricopa County Area portion of the Arizona State Implementation Plan (SIP). These revisions concern particulate matter (PM_{10}) emissions from fugitive dust sources. We are approving local statutes that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by May 20, 2013.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2013–0194, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Robert Marinaro, (415) 972–3019, *marinaro.robert@epa.gov* or Nancy Levin, (415) 972–3848, *levin.nancy@epa.gov*, EPA Region IX,

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

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I. The State's Submittal

A. What statutes did the State submit?

Table 1 lists the statutes addressed by this proposal with the dates that they were adopted and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1—SUBMITTED STATUTES

Local agency	Statute No.	Statute title	Adopted	Submitted
ADEQ	9–500.04	Air Quality Control; Definitions	07/02/07	05/25/12
ADEQ	11–877	Air Quality Control Measures	07/02/07	05/25/12
ADEQ	49–457.01	Leaf Blower Use Restrictions and Training; Leaf Blower Equipment Sellers; Informational Material; Outreach; Applicability.	07/02/07	05/25/12
ADEQ	49–474.01	Additional Board Duties in Vehicle Emissions Control Areas; Definitions	07/02/07	05/25/12
ADEQ	49–474.05	Dust Control; Training; Site Coordinators	07/02/07	05/25/12
ADEQ	49–474.06	Dust Control; Subcontractor Registration; Fee	07/02/07	05/25/12

On July 20, 2012 EPA determined that the submittal for Maricopa County, Statutes: 9–500.04, 11–877, 49–457.01, 49–474.01, 49–474.05, and 49–474.06 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these statutes?

There are no previous versions of statutes 9–500.04, 11–877, 49–457.01, 49–474.01, 49–474.05, and 49–474.06 in the SIP, although ADEQ adopted these statutes on July 2, 2007. ADEQ submitted them to us on December 21, 2007; however, they were consequently withdrawn on January 25, 2011 and then resubmitted on May 25, 2012.

C. What is the purpose of the submitted statutes?

PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM emissions.

Statute 9–500.04 requires municipalities to stabilize certain unpaved roads, alleys, and unpaved shoulders. Additionally, it requires the stabilization of parking and traffic areas and restricts parking and vehicle use on unpaved or unstabilized vacant lots.

Statute 11–877 mandates counties to develop, implement, and enforce air quality control measures that prohibit any person from operating leaf blowers on any high pollution advisory day except while in vacuum mode.

Statute 49–457.01 prohibits the use of leaf blowers to blow landscape debris into public roadways and limits their use to stabilized surfaces. It also mandates the County to produce and distribute materials to educate operators for the purpose of minimizing entrained dust.

Statute 49–474.01 requires counties, densely populated areas, and serious nonattainment areas to stabilize certain unpaved roads, parking, and traffic areas. Additionally, it restricts parking and vehicle use on unpaved or unstabilized vacant lots and requires certified street sweepers.

Statute 49–474.05 requires counties, densely populated areas, and serious nonattainment areas to have an air pollution control officer (APCO) to develop and implement training programs. Additionally, it requires an on-site dust control coordinator who has full authority to ensure implementation of dust control measures.

Statute 49–474.06 requires subcontractors in counties, densely populated areas, and serious nonattainment areas engaging in dust generation operations to register with the APCO. The APCO may also establish registration fees.

EPA's technical support documents (TSD) have more information about these statutes.

II. EPA's Evaluation and Action

A. How is EPA evaluating the statutes?

Generally, SIP measures must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193).

Guidance and policy documents that we use to evaluate enforceability consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

3. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

4. ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).

5. ''PM–10 Guideline Document,'' EPA 452/R–93–008, April 1993.

6. State of Arizona Senate Bill 1552, Adopted July 2, 2007.

7. A Report of the California Legislature on the Potential Health and Environmental Impacts of Leaf Blowers, California Air resources Board, February 2000.

B. Do the statutes meet the evaluation criteria?

We believe these statutes are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Statutes

The TSDs describe additional revisions that we recommend for the next time the local agency modifies the statutes but are not currently the basis for rule disapproval. This is particularly the case with the leaf blower statutes: 11–877 and 49–457.01.

D. Public Comment and Final Action

Because EPA believes the submitted statutes fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these statutes into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements

beyond those imposed by State law. For that reason, this proposed action:

- is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: April 9, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013–09288 Filed 4–18–13; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PS Docket Nos. 13–87, 06–229; WT Docket No. 96–86; RM–11433, RM–11577; FCC 13–40]

Service Rules Governing Public Safety Narrowband Operations in the 769–775/799–805 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks comment on proposals to amend the Commission's rules to promote spectrum efficiency, interoperability, and flexibility in 700 MHz public safety narrowband operations (769–775/799–805 MHz). By this action, the Commission affords interested parties an opportunity to submit comments on these proposed rule changes.

DATES: Comments are due on or before June 18, 2013 and reply comments are due on or before July 18, 2013.

ADDRESS: You may submit comments, identified by PS Docket No. 13–87, by any of the following methods:

- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brian Marenco, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0838.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 13–40, released on April 1, 2013. The document is available for download at *http://fjallfoss.fcc.gov/edocs_public/.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

1. In the Notice of Proposed Rulemaking (NPRM) in PS Docket No. 13–87, the Commission initiates a new proceeding to seek comment on proposals to amend the Commission's rules governing 700 MHz public safety narrowband operations (769–775/799–805 MHz). The Commission seeks comment on whether to extend or eliminate the December 31, 2016 narrowbanding deadline for 700 MHz public safety narrowband licensees to transition from 12.5 kilohertz to 6.25 kilohertz channel bandwidth technology.

2. The Commission also seeks comment on a proposal from the National Public Safety Telecommunications Council (NPSTC) to authorize secondary use of certain channels in the 700 MHz band for public safety aircraft voice operations. Furthermore, the Commission seeks comment on additional NPSTC proposals to modify the rules governing use of the designated nationwide interoperability channels, data-only interoperability channels, reserve channels, and low power channels.

3. Finally, the Commission seeks comment on a number of other issues, including adjacent channel power (ACP) limits for signal boosters, harmonizing power limits, certifying Project 25 equipment and establishing a standardized Network Access Code (NAC) for operation on 700 MHz interoperability channels.

4. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to the NPRM should refer to PS Docket No. 13–87. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs.* Filers should follow the instructions provided on the Web site for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for

each additional docket or rulemaking number.

5. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

6. Interested parties may view documents filed in this proceeding on the Commission's Electronic Comment Filing System (ECFS) using the following steps: (1) Access ECFS at *http://www.fcc.gov/cgb/ecfs.* (2) In the introductory screen, click on ''Search for Filed Comments.'' (3) In the ''Proceeding'' box, enter the numerals in the docket number. (4) Click on the box marked ''Retrieve Document List.'' A link to each document is provided in the document list. The public may inspect and copy filings and comments during regular business hours at the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The public may also purchase filings and comments from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via email to *fcc@bcpiweb.com.* The public may also download this NPRM from the Commission's Web site at *http://www.fcc.gov/.*

7. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

8. Commenters who file information that they believe should be withheld from public inspection may request confidential treatment pursuant to § 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. *See* Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order,* 13 FCC Rcd 24816 (1998), *Order on Reconsideration,* 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. *See* 47 CFR 0.461; 5 U.S.C. 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

9. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Procedural Matters

A. Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on a substantial number of small entities that might result from adoption of the rules proposed in the *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the applicable deadlines for initial comments, or reply comments, as specified in the Further Notice of Proposed Rulemaking. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'').

B. Need for, and Objectives of, the Proposed Rules

11. In the *NPRM,* the Commission seeks comment on further proposals to amend the Commission's rules governing 700 MHz public safety narrowband spectrum at 769–775 MHz and 799–805 MHz. The rule changes the Commission seeks comment on are intended to promote flexible and efficient use of public safety narrowband spectrum in the 700 MHz band while reducing the regulatory burdens on licensees wherever possible. In order to achieve these objectives, the Commission seeks comment in the *NPRM* on:

- extending or eliminating the December 31, 2016 narrowbanding deadline for 700 MHz public safety narrowband licensees;
- allowing 700 MHz public safety narrowband licensees to use the secondary trunking channels for low-altitude, low power air-ground voice communications;
- redesignating two 6.25 kilohertz bandwidth nationwide calling channels as Nationwide Interoperability Travel Channels;
- allowing tactical voice communications on a secondary basis

on the two 6.25 kilohertz bandwidth data-only interoperability channels;

- designating the forty-eight 6.25 kilohertz bandwidth reserve channel pairs for use by temporary deployable mobile trunked infrastructure that could be transported into an incident area to assist with emergency response and recovery;
- increasing the two-watt power limit for low power channels to 20 watts effective radiated power (ERP);
- requiring all 700 MHz narrowband equipment to be certified under the TIA Project 25 Compliance Assessment Program (P25 CAP);
- exempting Class B signal boosters from the Adjacent Channel Power (ACP) limits when retransmitting multiple signals;
- harmonizing and eliminating redundant or conflicting power limits for transmitters operating on the 700 MHz public safety narrowband channels;
- specifying by rule a standardized Network Access Code (NAC) for operation on the 700 MHz interoperability channels;
- clarifying that our rules require radios to be capable of being programmed to operate on all sixty-four of the 6.25 kilohertz bandwidth interoperability channels in the 700 MHz band;
- permitting users to operate their mobile and portable equipment in analog mode on the interoperability channels.

C. Legal Basis

12. The legal basis for any action that may be taken pursuant to the *NPRM* is contained in sections 1, 4(i), 303, 316, 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303, 316, 332, and 337.

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

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

14. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. For the purpose of determining whether a Public Safety Radio licensee is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require Public Safety Radio licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many Public Safety Radio licensees constitute small entities under this definition.

15. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. According to Census bureau data for 2007, there were a total of 919 firms in this category that operated for the entire year. Of this total, 771 had less than 100 employees and 148 had more than 100 employees. Thus, under that size standard, the majority of firms can be considered small.

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

16. No rule proposed in the NPRM will entail additional reporting, recordkeeping, and/or third-party consultation. Two proposed rules in the NPRM, however, would entail additional compliance efforts as described below.

17. *Project 25 Compliance Assessment Program.* We propose to require all vendors of 700 MHz narrowband equipment designed to operate on the interoperability channels to demonstrate compliance with the Project 25 Compliance Assessment Program (CAP). CAP is a voluntary program that establishes an independent compliance assessment process to ensure that communications equipment conforms to Project 25 standards and is interoperable across vendors. The purpose of this proposal is to enhance interoperability and provide assurance to licensees that their equipment is interoperable across vendors regardless of which vendor they choose.

18. *Interoperability Network Access Code.* We seek comment on whether to specify a standardized Network Access Code (NAC) by rule for operation on the 700 MHz interoperability channels. A NAC is a pre-programmed digital address used by radio units employing the Project 25 standard to ''hear'' only communications directed to that address from another radio. We seek comment on whether a standardized NAC is necessary to ensure all radio users can communicate with each other on the interoperability channels.

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

19. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.''

20. The *NPRM* seeks comment on a number of proposed changes to the rules covering operation of public safety systems on narrowband spectrum in the 700 MHz band. The *NPRM* seeks comment on whether the proposed rule changes will promote efficient use of public safety narrowband spectrum in the band while reducing economic burdens on licensees. In order to strike the proper balance between these two objectives, the *NPRM* seeks comment on a wide range of alternatives to the proposals put forth.

21. *Deadline for Narrowbanding Transition to 6.25 Kilohertz Technology.* The *NPRM* seeks comment on petitions filed separately by the 700 MHz Region 24 Planning Committee, the State of Louisiana, and the Regional Wireless Cooperative seeking to delay the December 31, 2016 deadline for transition to 6.25 kilohertz-capable equipment. Public safety licensees operating on narrowband spectrum in the 700 MHz band have until December 31, 2016 to complete a mandatory migration from a 12.5 kilohertz voice efficiency standard to a 6.25 kilohertz voice efficiency standard. These parties seek an extension of the deadline in order to ensure that equipment purchased by public safety licensees for operation in the band need not be replaced before its intended life cycle is met. The *NPRM* seeks comment on extending the December 31, 2016 deadline and factors to be considered if a new deadline is selected. Alternatively, the *NPRM* seeks comment on whether the long-term future of the 700 MHz narrowband spectrum would be best served by suspending or eliminating the mandatory migration to a 6.25 kilohertz voice efficiency standard.

22. *Air-Ground Communications on Secondary Trunking Channels.* The *NPRM* seeks comment on a proposal by the National Public Safety Telecommunications Council (NPSTC) to allow 700 MHz public safety narrowband licensees to use the secondary trunking channels for low-altitude, low power air-ground voice communications. NPSTC asserts that designating these channels for airborne use would allow licensees to incorporate air-ground communications into their operations while creating little risk of interference to ground-based operations. The *NPRM* seeks comment on whether to dedicate channels in the 700 MHz band for air-ground use, if the secondary trunking channels are the most appropriate channels for this purpose and if protection criteria is needed to ensure that airborne operations create no interfere to terrestrial users which could potentially increase costs and cause disruption to users in the band.

23. *Nationwide Interoperability Travel Channel.* The *NPRM* seeks comment on a NPSTC proposal to redesignate two nationwide calling interoperability channels as Nationwide Interoperability Travel Channels. NPSTC contends the travel channels would facilitate coordination of vehicle convoys transporting resources, assets, and personnel to major incidents, allowing first responders and equipment to be deployed to an area directly instead of having to first travel to a staging area. The *NPRM* seeks comment on NPSTC's proposal and whether the potential benefits of such a designation outweigh the potential adverse impact of reducing the overall channel capacity devoted to nationwide calling interoperability.

24. *Tactical Voice Communications on Data Interoperability Channels.* The *NPRM* seeks comment on a NPSTC proposal to allow tactical voice communications on a secondary basis on data-only interoperability channels. NPSTC argues such action would help meet the expanding demand for communications supporting tactical operations. The *NPRM* seeks comment on NPSTC's proposal and whether such a designation would have any adverse impact on primary data-only interoperability. In this regard, the *NPRM* seeks comment on whether this proposal would have any impact on the existing base of mobile, portable, and base stations currently in use by public safety entities, such as requiring reprogramming or retrofits.

25. *Temporary Deployable Mobile Trunked Infrastructure.* The *NPRM* seeks comment on a NPSTC proposal to designate all 48 reserve channel pairs for use by temporary deployable mobile trunked infrastructure that could be transported into an incident area to assist with emergency response and recovery. According to NPSTC, designating channels for deployable trunked use would allow 700 MHz licensees to pre-program these channels into their subscriber radios, negating the need during a disaster to reprogram radios in the field or distribute cached radios. The *NPRM* seeks comment on whether designating some or all of the narrowband reserve channels for deployable mobile trunked infrastructure would be a practical and efficient utilization of these channels. Alternatively, the *NPRM* seeks comment on whether the same benefits could be achieved by simply requiring deployable equipment to operate on the narrowband channels already designated for general and/or state use in the affected area.

26. *Power Limit for Low Power Channels.* The *NPRM* seeks comment on a NPSTC proposal to increase the power limit on the low power channels from two watts to 20 watts effective radiated power (ERP). NPSTC argues that such an increase would allow for more effective on-scene communications in critical life-safety situations, particularly for fire department radios operating in high ambient noise environments. The *NPRM* seeks comment on whether NPSTC's proposal to increase the power limit to 20 watts ERP would overcome the problem of communicating in high ambient noise environments but also seeks comment on alternative solutions such as using vehicular repeater system (VRS) units to overcome the problem of communicating in noisy environments.

27. *Project 25 Compliance Assessment Program.* The *NPRM* seeks comment on requiring all 700 MHz narrowband equipment to be certified under the Project 25 Compliance Assessment Program (P25 CAP). The Commission states in the *NPRM* that it believes requiring all 700 MHz narrowband equipment to be P25 CAP-certified would enhance interoperability in the band and would provide assurance to licensees that their equipment will be interoperable across vendors regardless of which vendor they choose. Nonetheless, the *NPRM* seeks comment on what costs, if any, P25 CAP certification would impose on vendors.

28. *ACP Requirements for Class B Signal Boosters.* The *NPRM* seeks comment on a proposal by Dekolink to exempt Class B signal boosters from the Adjacent Channel Power (ACP) requirements when multiple signals are retransmitted. Dekolink suggests that Class B signal boosters currently authorized to operate in the 700 MHz public safety narrowband spectrum typically produce intermodulation products in excess of ACP limits when simultaneously retransmitting two or more signals. The *NPRM* seeks comment whether exempting this class of devices from the ACP requirements when multiple signals are retransmitted would unreasonably elevate the potential for harmful interference to adjacent channel users. The *NPRM* also seeks comment on any technical limitations that prevent these devices from being designed and manufactured to meet the current ACP limits and whether compliance can be achieved through filters and/or other technical remedies.

29. *Narrowband Power Limits.* The *NPRM* seeks comment on harmonizing and consolidating power limits in §§ 90.541 and 90.545(b) of the Commission's rules. In this regard, the *NPRM* tentatively concludes to base power limits on effective radiated power (ERP) rather than transmitter power output (TPO) but seeks comment on whether a change in policy from TPO to ERP would render certain incumbent users or previously certified equipment non-compliant. The *NPRM* also seeks comment on antenna height limits.

30. *Interoperability Network Access Code.* The *NPRM* seeks comment on whether the Commission should specify

a standardized Network Access Code (NAC) by rule for operation on the 700 MHz interoperability channels. The NAC is a pre-programmed digital address in a Project 25 radio which allows the radio to ''hear'' only communications directed to that address from another radio. If the NAC is to be set by rule, the *NPRM* seeks comment what code would be most appropriate. Alternatively, the *NPRM* seeks comment on whether NACs should be left to an industry standard, which would be more flexible then codifying a single code into the Commission's rules.

31. *User Access to Interoperability Channels.* The *NPRM* proposes to clarify that transmitters designed to operate on the narrowband channels in the 700 MHz band be capable of being programmed to operate on all sixty-four of the 6.25 kilohertz bandwidth interoperability channels. The *NPRM* seeks comment on its proposal.

32. *Analog Operation on the Interoperability Channels.* The *NPRM* seeks comment on whether to permit users to operate their mobile and portable equipment in analog mode on the interoperability channels. In particular, the *NPRM* asks parties addressing this issue to describe what benefits may accrue from allowing analog operation on the interoperability channels and whether such benefits outweigh the impairment to interoperability resulting from allowing both analog and digital modes of operation on these channels.

G. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

33. None.

Ordering Clauses

34. Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 303, 316, 332 and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, 316, 332 and 337, the NPRM *is hereby adopted.*

35. *It is further ordered* that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the NPRM on or before June 18, 2013, and reply comments on or before July 18, 2013.

36. *It is further ordered* that the Commission *shall send* a copy of the NPRM in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–09069 Filed 4–18–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2012–0094; FXES111309F2130–123–FF09E22000]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Wood Bison

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to delist the wood bison (*Bison bison athabascae*) under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition does not present substantial information indicating that delisting the wood bison subspecies may be warranted. Therefore, we are not initiating a status review in response to this petition. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the wood bison or its habitat at any time.

DATES: The finding announced in this document was made on April 19, 2013.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–HQ–ES–2012–0094. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Alaska Regional Office, 1011 East Tudor Road, Anchorage, AK 99503; (907) 786–3856. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Marilyn Myers at U.S. Fish and Wildlife Service, Fisheries and Ecological Services, 1011 E. Tudor Road, Anchorage, AK 99503; or by telephone at 907–786–3559; or by facsimile at (907) 786–3848. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On April 3, 2012, we received a petition, dated April 3, 2012, from the Western Bison Association, the Rocky Mountain Buffalo Association, the Minnesota Buffalo Association, the Oklahoma Buffalo Association, the North Dakota Buffalo Association, the Northwest Buffalo Association, the Missouri Buffalo Association, the Kansas Buffalo Association, and W. Michael Gear and Kathleen O'Neal Gear requesting that the wood bison be removed from the Federal List of Endangered and Threatened Wildlife as threatened under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required at 50 CFR 424.14(a). In a letter to the petitioners sent April 24, 2012, we stated that we anticipated that we would review the petition and make a finding within the coming year. This finding addresses the petition.

Previous Federal Action(s)

The listing history for wood bison is extensive and was reconstructed in the proposed rule to reclassify wood bison from endangered to threatened, which published February 8, 2011 (76 FR

6734). Please refer to that document for the complete listing history. Here we present only the most pertinent facts.

Wood bison became listed in the United States under the 1969 Endangered Species Conservation Act when it was included on the first List of Endangered Foreign Fish and Wildlife, which was published in the **Federal Register** on June 2, 1970 (35 FR 8491). In 1974, the first list under the 1973 Endangered Species Act appeared in the Code of Federal Regulations (CFR); the wood bison was listed as an endangered species based on its inclusion on the original 1969 list. Because the wood bison was listed under the 1969 Endangered Species Conservation Act, there is not a separate **Federal Register** notice that defined the population(s) and their range, or analyzed threats to the subspecies.

On May 14, 1998, the Service received a petition from a private individual requesting that the Service remove the wood bison from the List of Endangered and Threatened Wildlife, primarily because it had been downlisted from Appendix I to Appendix II under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In a 90-day finding published on November 25, 1998 (63 FR 65164), we found that the petitioner did not provide substantial information to indicate that the delisting may be warranted.

On November 26, 2007, we received a petition from the co-chairs of Canada's National Wood Bison Recovery Team requesting that we reclassify the wood bison from endangered to threatened. On February 3, 2009, we published a 90-day finding (74 FR 5908) acknowledging that the petition provided sufficient information to indicate that reclassification may be warranted and that we would initiate a status review. On February 8, 2011, we published a proposed rule to reclassify wood bison (76 FR 6734), and on May 3, 2012, we published a final rule reclassifying wood bison as threatened under the Act (77 FR 26191).

Status in Canada

In Canada, the Species at Risk Act (SARA) is the Canadian counterpart to the U.S. Endangered Species Act. Under the SARA, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) was established as the scientific body that identifies and assesses a species' status. The wood bison was recognized by the COSEWIC as an endangered subspecies of Canadian wildlife in 1978. Wood bison was reclassified to threatened in June 1988, based on a status report prepared by the National Wood Bison Recovery Team. The National Wood Bison Recovery Team published a national recovery plan in 2001 (Gates *et al.* 2001), which has guided recovery actions in Canada since that time.

Species Information

Wood bison is the largest native extant terrestrial mammal in North America (Reynolds *et al.* 2003, p. 1015). Average weight of mature males (age 8) is 910 kilograms (kg) (2,006 pounds (lb)) and the average weight of mature females (age 13) is 440 kg (970 lb) (Reynolds *et al.* 2003, p. 1015). They have a large triangular head, a thin beard and rudimentary throat mane, and a poorly demarcated cape (Boyd *et al.* 2010, p. 16). In addition, the highest point of their hump is forward of their front legs; they have reduced chaps on their front legs; and their horns usually extend above the hair on their head (Boyd *et al.* 2010, p. 16). These physical characteristics distinguish them from the plains bison (Reynolds *et al.* 2003, p. 1015; Boyd *et al.* 2010, p. 16). Detailed information on the biology of wood bison is provided in our February 8, 2011, proposed rule to reclassify wood bison as threatened (76 FR 6734) and in our May 3, 2012, final rule (77 FR 26191). Please refer to those documents for a detailed account of the species' biology.

Taxonomy

In the proposed and final rules (76 FR 6734, 77 FR 26191), we adopt the widely accepted notion that wood bison is a valid subspecies, a point which the petitioners contest. The petitioners assert that wood bison and plains bison (*Bison bison bison*) are not significantly different and that they should be considered a single species. Therefore, we discuss taxonomic classification and our rationale for accepting wood bison as a valid subspecies below.

Taxonomy is the theory and practice of classifying organisms. Traditionally, physical characteristics of an organism were used to describe a species. However, from an evolutionary perspective, appearances can be deceptive; animals that look alike may not be closely related and animals that appear different from one another may actually be closely related. With the advent of sophisticated molecular tools, taxonomists can now examine various aspects of a species genetic code to help them determine how closely animals are related to one another. Although molecular techniques have added another tool in the taxonomist's toolbox, they also have limitations and do not necessarily give an unambiguous picture of the relationship among species. Sample size (number of animals sampled, number of genes sampled, or the number of loci on a gene sampled), type of DNA examined (mitochondrial DNA vs. nuclear DNA), the techniques used, and the populations selected for sampling are among a few of the reasons that variable or ambiguous results may arise. In addition, how a species (or subspecies) is defined, which on its face is a simple concept, is in reality very complex, and several definitions for ''species'' exist (Mayr and Ashlock 1991, pp. 24–28; de Queiroz 2007, pp. 879–885). Consequently, the intersection of incomplete knowledge of exactly how animals are related to one another, combined with the human concept of what a species is, often culminates in controversy over whether certain groups of animals should be lumped together or split apart. Such is the case for wood bison.

We recognize, as the petitioners assert, that differences in opinion exist regarding the division of *Bison* into two subspecies (*B. b. athabascae* and *B. b. bison*) (e.g., Bork *et al.* 1991, pp. 43, 47; Geist 1991, p. 283). However, quantified differences in pelage (e.g., distribution of mane, chaps, and cape) and structure (e.g., overall body size, location of hump, length of horns) have been described (van Zyll de Jong *et al.* 1995, pp. 394–400). These differences, and the fact that wood bison and plains bison are physically separated by a great distance, led Boyd *et al.* (2010, p. 16 (American Bison Specialist Group)) to conclude separation into two subspecies is consistent with the subspecies concept. As noted in our final rule to downlist wood bison (77 FR 26209), the introduction of plains bison into Wood Buffalo National Park in Canada, the only place where wood bison remained in the 1920s, led to some degree of hybridization. However, genetic analysis has indicated that although the wood bison had limited contact with plains bison, it was minimal enough that the animals exhibit predominantly wood bison traits. Wood bison originating from founders with minimal contact with plains bison are genetically more similar to one another than they are to plains bison (van Zyll de Jong *et al.* 1995, pp. 394–404; Wilson and Strobeck 1999, p. 493). Hybridization did not lead to a phenotypically homogenous population (one population that looks the same) (van Zyll de Jong *et al.* 1995, pp. 394–404).

As described above, molecular tools can be used to evaluate the relatedness of individuals, populations, species, and genera. The work of Wilson (2001) and Wilson and Strobeck (1999, pp. 493–

494) using DNA microsatellites indicate that the genetic differences between plains bison and wood bison are greater than those within either of the two subspecies. These results support maintaining the subspecific designation. Results of studies that sequence only mitochondrial DNA are of limited value in answering questions about subspecific designation because mitochondrial DNA is inherited only from the maternal side (Avise 1994, pp. 62, 99). In the case of Douglas *et al.* (2011), which the petitioners use as support for their argument of lumping the subspecies together, mitochondrial DNA from only two wood bison were sequenced, further limiting the authors' ability to draw general conclusions about the relatedness of wood and plains bison. As Boyd *et al.* (2010, p. 17) note, the inability to detect a difference with a molecular test comparing limited sequences of genomic material does not necessarily mean that there is no difference. It is possible that in the future refined genetic analysis with appropriate sample design and sample size will provide a more compelling reason to lump the two subspecies together. Until that time, we will continue to follow the accepted separation of North American bison into two subspecies.

The Canadian National Recovery Plan (Gates *et al.* 2001, p. 28) provides this summary about American bison subspecies:

(1) Historically, wood bison differed from other bison populations with regard to multiple morphological and genetic characteristics.

(2) The intrusion of plains bison into the range of wood bison in 1925–1928 was entirely human-caused.

(3) The two North American bison subspecies continue to be morphologically and genetically distinct, despite some hybridization in the 1920s.

(4) Wood bison and their descendants continue to constitute populations of a subspecies of bison.

In a recent evaluation of the subspecific separation of wood bison from plains bison, Boyd *et al.* (2010 pp. 15–18) also conclude that there appears to be sufficient justification for the formal recognition of the two subspecies. In addition, they point out that regardless of the formal designation for wood bison, all forms of geographic and ecological variation contribute to biodiversity and that variants of a species may have evolutionarily important ecological adaptations (Boyd *et al.* 2010, p. 18). This reality is reflected in the Service's ability to recognize and provide protection to ''distinct population segments'' at a taxonomic level below subspecies. In addition, COSEWIC also considers and includes subspecies, varieties, or geographically or genetically distinct populations in its definition of wildlife species (*http://www.cosewic.gc.ca/eng/sct2/sct2_5_e.cfm*, viewed June 26, 2012). Both the Act and SARA recognize that conservation of biological diversity requires protection for taxonomic entities below the species level whether at the subspecific level or less (e.g., distinct populations). Therefore, regardless of how we name the populations we now call wood bison, since its description in 1897 (Rhoads 1897) wood bison in Canada have been recognized as a unique subspecies and managed as such. Consequently, even if we were to consider wood bison and plains bison as one species, that would not automatically lead to the delisting of the wood bison.

The International Code of Zoological Nomenclature (Code) provides guidance to zoologists worldwide regarding naming species. In the Preface to the Code it states, ''Nomenclatural rules are tools that are designed to provide the maximum stability compatible with taxonomic freedom.'' A published ''revision'' or ''monograph'' is the standard method used to examine all the species within a group and present a unified synopsis of all of the information available (Mayr and Ashlock 1991, p. 348). Recognizing the taxonomic controversy that exists for the subspecific designation of wood bison, a reasonable, defensible, and conservative approach is to follow the naming conventions that are in place. The petition does not provide compelling, convincing, or unambiguous information that would cause the Service to consider wood bison and plains bison as a single species, nor can we authoritatively resolve this issue with the information available.

In summary, based on the historical physical separation, and quantifiable behavioral, morphological, phenological (appearance), and genetic differences between the two subspecies, the best available scientific information indicates that subspecific designation is appropriate (FEAP 1990, p. 24; Bork *et al.* 1991, p. 47; van Zyll de Jong *et al.* 1995, pp. 403–404; Wilson and Strobeck 1999, pp. 492–494; Reynolds *et al.* 2003, p. 1010; Boyd *et al.* 2010, pp. 15–18). The established management of bison as two subspecies and the long-standing recognition of the two subspecies by the scientific community provide additional justification for treating wood bison and plains bison as two distinct subspecies.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons:

(1) The species is extinct;

(2) The species has recovered and is no longer endangered or threatened; or

(3) The original scientific data used at the time the species was classified were in error.

In the case of this petition, the petitioners have not discussed threats to the species (or subspecies) that remain or have been eliminated. They focus instead on the success of recovery efforts for wood bison ''ecotype,'' the increase in the number of animals, and the establishment of new herds. We agree that significant strides have been made towards recovery of wood bison, and we discussed the success of recovery efforts in our proposed and final rules for the reclassification of wood bison (76 FR 6734, 77 FR 26191). Although we acknowledge that wood bison are no longer endangered, we conclude in our final rule that threats to wood bison remain and that the wood bison should be listed as threatened. In particular, we identified loss of habitat, disease, and hybridization as ongoing threats. The conclusions made in the May 3, 2012, final rule to reclassify the subspecies are still valid. The petitioners have not provided, and we have not received, any new information regarding threats to, or recovery of, wood bison that was not considered in the final reclassification rule.

Finding

The petition does not present substantial information to indicate that delisting of wood bison is warranted. Although we recognize that controversy exists around the subspecific designation for wood bison, nomenclature stability, management history, and the acceptance of two subspecies by the American Bison Specialist Group, the Canadian National Wood Bison Recovery Team, and other zoologists lead us to the conclusion that retaining the current nomenclature is appropriate and defensible.

Although the petitioners argue that wood bison and plains bison should be considered as one species, they did not indicate that all or most threats to bison have been ameliorated. Instead, they focus on the success of recovery efforts for wood bison. We agree that the status of wood bison is more secure today than it once was. However, in our final rule to reclassify wood bison as threatened, which published earlier this year, we identified threats that remain to the species. The petitioners did not provide any new information about the status of the species that we were not already aware of and had evaluated in our final rule.

On the basis of our determination under section 4(b)(3)(A) of the Act, we conclude that the petition does not present substantial scientific or commercial information to indicate that delisting the wood bison under the Act may be warranted at this time. Although we will not conduct a thorough review of the status of the species at this time, we encourage interested parties to continue to gather data that will assist with the conservation of the wood bison. If you wish to provide information regarding the wood bison, you may submit your information or materials to Marilyn Myers, Endangered Species Biologist, Alaska Regional Office (see **FOR FURTHER INFORMATION CONTACT**), at any time.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Alaska Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this notice is Marilyn Myers of the Alaska Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 7, 2012.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–09241 Filed 4–18–13; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 78, No. 76
Friday, April 19, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Cook Inlet Beluga Whale Economic Survey.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 4,200.

Average Hours per Response: 25 minutes.

Burden Hours: 1,750.

Needs and Uses: This request is for a new information collection.

The population of Cook Inlet beluga whales in the Cook Inlet of Alaska is one of five distinct population segments in United States (U.S.) waters. It was listed as endangered under the Endangered Species Act on October 22, 2008 (73 FR 62919), and Critical Habitat was designated in a final rule published on April 11, 2011 (76 FR 20180). The public benefits associated with protection actions for the Cook Inlet beluga whale are substantially the result of the non-consumptive value people attribute to such protection. This includes active use values associated with being able to view beluga whales and passive use, or ''existence,'' values unrelated to direct human use. No empirical estimates of these values for Cook Inlet beluga whales are currently available, but this information is needed for decision makers to more fully understand the trade-offs involved in evaluating population recovery planning alternatives and to complement other information available about the costs, benefits, and impacts of alternative plans.

The National Marine Fisheries Service (NMFS) plans to conduct a survey of Alaska households to collect data for estimating non-consumptive economic benefits associated with changes in extinction risk resulting from protection actions for the Cook Inlet beluga whale. The analysis NMFS completed prior to designating Critical Habitat for Cook Inlet beluga whales described non-consumptive benefits in limited qualitative terms only. Adding empirical data about non-consumptive benefits remains the most significant gap to enabling a complete and balanced economic analysis. The results from this survey should be useful to NMFS and the public in the future as NMFS considers various actions under the recovery planning process for Cook Inlet beluga whales. Any future regulatory actions would include analyses of costs and benefits of the proposed measures as well as opportunities for public input.

During 2011, NMFS fielded a pilot version of the survey to a small number of households, primarily to evaluate the survey administration procedures prior to sending the survey out to a larger and more representative sample. The results of this pretest indicated the need to make minor adjustments to the survey administration (e.g., timing of mailings and telephone calls), which will be incorporated in the data collection to which this notice pertains.

This notice revises a previously published notice that had indicated a survey of larger scope (77 FR 32928).

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov*.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov*.

Dated: April 15, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–09168 Filed 4–18–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[4/3/2013 through 4/15/2013]

Firm name	Firm address	Date accepted for investigation	Product(s)
PrintFlex Graphics, Inc	2201 January Avenue, St. Louis, MO 63110.	4/3/2013	The firm manufactures promotional paper products, instant redemption coupons, booklets, stickers and labels.
AD Hawk, Inc. d/b/a Amrak Enterprises.	3515 Airway Drive Suite 206, Reno, NV 89511.	4/3/2013	The firm manufacturers valve components and other machined components and sub assemblies.
Habitata Building Products, LLC d/b/a Halcyon Shades.	1600 S. 39th St, St. Louis, MO 63110.	4/9/2013	The firm manufacturers solar shades for windows.
Creative Candles, LLC	3218 Roanoke Road, Kansas City, MO 64111.	4/9/2013	The firm manufacturers candles and accessories.
Irrigation Accessories Company ..	12410 NE 95th Street, Vancouver, WA 98682.	4/12/2013	The firm manufactuers irrigation accessories.
ChannelLock, Inc	1306 South Main Street, Meadville, PA 16335.	4/3/2013	The firm manufactures pliers and hand tools.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: April 15, 2013.

Michael S. DeVillo,

Eligibility Examiner.

[FR Doc. 2013–09211 Filed 4–18–13; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1896]

Designation of New Grantee; Foreign Trade Zone 104, Savannah, Georgia

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The Foreign-Trade Zones (FTZ) Board (the Board) has considered the application (docketed 02/15/13) submitted by the Savannah Airport Commission, grantee of FTZ 104, Savannah, Georgia, requesting reissuance of the grant of authority for said zone to the World Trade Center Savannah, LLC, which has accepted such reissuance subject to approval by the FTZ Board. Upon review, the Board finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest.

Therefore, the Board approves the application and recognizes the World Trade Center Savannah, LLC as the new grantee for Foreign-Trade Zone 104, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 11th day of April 2013.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–09254 Filed 4–18–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC628

Marine Mammals; File No. 17312

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Scripps Institution of Oceanography [Responsible Party: John Hildebrand, Ph.D.], University of California, 8635 Discovery Way, La Jolla, CA 92093, has applied in due form for a permit to conduct research on 35 cetacean species/stocks, including the following endangered whales: blue (*Balaenoptera musculus*), fin (*B. physalus*), sei (*B. borealis*), Southern Resident stock of killer (*Orcinus orca*), Hawaii insular stock of false killer (*Pseudorca crassidens*), sperm (*Physeter macrocephalus*), North Pacific right (*Eubalaena japonica*), and humpback (*Megaptera novaeangliae*) whales.

DATES: Written, telefaxed, or email comments must be received on or before May 20, 2013.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 17312 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION**.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Carrie Hubard, (301)427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended

(MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant is requesting a 5-year research permit to study 35 cetacean species or stocks during vessel surveys in the Pacific Ocean and Gulf of Mexico to understand cetaceans' use of sound, their sensitivity to anthropogenic sound, and impacts of the Deepwater Horizon oil spill. The applicant requests authority to: (1) Photograph cetaceans for identification to determine abundance, movements and population structure; (2) collect biopsies and fecal samples to determine taxonomy, sex, relatedness and stock structure of cetaceans; and (3) suction-cup tag, track, and collect passive acoustic recordings to study cetacean diving behavior, calling behavior, feeding, and movements.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register,** NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Dated: April 16, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–09249 Filed 4–18–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC620

National Marine Fisheries Service, Pacific Fishery Management Council (Pacific Council); May 6 and 9–10, 2013 Council Coordination Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Council will host a meeting of the Council Coordination Committee (CCC) consisting of the eight Regional Fishery Management Council (RFMC) chairs, vice chairs, and executive directors and its subcommittees in May 2013. The intent of this meeting is to discuss issues of relevance to the Councils, including: budget issues, CCC meeting protocols, Managing Our Nation's Fisheries 3 (MONF3) conference results, Endangered Species Act transparency, electronic monitoring, allocation review process, Department of Commerce Office of the Inspector General report action plan, new environmental review process, other topics of concern to the RFMC, and decisions and follow-up activities.

DATES: The meeting will begin at 10 a.m. on Monday, May 6, 2013, and recess at 5:30 p.m. or when business is complete; reconvene at 1:30 p.m. on Thursday, May 9, 2013 and recess at 5 p.m. or when business is complete; and reconvene at 9 a.m. on Friday, May 10, 2013 and adjourn by 5:30 p.m. or when business is complete.

ADDRESSES: The meeting will be held at the Mayflower Renaissance Hotel, 1127 Connecticut Avenue NW., Washington DC 20036. The Pacific Council address is Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, Oregon 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: 503–820–2280 or 866–806–7204 toll free; or access the Pacific Council Web site, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006 established the Council Coordination Committee (CCC) by amending section 302 (16 U.S.C. 1852) of the MSA. The committee consists of the chairs, vice chairs, and executive directors of each of the eight Regional Fishery Management Councils authorized by the MSA or other Council members or staff. The meeting is being held before and after the MONF3 national conference being held in Washington, DC May 6–9, 2013. The meeting and subcommittee meetings are open to the public (Submit written comments to the Pacific Council (see **ADDRESSES**). There will be a short closed session of the CCC Monday morning. The Web site (found at *http://www.cvent.com/events/managing-our-nation-s-fisheries-3/event-summary-94ddf325198f4501996ccc62aa396aa2.aspx*) has materials relevant to discussions at the CCC meetings.

Agenda

Monday, May 6, 2013

10–11 a.m. Closed session.
11 a.m.–12 p.m.
  Call to Order
  Open Public Comment
  Managing Our Nations Fisheries III Conference
12 p.m.–1:30 p.m. Lunch
1:30–4 p.m.
  CCC Meeting Guidance
  Budget Issues
4–5 p.m. The Marine Fisheries Advisory Committee (MAFAC) ESA Working Group Session
4–5 p.m. OIG Report Response: CCC Subcommittee and NMFS meeting

Thursday, May 9, 2013

1:30–5 p.m.
  Consideration of Managing Our Nation's Fisheries 3 Conference Results
  Magnuson-Stevens Act Reauthorization and Associated Legislation Possibilities

Friday, May 10, 2013

9 a.m.–12 p.m.
  ESA Transparency
  Electronic Monitoring
  Allocation Review Process
12–1:30 p.m. Lunch
1:30–5 p.m.
  OIG Report Action Plan
  New NEPA process
  Discussion of Follow-up Activities
  ADJOURN

The timing and order in which agenda items are addressed may change as required to effectively address the issues. The CCC will meet as late as necessary to complete scheduled business.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at 503–820–2280 at least five days prior to the meeting date.

Dated: April 15, 2013.

William D. Chappell,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–09188 Filed 4–18–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC613

General Advisory Committee and Scientific Advisory Subcommittee to the U.S. Section to the Inter-American Tropical Tuna Commission; Meeting Announcement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a combined meeting of the Scientific Advisory Subcommittee (SAS) and the General Advisory Committee (GAC) to the U.S. Section to the Inter-American Tropical Tuna Commission (IATTC) on May 15, 2013. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The one-day combined meeting of the SAS and of the GAC will be held on May 15, 2013, from 8:30 a.m. to 5 p.m. PDT (or until business is concluded).

ADDRESSES: The meeting will be held at the NMFS Long Beach office: 501 West Ocean Blvd., Long Beach, CA 90802. Please notify Heidi Taylor prior to May 10, 2013, of your plans to attend either meeting, or interest in a teleconference option.

FOR FURTHER INFORMATION CONTACT: Heidi Taylor, Southwest Region, NMFS, at *Heidi.Taylor@noaa.gov,* or at (562) 980–4039.

SUPPLEMENTARY INFORMATION: In accordance with the Tuna Conventions Act, 16 U.S.C. 953 the Department of State has appointed a General Advisory Committee (GAC) and a Scientific Advisory Subcommittee (SAS) to the U.S. Section to the IATTC. The U.S. Section consists of four U.S. Commissioners to the IATTC and a representative of the Deputy Assistant Secretary of State for Oceans and Fisheries. The GAC and SAS support the U.S. Section to the IATTC in an advisory capacity; in particular, they provide advice on the development of U.S. policies and positions. NOAA Fisheries Southwest Regional Office administers the GAC and SAS in cooperation with the Department of State. The combined GAC and SAS meeting is open to the public and time provided for public comment will be at the discretion of the GAC and SAS chairmen.

The next annual meeting of the IATTC is scheduled from June 3 through June 14, 2013, in Veracruz, Mexico. For more information on the IATTC meeting, please visit the IATTC's Web site: *http://www.iattc.org/HomeENG.htm.*

Meeting Topics

The SAS meeting topics will include, but are not limited to, the following: (1) Relevant stock status updates, including yellowfin, bigeye, skipjack, and Pacific bluefin tunas; (2) updates on bycatch mitigation measures; (3) evaluation of the IATTC's recommended conservation measures, U.S. proposals, and proposals from other IATTC members; (4) input to the GAC; and (5) other issues that arise.

The GAC meeting topics will include, but are not limited to, the following: (1) Relevant stock status updates, including yellowfin, bigeye, skipjack, and Pacific bluefin tunas; (2) U.S. regulatory changes that could affect tuna fisheries in the eastern Pacific Ocean; (3) the status of U.S legislation to implement the Antigua Convention; (4) input from the SAS; (5) formulation of advice on issues that may arise at the upcoming 2013 IATTC meeting, including the IATTC's recommended conservation measures, potential U.S. proposals, and potential proposals from other IATTC members; and (6) other issues as they arise.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heidi Taylor at (562) 980–4039 by May 10, 2013.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 15, 2013.

Kara Meckley,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–09251 Filed 4–18–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC629

Fisheries in the Western Pacific; American Samoa Pelagic Longline Limited Entry Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; availability of permits.

SUMMARY: NMFS announces the availability of, and is soliciting applications for, American Samoa pelagic longline limited entry fishing permits. At least 12 permits in two size classes are available for 2013.

DATES: NMFS must receive completed permit applications by August 19, 2013.

ADDRESSES: Request a blank application form from the NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4733, or the PIR Web site *www.fpir.noaa.gov.* Mail completed applications and payment to NMFS PIR, ATTN: ASLE Permits, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4733.

FOR FURTHER INFORMATION CONTACT: Walter Ikehara, Sustainable Fisheries, NMFS PIR, tel 808–944–2275, fax 808–973–2940, or email *PIRO-permits@noaa.gov.*

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR 665.816 require NMFS to issue new permits for the American Samoa pelagic longline limited entry program if the number of permits in a size class falls below the maximum allowed. At least 12 permits are available for issuance, as follows: 11 in Class A (vessels less than or equal to 40 ft) and one in Class B (over 40 ft to 50 ft). Note that the number of available permits may change before the application period closes.

Complete applications must include the completed and signed application form, evidence of documented participation in the American Samoa pelagic longline fishery, and payment for the non-refundable application processing fee in accordance with the regulations at 50 CFR 665.13. Applicants must specify the permit

class for which they are applying. NMFS will reject incomplete applications.

Documented participation means participation proved by, but not necessarily limited to, a properly submitted NMFS or American Samoa logbook, an American Samoa creel survey record, a delivery or payment record from an American Samoa-based cannery, retailer or wholesaler, an American Samoa tax record, an individual wage record, ownership title, vessel registration, or other official documents. The documents must show either ownership of a vessel that was used to fish in the EEZ around American Samoa, or evidence of work on a fishing trip during which longline gear was used to harvest western Pacific pelagic MUS in the EEZ around American Samoa.

If the applicant does not possess the necessary documentation of evidence of work on a fishing trip based on records available only from NMFS or the Government of American Samoa, the applicant may issue a request to NMFS to obtain such records from the appropriate agencies, if available. The applicant should provide sufficient information on the fishing trip to allow NMFS to retrieve the records. If the applicant requests NMFS in writing to use longline logbook data for evidence of documented participation, the applicant must specify the qualifying vessel, official number, and month(s) and year(s) of the logbook records for NMFS to search. An applicant's request that NMFS base its determination of documented participation on records currently held by NMFS constitutes acceptance that such records fairly and accurately describe the applicant's participation in the fishery.

If NMFS receives more complete applications than available permits for a given permit class, NMFS will prioritize applicants using *only* the information in the applications and documentation provided by the applicants.

NMFS will assign the highest priority for permits in any size class to applicants with the earliest documented participation in the fishery on a Class A vessel, followed by applicants with the earliest documented participation in Classes B, C, and D, in that order. If there is a tie in priority, NMFS will rank higher the applicant whose second documented participation in the fishery is earlier. Detailed criteria for prioritizing eligible applicants are in the regulations at 50 CFR 665.816(g).

NMFS (see **ADDRESSES**) must receive applications by August 19, 2013, and will not accept late applications. Authoritative additional information on the American Samoa limited entry program may be found in 50 CFR part 665.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 15, 2013.

Kara Meckley,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–09247 Filed 4–18–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on spectrum management policy matters.

DATES: The meeting will be held on June 18, 2013, from 1:00 p.m. to 4:00 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4830, Washington, DC 20230. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4099, Washington, DC 20230 or emailed to *spectrumadvisory@ntia.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Bruce M. Washington, Designated Federal Officer, at (202) 482–6415 or *BWashington@ntia.doc.gov;* and/or visit NTIA's Web site at *http://www.ntia.doc.gov/category/csmac*.

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: license radio frequencies in a way that maximizes their public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. *See* charter, at *http://www.ntia.doc.gov/other-publication/2013/csmac-2013-charter*. This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.doc.gov/category/csmac*.

Matters To Be Considered: The Committee will receive reports from designated committee members on the recommendations of working groups (WGs) which were established to facilitate collaboration efforts between industry and government stakeholders to develop proposed relocation, transition, and sharing arrangements and plans for the 1695–1710 MHz and the 1755–1850 MHz bands:

1. WG1 1695–1710 MHz Weather Satellite Receive Earth Stations,
2. WG2 1755–1850 MHz Law Enforcement Surveillance and other short-range fixed,
3. WG3 1755–1850 MHz Satellite Control Links and Electronic Warfare,
4. WG4 1755–1850 MHz Fixed Point-to-Point and Tactical Radio Relay, and
5. WG5 1755–1850 MHz Airborne Operations.

NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov,* prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may speak to or otherwise address the advisory committee regarding agenda items. During the portion of the meeting when the public may make an oral presentation, speakers may address only matters the subject of which are on the agenda. See *Open Meeting and Public Participation Policy,* available at *http://www.ntia.doc.gov/category/csmac*.

Time and Date: The meeting will be held on June 18, 2013 from 1:00 p.m. to 4:00 p.m., Eastern Daylight Time. The times and the agenda topics are subject to change. The meeting will be available via two-way audio link and may be webcast. Please refer to NTIA's Web site, *http://www.ntia.doc.gov*, for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at the U.S. Department of Commerce, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4830, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other

ancillary aids, are asked to notify Mr. Washington, at (202) 482–6415 or *BWashington@ntia.doc.gov*, at least five (5) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting must send them to NTIA's Washington, DC office at the above-listed address and comments must be received by close of business on June 12, 2013, to provide sufficient time for review. Comments received after June 12, 2013 will be distributed to the Committee, but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in HTML, ASCII, Word, or WordPerfect format (please specify version). CDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to *spectrumadvisory@ntia.doc.gov*. Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and any reports are available on NTIA's Committee Web page at *http://www.ntia.doc.gov/category/csmac*.

Dated: April 16, 2013.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2013–09235 Filed 4–18–13; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 5/20/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 2/15/2013 (78 FR 11159) and 2/22/2013 (78 FR 12296–12297), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 7045–00–NIB–0393—Privacy Filter, LCD Monitor, 16:9 Aspect Ratio, 24 Widescreen
NPA: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.

NSN: 7530–00–NIB–0988—Cover, Record Book, Digital Camo, 6″ x 9″
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.

Services

Service Type/Locations: Custodial Service Danville Courthouse, 700 Main Street, Danville, VA, Norfolk Federal Building, 200 Granby St., Norfolk, VA
NPA: Portco, Inc., Portsmouth, VA
Contracting Activity: Public Building Service, GSA/PBS/R03 South Service Center, Philadelphia, PA

Service Type/Locations: Janitorial Service, National Center for Cool and Cold Water Aquaculture, 11861 Leetown Road, Kearneysville, WV Appalachian Fruit Research Station, 2217 Wiltshire Road, Kearneysville, WV
NPA: NW Works, Inc., Winchester, VA
Contracting Activity: Agricultural Research Service, USDA ARS NAA 349B, Kearneysville, WV

Service Type/Location: Warehouse Operation, National Labor Relations Board HQ, 1099 14th Street NW., Washington, DC
NPA: Linden Resources, Inc., Arlington, VA
Contracting Activity: National Labor Relations Board, Washington DC

Service Type/Location: Coating of Polypropylene Plastic Bleeding Tubes, USDA, APHIS-National Veterinary Stockpile, (Offsite: 12600 Third St., Grandview, MO), 1541 E. Bannister Road, Kansas City, MO
NPA: JobOne, Independence, MO
Contracting Activity: Animal and Plant Health Inspection Service, Minneapolis, MN

Service Type/Location: Custodial Service, Elizabeth Kee Federal Building, 601 Federal Street, Bluefield, WV
NPA: Integrated Resources, Inc., Maben, WV
Contracting Activity: Public Building Service, GSA/PBS/R03 Charleston, Roanoke, Huntington, Elkins & Parkersburg FO, Charleston, WV

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management.

[FR Doc. 2013–09216 Filed 4–18–13; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: 5/20/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

For Further Information or to Submit Comments Contact: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 7520–00–NSH–0188—Hole Punch, Paper, High-capacity, 3-Hole, Adjustable, 28 sheet capacity, Black Base, Black Grip.

NSN: 7520–00–NSH–0195—Hole Punch, Paper, Light Duty, 3-Hole, Adjustable, 10 sheet capacity, Metallic Base, Black Handle.

Coverage: B-List for the Broad Government requirement as aggregated by the General Services Administration, New York, NY.

NSN: 7520–00–NSH–0189—Hole Punch, Paper, Light Duty, 3-Hole, Adjustable, 10 sheet capacity, Black.

NSN: 7520–00–NSH–0191—Hole Punch, Paper, Light Duty, 3-Hole, Adjustable, 8 sheet capacity, Black.

NSN: 7520–00–NSH–0193—Hole Punch, Paper, High-capacity, 2-Hole, Adjustable, 30 sheet capacity, Black Base, Black Grip.

NSN: 7520–00–NSH–0194—Hole Punch, Paper, High-capacity, 3-Hole, Adjustable, 32 sheet capacity, Black Base, Metallic Handle.

NSN: 7520–00–NSH–0196—Hole Punch, Paper, Light Duty, 3-Hole, Adjustable, 11 sheet capacity, Black Base, Metallic Handle.

NSN: 7520–00–NSH–0197—Hole Punch, Paper, Desktop, 3-Hole, Adjustable, 11 sheet capacity, Metallic Base, Black Grip.

NSN: 7520–00–NSH–0199—Hole Punch, Paper, High-capacity, 2-Hole, Adjustable, 30 sheet capacity, Black Base, Metallic Handle.

Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration, New York, NY.

NPA: FVO Solutions Inc., Pasadena, CA.

Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Product, New York, NY.

NSN: 6230–00–NIB–0033—Kit, Safety Flare, Programmable Flicker Pattern, Red LED, 8in Diameter, AA Battery Operated.

NSN: 6230–00–NIB–0034—Kit, Safety Flare, Programmable Flicker Pattern, Red LED, 8in Diameter, Rechargeable Power Unit.

Coverage: B-List for the Broad Government Requirement as aggregated by the Defense Logistics Agency, Philadelphia, PA.

NPA: Tarrant County Association for the Blind, Fort Worth, TX.

Contracting Activity: Defense Logistics Agency, DLA Troop Support, Philadelphia, PA.

NSN: 7920–00–NIB–0548—Scrubber, Grout, Non-Scratch, Light Blue.

NSN: 7920–00–NIB–0549—Scrubber, Kitchen/Bath, Non-scratch, Dark Blue.

NSN: 7920–00–NIB–0550—Scrubber, Tub/Shower, Non-scratch, Light Blue.

Coverage: B-List for the Broad Government requirement as aggregated by the General Services Administration, Fort Worth, TX.

NPA: Industries for the Blind, Inc., West Allis, WI.

Contracting Activity: Federal Acquisition Service, GSA/FAS Southwest Supply Center(QSDAC), Fort Worth, TX.

NSN: 6135–00–826–4798—AAA Alkaline non-rechargeable battery. UOI is PG. PG = 12.

NSN: 6135–00–900–2139—9V Alkaline non-rechargeable battery. UOI is PG. PG = 12.

NSN: 6135–00–826–4798—AAA Alkaline non-rechargeable battery. UOI is PG. PG = 12.

NSN: 6135–00–900–2139—9V Alkaline non-rechargeable battery. UOI is PG. PG = 12.

NSN: 6135–00–835–7210—D Alkaline non-rechargeable battery. UOI is PG. PG = 12.

Coverage: A-List for the Total Government Requirement as aggregated by the Defense Logistics Agency, Columbus, OH.

NPA: Eastern Carolina Vocational Center, Inc., Greenville, NC.

Contracting Activity: Defense Logistics Agency, DLA Land and Maritime, Columbus, OH.

Patricia Briscoe,

Deputy Director, Business Operations Pricing and Information Management.

[FR Doc. 2013–09215 Filed 4–18–13; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products and a service from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 5/20/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 3/8/2013 (78 FR 15000) and 11/2/2012 (77 FR 66181), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service deleted from the Procurement List.

End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

Products

NSN: 6545–01–168–6893—First Aid Kit,

Small Craft
NSN: 6545–01–141–9476—Medical Equipment Set, Ground Ambulance
NSN: 6545–01–191–8972—Medical Equipment Set, Trauma, Field
NSN: 6545–01–191–8971—Medical Equipment Set, X-Ray, Field
NSN: 6545–00–920–7125—First Aid Kit, Gun Crew
NPA: Ontario County Chapter, NYSARC, Inc., Canandaigua, NY
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA
NSN: 1680–00–677–2060—Bottom Assembly, Crew Berth
NPA: None assigned.
Contracting Activity: Defense Logistics Agency Aviation, Richmond, VA

Service

Service Type/Location: Custodial Services, Kastenmeir US Courthouse, 120 Henry Street, Madison, WI
NPA: Madison Area Rehabilitation Centers, Inc., Madison, WI
Contracting Activity: GSA, Public Buildings Service, Property Management Service Center, Chicago, IL

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2013–09217 Filed 4–18–13; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0066]

Proposed Extension of Approval of Information Collection; Comment Request: Recordkeeping Requirements Under the Safety Standard for Infant Walkers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed 3-year extension of approval of information collection for the recordkeeping requirements in the safety standard for infant walkers, 16 CFR part 1216. The Office of Management and Budget (OMB) previously approved the collection of information under control number 3041–0141. OMB's most recent extension of approval will expire on July 31, 2013. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive comments not later than June 18, 2013.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0066, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov*.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Section 104(B) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires the CPSC to promulgate consumer product safety standards for durable infant or toddler products. On June 21, 2010, in compliance with the CPSIA, the Commission published in the **Federal Register** a safety standard for infant walkers that incorporated by reference the voluntary standard for infant walkers issued by ASTM International, ASTM F977–07, with some modifications to further reduce the risk of injury associated with infant walkers. The rule became effective on December 21, 2010.

B. Estimated Burden

Sections 8.1and 9.1 of the voluntary standard ASTM F977–07, which is now a mandatory standard, contain requirements for marking, labeling, and instructional literature that are disclosure requirements, thus falling within the definition of ''collections of information.'' 5 CFR 1320.3(c). Section 8.1 of ASTM F977–07 requires:

- The name and the place of business (city, state, and mailing address, including zip code) and/or telephone number of the manufacturer, importer distributor, or seller; and
- A code mark or other means that identifies the date (month and year, as a minimum) of manufacture.

Section 9.1 of ASTM F977–07 requires infant walkers to be provided with easy to read instructions regarding assembly, maintenance, cleaning, and use.

There are 16 known firms supplying infant walkers to the U.S. market. All 16 firms are assumed to already use labels on both their products and their packaging, but they might need to make some modifications to their existing labels. The estimated time required to make these modifications is about 1 hour per model. Each of these firms supplies an average of four different models of infant walkers; therefore, the estimated burden hours associated with labels is 1 hour $\times$ 16 firms $\times$ 4 models per firm = 64 annual hours.

Section 9.1 of ASTM F977–07 requires instructions to be supplied with the product. This is a practice that is usual and customary with infant walkers. These are products that generally require some installation and maintenance instructions, and any products sold without such information would not be able to successfully compete with products that provide this information. Therefore, because the CPSC is unaware of infant walkers that: (a) generally require some installation, but (b) lack any instructions to the user about such installation, there are no burden hours associated with the instruction requirement in section 9.1 because any burden associated with supplying instructions with infant walkers would be ''usual and customary'' and not within the definition of ''burden'' under OMB's regulations.

CPSC staff estimates that hourly compensation for the time required to create and update labels is $27.12 (U.S. Bureau of Labor Statistics, ''Employer

Costs for Employee Compensation,'' December 2012, Table 9, total compensation for all sales and office workers in goods-producing private industries: *http://www.bls.gov/ncs/*). Therefore, the estimated annual cost associated with the proposed requirements is $1,736 ($27.12 per hour × 64 hours = $1,736).

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 16, 2013.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2013–09226 Filed 4–18–13; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0088]

Proposed Extension of Approval of Information Collection; Comment Request: Third Party Conformity Assessment Body Registration Form

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed 3-year extension of approval of information collection regarding a form used to evaluate whether third party conformity assessment bodies meet the requirements to test for compliance to specified children's product safety rules. Third party conformity assessment bodies found to meet the requirements are listed on the CPSC Web site. The Office of Management and Budget (OMB) previously approved the collection of information under control number 3041–0143. OMB's most recent extension of approval will expire on July 31, 2013. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive comments not later than June 18, 2013.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0088, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Improvement Act of 2008 (CPSIA) requires third party testing be conducted by a third party conformity assessment body for any children's product, that is subject to a children's product safety rule, before importing for consumption or warehousing or distributing in commerce. The CPSIA allows accreditation of third party conformity assessment bodies to be conducted either by the Commission or by an independent accreditation organization designated by the Commission, and requires that the Commission maintain on its Web site an up-to-date list of entities that have been accredited to assess conformity with children's product safety rules. With the exception of firewalled third party conformity assessment bodies, the Commission has chosen to accept the accreditation of third party conformity assessment bodies that meet accreditation requirements of an independent accreditation organization.

In order to assess a third party conformity assessment body's qualifications for acceptance by CPSC, information related to location, accreditation, and ownership must be collected from third party conformity assessment bodies. The CPSC uses an online collection form, CPSC Form 223, to gather information from third party conformity assessment bodies voluntarily seeking acceptance by CPSC. The information collected relates to location, accreditation, and ownership. The Commission staff uses this information to assess:

- A third party conformity assessment body's status as either an independent third party conformity assessment body, a government-owned or government-controlled conformity assessment body, or a firewalled conformity assessment body;
- Qualifications for acceptance by CPSC to test for compliance to specified children's product safety rules; and
- Eligibility for acceptance on the CPSC Web site.

The Commission recently published a final rule (16 CFR part 1112) regarding the requirements for third party conformity assessment bodies in the **Federal Register** on March 12, 2013, which will become effective on June 10, 2013. Once 16 CFR part 1112 is in effect it will require the collection of information in CPSC Form 223:

- Upon initial application by the third party conformity assessment body for acceptance by CPSC;

• Whenever there is a change to accreditation or ownership information; and

• At least every 2 years as part of a regular audit process.

B. Estimated Burden

The CPSC estimates the burden of the collection of information in CPSC Form 223 is as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Activity	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total hours
Initial Registration	55	1	55	1	55
Re-Registration	204	1	204	1	204
Changes in Information	3	1	3	0.25	0.75
Total	.....	.....	.....	.....	259.75

These estimates are based on the following information:

• From March 19, 2012 to March 19, 2013, 56 new third party conformity assessment bodies have registered with the CPSC. Since 2011, the number of third party conformity assessment bodies (53) has remained stable. Therefore, the estimated number of third party conformity assessment bodies who would register initially would be 55.

• Under the final rule 16 CFR part 1112, third party conformity assessment bodies are required to resubmit CPSC Form 223 every two years. As all third party conformity assessment bodies have not submitted their first CPSC Form 223s at the same time, only some would be expected to resubmit a CPSC Form 223 in any one year. As of March 2013, 409 third party conformity assessment bodies have registered with CPSC. Approximately half (204) of these firms would be required to re-register with CPSC.

• Under the final rule 16 CFR part 1112, third party conformity assessment bodies are required to keep the information submitted on CPSC Form 223 up to date and to submit a new CPSC Form 223 whenever the information changes. Based on current experience with third party conformity assessment bodies, CPSC staff estimates that third party conformity assessment bodies will make no more than 3 revisions per year to update their information. A change in information is a change which does not require review of laboratory accreditation documents, such as scope or test methods. Examples of revised information include changes in the Web site URL, name of the laboratory, and name of point of contact.

The total burden, therefore, is 259.75 hours, which is rounded up to 260 hours. CPSC staff estimates that hourly compensation for the time required for recordkeeping is $27.12 per hour (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' Table 9, total compensation for sales, office, and related workers in goods-producing industries: *http:www.bls.gov/ncs*). The total cost burden to the respondents is approximately $7,052 ($27.12 × 260 hours = $7,051.20).

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

• Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

• Whether the estimated burden of the proposed collection of information is accurate;

• Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

• Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 16, 2013.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2013–09225 Filed 4–18–13; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0073]

Proposed Extension of Approval of Information Collection; Comment Request: Virginia Graeme Baker Pool and Spa Safety Act; Compliance Form

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed 3-year extension of approval of information collection regarding a form used to verify whether pools and spas are in compliance with the Virginia Graeme Baker Pool and Spa Safety Act. The Office of Management and Budget (OMB) previously approved the collection of information under control number 3041–0142. OMB's most recent extension of approval will expire on July 31, 2013. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive comments not later than June 18, 2013.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0073, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On December 19, 2008, the Virginia Graeme Baker Pool and Spa Safety Act (Pool and Spa Safety Act) became effective (Pub. L. 110–140). The Pool and Spa Safety Act applies to public pools and spas and requires that each swimming pool and spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard or any successor standard regulating such swimming pool or drain cover pursuant to section 1404(b) of the Pool and Spa Safety Act (Drain Cover Standard).

On August 5, 2011, the Commission published a final rule incorporating ANSI/APSP–16 2011 as the successor standard, effective September 6, 2011. In addition to the anti-entrapment devices or systems, each public pool and spa in the United States with a single main drain other than an unblockable drain shall be equipped with one or more of the following devices or systems designed to prevent entrapment by pool or spa drains that meet the performance requirements of any ASME/ANSI or ASTM standard if such standard exists for such device or system; safety vacuum release system; suction-limiting vent system; gravity drainage system; automatic pump shut-off system or drain disablement. The Pool and Spa Safety Act is designed to prevent the tragic and hidden hazard of drain entrapment and eviscerations in public pools and spas.

B. Estimated Burden

CPSC staff estimates that there may be approximately 97 inspections per year. CPSC staff estimates investigators will be talking to either the pool owners/operators or staff of the pool owners/operators at the time of the inspection. Investigators will be collecting drain cover and sump certification documents. It is estimated that 3 hours will be required to inspect a pool or spa facility. The total testing burden hours are 291 (97 inspections × 3 hours per inspection). We estimate that hourly compensation for the time required for testing is $61.06 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' December 2012, Table 9, total compensation for management, professional, and related workers in goods-producing industries: *http://www.bls.gov/ncs*). We estimate the annual cost to be $17,768 ($61.06 × 291).

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 16, 2013.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2013–09227 Filed 4–18–13; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, April 24, 2013, 10:00 a.m.–11:00 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

Briefing Matter: Strollers—NPR

A live webcast of the Meeting can be viewed at *www.cpsc.gov/live.* For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: April 17, 2013.

Todd A. Stevenson,

Secretary.

[FR Doc. 2013–09434 Filed 4–17–13; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting; Correction

AGENCY: DoD.

ACTION: Meeting notice; correction.

SUMMARY: On April 2, 2013 (78 FR 19691), the Department of Defense published a notice announcing a meeting of the Defense Business Board. Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the meeting time and agenda have changed. All other information in the April 2, 2013 notice remains the same.

DATES: The public meeting of the Defense Business Board will be held on Thursday, April 25, 2013. The meeting will begin at 12:30 p.m. and will now end at 1:45 p.m.

FOR FURTHER INFORMATION CONTACT: The Board's Designated Federal Officer is Phyllis Ferguson, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *Phyllis.Ferguson@osd.mil,* 703–695–7563. For meeting information please contact Ms. Debora Duffy, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *Debora.Duffy@osd.mil,* (703) 697–2168.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: At this meeting, the Board will deliberate the

findings and draft recommendations from the Task Group ''Applying Best Business Practices for Corporate Performance Management to DoD.''

Meeting Agenda:

12:30 p.m.–1:45 p.m. Task Group Outbrief and Board Deliberations, ''Applying Best Business Practices for Corporate Performance Management to DoD''

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b 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 is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Debora Duffy at the number listed in **FOR FURTHER INFORMATION CONTACT** no later than 12:00 p.m. on Monday, April 22, 2013 to register and make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Metro Entrance with sufficient time to complete security screening no later than 12:10 p.m. on April 25. To complete security screening, please come prepared to present two forms of identification and one must be a pictured identification card.

Dated: April 16, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–09208 Filed 4–18–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Extension of Public Comment Period for the Draft Environmental Impact Statement for U.S. Navy F–35C West Coast Homebasing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: A Notice of Availability for the Department of the Navy's (DoN) Draft Environmental Impact Statement (EIS) for the U.S. Navy F–35C West Coast Homebasing was published in the **Federal Register** by the U.S. Environmental Protection Agency on February 15, 2013 (78 FR 11171). The public review period ends on April 22, 2013. This notice announces an extension of the public comment period until May 7, 2013.

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Command Southwest, Attn: Code EV21.AK (F–35C EIS Project Manager), 1220 Pacific Highway, Building 1, 5th Floor, San Diego, CA 92132.

SUPPLEMENTARY INFORMATION: This notice announces an extension of the public comment period until May 7, 2013. Comments may be submitted in writing to Naval Facilities Engineering Command Southwest, Attn: Code EV21.AK (F–35C EIS Project Manager), 1220 Pacific Highway, Building 1, 5th Floor, San Diego, CA 92132 or electronically via the project Web site (*www.navyf35cwestcoasteis.com*). All written comments must be postmarked or received (online) by May 7, 2013, to ensure they become part of the official record. All comments will be addressed in the Final EIS.

A copy of the Draft EIS (with the Draft Clean Air Act Conformity Determination) is available for electronic viewing or download at *www.navyf35cwestcoasteis.com.* In addition, paper copies of the Draft EIS are available for public review at the following libraries:

1. City of El Centro Public Library, 1140 North Imperial Avenue, El Centro, California 92243.

2. City of Imperial Public Library, 200 West 9th Street, Imperial, California 92251.

3. Imperial County Free Library, Holtville Branch, 101 East 6th Street, Holtville, California 92250.

4. Imperial County Free Library, Heber Branch, 1078 Dogwood Road, Heber, California 92257.

5. Imperial County Free Library, Seeley Library Services provided at the Seeley Community Church, 1774 West Rio Vista Street, Seeley, California 92243.

6. Kings County Library, Lemoore Branch, 457 C Street, Lemoore, California 93245.

7. Kings County Library, Hanford Branch, 401 North Douty Street, Hanford, California 93230.

8. Fresno County Public Library, Central Library, 2420 Mariposa Street, Fresno, California 93721.

9. Fresno County Public Library, Riverdale Branch Library, 20975 Malsbary Avenue, Riverdale, California 93656.

10. West Hills College Lemoore Library, 555 College Avenue, Lemoore, California 93245.

Dated: April 8, 2013.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–09207 Filed 4–18–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Draft Supplemental Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury

AGENCY: Department of Energy (DOE).

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the *Draft Long-Term Management and Storage of Elemental Mercury Supplemental Environmental Impact Statement* (Mercury Storage SEIS, DOE/EIS–0423–S1) for public comment. As required by the Mercury Export Ban Act of 2008 (hereafter referred to as ''the Act''), DOE plans to identify a facility or facilities for the long-term management and storage of elemental mercury generated in the United States (U.S.) To this end, DOE issued the *Final Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury* (Mercury Storage EIS, DOE/EIS–0423, January 2011) to analyze reasonable alternatives, in accordance with the National Environmental Policy Act (NEPA), for locating and developing such a facility. Subsequently, DOE identified three additional, reasonable alternative locations in the vicinity of its Waste Isolation Pilot Plant (WIPP) in Carlsbad, NM. On June 5, 2012, DOE announced its intent to prepare a supplement to the Mercury Storage EIS and held a 30-day public scoping period. This Draft Mercury Storage Supplemental EIS (Draft Mercury Storage SEIS or Draft SEIS) considered all comments received during the public scoping period.

DATES: DOE invites public comment on this Draft Mercury Storage SEIS during a 45-day public coment period commencing with the date of publication of this Notice in the **Federal Register**, and ending on June 3, 2013. In preparing the Mercury Storage SEIS, DOE will consider all comments received or postmarked by that date. Comments received after that date will be considered to the extent practicable.

ADDRESSES: DOE will hold two public hearings during the public comment period. The dates, times and locations of the public hearings are as follows.

May 7, 2013
Open house 5:00 p.m.—6:00 p.m.
Public hearing 6:00 p.m.—9:00 p.m.
Skeen-Whitlock Building Auditorium
DOE, Carlsbad Field Office
4021 National Parks Highway
Carlsbad, New Mexico 88220
May 9, 2013
Open house 5:00 p.m.—6:00 p.m.
Public hearing 6:00 p.m.—9:00 p.m.

Crowne Plaza Albuquerque Hotel
1901 University Blvd. NE
Albuquerque, New Mexico 87102.

Written comments not submitted during the public hearings may be mailed to:

Mr. David Levenstein, Document Manager, Office of Environmental Compliance (EM–11), U.S. Department of Energy, Post Office Box 2612, Germantown, Maryland 20874

Written comments may also be submitted via the Draft Mercury Storage EIS Web site at *http://mercurystorageeis.com/.*

FOR FURTHER INFORMATION CONTACT: To request further information about the Draft Mercury Storage SEIS or the Mercury Storage EIS, or to be placed on the distribution list for the Final Mercury Storage SEIS, use either of the methods (mail or Web site) listed under **ADDRESSES**. The Draft Mercury Storage SEIS contains a Summary, all chapters, appendices and other text within one volume, and includes a CD ROM of the full Draft Mercury Storage SEIS and the full 2011 Mercury Storage EIS.

For general information concerning DOE's NEPA process, please contact:

Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–4600, by fax at (202) 586–7031, by email at *askNEPA@hq.doe.gov* or leave a message at 1–800–472–2756. The Draft Mercury Storage SEIS is available on the Internet at *http://www.energy.gov/NEPA/* and on the project Web site at *http://mercurystorageeis.com/.*

SUPPLEMENTARY INFORMATION:

Background

The Mercury Export Ban Act of 2008 (Pub. L. 110–414) amends the Toxic Substances Control Act (TSCA) (15 U.S.C. 2605(f)) to prohibit the sale, distribution, or transfer by Federal agencies to any other Federal agency, any state or local government agency, or any private individual or entity, of any elemental mercury under the control or jurisdiction of a Federal agency (with certain limited exceptions). It also amends TSCA (15 U.S.C. 2611(c)) to prohibit the export of elemental mercury from the U.S. effective January 1, 2013 (subject to certain essential use exemptions). Section 5 of the Act, *Long-Term Storage,* amends the Resource Conservation and Recovery Act (RCRA, 42 U.S.C. 6939f) and directs DOE to designate a facility or facilities for the long-term management and storage of elemental mercury generated within the U.S.

To evaluate the range of reasonable alternatives for siting, constructing and operating a facility or facilities to meet its obligations under the Act, DOE prepared the Mercury Storage EIS in accordance with NEPA and its implementing regulations (40 CFR parts 1500–1508 and 10 CFR part 1021) and issued the Mercury Storage EIS in January 2011 (76 FR 5145). The Mercury Storage EIS and related NEPA documents are available at the Web sites listed under **ADDRESSES**. DOE estimated that up to approximately 10,000 metric tons of elemental mercury would need to be managed and stored at the DOE facility during the 40-year period of analysis. These estimates do not include approximately 4,400 metric tons of elemental mercury that the Department of Defense (DOD) stores at its facility in Hawthorne, Nevada.

Purpose and Need for Action

DOE's purpose and need for action remains unchanged from the 2011 Mercury Storage EIS. That is, DOE needs to designate a facility or facilities for the long-term management and storage of elemental mercury generated within the U.S., as required by the Act.

Proposed Action

As also stated in the 2011 Mercury Storage EIS, DOE proposes to construct one or more new facilities and/or select one or more existing facilities (including modification as needed) for the long-term management and storage of elemental mercury in accordance with the Act. Facilities to be constructed as well as existing or modified facilities must comply with applicable requirements of section 5(d) of the Act, *Management Standards for a Facility,* including the requirements of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), and other permitting requirements.

Proposed Alternatives

The January 2011 Mercury Storage EIS evaluated seven candidate sites for the facility or facilities, as well as a No Action Alternative as required under NEPA. The candidate sites are: DOE Grand Junction Disposal site near Grand Junction, Colorado; DOE Hanford site near Richland, Washington; Hawthorne Army Depot near Hawthorne, Nevada; DOE Idaho National Laboratory near Idaho Falls, Idaho (2 locations); DOE Kansas City Plant in Kansas City, Missouri; DOE Savannah River Site near Aiken, South Carolina; and Waste Control Specialists, LLC, site near Andrews, Texas.

Since publication of the 2011 Mercury Storage EIS, DOE has reconsidered the range of reasonable alternatives evaluated in that EIS and on June 5, 2012, DOE announced its intent to prepare a supplement to the Mercury Storage EIS (77 FR 33204). DOE held two public meetings during a 30-day public scoping period and considered all comments received during that period in preparing this Draft SEIS.

The scope of this Draft Mercury Storage SEIS includes three locations for a long-term mercury storage facility at or near the WIPP site, which DOE operates for disposal of defense transuranic waste. The additional locations evaluated in the Draft Mercury Storage SEIS are in: Section 20, Township 22 South, Range 31 East within the land subject to the WIPP Land Withdrawal Act (Pub. L. 102–579) as amended; Section 10, Township 22 South, Range 31 East, in the vicinity of WIPP, but outside of the lands withdrawn by the WIPP Land Withdrawal Act; and Section 35, Township 22 South, Range 31 East, also outside of the lands withdrawn by the WIPP Land Withdrawal Act. Each of these locations is suitable for an above-ground storage facility and can take advantage of existing roads and other infrastructure.

DOE identified the Waste Control Specialists, LLC location near Andrews, Texas, as the Preferred Alternative in the 2011 Mercury Storage EIS. DOE has not changed its preferred alternative in the Draft Mercury Storage SEIS; however, the preferred alternative may or may not change as a result of public comment on this draft and further analysis in completing the Final Mercury Storage SEIS.

Among the potential health and environmental impacts evaluated in the Draft Mercury Storage SEIS is an evaluation of the potential cumulative impacts of constructing and operating a facility for long-term management and storage of elemental mercury with the ongoing and planned operations of WIPP for disposal of defense transuranic waste. The Draft Mercury Storage SEIS also considers the potential disposal of greater-than-Class C waste (*Draft Environmental Impact Statement for the Disposal of Greater-Than-Class C (GTCC) Low-level Radioactive Waste and GTCC-Like Waste* (DOE/EIS–0375, February 2011)), which included two separately identified locations at WIPP and the WIPP vicinity.

Public Participation in the SEIS Process

At each public hearing, DOE representatives will be available during

an open house to greet stakeholders and review presentational materials. Participants wishing to speak during each public hearing will be asked to register and will be given 10 minutes to speak, in the order in which participants have signed up. Once all those who wish to speak have had an opportunity to do so, participants will be given additional time until time for the public hearings to conclude. A court reporter will record the proceedings at each public hearing.

DOE invites Federal agencies, state, local, and tribal governments, and the general public to comment on the Draft Mercury Storage SEIS during the public comment period. DOE will consider all public comments on the Draft SEIS equally in preparing the Final Mercury Storage SEIS. Any comments received after the deadline will be considered to the extent practicable.

Issued in Washington, DC, on April 16, 2013.

Mark Gilbertson,

Deputy Assistant Secretary for Site Restoration.

[FR Doc. 2013–09291 Filed 4–18–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2012–BT–BC–0030]

Department of Energy's (DOE) Participation in Development of the International Energy Conservation Code

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

ACTION: Notice.

SUMMARY: The DOE participates in the code development process of the International Code Council (ICC), which produces the International Energy Conservation Code (IECC). DOE will continue to publish code change proposals for the IECC before submitting them to the ICC to allow interested parties an opportunity to provide suggested revisions, enhancements to and comments on DOE code change proposals. This notice outlines the process by which DOE produces code change proposals, and participates in the ICC code development process.

FOR FURTHER INFORMATION CONTACT:

Jeremiah Williams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, Telephone: (202) 287–1941, Email: *jeremiah.williams@ee.doe.gov.*

Kavita Vaidyanathan, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, Mailstop GC–71, 1000 Independence Ave. SW., Washington, DC 20585, Telephone: (202) 586–0669, Email: *kavita.vaidyanathan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Department of Energy (DOE) supports the International Energy Conservation Code (IECC) by participating in the code development processes administered by the International Code Council (ICC). As a participant in this process, DOE considers and evaluates concepts to be submitted as proposed changes to the IECC (''code''). This Notice outlines the process by which DOE produces code change proposals, and participates in the ICC code development process. Note that, if approved through the ICC code development process, DOE's proposed changes would be contained in the next edition of the IECC.

A. Statutory Requirements

Title III of the Energy Conservation and Production Act, as amended (ECPA), establishes requirements related to energy conservation standards for new buildings. (42 U.S.C. 6831–6837). Section 307 (b) of ECPA directs DOE to support voluntary building energy codes by periodically reviewing the technical and economic basis of the voluntary building codes, recommending amendments to such codes, seeking adoption of all technologically feasible and economically justified energy efficiency measures, and otherwise participate in any industry process for review and modification of such codes. (42 U.S.C. 6836(b))

B. Background

The IECC serves as a model building energy code and is adopted by many U.S. states, territories, the District of Columbia, and localities across the nation. Development of the IECC is administered by the ICC, with revisions taking place every three years under the ICC governmental consensus process. Any party can propose changes to the IECC with proposed code changes subject to the bylaws, policies and procedures as defined by the ICC.[1]

[1] See *http://www.iccsafe.org/cs/codes/pages/default.aspx.*

II. DOE's Participation in the ICC Code Development Process

As described above, under ECPA, one of the methods by which DOE supports the upgrade of voluntary building energy codes is through participation in the IECC development process. DOE participates in the ICC code development process by:

1. Developing code change proposals for submission to the ICC;
2. Gathering public input on DOE code change proposals from interested parties prior to submitting them to ICC;
3. Conducting necessary technical analyses to document the validity of DOE code change proposals; and
4. Participating in the ICC code development hearings.

DOE Proposal Development

DOE seeks to advance energy efficiency in the IECC by strengthening the code where cost-effective, and improving the criteria to be more easily understood, applied, implemented and enforced. Prior to submitting code change proposals to the ICC, DOE has and will continue to publish code change proposals that it has developed, along with documentation of concepts, for public review and comment at: *http://www.energycodes.gov/development.* This represents an opportunity for parties to provide information they wish DOE to be aware of during the evaluation of proposals for the IECC. Following the opportunity for public review and comment DOE will not provide responses to individual comments, but will consider any and all comments timely submitted in developing final code change proposals. Final proposals will be posted at the same web address for public viewing prior to submitting to the ICC.

DOE Technical Analysis

In developing concepts for submission to the ICC, DOE conducts a series of analyses to evaluate energy savings and economic impacts of potential code change proposals. As this analysis is completed, resources have been and will be published online, including: the DOE residential cost-effectiveness methodology, energy and economic assumptions, energy simulation models, investigations into special topic areas, and draft proposal language. Any interested party wishing to review or build-upon the DOE analysis can access it via the DOE Building Energy Codes Web site.[2]

DOE references all analysis and supporting documentation as required by the ICC. Analysis performed by DOE

[2] See *http://www.energycodes.gov/development.*

or its contractors for the purpose of developing code change proposals should be considered on a technical basis, and does not represent an endorsement of any particular individual or organization. For the purposes of IECC development, DOE conducts analysis to support its code change proposals. DOE may indicate whether its technical analysis is relevant to a proposal presented by another entity (i.e., whether various proposals are the same). Again, however, such an indication would not constitute an endorsement of a proposal.

DOE is not able to provide technical assistance at the request of outside parties, but reserves the right to conduct analysis in support of proposals DOE is considering for submission to the ICC. While DOE cannot enter into joint code change proposals (outside of proposals submitted jointly with another federal agency), DOE intends to support efficiency concepts from the perspective of its own analysis. DOE also publishes the results of its analysis, along with supporting energy simulation models, for review and use by outside parties.

DOE's Participation in the ICC Code Development Hearings

At ICC hearings, DOE will communicate its opinion on proposals as follows: DOE will defend its proposals. To the extent that DOE has prepared a technical analysis of a proposal other than a DOE proposal, consistent with the discussion above, DOE may present the results of the analysis. Again, presentation of technical reviews does not constitute an endorsement of any proposal. DOE may also recognize a proposal to the extent that the proposal or provisions within the proposal are the same as a DOE proposal or provisions within a DOE proposal. DOE may alter its proposal based on information it obtains at the code hearings but, will not seek further comment before altering its proposal.

DOE anticipates that it or its contractors may be contacted regarding code concepts, ideas or change proposals prior to the code hearing and during the code hearing. While DOE code change proposals to the IECC are not regulations, DOE will follow ex parte communication policy for such communications. Guidance on ex parte communications was published on January 21, 2009 (74 FR 4685) and can be found at *http://energy.gov/gc/downloads/guidance-ex-parte-communications.* Note that such communications will be reflected in the public docket consistent with the ex parte guidance.

DOE maintains an organizational membership with the ICC. As an ICC governmental member, DOE will exercise voting privileges as defined by the guiding ICC rules and procedures.

III. DOE Participation in the Development of the 2015 IECC

DOE Proposal Development

In the current code cycle, the ICC will be considering proposed revisions to the 2012 IECC which will result in the 2015 IECC. Initial concepts DOE considered for the 2015 IECC were provided for public review and comment in October 2012 (public comments received are available at *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-BC-0030*). DOE then revised its proposals based on stakeholder feedback, and submitted final proposals to the ICC by the January 3, 2013 deadline. DOE's final proposals are available at *http://www.energycodes.gov/development.*

DOE Technical Analysis

In developing proposed revisions for the 2012 IECC, DOE conducted a series of analyses to evaluate energy savings and economic impacts of potential code change proposals. Final DOE code change proposals are published online along with supporting resources, including the DOE residential cost-effectiveness methodology, energy and economic assumptions, energy simulation models, and investigations into special topic areas. Any interested party wishing to review or build-upon the DOE analysis can access it via the DOE Building Energy Codes Web site.[3]

DOE's Participation in the ICC Code Development Hearings

At ICC hearings, DOE will communicate its opinion on proposals as follows: DOE will defend its proposals. To the extent that DOE has prepared a technical analysis of a proposal other than a DOE proposal, consistent with the discussion above, DOE may present it results of the analysis. Again, presentation of technical reviews does not constitute an endorsement of any proposal.

DOE may also recognize a proposal to the extent that the proposal or provisions within the proposal are the same as a DOE proposal or provisions within a DOE proposal. DOE may alter its proposal based on information it obtains at the code hearings but, will not seek further comment before altering its proposal.

As indicated above, DOE will follow DOE's ex parte communication policy for such communications. Note that such communications will be reflected in the public docket consistent with the ex parte guidance.

Issued in Washington, DC, on April 15, 2013.

Roland Risser,

Director, Building Technologies Office, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–09236 Filed 4–18–13; 8:45 am]

BILLING CODE 6450–01–P

[3] See *http://www.energycodes.gov/development.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–124–000]

ANR Pipeline Company; Notice of Application for Abandonment

Take notice that on April 4, 2013, ANR Pipeline Company (ANR), 717 Texas Street, Houston, TX 77002–2761, filed in Docket No. CP13–31–000, an application pursuant to sections 157.7 and 157.18 of the Commission's Regulations under the Natural Gas Act (NGA) as amended. ANR seeks authority to abandon by sale to Transcontinental Gas Pipe Line Company, LLC (Transco) ANR's 6.67% interest and related dedicated capacity in the Project Central Texas Loop facilities. These facilities will remain physically in place and held for future use. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of

the date of issuance of the Commission staff's FEIS or EA.

Any questions concerning this application may be directed to Rene Staeb, Manager, Project Determinations & Regulatory Administration, ANR Pipeline Company, 717 Texas Street, Houston, TX 77002–2761; phone (832)320–5215; FAX (820)320–6515.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: 5:00 p.m. Eastern Time on May 6, 2013.

Dated: April 15, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09257 Filed 4–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP13–113–000; PF12–16–000]

Dominion Cove Point LNG, LP; Notice of Application

Take notice that on April 1, 2013, Dominion Cove Point LNG, LP (Dominion Cove Point), 120 Tredegar Street, Richmond, Virginia, filed in Docket No. CP13–113–000 an application under section 3 of the Natural Gas Act (NGA) seeking authorization to construct, modify, own and operate certain facilities to enable the liquefaction of natural gas for the export at its existing Cove Point LNG terminal in Calvert County, Maryland. Additionally, pursuant to section 7 of the NGA, Dominion Cove Point seeks authority to construct, install, own, operate and maintain facilities on its Cove Point Pipeline at its existing compressor station and metering and regulating (M&R) site in Fairfax County, Virginia, and at its M&R site located in Loudon County, Virginia, for the transportation of natural gas for customers of Dominion Cove Point's LNG terminal, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Questions regarding this application should be directed to Amanda K. Prestage, Regulatory and Certificates Analyst III, Dominion Transmission, Inc., 701 East Cary Street, Richmond, Virginia 23219, or by telephone at 804–771–4416, or email at *Amanda.K.Prestage@dom.com*.

On June 26, 2012, the Commission staff granted Dominion Cove Point's request to utilize the Pre-Filing Process and assigned Docket No. PF12–16 to staff activities involved with Dominion Cove Point's Liquefaction Project. Now, as of the filing of the application on April 1, 2013, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP13–113–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's regulations, 18 CFR 157.9, within 90 days of this Notice, the Commission's staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission's staff issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to reach a final decision on a request for federal authorization within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission

and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on May 3, 2013.

Dated: April 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09261 Filed 4–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–491–000]

Trunkline Gas Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Trunkline Mainline Abandonment Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Trunkline Mainline Abandonment Project (Project), proposed by Trunkline Gas Company, LLC (Trunkline) in the above-referenced docket. Trunkline requests authorization to abandon by transfer to a corporate affiliate portions of its existing 100–1 and 100–2 looped pipeline systems and portions of compressor stations (CS) located in numerous counties in Illinois, Kentucky, Tennessee, Mississippi, Arkansas, Louisiana, and Texas. Trunkline would also abandon in place 12 compressor units totaling 15,850 horsepower, and abandon minor facilities at 163 sites across the two systems.

The EA assesses the potential environmental effects of the activities associated with the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Trunkline would conduct the following activities as part of the Project:

- Abandon by transfer 45.02 miles of the 24-inch-diameter 100–1 Loopline pipeline extending from mainline valve (MLV) 43–1 near Buna, Texas to the Longville CS near Longville, Louisiana;
- Abandon by transfer 725.46 miles of the 30-inch-diameter 100–2 Loopline pipeline extending from the Longville CS to the Tuscola CS near Tuscola, Illinois;
- Abandon in place a 3,000-hp compressor unit at the Pollock CS (Louisiana); a 1,050-hp compressor unit at the Epps CS, (Louisiana); four compressor units totaling 4,200 hp at the Shaw CS (Mississippi); five compressor units totaling 5,250 hp at the Independence CS (Mississippi); and a 2,350-hp compressor unit at the Joppa CS (Illinois); and
- Abandon minor facilities at 163 sites across the systems, 80 of which would require ground disturbing activities

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; Native American tribes; potentially affected landowners; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before May 22, 2013.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP12–491–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address:, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the

[1] See the previous discussion on the methods for filing comments.

Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP12–491). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Dated: April 15, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09258 Filed 4–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–73–000]

Sierrita Gas Pipeline LLC; Supplemental Notice of Intent To Prepare an Environmental Impact Statement for the Sierrita Pipeline Project and Request for Comments on Environmental Issues

As previously noticed on August 1, 2012, and supplemented herein, the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impact of the Sierrita Pipeline Project (Project) involving construction and operation of facilities by Sierrita Gas Pipeline LLC (Sierrita) in Pima County, Arizona (the project was previously known as the Sasabe Lateral Project). The Commission will use this EIS in its decision-making process to determine whether the Project is in the public convenience and necessity. The Commission staff began its review of the Project on May 2, 2012, during the pre-filing process under Docket No. PF12–11–000. The initial scoping period closed on October 27, 2012.

This notice announces the opening of a supplemental scoping period that the Commission will use to gather input from the public and interested agencies due to a change in the proposed Project route. Specifically, this notice is requesting comments as they relate to *Sierrita's proposed route modification* filed on March 25, 2013, and detailed below. Your input will help the Commission staff determine what issues relevant to the route modification need evaluation in the EIS. All previous comments submitted during the pre-filing process and initial scoping period do not need to be resubmitted. Further details on how to submit written comments are in the Public Participation section of this notice. Please note that this supplemental scoping period will close on May 13, 2013.

This notice is being sent to the Commission's current environmental mailing list for the Project. State and local government representatives should notify their constituents of the proposed project and encourage them to comment on their areas of concern.

Summary of the Project (as Supplemented)

The Project would consist of the installation of about 60 miles of 36-inch-diameter natural gas pipeline and construction of two meter stations and various other appurtenant facilities in Pima County, Arizona. The pipeline would link El Paso Natural Gas Company's [1] existing South Mainline System near Tucson to an interconnect with the Sasabe-Guaymas Pipeline at the U.S.-Mexico border near the town of Sasabe, Arizona.

Sierrita's route modification shifts an approximate 10 mile segment of the originally proposed pipeline route eastward to a new location closer to State Highway 286. It would leave the original proposed route at milepost 25.7 and rejoin at milepost 36.3. The route modification would be approximately 12 miles long and would add approximately 1.5 miles of length to the overall project. The general location of the Project facilities and route modification are shown in Appendix 1.[2]

Updated environmental information concerning the route modification, including field surveys, is pending and Sierrita will file this information with the FERC when completed.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues related to the route modification to address in the EIS. We will consider all filed comments during the preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the Project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation, wildlife, and endangered and threatened species;
- Land use and cumulative impacts;
- Socioeconomics;
- Cultural resources;
- Air quality and noise; and
- Public safety.

We will also evaluate possible alternatives to the Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EIS will present our independent analysis of the issues. We will publish and distribute the draft EIS for public comment. After the comment period, we will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section below.

Currently, the U.S. Fish and Wildlife Service (both the Arizona Ecological Services Office and the Buenos Aires National Wildlife Refuge), the Arizona Game and Fish Department, and the U.S. Customs and Border Protection are participating as cooperating agencies in the preparation of the EIS to satisfy their

[1] El Paso Natural Gas Company is an affiliate of Sierrita.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

NEPA responsibilities related to this Project or provide technical expertise.[4]

Public Participation

You can make a difference by providing us with your specific comments or concerns about the route modification of the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts associated with the route modification. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before May 13, 2013. This is not your only public input opportunity; please refer to the Environmental Review Process flow chart in Appendix 2.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number (CP13–73) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, whose property was affected by the corresponding segment of the original route, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project.

Copies of the completed draft EIS will be sent to the environmental mailing list for public review and comment.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP13–73). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: April 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09260 Filed 4–18–13; 8:45 am]

BILLING CODE 6717–01–P

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2503–153]

Duke Energy Carolinas, LLC; 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:* 2503–153.

c. *Date Filed:* December 17, 2012.

d. *Applicant:* Duke Energy Carolinas. LLC.

e. *Name of Project:* Keowee-Toxaway Hydroelectric Project.

f. *Location:* Lake Keowee, Oconee County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kelvin Reagan, Duke Energy Carolinas, P.O. Box 1006, Charlotte, NC 28201–1006, (704) 382–9386.

i. *FERC Contact:* Ms. Jade Alvey, (202) 502–6864, *jade.alvey@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 13, 2013.

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–2503–153) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments

or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* Duke Energy Carolinas, LLC requests Commission approval to lease 1.331 total acres of project lands, known as Mosquito Point, to Breazeale Shoreline Erosion Control, Inc., Kroeger Marine Construction, Inc, Lakeside Barge Company, Inc., Trees Unlimited, Inc./ Shorescapes, and any additional future contractors, for use as a construction staging area for lake construction activities including, but not limited to excavations, shoreline stabilization, assembling of docking facilities and mooring, loading and unloading of materials and equipment from barges, and other construction-related activities. Mosquito Point has existing staging facilities currently in use, and the licensee is requesting that the existing and additional proposed facilities be considered for approval together. The Mosquito Point shoreline area is 428.38 contiguous linear feet, but is described as four areas for the purpose of the application. Each area would house two barges and two barge pushers. The existing facilities consist of three wooden piers, a retaining wall, three gravel loading ramps, and a concrete loading ramp. The additional proposed facility is a gravel loading ramp to be used as a barge loading area. The application provides location, descriptions, and dimension for the existing and proposed facilities, as well as documentation of consultation with the relevant agencies.

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–2503) 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: April 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09262 Filed 4–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[RM07–16–000; RM01–5–000; RM12–3–000]

Supplemental Notice of Technical Conference

	Docket Nos.
Filing via the Internet	RM07–16–000
Electronic Tariff Filings	RM01–5–000
Revisions to Electric Quarterly Report Filing Process	RM12–3–000

As announced in the Notice issued March 8, 2013,[1] the staff of the Federal Energy Regulatory Commission (Commission) will hold a technical conference on April 16, 2013 from 10:00 a.m. to 1:00 p.m. (EST) to demonstrate changes to the company registration process applicable to filers of electronic tariffs (eTariff) and other filings, such as Electric Quarterly Reports (EQRs), requiring the use of a company registration account.[2] Notice is hereby given that conference materials have been posted to the Commission's Web site and that there have been changes affecting the off-site broadcast of the technical conference.

The posted materials can be accessed by navigating to the Calendar of Events on the Commission's Web site, *www.ferc.gov*, and locating the technical conference on the Calendar.

In addition, a free webcast of the conference will be offered in lieu of WebEx and teleconferencing service. Anyone with internet access who wants to view and listen to the conference can do so by navigating to the Calendar of Events at *www.ferc.gov* and locating the technical conference on the Calendar. An email account has been created for off-site participants to submit questions for the question and answer session at the technical conference. During the technical conference, please email questions to *CIDQA@ferc.gov.* The Capitol Connection provides technical support for the webcast. For webcast support please visit *www.CapitolConnection.org* or call 703–993–3100.

Registration is not required for any technical conference participants, whether attending on-site or viewing the webcast. Off-site participants who have already registered for WebEx or teleconferencing will receive an email with a link to the webcast.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX

[1] Notice of Technical Conference, Docket Nos. RM01–5–000, RM07–16–000, RM12–3–000 (March 8, 2013).

[2] The changes that will be demonstrated were directed by the Commission in its February 7, 2013 order. *See Revisions to Company Registration and Establishing Technical Conference,* 142 FERC ¶ 61,097 (2013). The Commission also has required the use of company registration for filers of Electric Quarterly Reports. *Revisions to Electric Quarterly Report Filing Process,* Order No. 770, 77 FR 71288 (Nov. 30, 2012), FERC Stats. & Regs. [Regulation Preambles] ¶ 31,338 (cross-referenced at 141 FERC ¶ 61,120) (Nov. 15, 2012).

to 202–208–2106 with the required accommodations.

For more information about the technical conference, please contact: Nicholas Gladd, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8836, *Nicholas.Gladd@ferc.gov.*

Dated: April 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09259 Filed 4–18–13; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0216; FRL–9383–3]

Fipronil; Receipt of Application for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Oregon Department of Agriculture to use the pesticide fipronil (CAS No. 120068–37–3) to treat up to 600 acres of turnips and rutabagas to control the cabbage maggot.

The applicant proposes a use which is supported by the Interregional Research Project No. 4 (IR–4) and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before May 6, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2013–0216, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; fax number: (703) 605–0781; email address: *conrath.andrea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is the agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Oregon Department of Agriculture has requested the EPA Administrator to issue specific exemptions for the use of fipronil on turnip and rutabaga to control the cabbage maggot. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that an emergency situation exists based upon three factors: A severe increase in cabbage maggot populations; apparent increasing resistance of the maggot to the registered alternative; and phytotoxicity of the registered alternative to emerging seedlings. The applicant states that significant economic losses will be suffered without adequate control of the cabbage

maggot in turnip and rutabaga production. The applicant indicates that fipronil has been shown to provide excellent crop safety, and overall provides better control than the registered alternative.

The Applicant proposes to make no more than one application at 4.16 fluid oz. of product per acre, to a maximum of 600 acres of rutabagas and turnips, for use of up to a potential maximum of 19.5 gallons of product. Applications would potentially be made from April 1 through September 30, 2013, in the Oregon counties of Clackimas, Marion, Multnomah, and Umatilla.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing a use which is supported by the IR–4 program and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. The notice provides an opportunity for public comment on the application. The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Oregon Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 12, 2013.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2013–09285 Filed 4–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9008–7]

Environmental Impacts Statements; Notice Of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 04/08/2013 Through 04/12/2013 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20130089, Draft EIS, USFS, ID, Clear Creek Integrated Restoration Project, Comment Period Ends: 06/03/2013, Contact: Lois Hill 208–935–4258.

E*IS No. 20130090, Final EIS, USACE, CA,* Eagle Rock Aggregate Terminal Project, Review Period Ends: 05/20/2013, Contact: John W. Markham 805–585–2150.

EIS No. 20130091, Draft EIS, USFWS, NPS, 00, Niobrara Confluence and Ponca Bluffs Conservation Areas Land Protection Plan, Comment Period Ends: 06/03/2013, Contact: Nick Kaczor 303–236–4387. The U.S. Department of the Interior's Fish and Wildlife Service and the National Park Service are joint lead agencies for this project.

EIS No. 20130092, Draft EIS, USFS, OR, West Bend Vegetation Management Project and Forest Plan Amendments, Comment Period Ends: 06/03/2013, Contact: Beth Peer 541–383–4769.

EIS No. 20130093, Draft EIS, USACE, FL, Lake Worth Inlet, Palm Beach Harbor Project, Comment Period Ends: 06/03/2013, Contact: Angela Dunn 904–232–2108.

EIS No. 20130094, Draft Supplement, DOE, 00, Long-Term Management and Storage of Elemental Mercury Facilities, Comment Period Ends: 06/03/2013, Contact: David Levenstein 301–903–6500.

EIS No. 20130095, Second Draft Supplement, USFS, CA, Tehachapi Renewable Transmission Project, Comment Period Ends: 06/03/2013, Contact: Lorraine Gerchas 626–574–5281.

EIS No. 20130096, Draft Supplement, USFS, WY, Long Term Special Use Authorization for Wyoming Game and Fish Commission to Use National Forest System Lands for their Winter Elk Management Activities at Alkali Creek Feedground, Comment Period Ends: 06/03/2013, Contact: Pam Bode 307–739–5513.

EIS No. 20130097, Final EIS, STB, CA, ADOPTION—California High-Speed Train: Merced to Fresno Section, Review Period Ends: 05/20/2013, Contact: David Navecky 202–245–0294. U.S. Department of Transportation's Surface Transportation Board (STB) has adopted the Federal Railroad Administration's FEIS #20120118, filed 04/18/2012. The STB was not a cooperating agency for the above FEIS. Recirculation of the document is necessary under Section 1506.3(b) of the CEQ Regulations.

EIS No. 20130098, Draft EIS, FAA, TX, SpaceX Texas Launch Site, Comment Period Ends: 06/03/2013, Contact: Stacey M. Zee 202–267–9305.

EIS No. 20130099, Final EIS, USFWS, OH, Proposed Habitat Conservation Plan and Incidental Take Permit for the Indiana Bat (Myotis sodalis) for the Buckeye Wind Power Project, Review Period Ends: 05/20/2013, Contact: Megan Seymour 614–416–8993 ext. 16.

Amended Notices

EIS No. 20130031, Draft EIS, USN, CA, U.S. Navy F–35C West Coast Homebasing, Comment Period Ends: 05/07/2013, Contact: Amy Kelley 619–532–2799. Revision to FR Notice Published 2/15/201; Extending Comment Period from 4/22/2013 to/5/7/2013.

EIS No. 20130044, Draft EIS, FHWA, NV, Pyramid Way and McCarran Boulevard Intersection Improvement Project, Comment Period Ends: 04/30/2013, Contact: Abdelmoez Abdalla, 775–687–1231. Revision to FR Notice Published 04/11/2013; Extending Comment Period from 4/15/2013 to 04/30/2013.

Dated: April 16, 2013.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2013–09280 Filed 4–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0026; FRL–9383–8]

Pesticide Products; Registration Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received several applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before May 20, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the EPA File Symbol of interest as shown in the body of this

document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone, email, or mail. Mail correspondence to the Biopesticides and Pollution Prevention Division (BPPD) (7511P) or the Registration Division (RD) (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received several applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under the Agency's public participation process for registration actions, there will be an additional opportunity for a 30–day public comment period on the proposed decision. Please see the Agency's public participation Web site for additional information on this process (*http://www.epa.gov/pesticides/regulating/registration-public-involvement.html*).

EPA received the following applications to register pesticide products containing an active ingredient not included in any currently registered products:

1. *EPA File Symbol:* 100–RUTI. *Docket ID Number:* EPA–HQ–OPP–2013–0141. *Applicant:* Syngenta Crop Protection LLC., P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Benzovindiflupyr. *Product Type:* Fungicide. *Proposed Use:* Technical product for Manufacturing Use Only. Contact: Shaunta Hill, (RD), (703) 347–8961, email address: *hill.shaunta@epa.gov.*

2. *EPA File Symbol:* 100–RUTR. *Docket ID Number:* EPA–HQ–OPP–2013–0141. *Applicant:* Syngenta Crop Protection LLC., P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Benzovindiflupyr. *Product Type:* Fungicide. *Proposed Use:* Terrestrial food crops. Contact: Shaunta Hill, (RD), (703) 347–8961, email address: *hill.shaunta@epa.gov.*

3. *EPA File Symbol:* 100–RUTE. *Docket ID Number:* EPA–HQ–OPP–2013–0141. *Applicant:* Syngenta Crop Protection LLC., P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Benzovindiflupyr. *Product Type:* Fungicide. *Proposed Use:* Turf and Greenhouse/Outdoor Ornamentals. Contact: Shaunta Hill, (RD), (703) 347–8961, email address: *hill.shaunta@epa.gov.*

4. *EPA File Symbol:* 100–RUTA. *Docket ID Number:* EPA–HQ–OPP–2013–0141. *Applicant:* Syngenta Crop Protection LLC., P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Benzovindiflupyr and Difenoconazole. *Product Type:* Fungicide. *Proposed Use:* Terrestrial food crops. Contact: Shaunta Hill, (RD), (703) 347–8961, email address: *hill.shaunta@epa.gov.*

5. *EPA File Symbol:* 100–RUTT. *Docket ID Number:* EPA–HQ–OPP–2013–0141. *Applicant:* Syngenta Crop Protection LLC., P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Benzovindiflupyr and Difenoconazole. *Product Type:* Fungicide. *Proposed Use:* Turf. Contact: Shaunta Hill, (RD), (703) 347–8961, email address: *hill.shaunta@epa.gov.*

6. *EPA File Symbol:* 100–RUIN. *Docket ID Number:* EPA–HQ–OPP–2013–0141. *Applicant:* Syngenta Crop Protection LLC., P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Benzovindiflupyr and Azoxystrobin. *Product Type:* Fungicide. *Proposed Use:* Terrestrial food crops. Contact: Shaunta Hill, (RD), (703) 347–8961, email address: *hill.shaunta@epa.gov.*

7. *EPA File Symbol:* 100–RUTU. *Docket ID Number:* EPA–HQ–OPP–2013–0141. *Applicant:* Syngenta Crop Protection LLC., P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Benzovindiflupyr and Azoxystrobin. *Product Type:* Fungicide. *Proposed Use:* Turf. Contact: Shaunta Hill, (RD), (703) 347–8961, email address: *hill.shaunta@epa.gov.*

8. *EPA File Symbol:* 100–RUTO. *Docket ID Number:* EPA–HQ–OPP–2013–0141. *Applicant:* Syngenta Crop Protection LLC., P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Benzovindiflupyr and Azoxystrobin. *Product Type:* Fungicide. *Proposed Use:* Ornamentals. Contact: Shaunta Hill, (RD), (703) 347–8961, email address: *hill.shaunta@epa.gov.*

9. *EPA File Symbol:* 100–RUTL. *Docket ID Number:* EPA–HQ–OPP–2013–0141. *Applicant:* Syngenta Crop Protection LLC., P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Benzovindiflupyr and Propiconazole. *Product Type:* Fungicide. *Proposed Use:* Terrestrial food crops. Contact: Shaunta Hill, (RD), (703) 347–8961, email address: *hill.shaunta@epa.gov.*

10. *EPA File Symbol:* 264–RRAU. *Docket ID Number:* EPA–HQ–OPP–2013–0160. *Applicant:* Bayer CropScience LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Active ingredient: Streptomyces microflavus* strain AQ 6121. *Product Type:* e.g., Insecticide/Miticide. *Proposed Uses:* Terrestrial food crops. Contact: Michael Glikes, (BPPD), (703) 305–6231, email address: *glikes.michael@epa.gov.*

11. *EPA File Symbols:* 10163–GET and 10163–GEI. *Docket ID Number:* EPA–HQ–OPP–2013–0186. *Applicant:* Gowan Company, P.O. Box 5569, Yuma, AZ 85366. *Active ingredient:* Benzobicyclon. *Product Type:* Herbicide. *Proposed Uses:* For use only in California: Post-flooding rice paddy fields. Contact: Emily Hartman, (RD), (703) 347–0189, email address: *hartman.emily@epa.gov.*

12. *EPA File Symbols:* 71512–ER, 71512–EE, and 71512–EG. *Docket ID Number:* EPA–HQ–OPP–2013–0138. *Applicant:* ISK Biosciences, 7470 Auburn Road, Suite A, Concord, OH 44077. *Active Ingredient:* Isofetamid. *Product Type:* Fungicide. *Proposed Use:* Almonds; Lettuce (head and leaf); Small Fruit Vine Climbing, Subgroup 13–07F; Low growing Berry, Subgroup 13–07G; and Rapeseed, Subgroup 20A. Contact: Dominic Schuler, (RD), (703) 347–0260, email address: *schuler.dominic@epa.gov.*

13. *EPA File Symbol:* 87978–R. *Docket ID Number:* EPA–HQ–OPP–2013–0099. *Applicant:* AgBiTech Pty. Ltd., 8 Rocla Court, Glenvale, Queensland, Australia, 4350, c/o MacIntosh Associates, Inc., 1203 Hartford Avenue, Saint Paul, MN 55116. *Active Ingredient: Helicoverpa zea Nucleopolyhedrovirus. Product Type:* Insecticide. *Proposed Use:* Agriculture (outdoors). Contact*:* Michael Glikes, (BPPD), (703) 305–6231, email address: *glikes.michael@epa.gov.*

14. *EPA File Symbol:* 88347–G. *Docket ID Number:* EPA–HQ–OPP–2011–0862. *Applicant:* Phyllom LLC, 922 San Leandro Ave., Suite F, Mountain View, CA 94043. *Active Ingredient: Bacillus thuringiensis* subsp. *galleriae* strain SDS–502 at 85.0%. *Proposed Use:* For control of certain beetle pests, including those in the families *Buprestidae, Scarabaeidae,* and *Curculionidae,* on ornamentals and select crops for food and animal feed uses in poultry premises. Contact: Jeannine Kausch, (BPPD), (703) 347–8920, email address: *kausch.jeannine@epa.gov.* **Note:** In the **Federal Register** of February 29, 2012 (77 FR 12295)(FRL–9332–8), EPA announced receipt of two other applications to register pesticide products containing this new active ingredient.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 12, 2013.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2013–09275 Filed 4–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9803–7]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (''CAA''), notice is hereby given of a proposed consent decree to resolve a lawsuit filed by the Center for Biological Diversity and the Center for Environmental Health (''Plaintiffs'') in the United States District Court for the Northern District of California: *Center for Biological Diversity, et al.* v. *Jackson,* No. C–12–04968 JWT (N.D. CA.). On September 24, 2012, Plaintiffs filed a complaint alleging that EPA failed to make a finding of failure to submit infrastructure state implementation plans (SIPs) for Colorado, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Vermont, and Washington with regard to the 2008 lead National Ambient Air Quality Standard (2008 lead NAAQS) by the statutory deadline established by CAA. Plaintiffs' complaint also alleged that EPA failed to take final action on the infrastructure SIP submitted by Tennessee with regard to the 2008 Lead NAAQs by the statutory deadline established by CAA. In addition, the complaint alleges that EPA failed to determine whether the Herculaneum nonattainment area, in Jefferson County, Missouri attained the 1978 lead National Ambient Air Quality Standard (1978 lead NAAQS) by its attainment date as mandated by CAA. The proposed consent decree establishes a deadline of August 15, 2013 for EPA to take action with respect to the Tennessee infrastructure SIP and the Herculaneum nonattainment area.

DATES: Written comments on the proposed consent decree must be received by May 20, 2013.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2013–0236, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: David Orlin, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–1222; fax number (202) 564–5601; email address: *orlin.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by Plaintiffs seeking to compel the Agency to satisfy certain mandatory duties under the Clean Air Act. The proposed consent decree provides that no later than August 15, 2013, EPA shall sign for publication in the **Federal Register** a notice of EPA's action approving, disapproving, or approving in part and disapproving in part the infrastructure SIP for the 2008 lead NAAQS submitted by Tennessee. In addition, the proposed consent decree provides that no later than August 15, 2013, EPA shall sign for publication in the **Federal Register** a notice of EPA's determination whether the Herculaneum nonattainment area, in Jefferson County, Missouri attained the 1978 lead NAAQS by its attainment date, unless as of that date, EPA issues a determination that it has received from Missouri a nonattainment area SIP for the 2008 lead NAAQS for the Herculaneum nonattainment area which meets the requirements of 40 CFR 51.103(a) or EPA signs for publication in the **Federal Register** a notice finding that Missouri has failed to submit a complete nonattainment area SIP for the 2008 lead NAAQS for the Herculaneum nonattainment area. The proposed consent decree also notes that on February 15, 2013, EPA signed a notice making certain findings that the States of Hawaii, Illinois, Massachusetts, New Jersey, Oregon, Vermont and Washington had failed to submit complete infrastructure SIPs for the 2008 lead NAAQS, and noted that as of February 14, 2013, Colorado, Maryland, Oklahoma, Pennsylvania, and South Dakota had submitted complete infrastructure SIPs for the 2008 lead NAAQS.

Following signature of each final action described in the proposed consent decree, EPA shall promptly deliver notice of such action to the Office of the Federal Register for review and publication in the **Federal Register**. After EPA fulfills its obligations under the consent decree, the consent decree provides that this case shall be dismissed with prejudice.

The proposed consent decree also states that that the consent decree can be modified by the parties, or by the court following a motion by a party and a response thereto. In addition, the parties agree to seek to resolve informally Plaintiffs' claim for litigation costs pursuant to 42 U.S.C. 7604(d), but the court would retain jurisdiction to resolve that claim.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC- 2013–0236) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: April 8, 2013.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2013–09292 Filed 4–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9803–8]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (''CAA''), notice is hereby given of a proposed consent decree, to resolve a lawsuit filed by Clean Air Council in the United States District Court for the District of Columbia: *Clean Air Council* v. *Jackson,* No. 1:12-cv-00707 (D. DC). On May 2, 2012, Plaintiff filed a complaint alleging that EPA failed to promulgate a Federal Implementation Plan (''FIP'') as mandated by the CAA, addressing certain nonattainment planning provisions for the 1997 fine particulate matter National Ambient Air Quality Standard (''NAAQS'') in the Commonwealth of Pennsylvania (''Pennsylvania''). The complaint also alleges that EPA failed to make a determination regarding whether the Liberty-Clairton nonattainment area in Pennsylvania (''Liberty-Clairton Area'') has attained the 1997 fine particulate matter NAAQS by the applicable attainment date as mandated by the CAA,. The proposed consent decree establishes deadlines for EPA to take action.

DATES: Written comments on the proposed consent decree must be received by May 20, 2013.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2013–0234, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: David Orlin, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–1222; fax number (202) 564–5601; email address: *orlin.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by the Clean Air Council seeking to compel the Agency to satisfy certain mandatory duties under the Clean Air Act. Specifically the consent decree provides for EPA to promulgate a FIP by December 15, 2013, for the Liberty-Clairton Area including the following elements: an attainment demonstration, emission inventory, reasonably available control measures/reasonably available control technology (''RACM/RACT''), reasonable further progress (''RFP''), and contingency measures for the 1997 fine particulate matter annual NAAQS under CAA section 110(c)(1)(A), 42 U.S.C. 7410(c)(1)(A). However, pursuant to CAA section 110(k)(3), 42 U.S.C. 7410(k)(3), should EPA approve a state implementation plan for the Liberty-Clairton Area to attain the 1997 fine particulate matter annual NAAQS for any of the elements listed above, EPA's obligation to promulgate a federal implementation plan for that element is void. In addition, should EPA make a determination that the Liberty Clairton Area has attained the 1997 fine particulate matter annual NAAQS prior to December 15, 2013 and has not revoked that determination by December 15, 2013, the obligation to promulgate a FIP for an attainment demonstration, reasonably available control measures/reasonably available control technology (''RACM/RACT''), reasonable further progress (''RFP''), and contingency measures is void. The proposed consent decree also provides for EPA to make a determination by December 15, 2013, as to whether the Liberty-Clairton Area attained the 1997 fine particulate matter annual NAAQS by the applicable attainment date, unless as of December 15, 2013, EPA has signed a final notice extending the attainment deadline for the 1997 fine particulate matter annual NAAQS for the Liberty-Clairton Area to a date after April 5, 2010.

Under the proposed consent decree, within 15 business days following signature of each final action described in the proposed consent decree, EPA shall deliver the notice to the Office of the Federal Register for review and publication in the **Federal Register**. After EPA fulfills its obligations under the consent decree, the consent decree provides that this case shall be dismissed with prejudice.

The proposed consent decree also states that the consent decree can be modified by the parties, or by the court following a motion by a party and a response thereto. In addition, the parties agree to seek to resolve informally Clean Air Council's claim for litigation costs pursuant to 42 U.S.C. 7604(d), but the court would retain jurisdiction to resolve that claim.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2013–0234) contains a copy of the proposed consent decree (including Attachment A). The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether

submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: April 8, 2013.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2013–09294 Filed 4–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9805–2; CERCLA–04–2013–3751]

LWD, Inc. Superfund Site; Calvert City, Marshall County, Kentucky; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Settlement.

SUMMARY: Under 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement with one hundred twenty-five (125) parties and nineteen (19) Federal Agencies addressing past costs concerning the LWD, Inc., Superfund Site located in Calvert City, Marshall County, Kentucky. The settlement addresses costs from a federally funded Removal Action taken by EPA at the Site and response costs incurred by the settling parties in connection with the Site pursuant to a 2007 work AOC.

DATES: The Agency will consider public comments on the settlement until May 20, 2013. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from EPA's Environmental Protection Specialist, Ms. Paula V. Painter. Submit your comments by Site name LWD, Inc., Superfund Site by one of the following methods:

- *www.epa.gov/region4/superfund/programs/enforcement/enforcement.html*
- *Email. Painter.Paula@epa.gov*
- U.S. Environmental Protection Agency, Attn: Paula V. Painter, Superfund Division, 61 Forsyth Street SW., Atlanta, Georgia 30303

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: April 11, 2013.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2013–09306 Filed 4–18–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 13–86; DA 13–581]

FCC Reduces Backlog of Broadcast Indecency Complaints by 70% (More Than One Million Complaints); Seeks Comments on Adopting Egregious Cases Policy

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission Enforcement Bureau and Office of General Counsel seek comment on whether the full Commission should make changes to its current broadcast indecency policies or maintain them as they are. For example, should the Commission treat isolated expletives in a manner consistent with its decision in *Pacifica Foundation, Inc.* or instead maintain the approach to isolated expletives set forth in its decision in *Complaints Against Various Broadcast Licensees Regarding Their Airing of the ''Golden Globe Awards'' Program?* As another example, should the Commission treat isolated (non-sexual) nudity the same as or differently than isolated expletives? Commenters are invited to address these issues as well as any other aspect of the Commission's substantive indecency policies.

DATES: Written comments may be filed on or before May 20, 2013. Reply comments may be filed on or before June 18, 2013.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. *See Supplementary Information.*

FOR FURTHER INFORMATION CONTACT: Eloise Gore, Associate Bureau Chief, Enforcement Bureau, at (202) 418–1066 or Jacob Lewis, Associate General Counsel, Office of the General Counsel, at (202) 418–1767. Please direct press inquiries to Mark Wigfield at (202) 418–0253.

SUPPLEMENTARY INFORMATION: Each document that is filed in this proceeding must display the docket number of this Notice, GN Docket No. 13–86, on the front page. The Public Notice, DA 13–581, released April 1, 2013, is available for inspection and

copying from 8 a.m. until 4:30 p.m., Monday through Thursday or from 8 a.m. until 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, Room CY–A257, 445 12th Street SW., Washington, DC 20554. The complete text of the Public Notice may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160, facsimile (202) 488–5563, email *FCC@BCPIWEB.com,* or you may contact BCPI via its Web site, *http://www.bcpiweb.com.* When ordering documents from BCPI, please provide the appropriate FCC document number DA 13–581. The Public Notice is also available on the Internet at the Commission's Web site through its Electronic Document Management System (EDOCS) at *http://hraunfoss.fcc.gov/edocs_public/.* Alternative formats are available to persons with disabilities (Braille, large print, electronic files, audio format); to obtain, please send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

For purposes of this proceeding, we are establishing a new docket, GN Docket No. 13–86. All comments should refer to GN Docket No. 13–86.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[1] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.[2] Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules.[3]

Federal Communications Commission.

Eloise Gore,

Associate Chief, Enforcement Bureau.

[FR Doc. 2013–09274 Filed 4–18–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 13–524]

Emergency Access Advisory Committee; Announcement of Date of Next Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date of the Emergency Access Advisory Committee's (Committee or EAAC) next meeting. At the June 2013 meeting, the agenda will include discussion of reports from the subcommittees and other activities needed to ensure access to 911 by individuals with disabilities.

DATES: The Committee's next meeting will take place on Friday, June 14, 2013, 10:30 a.m. to 3:30 p.m. (EST), at the headquarters of the Federal Communications Commission (FCC or Commission).

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, in the Commission Meeting Room.

FOR FURTHER INFORMATION CONTACT: Suzy Rosen Singleton, Consumer and Governmental Affairs Bureau, 202–810–1503, or *Suzanne.Singleton@fcc.gov* (email); and/or Zenji Nakazawa, Public Safety and Homeland Security Bureau, 202–418–7949, or *Zenji.Nakazawa@fcc.gov* (email).

SUPPLEMENTARY INFORMATION: On December 7, 2010, in document DA 10–2318, Chairman Julius Genachowski announced the establishment and appointment of members and Co-Chairpersons of the EAAC, an advisory committee required by the Twenty-First Century Communications and Video Accessibility Act (CVAA), Public Law 11–260, for the purpose of achieving equal access to emergency services by individuals with disabilities as part of our nation's migration to a national Internet protocol-enabled emergency network, also known as the next generation 9–1–1 system (NG9–1–1). The purpose of the EAAC is to determine the most effective and efficient technologies and methods by which to enable access to Next Generation 911 (NG 9–1–1) emergency services by individuals with disabilities, and to make recommendations to the Commission on how to achieve those effective and efficient technologies and methods. During the spring of 2011, the EAAC conducted a nationwide survey of individuals with disabilities and released a report on that survey on June 21, 2011. Following release of the survey report, the EAAC developed recommendations, which it submitted to the Commission on December 7, 2011, as required by the CVAA. At the June 2013 EAAC meeting, the agenda will include discussion of reports from the subcommittees and other activities needed to ensure access to 911 by individuals with disabilities.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable

[1] *See* 47 CFR 1.1200, 1.1206.

[2] *See* 47 CFR 1.1206(b).

[3] *Id.*

accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

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).

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2013–09268 Filed 4–18–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: CALVARY CHAPEL OF CASA GRANDE, Station KVNG, Facility ID 175820, BMPED–20130312ABR, From CHUICHU, AZ, To ELOY, AZ; CALVARY CHAPEL OF TWIN FALLS, INC., Station KGSF, Facility ID 92987, BPED–20130318AFZ, From GREEN FOREST, AR, To HUNTSVILLE, AR; CARROLL COUNTY BROADCASTING, INC., Station KAKS, Facility ID 69858, BPH–20130318AGJ, From HUNTSVILLE, AR, To GOSHEN, AR; CARROLL COUNTY BROADCASTING, INC., Station KTHS, Facility ID 35668, BP–20130318AGK, From BERRYVILLE, AR, To GREEN FOREST, AR; FOREVER BROADCASTING, LLC, Station WFGE, Facility ID 1057, BPH–20130325AJI, From TYRONE, PA, To STATE COLLEGE, PA; INVISIBLE ALLIES MINISTRIES, Station WRVI, Facility ID 176200, BMPED–20130227AAH, From SAINT MARYS, PA, To RIDGWAY, PA; INVISIBLE ALLIES MINISTRIES, Station WRQV, Facility ID 175421, BPED–20130227AAI, From RIDGWAY, PA, To MAHAFFEY, PA; LASER LICENSES, LLC, Station KMLY, Facility ID 164096, BPH–20130411AAK, From CARMEL VALLEY, CA, To GONZALES, CA; SPIRIT BROADCASTING GROUP, INC., Station WKBR–FM, Facility ID 173901, BMPED–20130401ABH, From BRANCHVILLE, SC, To SUMMERVILLE, SC; TELIKOJA EDUCATIONAL BROADCASTING INC., Station WPAL, Facility ID 177311, BMPED–20130219ABX, From LAPORTE, PA, To NEW ALBANY, PA.

DATES: The agency must receive comments on or before June 18, 2013.

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

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2013–09276 Filed 4–18–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficient Assets To Satisfy Claims Against Financial Institution in Receivership

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: The FDIC has determined that insufficient assets exist in the receivership of Colonial Bank, Montgomery, Alabama, to make any distribution on general unsecured claims, and therefore such claims will recover nothing and have no value.

DATES: The FDIC made its determination on April 15, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice, you may contact an FDIC Claims Agent at (972) 761–8677. Written correspondence may also be mailed to FDIC as Receiver of Colonial Bank, Attention: Claims Agent, 1601 Bryan Street, Dallas, Texas 75201.

SUPPLEMENTARY INFORMATION: On August 14, 2009, Colonial Bank, Montgomery, Alabama, (FIN #10103) was closed by the Alabama State Banking Department, and the Federal Deposit Insurance Corporation (''FDIC'') was appointed as its receiver (''Receiver''). In complying with its statutory duty to resolve the institution in the method that is least costly to the deposit insurance fund (see 12 U.S.C. 1823(c)(4)), the FDIC facilitated a transaction with Branch Banking and Trust (''BB&T''), Winston-Salem, North Carolina, to assume all of the deposits and most of the assets of the failed institution.

Section 11(d)(11)(A) of the FDI Act, 12 U.S.C. 1821(d)(11)(A), sets forth the order of priority for distribution of amounts realized from the liquidation or other resolution of an insured depository institution to pay claims. Under the statutory order of priority, administrative expenses and deposit liabilities must be paid in full before any distribution may be made to general unsecured creditors or any lower priority claims.

As of March 31, 2013, the maximum value of assets that could be available for distribution by the Receiver, together with maximum possible recoveries on professional liability claims against directors, officers, and other professionals, as well as potential tax refunds, was $3,282,813,040. As of the same date, administrative expenses and depositor liabilities equaled $4,981,236,544, exceeding available assets and potential recoveries by $1,698,423,504. Accordingly, the FDIC has determined that insufficient assets exist to make any distribution on general unsecured creditor claims (and any lower priority claims) and therefore all such claims, asserted or unasserted, will recover nothing and have no value.

Dated: April 16, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–09229 Filed 4–18–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank

or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 6, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Thomas W. Armstrong, and Bradley A. Trimner, individually and as Co-Trustees of the Arnold J. Stueber, Sr. Revocable Trust, and the Sadie A. Stueber Revocable Trust, and Mary Luethmers,* all of Park Falls, Wisconsin, individually, to each retain voting shares of Park Falls Agency, Inc., and thereby indirectly retain voting shares of The First National Bank of Park Falls, both in Park Falls, Wisconsin.

Board of Governors of the Federal Reserve System, April 16, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–09220 Filed 4–18–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2013–08630) published on pages 21949–21950 of the issue for Friday, April 12, 2013.

Under the Federal Reserve Bank of St. Louis heading, the entry for Hopfed Bancorp, Inc., Hopkinsville, Kentucky, is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Hopfed Bancorp, Inc.,* Hopkinsville, Kentucky; to become a bank holding company through the conversion of its wholly owned subsidiary, Heritage Bank, Hopkinsville, Kentucky, from a federally chartered savings bank to a state charted commercial bank.

Comments on this application must be received by May 9, 2013.

Board of Governors of the Federal Reserve System, April 16, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–09219 Filed 4–18–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10108, CMS–10268, CMS–10316, and CMS–10478]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Managed Care Regulations; *Use:* Medicaid enrollees use the information collected and reported to make informed choices regarding health care, including how to access health care services and the grievance and appeal system. States use the information collected and reported as part of its contracting process with managed care entities, as well as its compliance oversight role. The CMS uses the information collected and reported in an oversight role of state Medicaid managed care programs. *Form Number:* CMS–10108 (OCN: 0938–0920); *Frequency:* Occasionally; *Affected Public:* Individuals or households, Private sector (business or other for-profit and not-for-profit institutions), and State, local or Tribal Government; *Number of Respondents:* 1,640,223; *Total Annual Responses:* 5,217,333; *Total Annual Hours:* 5,872,255. (For policy questions regarding this collection contact Amy Gentile at 410–786–3499. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Reinstatement of a currently approved collection; *Title of Information Collection:* Consolidated Renal Operations in a Web Enabled Network (CROWNWeb) Third-party Submission Authorization Form *Use:* The Consolidated Renal Operations in a Web Enabled Network (CROWNWeb) Third-Party Submission Authorization (CWTPSA) form is to be completed by ''Facility Administrators'' (administrators of CMS-certified dialysis facilities) if they intend to authorize a third party (a business with which the facility is associated, or an independent vendor) to submit data to CMS to comply with the recently-revised Conditions for Coverage of dialysis facilities. The CROWNWeb system is the system used as the collection point of data necessary for entitlement of ESRD patients to Medicare benefits and for Federal Government monitoring and assessing of the quality and types of care provided to renal patients. The information collected through the CWTPSA form will allow CMS and its contractors to receive data from authorized parties acting on behalf of CMS-certified dialysis facilities. Since February 2009, CMS has received 4,160 CWTPSA forms and anticipates that they will continue to receive no more than 400 new CWTPSA forms annually to address the creation of new facilities under the current participating ''third party submitters.'' *Form Number:* CMS–10268 (OCN: 0938–1052); *Frequency:* Occasionally; *Affected Public:* Private Sector; Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 400; *Total Annual Responses:* 400; *Total Annual Hours:* 34. (For policy questions regarding this collection contact Michelle Tucker at 410–786–0736. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Revision of a currently approved collection. *Title of Information Collection:* Implementation of the Medicare Prescription Drug Plan (PDP) and Medicare Advantage (MA) Plan Disenrollment Reasons Survey. *Use:* This data collection complements the satisfaction data collected through the Medicare Consumer Assessment of Healthcare Providers and Systems survey by providing dissatisfaction data in the form of reasons for disenrollment

from a Prescription Drug Plan. The data collected in this survey can be used to improve the operation of Medicare Advantage (both MA and MA–PD) contracts and standalone PDPs through the identification of beneficiary disenrollment reasons. Plans can use the information to guide quality improvement efforts. The data can also be used by beneficiaries who need to choose among the different MA and PDP options. To the extent that these data identify areas for improvement at the contract level they can be used to inform CMS contract oversight. *Form Number:* CMS–10316 (OCN: 0938–1113). *Frequency:* Yearly; *Affected Public:* Individuals or households; *Number of Respondents:* 88,492; *Total Annual Responses:* 88,492; *Total Annual Hours:* 22,887. (For policy questions regarding this collection contact Sai Ma at 410–786–1479. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* New collection (request for a new OMB control number). *Title of Information Collection:* National Implementation of In-Center Hemodialysis CAHPS Survey. *Use:* Data collected in the national implementation of the In-center Hemodialysis Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey will be used for the following purposes: (1) To provide a source of information from which selected measures can be publicly reported to beneficiaries as a decision aid for dialysis facility selection; (2) to aid facilities with their internal quality improvement efforts and external benchmarking with other facilities; (3) to provide CMS with information for monitoring and public reporting purposes; and (4) to support the end-stage renal disease value-based purchasing program. *Form Number:* CMS–10478 (OCN: 0938–New); *Frequency:* Semi-annually and once; *Affected Public:* Individuals or households; *Number of Respondents:* 165,000; *Total Annual Responses:* 165,000; *Total Annual Hours:* 87,750. (For policy questions regarding this collection contact Elizabeth Goldstein at 410–786–6665. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by June 18, 2013:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: *April 16, 2013.*

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–09267 Filed 4–18–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–576A]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization's (OPOs) Health Insurance Benefits Agreement and Supporting Regulations at 42 CFR 486.301–486.348; *Use:* The Medicare and Medicaid Programs final conditions for coverage for Organ Procurement Organizations (OPOs) require OPOs to sign agreements with the Center for Medicare and Medicaid Services (CMS) in order to be reimbursed and perform their services. The information provided on this form serves as a basis for continuing the agreements with CMS and the OPOs for participation in the Medicare and Medicaid programs for reimbursement of service. *Form Number:* CMS–576A (OCN: 0938–0512); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 58; *Total Annual Responses:* 58; *Total Annual Hours:* 116. (For policy questions regarding this collection contact Melissa Rice at 410–786–3270. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on May 20, 2013.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov*

Dated: April 16, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–09256 Filed 4–18–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0018]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Health Care Professional Survey of Prescription Drug Promotion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Health Care Professional Survey of Prescription Drug Promotion'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: On October 12, 2012, the Agency submitted a proposed collection of information entitled ''Health Care Professional Survey of Prescription Drug Promotion'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0730. The approval expires on February 29, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: April 15, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–09176 Filed 4–18–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0937]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Clinical Laboratory Improvement Amendments Waiver Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 20, 2013.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0598. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Clinical Laboratory Improvement Amendments Waiver Applications—(OMB Control Number 0910–0598)—Extension

Congress passed the Clinical Laboratory Improvement Amendments (CLIA) (Public Law 100–578) in 1988 to establish quality standards for all laboratory testing. The purpose was to ensure the accuracy, reliability, and timeliness of patient test results regardless of where the test took place. CLIA requires that clinical laboratories obtain a certificate from the Secretary of Health and Human Services (the Secretary), before accepting materials derived from the human body for laboratory tests (42 U.S.C. 263a(b)). Laboratories that perform only tests that are ''simple'' and that have an ''insignificant risk of an erroneous result'' may obtain a certificate of waiver (42 U.S.C. 263a(d)(2)). The Secretary has delegated to FDA the authority to determine whether particular tests (waived tests) are ''simple'' and have ''an insignificant risk of an erroneous result'' under CLIA (69 FR 22849, April 27, 2004).

On January 30, 2008, FDA published a guidance document entitled ''Guidance for Industry and FDA Staff: Recommendations for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Waiver Applications for Manufacturers of In Vitro Diagnostic Devices'' (*http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm079632.htm*). This guidance document describes recommendations for device manufacturers submitting to FDA an application for determination that a cleared or approved device meets this CLIA standard (CLIA waiver application). The guidance recommends that CLIA waiver applications include a description of the features of the device that make it ''simple''; a report describing a hazard analysis that identifies potential sources of error, including a summary of the design and results of flex studies and conclusions drawn from the flex studies; a description of fail-safe and failure alert mechanisms and a description of the studies validating these mechanisms; a description of clinical tests that demonstrate the accuracy of the test in the hands of intended operators; and statistical analyses of clinical study results.

The total number of reporting and recordkeeping hours is 143,200 hours. FDA bases the burden on an Agency analysis of premarket submissions with clinical trials similar to the waived laboratory tests. Based on previous years' experience with CLIA waiver applications, FDA expects 40 manufacturers to submit one CLIA waiver application per year. The time required to prepare and submit a waiver application, including the time needed to assemble supporting data, averages 780 hours per waiver application for a total of 31,200 hours for reporting.

Based on previous years' experience with CLIA waiver applications, FDA expects that each manufacturer will spend 2,800 hours creating and maintaining the record for a total of 112,000 hours. The total operating and maintenance cost associated with the

waiver application is estimated at $66,200. The cost consists of specimen collection for the clinical study (estimated $23,500); laboratory supplies, reference testing and study oversight (estimated $26,700); shipping and office supplies (estimated $6,000); and educational materials, including quick reference instructions (estimated $10,000).

In the **Federal Register** of September 14, 2012 (77 FR 56846), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one PRA-related comment.

The comment asserts that the amount of time per response and the cost associated with a waiver application are underestimated. FDA has revised its estimates based on the comment received on the 60-day **Federal Register** notice. As shown below, FDA is increasing the hours per response from 780 to 1,200 hours. FDA is also increasing the estimated operating and maintenance cost burden from $66,200 to $350,000.

The Center for Devices and Radiological Health (including both the Office of In Vitro Diagnostics and the Division of Biostatistics) maintains dialogue with industry representatives (the Advanced Medical Technology Association), regarding development of additional options regarding study design and data analysis approaches for certain devices to demonstrate they are suitable candidates for waiver.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Total operating and maintenance costs
CLIA waiver application	40	1	40	1,200	48,000	$350,000

[1] There are no capital costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
CLIA waiver records	40	1	40	2,800	112,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 15, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–09180 Filed 4–18–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0324]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry, FDA Staff, and Foreign Governments: Fiscal Year 2012 Medical Device User Fee Small Business Qualification and Certification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry, FDA Staff, and Foreign Governments: Fiscal Year 2012 Medical Device User Fee Small Business Qualification and Certification'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: On January 31, 2013, the Agency submitted a proposed collection of information entitled ''Guidance for Industry, FDA Staff, and Foreign Governments: Fiscal Year 2012 Medical Device User Fee Small Business Qualification and Certification'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0508. The approval expires on March 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: April 15, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–09181 Filed 4–18–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0114]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Electronic Submission of Medical Device Registration and Listing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Electronic Submission of Medical Device Registration and Listing'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: On August 06, 2012, the Agency submitted a proposed collection of information entitled ''Electronic Submission of Medical Device Registration and Listing'' to OMB for review and

clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0625. The approval expires on March 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: April 15, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–09182 Filed 4–18–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

HRSA especially requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: Evaluating the Impact of 1115 Medicaid Waivers on Ryan White HIV/AIDS Program and Its Clients and Providers (OMB No. 0915–xxxx)—New

Abstract: Section 1115 of the Social Security Act allows states to develop, test, and implement new approaches to providing Medicaid coverage outside of federal program rules. Leading up to full implementation of the Affordable Care Act, states have begun to use Section 1115 Medicaid demonstration waivers as a ''bridge'' to 2014. This project will examine 1115 Medicaid waivers that have expanded eligibility to specifically include people living with HIV/AIDS (PLWH) who are not otherwise eligible for Medicaid services. Since 1990, the Ryan White HIV/AIDS Program (RWHAP) has provided funding for primary care, medications, and support services for PLWH, helping fill the health care and service gap for those who are uninsured or ineligible for Medicaid. Given the important role of the RWHAP and Medicaid in meeting the health care needs of PLWH, there is a need to better understand how Medicaid expansion and the 1115 Medicaid waivers will affect the RWHAP and how the waivers have prepared states for implementation of the Affordable Care Act.

As part of this project, case studies will be conducted in eight states that have implemented 1115 Medicaid waivers to expand Medicaid eligibility for PLWH. The case studies will include site visits and discussions with the state Medicaid programs and with RWHAP grantees and service providers to examine the waivers and their impact on PLWH. In addition, the studies will explore whether and how the 1115 Medicaid waivers have helped states and RWHAP grantees and providers prepare for implementation of the Affordable Care Act, including providing insights into Medicaid expansion. Data will be collected through qualitative interviews, guided by discussion tools with questions tailored for four specific groups of individuals from: (1) State Medicaid Agencies; (2) Ryan White HIV/AIDS Program Part B grantees and service providers; (3) Ryan White HIV/AIDS Program Part A grantees and service providers; and (4) Ryan White HIV/AIDS Program Part C grantees and clinical providers.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

The annual estimate of burden is as follows:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Qualitative Interview Data Collection Tool—State Medicaid Agencies	40	1	40	2	80
Qualitative Interview Data Collection Tool—RWHAP Part A Administrators/Planning Councils	80	1	80	2	160
Qualitative Interview Data Collection Tool—RWHAP Part B/ADAP Directors and Coordinators	80	1	80	2	160
Qualitative Interview Data Collection Tool—RWHAP Part C Grantees/Clinical Providers	80	1	80	2	160
Total	280	.....	280	.....	560

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Deadline: Comments on this Information Collection Request must be received within 60 days of this notice.

Dated: April 12, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–09221 Filed 4–18–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council on Blood Stem Cell Transplantation; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Council on Blood Stem Cell Transplantation.

Date and Time: May 16, 2013, 10:00 a.m. to 4:00 p.m. EST.

Place: The meeting will be via audio conference call and Adobe Connect Pro.

Status: The meeting will be open to the public.

Purpose: Pursuant to Public Law 109–129, 42 U.S.C. 274k (section 379 of the Public Health Service Act, as amended), the Advisory Council on Blood Stem Cell Transplantation (ACBSCT) advises the Secretary of the Department of Health and Human Services and the Administrator, Health Resources and Services Administration (HRSA), on matters related to the activities of the C.W. Bill Young Cell Transplantation Program (Program) and the National Cord Blood Inventory Program.

Agenda: The Council will hear reports from ACBSCT Work Groups including: Cord Blood Thawing and Washing; Access to Transplantation; and Advancing Hematopoietic Stem Cell Transplantation for Hemoglobinopathies. The Council will also hear presentations and discussions on topics including: Accreditation, Adverse Event Reporting, and Unmet Need. Agenda items are subject to change as priorities indicate.

After Council discussions, members of the public will have an opportunity to provide comments. Because of the Council's full agenda and the timeframe in which to cover the agenda topics, public comment may be limited. All public comments will be included in the record of the ACBSCT meeting. Meeting summary notes will be posted on HRSA's Program Web site at *http://bloodcell.transplant.hrsa.gov/ABOUT/Advisory_Council/index.html.*

The draft meeting agenda will be posted on *https://acbsctmeeting.com/public/sitePage.aspx?key=Home.* Those participating in this meeting should register by visiting *https://acbsctmeeting.com/public/sitePage.aspx?key=Home.* The deadline to register for this meeting is Tuesday, May 14, 2013. For all logistical questions and concerns, please contact Deborah Jones, Meeting Planner, by calling (301) 585–1261 or by sending an email to *registration@acbsctmeeting.com.*

The public can join the meeting by:

1. (Audio Portion) Calling the conference Phone Number 800–857–9638 and providing the Participant Code 75841; AND

2. (Visual Portion) Connecting to the ACBSCT Adobe Connect Pro Meeting using the following URL: *https://hrsa.connectsolutions.com/acbsctm/* (copy and paste the link into your browser if it does not work directly, and enter as a guest). Participants should call and connect 15 minutes prior to the meeting in order for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL: *https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm* and get a quick overview by following URL: *http://www.adobe.com/go/connectpro_overview.* Call (301) 443–0437 or send an email to *ptongele@hrsa.gov* if you are having trouble connecting to the meeting site.

Public Comment: It is preferred that persons interested in providing an oral presentation submit a written request, along with a copy of their presentation to: Passy Tongele, MBA, Division of Transplantation, Healthcare Systems Bureau, HRSA, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857; or email at *ptongele@hrsa.gov.* Requests should contain the name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative.

The allocation of time may be adjusted to accommodate the level of expressed interest. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may request it at the time of the public comment period. Public participation and ability to comment will be limited to space and time as it permits.

For Further Information Contact: Patricia Stroup, MBA, MPA, Executive Secretary, HSB, Healthcare Systems Bureau, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857; telephone (301) 443–1127.

Dated: April 15, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–09222 Filed 4–18–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Central Repositories Non-renewable Sample Access (X01): Hepatitis C and Type 1 Diabetes Biomarkers.

Date: May 9, 2013.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK–KUH Fellowship Review Committee.

Date: June 3, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 15, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–09172 Filed 4–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Institutional Clinical and Translational Science Award (U54).

Date: May 28–30, 2013.

Time: May 28, 2013, 6:00 p.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: May 29, 2013, 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: May 30, 2013, 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Priti Mehrotra, Ph.D., Chief, Immunology Review Branch, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–9369, *pmehrotra@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 15, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–09173 Filed 4–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Leadership Group for a Clinical Research Network on HIV/AIDS & HIV-associated Infections in Pediatric & Maternal Populations.

Date: May 14–15, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Betty Poon, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–6891, *poonb@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 15, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–09171 Filed 4–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Institutional Clinical and Translational Science Award (U54).

Date: May 22–24, 2013.

Time: May 22, 2013, 6:00 p.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: May 23, 2013, 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: May 24, 2013, 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Priti Mehrotra, Ph.D., Chief, Immunology Review Branch, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–9369, *pmehrotra@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 15, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–09174 Filed 4–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2013–0233]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an approval of a revision to the following collection of information: 1625–0066, Vessel and Facility Response Plans (Domestic and Int'l), and Additional Response Requirements for Prince William Sound, Alaska. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before June 18, 2013.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2013–0233] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov*.

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov*.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov*. Additionally, copies are available from: COMMANDANT (CG–612), ATTN PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2100 2ND ST SW STOP 7101, WASHINGTON DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–475–3929, for questions on these documents. Contact Ms. Barbara Hairson, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek approval of revisions of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2013–0233], and must be received by June 18, 2013. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2013–0233], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2013–0233'' in the ''Keyword'' box. If you submit your comments by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2013–0233'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

Title: Vessel and Facility Response Plans (Domestic and Int'l), and Additional Response Requirements for Prince William Sound, Alaska.

OMB Control Number: 1625–0066.

SUMMARY: The Oil Pollution Act of 1990 (OPA 90) required the development of Vessel and Facility Response Plans to minimize the impact of oil spills. OPA 90 also required additional response requirements for Prince William Sound. Shipboard Oil Pollution Emergency Plans and Shipboard Marine Pollution Emergency Plans are required of other vessels to minimize impacts of oil spills.

Need: This information is needed to ensure that vessels and facilities are prepared to respond in event of a spill incident. The information will be reviewed by the Coast Guard to assess the effectiveness of the response plan.

Forms: CG–6083.

Respondents: Owners and operators of vessels and facilities.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 276,503 hours to 128,575 hours a year.

Dated: April 13, 2013.

R.E. Day.

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2013–09198 Filed 4–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0782]

Public Workshop on Marine Technology and Standards

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The American Society of Mechanical Engineers, in coordination with the United States Coast Guard, is sponsoring a two-day public workshop on marine technology and standards in Arlington, VA. We originally published a notice regarding the workshop in the **Federal Register** on September 10, 2012. Today's notice provides updated information regarding the workshop including registration information. The workshop will provide a unique opportunity for classification societies, industry groups, standards development organizations, government organizations, and other interested members of the public to come together for a professional exchange of information on topics ranging from technological impacts on the marine industry, corresponding coverage in related codes and standards, and government regulations.

DATES: The two-day workshop will be held on Wednesday, July 24, 2013, and Thursday, July 25, 2013. The deadline for advance registration is Monday, July 1, 2013.

See **SUPPLEMENTARY INFORMATION** below for a list of proposed topics, fees, and information on how to register for the workshop.

ADDRESSES: The workshop will be held at The Double Tree by Hilton Hotel, in the Crystal City neighborhood of Arlington VA. The hotel is located at 300 Army Navy Drive, Arlington, VA; the hotel phone number is (703) 416–4100. The hotel is located approximately three miles from Ronald Reagan Washington National Airport (DCA) and approximately four blocks from the Pentagon City Metro station. For registration information or to obtain further information about this workshop, visit the USCG Web site at *http://www.uscg.mil/marine_event*. The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov*, inserting ''USCG–2012–0782'' in the ''Search'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice you may contact a USCG/ASME representative via email at *workshop@uscg.mil*. You may also contact Lieutenant Commander Kenneth Hettler, Office of Design and Engineering Standards, USCG, by telephone at (202) 372–1367; or Mr. Joseph S. Brzuszkiewicz, Project Engineering Manager, ASME, by telephone at (212) 591–8533.

If you have questions on viewing or submitting material to the docket, call Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The American Society of Mechanical Engineers/United States Coast Guard (ASME/USCG) Workshop on Marine Technology and Standards provides a unique opportunity for classification societies, industry groups, standards development organizations, government agencies, and interested members of the public to come together for a professional exchange of information on topics ranging from technological impacts on the marine industry, corresponding coverage in related codes and standards, and government regulations.

Held once every two to three years, the public workshop is sponsored by the ASME in coordination with the USCG Office of Design and Engineering Standards. ASME is a standards setting organization with wide-ranging volunteer committee membership, which includes USCG supported personnel who serve as members of various ASME committees in support of USCG missions in maritime safety and environmental protection. The USCG Office of Design and Engineering Standards is responsible for developing and promulgating national regulations and standards that govern the safe design and construction of ships and shipboard equipment, including hull structure, stability, electrical and mechanical systems, lifesaving and fire safety equipment, and related equipment approval and laboratory acceptance.

This workshop is an opportunity for the public to provide expertise on technical matters affecting the marine industry, to leverage new technologies, and to improve future policymaking, standards development, and rulemaking. The most recent workshop was held in Washington, DC, on July 29–30, 2010 (*see* 75 FR 8099, February 23, 2010). Public engagement on regulations and design standards enhances both the effectiveness and the quality of policy development. As an example, dialogue from the previous workshop on the safe and economical use of natural gas as a marine fuel provided valuable insight for the development of CG–521 Policy Letter No. 01–12,[1] which sets forth national

[1] CG–521 Policy Letter No. 01–12, ''Equivalency Determination—Design Criteria for Natural Gas Fuel Systems,'' is available for viewing at *http://www.uscg.mil/hq/cg5/cg521/docs/CG-521.PolicyLetter.01-12.pdf*.

policy regarding acceptable design criteria for shipboard natural gas fuel systems.

Topics for the 2013 workshop are listed below and include application of various marine technologies to promote safe and environmentally conscious operation of ships and offshore vessels and platforms.

The next workshop will be held in Arlington, VA, over a two-day period on Wednesday, July 24, 2013, and Thursday, July 25, 2013. See **ADDRESSES** above for event location information.

Topics of Meeting

This workshop comprises a series of panel sessions over a two-day period covering a variety of topics. Proposed topics include:

Equipment and Materials

- Mooring System Integrity
- Advances in Acrylics as a Pressure Vessel Material
- Bilgewater Monitoring Using Advanced Light Scattering Technology
- Vortex Induced Vibration Design Procedure for Marine Tubular
- Grooved Pipe Joints in Shipboard Applications

Compressed Natural Gas (CNG)/ Liquefied Natural Gas (LNG) Technology

- ASME Codes/Standards Applied to LNG Tank Pressure Vessel Development
- Development of a Short Sea, Intermodal Tanktainer Articulated Tug and Barge LNG Carrier
- Experiences, Challenges and Preferences of LNG as a Marine Fuel
- Design and Certification of Type C Independent Tanks for Gas Fuelled Ships
- Alternative-Fuel Engine Technology
- Application of ASME Section VIII, Division 3 to CNG Transport

Human Element and Risk Management

- Comprehensive Dynamic Positioning Proficiency Development
- Understanding Human Element in LNG Bunkering
- Risk Based Maintenance and Inspection on Vessel Machinery and Systems
- Management Perspective, Safety of Drilling and Production
- Risk Based Corrosion Management for Offshore Structures

Offshore Marine Technology

- Application of ASME Section VIII, Division 3 Design Requirements to Offshore High Pressure Equipment
- Fully Constrained Platform and Its Applications
- Dynamic Positioning Software Testing and Validation
- Development of Autonomous Underwater Platforms for Marine Applications

Regulatory and Classification Society

- Ergonomic Notations for Ships and Offshore Structures
- National Fire Protection Association (NFPA) Marine Fire Protection Codes and Standards
- Class Verification of Energy Efficiency Design Index
- Testing and Approval of Ballast Water Treatment Systems
- Acceptance of Non-ASME Pressure Vessels for Human Occupancy

Web Sites

For additional information on this workshop, visit the USCG Web site at *http://www.uscg.mil/marine_event*.

Registration

Registration is now open; to register for this workshop, visit the USCG Web site at *http://www.uscg.mil/marine_event* or the ASME Web site at *http://events.asme.org/asmeuscg13*. While the workshop is open to the public, meeting space is limited by room capacity. Since seating is limited, we ask anyone interested in attending the workshop to register in advance. The deadline for advance registration is Monday, July 1, 2013. Registration on the first day of the workshop will be permitted on a space-available basis. The registration fee for this event is $325 USD if submitted on or before May 31, 2013 and $375 USD if submitted after May 31, 2013. The registration fee includes admission for one person to each panel session for the two day event, several coffee breaks, and a reception on the first day of the event.

Proceedings

Material presented at the workshop will be made available to the public on the USCG Web site listed above after the conclusion of this event. For additional information on material presented at this event, you may contact one of the individuals listed above in **FOR FURTHER INFORMATION CONTACT**. Summaries of comments made and materials presented will be available on the docket at the conclusion of this event. To view the docket, see instructions above in **ADDRESSES**.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information on Services for Individuals With Disabilities

Persons with disabilities who require special assistance should advise us of their anticipated special needs as early as possible by one of the individuals listed above in **FOR FURTHER INFORMATION CONTACT**.

Adjournment

Please note that the workshop may adjourn early if all business is finished.

Authority

This notice is issued under authority of 5 U.S.C. 552(a) and 14 U.S.C. 93(a)(4).

Dated: April 12, 2013.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2013–09197 Filed 4–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2007–0008]

National Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The National Advisory Council (NAC) will meet on April 26, 2013 in Washington, DC. The meeting will be open to the public.

DATES: The NAC will meet on Friday, April 26, 2013, from 8:30 a.m. to 4:30 p.m. Eastern Daylight Time (EDT). Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at Hilton Garden Inn Capitol Hill located at 1225 First Street NE., Washington, DC 20002. Additionally, a conference line has been established for those members of the public interested in attending via teleconference: 1–800–320–4330 with Conference Bridge PIN 271425#.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Office of the NAC as soon as possible. See contact

information under **FOR FURTHER INFORMATION CONTACT** section below.

To facilitate public participation, members of the public are invited to comment on the issues to be considered by the committee, as listed in the **SUPPLEMENTARY INFORMATION** section. Written comments or requests to make oral presentations must be submitted in writing no later than April 25, 2013 and must be identified by Docket ID FEMA–2007–0008 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail/Courier:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Washington, DC 20472–3100.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the Docket ID FEMA–2007–0008 for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the NAC, go to *http://www.regulations.gov*.

A public comment period will be held during the meeting from 3:30 p.m. to 4:00 p.m. EDT. Those seeking to offer public comments must register in advance with the Office of the NAC and limit their comments to three (3) minutes. The public comment period is limited to a maximum of 10 speakers. Please note that the public comment period may end before the time indicated, following the last call for comments. There will also be a brief opportunity for public comment after each subcommittee report out. Briefing materials will be posted to the NAC Web site, *http://www.fema.gov/national-advisory-council,* as they become available.

FOR FURTHER INFORMATION CONTACT: Alexandra Woodruff, Alternate Designated Federal Officer, Office of the National Advisory Council, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472–3100, telephone (202) 646–3746, fax (540) 504–2331, and email *FEMA-NAC@fema.dhs.gov*. The NAC Web site is located here: *http://www.fema.gov/national-advisory-council*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The Federal Advisory Committee Act requires that notices of meetings of advisory committees be announced in the **Federal Register** 15 days prior to the meeting date. This notice is published less than 15 days prior to the meeting date due to increased budgetary restrictions and approval requirements for meetings as well as staffing changes. Because the NAC meeting is also accessible via teleconference, there will not be an undue burden on the public to arrange travel to attend this meeting. Notice of this meeting is also provided on the NAC's Web site at *http://www.fema.gov/national-advisory-council*.

The NAC advises the Administrator of FEMA on all aspects of emergency management. The NAC incorporates State, local, and Tribal governments, and private sector partners' input in the development and revision of FEMA plans and strategies. FEMA's Office of the NAC serves as the focal point for all NAC coordination.

Agenda: The NAC will meet with the FEMA Administrator and FEMA Deputy Administrator for the purpose of reviewing the progress and/or potential recommendations of its three subcommittees: Preparedness and Protection; Response and Recovery; and Federal Insurance and Mitigation. The full agenda will be posted on the NAC Web site.

The NAC will discuss how FEMA allocates planning, training, and funding resources to ensure whole community response and recovery efforts are sustainable beyond 72 hours; the National Mass Care Strategy; the review and update of the National Incident Management System (NIMS); Group Flood Insurance Policy; Biggert-Waters Flood Insurance Reform Act of 2012; the FEMA Qualification System (FQS); and the Sandy Recovery Improvement Act. There will also be a briefing on the FEMA Sandy After Action Report and the National Preparedness Grant Program.

The National Mass Care Strategy will provide a framework to enhance coordination, pool expertise and strengthen response capacity of mass care throughout the nation. The ''Strategy'' will assist in establishing common goals, foster collaborative planning and identifying resource needs to build national mass care capability. More information about the National Mass Care Strategy can be found at *https://nmcs.communityos.org/cms/node/42*.

The National Incident Management System (NIMS) is foundational doctrine, providing a blueprint for unified preparedness and all hazards incident support and management, and is applicable at all levels. The National Integration Center is leading the National effort to update the NIMS. More information about NIMS can be found at *http://www.fema.gov/national-incident-management-system*.

Group Flood Insurance Policy (GFIP) is issued by the National Flood Insurance Policy (NFIP) Direct Program in response to a presidential disaster declaration. Disaster assistance applicants, in exchange for a modest premium, receive a GFIP certificate for a minimum amount of building and/or contents coverage for a 3-year policy period. An applicant may cancel the group policy certificate at any time and secure a regular Standard Flood Insurance Policy through the NFIP.

In 1968, Congress created the National Flood Insurance Program (NFIP) to help provide a way for property owners to financially protect themselves by offering flood insurance if their community participates in the NFIP. Participating communities adopt and enforce ordinances that meet or exceed FEMA requirements to reduce the risk of flooding. FEMA announced the extension of the Preferred Risk Policy eligibility under the NFIP until further notice, as the Agency completes a study and analysis of the Biggert-Waters Flood Insurance Reform Act of 2012, signed into law by President Obama on July 6, 2012. More information can be found at *http://www.floodsmart.gov/floodsmart/pages/about/nfip_overview.jsp*.

The primary purpose of the FEMA Qualifications System (FQS) is to provide the best possible customer service to survivors and communities working to respond to, recover from, and mitigate against disasters. FQS helps build FEMA's disaster response and recovery capability by providing personnel with the training and experience needed to assume positions of progressively greater responsibility. More information on FQS can be found at *http://www.fema.gov/fema-qualification-system*.

The Sandy Recovery Improvement Act (SRIA) included language that authorized federally recognized Tribes to submit declaration requests directly to the President. A fact sheet on the SRIA can be found at *http://www.fema.gov/library/viewRecord.do?id=6983*.

The National Preparedness Grant Program (NPGP) seeks to sustain and continue to build on prevention, protection, response, and recovery capabilities to create robust national capacity based on cross-jurisdictional and readily deployable state and local assets. More information can be found at *https://www.fema.gov/pdf/government/grant/fy2013_npgp_grant_program_overview.pdf*.

Dated: April 16, 2013.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–09279 Filed 4–18–13; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection for Review; File No. I–352, Immigration Bond; OMB Control No. 1653–0022.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** on February 15, 2013, Vol. 78 No. 03591 allowing for a 60 day comment period. No comments were received during this period. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira submission@omb.eop.gov* or faxed to (202) 395–5806.

Comments are encouraged and will be accepted for thirty days until May 20, 2013. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to becollected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension, without change, of a currently approved information collection.

(2) Title of the Form/Collection: Immigration Bond.

(3) Agency form number, if any and the applicable component of the Department of Homeland Security sponsoring the collection: (No. Form I–352); U.S. Immigration and Customs Enforcement.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individual or Households; business or other for-profit. The data collected on this collection instrument is used by ICE to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The collection instrument serves the purpose of instructions in the completion of the form, together with an explanation of the terms and conditions of the bond. Sureties have the capability of accessing, completing and submitting a bond electronically through ICE's eBonds system which encompasses the I–352, while individuals are required to complete the bond form manually.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 25,000 responses at 30 minutes (.50 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 12,500 annual burden hours. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira submission@omb.eop.gov* or faxed to (202) 395–5806.

Dated: April 17, 2012.

Scott Elmore,

Forms Manager, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2013–09246 Filed 4–18–13; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5689–N–03]

Notice of Proposed Information Collection for Public Comment: Rental Assistance Demonstration Evaluation, Phase I

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* June 18, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent electronically to *Paul.A.Joice@hud.gov* or in hard copy to: Paul Joice, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8120, Washington, DC 20410–6000. Please use ''RAD Evaluation PRA Comment'' in the subject line of any email.

FOR FURTHER INFORMATION CONTACT: Paul Joice at 202–402–4608 (this is not a toll-free number) or *Paul.A.Joice@hud.gov,* for copies of the proposed forms and other available documents. Please use ''RAD Evaluation PRA Comment'' in the subject line of any email.

SUPPLEMENTARY INFORMATION: HUD will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Rental Assistance Demonstration Evaluation, Phase I.

OMB Control Number: Pending.

Description of the Need for the Information and Proposed Use: HUD is conducting an evaluation of the Rental Assistance Demonstration (RAD), focused on the conversion of public housing developments to project-based rental assistance and project-based vouchers. The evaluation will study a sample of RAD sites and a carefully chosen group of comparison sites. Identification of comparison sites will rely heavily on analysis of existing data—including internal HUD data on public housing and public housing tenants, and neighborhood data from the American Community Survey. If there are significant differences between RAD sites and comparison sites that are not reflected in the data, the resulting evaluation will be biased. Therefore it is necessary to conduct limited information collection from local experts to learn about any ''unobservable'' characteristics that should influence the selection of comparison sites. This information will refine the comparison group and enable HUD to produce more rigorous estimates of program impacts.

Agency Form Numbers: None.

Members of the Affected Public: This information collection request will affect individuals involved with public and assisted housing programs in the 24 sites selected to be part of the RAD Evaluation. Up to five individuals per site will be interviewed by telephone. They will be asked to provide information about a specific public housing development undergoing conversion through RAD—specifically, they will be asked about the decision to utilize RAD at that particular development. They will also be asked to comment on other public housing properties identified by the research team as potential comparison sites. These interviews will be semi-structured, guided by an interview protocol comprising mostly open-ended questions. Interviews will take no longer than 30 minutes.

Estimate of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The following chart details the respondent burden:

	Number of responses	Hours per response	Total hours
Telephone interviews	120	.5	60
Total	120	.5	60

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 12, 2013.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2013–09237 Filed 4–18–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5710–N–01]

Clarifying Guidance, Waivers, and Alternative Requirements for Hurricane Sandy Grantees in Receipt of Community Development Block Grant Disaster Recovery Funds

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: Previously, the Department allocated $5,400,000,000 of Community Development Block Grant disaster recovery (CDBG–DR) funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2) for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster due to Hurricane Sandy (*see* 78 FR 14329, published in the **Federal Register** on March 5, 2013). This Notice provides clarifying guidance, waivers, and alternative requirements.

DATES: With the exception of waivers included in this Notice, this Notice is effective on April 19, 2013. The effective date for waivers in this Notice is April 24, 2013.

FOR FURTHER INFORMATION CONTACT: Stan Gimont, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Gimont at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background
II. Applicable Rules, Statutes, Waivers, and Alternative Requirements
III. Catalog of Federal Domestic Assistance
IV. Finding of No Significant Impact

I. Background

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2, approved January 29, 2013) (Appropriations Act) makes available $16,000,000,000 in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013.

On March 1, 2013, the President issued a sequestration order in accordance with section 251A of the Balanced Budget and Emergency Deficit Control Act. This provision of law and the order implementing sequestration reduces funding for disaster recovery grants from $15,980,000,000 to $15,181,000,000. The $10 million provided to CPD for administrative costs and the $10 million provided to the

Office of the Inspector General are also each reduced to $9.5 million.

In a **Federal Register** Notice published March 5, 2013 (78 FR 14329), the Department allocated $5,400,000,000 after analyzing the impacts of Hurricane Sandy and identifying unmet needs. This Notice provides clarifying guidance, waivers, and alternative requirements to grantees in receipt of an allocation under the Appropriations Act.

II. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCD Act). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

This section provides additional waivers and alternative requirements to Hurricane Sandy grantees, and clarifies or modifies guidance provided at 78 FR 14329. For each waiver and alternative requirement described in this Notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of the HCD Act. Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the requirements of the Appropriations Act, regulatory waivers must be published in the **Federal Register** no later than five days before the effective date of such waiver.

1. *Action Plan for Disaster Recovery criterion for approval—Elevation Requirements.* Paragraph 1(a)(3) at 78 FR 14333 is hereby amended by deleting that paragraph and replacing it in its entirety with the following:

A description of how the grantee will promote: (a) Sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account possible sea level rise; and (b) how it will coordinate with other local and regional planning efforts to ensure consistency.

In addition, grantees must adopt and meet the following minimum requirements for approval: In order to better ensure a sustainable long-term recovery, grantees must elevate (or may, for certain non-residential structures as described below, floodproof) new construction and substantially improved structures one foot higher than the latest Federal Emergency Management Agency (FEMA) issued base flood elevation. This standard and criterion for approval of an Action Plan was made after considering the history of FEMA flood mitigation efforts. This higher elevation also takes into account projected sea level rise, which is not considered in current FEMA maps and National Flood Insurance Program premiums, which will potentially rise as FEMA Flood Insurance Rate Maps that take Hurricane Sandy into account are issued.

Each grantee must include in its Action Plan a description of how it will ensure compliance with the requirement that it will not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent in FEMA's most recent and current data source unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain. At a minimum, actions to minimize harm must include elevating or floodproofing new construction and substantial improvements to one foot above the base flood elevation and otherwise acting in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source and best available data under Executive Order 11988 is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

Executive Order 11988 on floodplain management requires that federal agencies use the best available flood data to determine the location of projects and activities. In addition, best available flood risk data must be used to determine requirements for reconstruction, and the elevation of structures for grants funding (in whole or part) new construction and substantial-improvements as defined at 24 CFR 55.2(b)(8). If a new construction or substantial improvement project or activity is located in a floodplain, the lowest floor must be designed using the base flood elevation, determined in accordance with the best available data, plus one foot as the baseline standard for elevation. If higher elevations are required by locally adopted code or standards, those higher standards would apply.

Instead of elevating non-residential structures that are not critical actions as defined at 24 CFR 55.2(b)(2), grantees may design and construct the project such that below the flood level, the structure is floodproofed using the best available flood data plus one foot. Floodproofing requires structures to be water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic loads, hydrodynamic loads, the effects of buoyancy or higher standards required by the FEMA National Flood Insurance Program as well as state and locally adopted codes. All mixed-use structures must be floodproofed consistent with the latest FEMA guidance.

Each grantee that submitted an Action Plan prior to the publication of this Notice must amend its Plan to address this modified requirement. This revision will be treated as a non-substantial amendment and does not require a public comment period. Revised plans must be submitted to the Department within thirty (30) days of the effective date of this Notice.

2. *State of New York—counties eligible for CDBG–DR assistance.* HUD is amending 78 FR 14330 to define ''most impacted and distressed counties'' to include counties that meet the revised threshold that will be used for non-Sandy allocations under Public Law 113–2. The new threshold identifies ''most impacted counties'' as counties with at least $10 million in damages. Of counties eligible for CDBG–DR assistance from the devastation of Hurricane Sandy, Westchester County, New York, meets this new threshold in addition to the ''most impacted counties'' already identified in FR 14330. As such, Table 2 at 78 FR 14330 is amended to identify the following counties as the most impacted and distressed: Nassau, Suffolk, Rockland, and Westchester. In addition, to provide consistency among CDBG disaster recovery appropriations, HUD has determined that any county within the State of New York that received a Presidential declaration under FEMA–4020–DR (Hurricane Irene) or FEMA–4031–DR (Tropical Storm Lee) is eligible to receive assistance under the Appropriations Act. However, the State must expend at least 80 percent of its CDBG–DR allocation in its most impacted and distressed counties.

3. *Waiver to permit some activities in support of the tourism industry (State of New York only).* The State of New York has requested a waiver to allow the State to use CDBG–DR funds to support

its $53.9 billion tourism industry and promote travel to communities in the disaster-impacted areas. Tourism in Sandy-impacted counties generates approximately $32.5 billion, $1.7 billion of which is created by disaster-affected businesses. In the surge area alone (nine of the 14 impacted counties), Hurricane Sandy affected 32,282 businesses; the Long Island tourism industry lost approximately 6,000 jobs due to Sandy's impact. Without this waiver, the State estimates a $500 million loss in revenue.

Tourism industry support, such as a national consumer awareness advertising campaign for an area in general, is ineligible for CDBG assistance. However, HUD understands that such support can be a useful recovery tool in a damaged regional economy that depends on tourism for many of its jobs and tax revenues and has granted similar waivers for several CDBG–DR disaster recovery efforts. As the State of New York is proposing advertising and marketing activities for this specific program, rather than direct assistance to tourism-dependent businesses, and because the measures of long-term benefit from the proposed activities must be derived using indirect means, 42 U.S.C. 5305(a) and 24 CFR 570.489(f) are waived only to the extent necessary to make eligible use of no more than $30 million for assistance for the tourism industry. CDBG–DR funds may be used to promote a community or communities in general, provided the assisted activities are designed to support tourism to the most impacted and distressed areas related to the effects of Hurricane Sandy. This waiver will expire at the end of the State's two-year expenditure period.

4. *Tenant-based rental assistance (New York City only).* The City of New York has found that low-income households were disproportionately impacted by Hurricane Sandy. Of the renters that registered for FEMA assistance, almost 65 percent had annual incomes less than $30,000. As of March 2013, nearly 1,200 households (almost 3,000 people) remain in hotels or interim facilities as a result of Hurricane Sandy, while an unknown number are living in unsafe conditions or ''doubled-up.''

To assess the permanent housing needs of displaced persons and families, and to match those households with available housing units, the city's Department of Housing Preservation and Development (HPD) created a ''housing portal.'' To date, more than 1,600 households have registered for assistance; 84 percent of these have incomes at or below 50 percent of the area median income. Meanwhile, HUD and FEMA are activating the Disaster Housing Assistance Program (DHAP), which could potentially address some households' need for rental assistance. However, DHAP is limited to one year, and the program requirements include evidence of sufficient financial assets to support a post-DHAP housing plan, which will exclude most extremely low-income households. Many of these households require a longer subsidy period so that they can develop a permanent housing plan. Thus, the Department is waiving 42 U.S.C. 5305(a), to the extent necessary to make eligible rental assistance payments on behalf of low-income households (at or below 50 percent of the area median income) displaced by Hurricane Sandy. Displaced households that have rejected public housing assistance, or declined a Section 8 voucher, will not be eligible. This waiver will expire at the end of the State's two year expenditure period.

5. *Program income alternative requirement.* The following changes and additions are made to Paragraph 17 at 78 FR 14341. Paragraphs a.(1)(h) through (j) are replaced, paragraph a.(1)(k) is added, and paragraph (2) is replaced with the following:

(h) Interest earned on funds held in a revolving fund account;

(i) Interest earned on program income pending disposition of the income;

(j) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not of low and moderate income, if the special assessments are used to recover all or part of the CDBG–DR portion of a public improvement; and

(k) Gross income paid to a unit of general local government or subgrantee of the unit of general local government from the ownership interest in a for-profit entity acquired in return for the provision of CDBG–DR assistance.

(2) ''Program income'' does not include the following:

(a) The total amount of funds, which does not exceed $35,000 received in a single year from activities, other than revolving loan funds that is retained by a unit of general local government and its subgrantees (all funds received from revolving loan funds are considered program income, regardless of amount);

(b) Amounts generated by activities eligible under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act;

(c) Payments of principal and interest made by a subgrantee carrying out a CDBG–DR activity for a unit of general local government, toward a loan from the local government to the subgrantee, to the extent that program income received by the subgrantee is used for such payments;

(d) The following classes of interest, which must be remitted to HUD for transmittal to the Department of the Treasury, and will not be reallocated under section 106(c) or (d) of the Act:

(i) Interest income from loans or other forms of assistance provided with CDBG–DR funds that are used for activities determined by HUD to be not eligible under § 570.482 or section 105(a) of the Act, to fail to meet a national objective in accordance with the requirements of § 570.483, or to fail substantially to meet any other requirement of this subpart or the Act;

(ii) Interest income from deposits of amounts reimbursed to a state's CDBG–DR program account prior to the state's disbursement of the reimbursed funds for eligible purposes; and

(iii) Interest income received by units of general local government on deposits of grant funds before disbursement of the funds for activities, except that the unit of general local government may keep interest payments of up to $100 per year for administrative expenses otherwise permitted to be paid with CDBG–DR funds.

(e) Proceeds from the sale of real property purchased or improved with CDBG–DR funds, if the proceeds are received more than 5 years after expiration of the grant agreement between the state and the unit of general local government.

* * * * *

6. *Assistance to businesses, including privately-owned utilities.* Paragraph 1(d)(3) at 78 FR 14335 is hereby amended to be consistent with the alternative requirement as stated in paragraph 41 at 78 FR 14347. While Paragraph 41 discussed both small businesses and private utilities, the paragraph at 1(d)(3) only discussed small busineses. Thus, grantees in receipt of an allocation under the Appropriations Act are subject to the following: when CDBG–DR funds are provided to for-profit businesses, such funds may only be provided to a small business, as defined by the SBA under 13 CFR part 121. CDBG–DR funds may not be used to assist a privately-owned utility for any purpose.

7. *Modification of certification.* Paragraph 42(n) at 78 FR 14348 is replaced with the following: The grantee will not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent in FEMA's most recent and current data source unless it also ensures that the action is

designed or modified to minimize harm to or within the floodplain. The grantee further certifies that at a minimum, actions to minimize harm will include elevating or floodproofing new construction and substantial improvements to one foot above the base flood elevation and otherwise acting in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

Grantees that have provided this certification in compliance with the previous Notice must resubmit the revised language to the Department within thirty (30) days of the effective date of this Notice.

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this Notice are as follows: 14.269.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: April 15, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs Programs.

[FR Doc. 2013–09228 Filed 4–18–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5681–N–16]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW. Room 7040 Washington, DC 20405, (202) 501–0084; (This is not toll-free numbers).

Dated: April 11, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 04/19/2013

Suitable/Available Properties

Building

Alaska

3 Buildings
Barrow Magnetic Observatory
Barrow AK 99723
Landholding Agency: GSA
Property Number: 54201240011
Status: Excess
GSA Number: 9AK–I–0842
Directions: STORAGE: 309 sf.; SENSOR BLDG.: 225 sf.; ABSOLUTE BLDG.: 166 sf
Comments: off-site removal only; total sf. 700; good to poor conditions; major renovations needed to make bldgs. ideal to occupy; lead/asbestos; contact GSA for more info. on accessibility/removal

Nebraska

Hummel Park Radio Station
11808 John Pershing Dr.
Omaha NE 68112
Landholding Agency: GSA
Property Number: 54201240005
Status: Surplus
GSA Number: 7–D–NE–0536
Comments: bldg. 1,040 sf.; sits on 4.87 acres +\ −; support for antenna operations; good conditions

Nevada

2 Buildings
Military Circle
Tonopah NV
Landholding Agency: GSA
Property Number: 54201240012
Status: Unutilized
GSA Number: 9–I–NV–514–AK
Directions: bldg. 102: 2,508 sf.; bldg. 103: 2,880 sf.
Comments: total sf. for both bldgs. 5,388; Admin.; vacant since 1998; sits on 0.747 acres; fair conditions; lead/asbestos present

Oregon

Triangle Lake Bldgs.
22650 Mapleton-Junction City Hwy
Cheshire OR 97419
Landholding Agency: GSA
Property Number: 54201240015
Status: Excess
GSA Number: 9–I–OR–0801
Directions: fuel pump bldg.: 220 sf.; vehicle maint. bldg.: 1,526 sf.
Comments: off-site removal only; vacant for 180 mons. or 15 yrs.; conditions unknown

Texas

Former Navy & Marine Corps Res
5301 Ave. South
Galveston TX 77551
Landholding Agency: GSA
Property Number: 54201240013
Status: Surplus
GSA Number: 7–D–TX–0549–9
Comments: 17,319 sf.; sits on 2.63 acres; Admin. office; fair conditions; eligible for Nat'l Register Historic Places; asbestos; access by appt. w/USACE

Wyoming

Signal Mountain Lodge Cabin
Grand Teton Nation Park
Moran WY 83013
Landholding Agency: GSA
Property Number: 54201240014
Status: Surplus
GSA Number: 7–I–WY–0475
Comments: off-site removal only; 1,830 sf. vacation cabin; moderate conditions; asbestos; access by appt. only

Land

California

Hydro Electric Power Plant
1402 San Rogue Rd.
Santa Barbara CA 93105
Landholding Agency: GSA
Property Number: 54201240009
Status: Excess
GSA Number: 9–I–CA–1693
Comments: .0997 acres; behind secured gate for Lauro Dame & Reservoir; will impact conveyance; contact GSA for more details

Tennessee

Fort Campbell Army Garrison
U.S. Hwy 79
Woodlawn TN 37191
Landholding Agency: GSA
Property Number: 54201240010
Status: Excess
GSA Number: 4–D–TN–586–2
Comments: 8 parcels; 3.41 to 13.90 acres; agricultural; adjacent to Ft. Campbell-U.S. Army Garrison; parcel 7 identified as wetlands; contact GSA for more details on specific property

Suitable/Unavailable Properties

Building

Arkansas

Sulphur Rock Radio Station
N. Main Street
Sulphur Rock AR 72579
Landholding Agency: GSA
Property Number: 54201220008
Status: Excess
GSA Number: 7–B–AR–576–AA
Comments: building #1: 152 sf.; building #2:59 sf; radio tower

Winnesburg Radio Station
SW Side of State Hwy 18 & County Rd.
Cash AR 72421
Landholding Agency: GSA
Property Number: 54201230013
Status: Excess
GSA Number: 7–B–AR–0577
Comments: 9′8″ × 15′5″; storage/office; fair conditions; need repairs

District of Columbia

West Heating Plant
1051 29th St. NW
Washington DC 20007
Landholding Agency: GSA
Property Number: 54201140006
Status: Surplus
GSA Number: DC–497–1
Comments: 1.97 acres; current use: industry; transferee is required to remediate significant contaminants which includes arsenic, PCBs, and benzo (a) pyrene; conveyance pending

Florida

4 Structures
142 Keeper's Cottage Way
Cape San Blas FL 32456
Landholding Agency: GSA
Property Number: 54201230008
Status: Surplus
GSA Number: 4–D–FL–1265AA
Directions: Cape San Blas Lighthouse, Keeper's Quarters A, Keeper's Quarter B, & an Oil/Storage Shed
Comments: UPDATE: Originally published on 8/24/2012. Availability extended to 11/06/2012 due to subsequent posting of outreach notice on 9/07/12.

Georgia

5 Acres
Former CB7 Radio Communication
Townsend GA 31331
Landholding Agency: GSA
Property Number: 54201210008
Status: Excess
GSA Number: 4–U–GA–885AA
Comments: 5.0 acres; current use: unknown; property located in 100 yr. floodplain—not in floodway and no impact in using property; contact GSA for more details

Illinois

1LT A.J. Ellison
Army Reserve
Wood River IL 62095
Landholding Agency: GSA
Property Number: 54201110012
Status: Excess
GSA Number: 1–D–II–738
Comments: 17,199 sq. ft. for the Admin. Bldg., 3,713 sq. ft. for the garage, public space (roads and hwy) and utilities easements, asbestos and lead base paint identified, most current use: unknown.

Iowa

U.S. Army Reserve
620 West 5th St.
Garner IA 50438
Landholding Agency: GSA
Property Number: 54200920017
Status: Excess
GSA Number: 7–D–IA–0510
Comments: 5743 sq. ft., presence of lead paint, most recent use—offices/classrooms/storage, subject to existing easements

NRCS–USDA Unit
1820 E. Euclid Ave.
Des Moines IA 50313
Landholding Agency: GSA
Property Number: 54201240004
Status: Excess
GSA Number: 7–A–IA–0511–AA
Directions: includes 2 Bldgs.; masonry 2,048 sf. +/−, frame 5,513 sf. +/−
Comments: bldgs. sits on .83 acres; fair conditions; equipment & material storage; driveway access easement w/adjacent property owner

Maine

Columbia Falls Radar Site
Tibbetstown Road
Columbia Falls ME 04623
Landholding Agency: GSA
Property Number: 54201140001
Status: Excess
GSA Number: 1–D–ME–0687
Directions: Buildings 1,2,3, and 4

Comments: Four bldgs. totaling 20,375 sq.; each one-story; current use: varies among properties

Maryland

Appraisers Store
null
Baltimore MD 21202
Landholding Agency: GSA
Property Number: 54201030016
Status: Excess
GSA Number: 4–G–MD–0623
Comments: Redetermination: 169,801 sq. ft., most recent use—federal offices, listed in the Nat'l Register of Historic Places, use restrictions

Consumer Products Safety Commi
10901 Darenestown Rd.
Gaithersburg MD 20878
Landholding Agency: GSA
Property Number: 54201220004
Status: Surplus
GSA Number: NCR–G–MR–1107–01
Directions: property includes building and Land
Comments: 37,543 sf.; office/warehouse space; secured area; however, will not interfere w/conveyance; contact GSA for further details

Michigan

Nat'l Weather Svc Ofc
214 West 14th Ave.
Sault Ste. Marie MI
Landholding Agency: GSA
Property Number: 54200120010
Status: Excess
GSA Number: 1–C–MI–802
Comments: previously unavailable; however, the property is 'available' as a facility to assist the homess; 2230 sq. ft., presence of asbestos, most recent use—office

CPT George S. Crabbe USARC
2901 Webber Street
Saginaw MI
Landholding Agency: GSA
Property Number: 54201030018
Status: Excess
GSA Number: 1–D–MI–835
Comments: 3891 sq. ft., 3-bay garage maintenance building

Minnesota

Noyes Land Port of Entry
SW Side of US Rte. 75
Noyes MN 56740
Landholding Agency: GSA
Property Number: 54201230007
Status: Excess
GSA Number: 1–G–MN–0593
Directions: one main bldg.; one storage; approx. 16,000 and 900 sf. respectively
Comments: sits on 2.29 acres; approx. 17,000 sf. total of bldg. space; office/governmental

Missouri

Nat'l Personnel Records Center
111 Winnebago
St. Louis MO 63118
Landholding Agency: GSA
Property Number: 54201220009
Status: Excess
GSA Number: 7–G–MO–0684
Comments: 440,000 +/− sf.; two floors; storage; asbestos, lead, & high level of radon; needs remediation

Crane Radio Station
Elm Street Rd.
Marionville MO 65633
Landholding Agency: GSA
Property Number: 54201240003
Status: Excess
GSA Number: 7–B–MO–0698
Comments: 213 sf.; sits on 4.65 acres; storage

Montana

James F. Battin & Courthouse
316 North 26th Street
Billings MT 59101
Landholding Agency: GSA
Property Number: 54201210005
Status: Excess
GSA Number: 7–G–MT–0621–AB
Comments: 116,865 sf.; current use: office; extensive asbestos contamination; needs remediation

Nevada

Alan Bible Federal Bldg.
600 S. Las Vegas Blvd.
Las Vegas NV 89101
Landholding Agency: GSA
Property Number: 54201210009
Status: Excess
GSA Number: 9–G–NV–565
Comments: 81,247 sf.; current use: federal bldg.; extensive structural issues; needs major repairs; contact GSA for further details

New Jersey

Camp Petricktown Sup. Facility
US Route 130
Pedricktown NJ 08067
Landholding Agency: GSA
Property Number: 54200740005
Status: Excess
GSA Number: 1–D–NJ–0662
Comments: 21 bldgs., need rehab, most recent use—barracks/mess hall/garages/quarters/admin., may be issues w/right of entry, utilities privately controlled, contaminants

New Mexico

USDA/NRCS Grants Field Office
117 N. Silver
Grants NM 87020
Landholding Agency: GSA
Property Number: 54201220011
Status: Surplus
GSA Number: 7–A–NM–0604
Comments: 817 sf. for office bldg.; 2,714 sf. for storage; good conditions; office/storage; access will be provided by NRCS employees located in Grants, NM

North Carolina

Greenville Site
10000 Cherry Run Rd.
Greenville NC 27834
Landholding Agency: GSA
Property Number: 54201210002
Status: Unutilized
GSA Number: 4–2–NC–0753
Comments: 49,300 sq. ft.; current use: transmitter bldg.; possible PCB contamination; not available—existing Federal need

Ohio

Oxford USAR Facility
6557 Todd Road
Oxford OH 45056
Landholding Agency: GSA
Property Number: 54201010007
Status: Excess
GSA Number: 1–D–OH–833
Comments: office bldg./mess hall/barracks/simulator bldg./small support bldgs., structures range from good to needing major rehab

Army Reserve Center
5301 Hauserman Rd.
Parma OH 44130
Landholding Agency: GSA
Property Number: 54201020009
Status: Excess
GSA Number: I–D–OH–842
Comments: 29, 212, and 6,097 sq. ft.; most recent use: office, storage, classroom, and drill hall; water damage on 2nd floor; and wetland property

LTC Dwite Schaffner
U.S. Army Reserve Center
1011 Gorge Blvd.
Akron OH 44310
Landholding Agency: GSA
Property Number: 54201120006
Status: Excess
GSA Number: 1–D–OH–836
Comments: 25,039 sq. ft., most recent use: Office; in good condition

Oklahoma

Lamar Radio Station
S. of County Rd.
Lamar OK 74850
Landholding Agency: GSA
Property Number: 54201240002
Status: Excess
GSA Number: 7–B–OK–0581
Comments: 152 sf.; sits on 4.65 acres; storage

Oregon

3 Bldgs./Land
OTHR–B Radar
Cty Rd 514
Christmas Valley OR 97641
Landholding Agency: GSA
Property Number: 54200840003
Status: Excess
GSA Number: 9–D–OR–0768
Comments: 14000 sq. ft. each/2626 acres, most recent use—radar site, right-of-way

Pennsylvania

Old Marienville Compound
110 South Forest St.
Marienville PA 16239
Landholding Agency: GSA
Property Number: 54201230001
Status: Excess
GSA Number: 4–A–PA–808AD
Directions: 10 bldgs.; wood farm duplex; office/garage; pole bard; shop; (2) wood sheds; block shed; trailer; carport; toilet bldg.
Comments: sq. ft. for ea. bldg. on property varies; contact GSA for specific sq. ft.; Forest Service Admin. complex; mold and lead identified; historic property

Texas

Veterans Post Office
1300 Mutamoros St.
Laredo TX 78040
Landholding Agency: GSA
Property Number: 54201240001
Status: Excess
GSA Number: 7–G–TX–1055–AA
Comments: CORRECTION: Approximately 57,380.; sits on 1.2 acres; office; 105 yrs.-

old; historic preservation restrictions on bldg. & ground

Utah

2 Buildings
9160 N. Hwy 83
Corinne UT 84307
Landholding Agency: GSA
Property Number: 54201230003
Status: Excess
GSA Number: 7–Z–UT–0533
Directions: T077 & T078; NASA Shuttle Storage Warehouses
Comments: off-site removal only; approx. 3,200 sf. each; storage

Washington

Log House
281 Fish Hatchery Rd.
Quilcene WA 98376
Landholding Agency: GSA
Property Number: 54201220006
Status: Excess
GSA Number: 9–I–WA–1260
Comments: off-site removal only; 3,385 sf.; residential/office

Wisconsin

Wausau Army Reserve Ctr.
1300 Sherman St.
Wausau WI 54401
Landholding Agency: GSA
Property Number: 54201210004
Status: Excess
GSA Number: 1–D–WI–610
Comments: bldg. 12,680 sq. ft.; garage 2,676 sq. ft.; current use: vacant; possible asbestos; remediation may be required; subjected to existing easements; Contact GSA for more detail

Land

Arizona

Land
95th Ave/Bethany Home Rd
Glendale AZ 85306
Landholding Agency: GSA
Property Number: 54201010014
Status: Surplus
GSA Number: 9–AZ–852
Comments: 0.29 acre, most recent use—irrigation canal

0.30 acre
Bethany Home Road
Glendale AZ 85306
Landholding Agency: GSA
Property Number: 54201030010
Status: Excess
GSA Number: 9–I–AZ–0859
Comments: 10 feet wide access road

California

Drill Site #3A
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040004
Status: Surplus
GSA Number: 9–B–CA–1673–AG
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #4
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040005
Status: Surplus
GSA Number: 9–B–CA–1673–AB
Comments: 2.21 acres, mineral rights, utility easements

Drill Site #6
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040006
Status: Surplus
GSA Number: 9–B–CA–1673–AC
Comments: 2.13 acres, mineral rights, utility easements

Drill Site #9
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040007
Status: Surplus
GSA Number: 9–B–CA–1673–AH
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #20
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040008
Status: Surplus
GSA Number: 9–B–CA–1673–AD
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #24
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040010
Status: Surplus
GSA Number: 9–B–CA–1673–AE
Comments: 2.06 acres, mineral rights, utility easements

Seal Beach RR Right of Way
West 19th Street
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140015
Status: Surplus
GSA Number: 9–N–CA–1508–AF
Comments: 8,036.82 sq. ft.; current use: vacant lot

Seal Beach RR Right of Way
East 17th Street
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140016
Status: Surplus
GSA Number: 9–N–CA–1508–AB
Comments: 9,713.88 sq. ft.; current use: private home

Seal Beach RR Right of Way
East of 16th Street
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140017
Status: Surplus
GSA Number: 9–N–CA–1508–AG
Comments: 6,834.56 sq. ft.; current use: vacant

Seal Beach RR Right of Way
West of Seal Beach Blvd.
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140018
Status: Surplus
GSA Number: 9–N–CA–1508–AA
Comments: 10,493.60 sq. ft.; current use: vacant lot

Seal Beach RR Right of Way
Seal Beach
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201210006
Status: Surplus
GSA Number: 9–N–CA–1508–AH
Comments: 4,721.90 sf.; current use: vacant lot between residential bldgs.

Seal Beach RR Right of Way
Seal Beach
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201210007
Status: Surplus
GSA Number: 9–N–CA–1508–AJ
Comments: 6,028.70 sf.; current use: vacant lot between residential bldgs.

Illinois

former Outer Marker Compass
2651 West 83rd Place
Chicago IL
Landholding Agency: GSA
Property Number: 54201220002
Status: Excess
GSA Number: 1–U–I–797
Comments: .22 acres; current use: airport outer marker

Kansas

1.64 Acres
Wichita Automated Flight Service
Anthony KS 67003
Landholding Agency: GSA
Property Number: 54201230002
Status: Excess
GSA Number: 7–U–KS–0526
Comments: Agricultural surroundings; remedial action has been taken for asbestos removal

Massachusetts

FAA Site
Massasoit Bridge Rd.
Nantucket MA 02554
Landholding Agency: GSA
Property Number: 54200830026
Status: Surplus
GSA Number: MA–0895
Comments: approx. 92 acres, entire parcel within MA Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program

Michigan

FAA Outer Marker
Ash Rd. East of Clark Rd.
New Boston MI 48164
Landholding Agency: GSA
Property Number: 54201230009
Status: Excess
GSA Number: 1–U–MI–0840
Comments: .24 acres; located in a rural area; neighboring farm fields

FAA Outer Marker
N. Side of Avondale St., W. of Tobin Dr.
Inkster MI 48141
Landholding Agency: GSA
Property Number: 54201230010
Status: Excess
GSA Number: 1–U–MI–0841
Comments: .55 acres; located in a residential area; flat & grassy; public park located north of property

Missouri

Long Branch Lake

30174 Visitor Center Rd.
Macon MO 63552
Landholding Agency: GSA
Property Number: 54201230006
Status: Surplus
GSA Number: 7–D–MO–0579
Comments: 7.60 acres

SWPA-Jenkins Antenna Site
Barry County
Jenkins MO
Landholding Agency: GSA
Property Number: 54201230011
Status: Surplus
GSA Number: 7–B–MO–0696
Comments: 0.06 acres; surrounded by 5.18 acre easement that will be lifted when property is conveyed out of Fed. inventory; access to property by appt. only

Nevada

RBG Water Project Site
Bureau of Reclamation
Henderson NV 89011
Landholding Agency: GSA
Property Number: 54201140004
Status: Surplus
GSA Number: 9–I–AZ–0562
Comments: water easement (will not impact conveyance); 22±acres; current use: water sludge disposal site; lead from shotgun shells on <1 acre.

North Dakota

Vacant Land of MSR Site
Stanley Mickelsen
Nekoma ND
Landholding Agency: GSA
Property Number: 54201130009
Status: Surplus
GSA Number: 7–D–ND–0499
Comments: 201.2 acres; recent use: unknown

Pennsylvania

approx. 16.88
271 Sterrettania Rd.
Erie PA 16506
Landholding Agency: GSA
Property Number: 54200820011
Status: Surplus
GSA Number: 4–D–PA–0810
Comments: vacant land

Utah

BLM Kanab Field Office
318 N. 100 East
Kanab UT 84741
Landholding Agency: GSA
Property Number: 54201230012
Status: Surplus
GSA Number: 7–I–UT–0528
Directions: includes 6,192 sf. office bldg.; 4,800 sf. warehouse; 1,120 sf. storage/shed on property
Comments: 2.8 acre w/three bldgs.; access to property by appt. only; friable asbestos; remediation needed

[FR Doc. 2013–08887 Filed 4–18–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2013–N084; FXES11130600000D2–123–FF06E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application to conduct certain activities with endangered or threatened species. With some exceptions, the Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by May 20, 2013.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (e.g., Permit No. TE–067734).

- *Email: permitsR6ES@fws.gov*. Please refer to the respective permit number (e.g., Permit No. TE–067734) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225
- *In-Person Drop-off, Viewing, or Pickup:* Call (303) 236–4212 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kathy Konishi, Permit Coordinator Ecological Services, (303) 236–4212 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes activities with United States endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Application Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following application. Documents and other information the applicant has submitted are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number: TE–067734

Applicant: National Park Service, Badlands National Park, 25216 Ben Reifel Road, Interior, SD 57750.

Applicant requests the renewal of an existing permit to take black-footed ferret (*Mustela nigripes*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

National Environmental Policy Act

In compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in this permit are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: April 12, 2013.

Michael G. Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2013–09204 Filed 4–18–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2012–0036; FXES11120300000F2–134–FF03E15000]

Final Environmental Impact Statement, Habitat Conservation Plan, and Implementing Agreement and Draft Programmatic Agreement, Buckeye Wind Power Project, Champaign County, Ohio

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: final environmental impact statement, habitat conservation plan, implementing agreement and draft programmatic agreement.

SUMMARY: Under the National Environmental Policy Act (NEPA), the U.S. Fish and Wildlife Service (Service) is advising the public of the availability of the Final Environmental Impact Statement (FEIS) associated with an application received from Buckeye Wind, LLC (Buckeye Wind, applicant) for an incidental take permit (permit) pursuant to the Endangered Species Act of 1973, as amended (ESA). We also announce the availability of the Buckeye Wind Power Project Habitat Conservation Plan (HCP), prepared in accordance with the ESA, and the availability of a Draft Programmatic Agreement (PA) to address the National Historic Preservation Act (NHPA) and its implementing regulations, ''Protection of Historic Properties.'' Buckeye Wind submitted the HCP, as well as a proposed Implementing Agreement (IA), as part of its incidental take permit application. If issued, the permit would authorize incidental take of the federally listed endangered Indiana bat (*Myotis sodalis*) from construction, operation, maintenance, and decommissioning associated with the Buckeye Wind Power Project. Buckeye Wind is requesting a 30-year permit term.

We request comments from the public on the permit application, the HCP, the IA, the FEIS, and the Draft PA, all of which are available for review. The Service is furnishing this notice to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to the ESA. For locations to review the documents, please see the Availability of Documents section below.

DATES: *Comments:* We will accept comments received or postmarked on or before May 20, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. The Service's decision on issuance of the permit will occur no sooner than 30 days after the publication of the Environmental Protection Agency notice of the FEIS in the **Federal Register** and will be documented in a Record of Decision.

ADDRESSES: *Document availability:*

- *Internet:* You may obtain copies of the documents on the Internet at *http://www.regulations.gov* (Docket Number FWS–R3–ES–2012–0036) or *http://www.fws.gov/midwest/endangered/permits/hcp/r3hcps.html.*
- *U.S. Mail:* You can obtain the documents by mail from the Ecological Services Office in the Midwest Regional Office (see **FOR FURTHER INFORMATION CONTACT**).
- *In-Person:* To view hard copies of the documents in person, go to one of the Ecological Services Offices (8 a.m. to 4 p.m.) listed under **FOR FURTHER INFORMATION CONTACT,** or to one of the following libraries during normal business hours: Champaign County Library, 1060 Scioto Street, Urbana, OH 43078–2228; or North Lewisburg Branch, 161 Winder Street, North Lewisburg, OH 43060.

Comment submission: In your comment, please specify whether your comment addresses the HCP, the FEIS, the IA, or the PA. You may submit written comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R3–ES–2012–0036, which is the docket number for this notice. Then, on the left side of the screen, under the Document Type heading, click on the Notices link to locate this document and submit a comment.
- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R3–ES–2012–0036; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments by only the methods described above. We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Megan Seymour, Fish and Wildlife Biologist, Ohio Ecological Services Field Office, U.S. Fish and Wildlife Service, 4625 Morse Road, Suite 104, Columbus, OH 43230; 614–416–8993, extension 16; or Rick Amidon, Fish and Wildlife Biologist, Ecological Services, Midwest Regional Office, U.S. Fish and Wildlife Service, 5600 American Blvd., West, Suite 990, Bloomington, MN 55437–1458; 612–713–5164.

SUPPLEMENTARY INFORMATION:

Background

We have received an application from Buckeye Wind, LLC, for an incidental take permit (TE66315A) under the ESA (16 U.S.C. 1531 *et seq.*). If approved, the permit would be for a 30-year period and would authorize incidental take of the Indiana bat.

The applicant has prepared a draft HCP to cover the construction, operation, maintenance, and decommissioning of the project. The project consists of a 100-turbine wind-powered electric generation facility located in an approximately 80,051-acre area (the action area) located in portions of Union, Wayne, Urbana, Salem, Rush, and Goshen Townships, in Champaign County, Ohio. The draft HCP describes the following: (1) Biological goals and objectives of the HCP; (2) the covered activities; (3) permit duration; (4) permit area; (5) alternatives to the taking that were considered; (5) public participation; (6) life history of the Indiana bat; (6) a quantification of the take for which authorization is requested; (7) an assessment of direct and indirect effects of the taking on the Indiana bat within the action area and within the Midwest Recovery Unit (as delineated in the 2007 Indiana Bat Draft Recovery Plan, USFWS); (8) a conservation program consisting of avoidance and minimization measures, mitigation, monitoring, and adaptive management; (9) funding for the HCP; (10) procedures to deal with changed and unforeseen circumstances; and (11) methods for permit amendments.

In addition to the HCP, the applicant has prepared an IA to document the responsibilities of the parties.

Pursuant to the NHPA (16 U.S.C. 470, 470f), the Service has initiated Section 106 consultation with the Ohio State Historic Preservation Office for the project. Architectural surveys have been completed for the full 100-turbine project. Only 52 turbines have been sited to date. Thus, archaeological surveys have only been conducted for the 52-turbine Project footprint. Therefore, additional effort will be required to identify archaeological sites and historic properties that may be adversely affected within the footprint of the remaining 48 turbines and associated infrastructure. Following siting of the additional 48 turbines, additional archaeological surveys will be conducted, with plans and reports submitted to the Ohio State Historic Preservation Office for review. The draft PA between the Service, Buckeye Wind, and Ohio State Historic Preservation Office describes the process for conducting the remaining surveys, evaluating the results of the surveys, and determining if resources can be avoided or if additional surveys or mitigation are necessary before the Section 106 process is completed. The final PA will be signed prior to issuance of the EIS Record of Decision. The Section 106 process will be completed prior to Project construction beginning. Public comments are solicited on the content of the draft PA.

Public Involvement

Public scoping for the Draft EIS was first initiated in the form of a Notice of Intent to conduct a 30-day scoping period for a NEPA decision on the proposed HCP and permit and request for comments, published in the **Federal Register** on January 29, 2010 (75 FR 4840). The Service formally initiated an environmental review of the project through publication of a Notice of Intent to prepare an Environmental Impact Statement in the **Federal Register** on May 26, 2010 (75 FR 29575). Utilizing the public scoping comments, the Service prepared a draft EIS to analyze the effects of the alternatives on the human environment. The draft EIS was released for a 90-day public comment on June 29, 2012 (77 FR 38819). A public meeting was held on July 12, 2012, at the Champaign County Community Center Auditorium, 1512 S. U.S. Highway 68, Urbana, OH to solicit additional input from the public on the HCP and Draft EIS. The official comment period ended on September 27, 2012.

Public Comments

You may submit your comments and materials concerning the notice by one of the methods listed in **ADDRESSES**. We request that you send comments only by one of the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as documents associated with the notice, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R3–ES–2012–0036, or by appointment, during normal business hours, at the Ohio Ecological Services Field Office in Columbus, Ohio (see **FOR FURTHER INFORMATION CONTACT**).

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531, 1539(c)) and its implementing regulations (50 CFR 17.22), NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR Part 46), and Section 106 of the NHPA (16 U.S.C. 470, 470f) and its implementing regulations (36 CFR Part 800). We will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA. A permit decision will be made no sooner than 30 days after the publication of the EPA's FEIS notice in the **Federal Register** and completion of the Record of Decision. If we determine that all requirements are met, we will issue an incidental take permit under section 10(a)(1)(B) of the ESA to Buckeye Wind for take of the Indiana bat, incidental to otherwise lawful activities in accordance with the HCP, the IA, and the permit.

Dated: April 4, 2013.

Lynn Lewis,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2013–09201 Filed 4–18–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–EA–2013–N083; FF09X60000–FVWF97920900000–XXX]

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a public meeting of the Sport Fishing and Boating Partnership Council (Council). A Federal advisory committee, the Council was created in part to foster partnerships to enhance public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating in the United States. This meeting is open to the public, and interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: The meeting will take place Monday, May 20, 2013, from 8:30 a.m. to 4:30 p.m., and Tuesday, May 21, 2013, from 8:30 a.m. to 12:00 p.m. (Eastern Daylight Time). For deadlines and directions on registering to attend the meeting, submitting written material, and/or giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Department of the Interior, Room 5160; 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2336; fax (703) 358–2548; or email *doug_hobbs@fws.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Sport Fishing and Boating Partnership Council will hold a meeting.

Background

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director of the Service, on aquatic conservation endeavors that benefit recreational fishery resources and recreational boating and that encourage partnerships among industry, the public, and government. The Council represents the interests of the public and private sectors of the recreational fishing,

boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Service Director and the president of the Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.gov/sfbpc*.

Meeting Agenda

The Council will hold a meeting to consider:

- A draft vision for fish and aquatic resource conservation in the Service. The Council will consider a technical report presented to it by an ad hoc steering committee and possible recommendations to the Service resulting from information included in the report.
- Issues regarding the Boating Infrastructure Grant Program, Clean Vessel Act Grant Program, and the Sport Fish Restoration Boating Access Program.
- Updates on the Rigs to Reefs Program and the Department of the Interior's implementation of its ''Idle Iron'' policy for decommissioning and removing unused oil and gas production infrastructure.
- An update on the activities of the Federal Interagency Council on Outdoor Recreation (FICOR) in implementing the America's Great Outdoors Initiative.
- An update from the Recreational Boating and Fishing Foundation on progress in implementing Council recommendations to improve the activities and operations of the Foundation.
- An update on activities of the Service's Wildlife and Sport Fish Restoration Program.
- Other miscellaneous Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/sfbpc*.

Public Input

If you wish to	Then you must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than
Attend the meeting	Monday, May 13, 2013.
Submit written information or questions before the meeting for the council to consider during the meeting	Monday, May 13, 2013.
Give an oral presentation during the meeting	Monday, May 13, 2013.

Attendance

Because entry to Federal buildings is restricted, all visitors are required to preregister to be admitted. In order to attend this meeting, you must register by close of business on the dates listed in ''Public Input'' under **SUPPLEMENTARY INFORMATION**. Please submit your name, time of arrival, email address, and phone number to the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the meeting. Written statements must be received by the date listed above in ''Public Input,'' so that the information may be made available to the Council for their consideration prior to the meeting. Written statements must be supplied to the Council Coordinator in one of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation during the meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting. To ensure an opportunity to speak during the public comment period of the meeting, members of the public must register with the Council Coordinator. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the meeting.

Meeting Minutes

Summary minutes of the meeting will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 120 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/sfbpc*.

Stephen Guertin,

Deputy Director.

[FR Doc. 2013–09206 Filed 4–18–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDB00100 LF1000000.HT0000 LXSS020D0000 4500031240]

Final Supplementary Rules for the Morley Nelson Snake River Birds of Prey National Conservation Area, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Final Supplementary Rules.

SUMMARY: The Bureau of Land Management (BLM) is finalizing supplementary rules for all BLM-administered public lands within the approximately 483,700-acre Morley Nelson Snake River Birds of Prey National Conservation Area (NCA), addressed in the September 2008 Resource Management Plan (RMP) and Record of Decision (ROD). The Snake River Birds of Prey NCA RMP identifies implementation level decisions which describe an array of management actions designed to conserve natural and cultural resources on BLM administered land while providing for recreational opportunities. These supplementary rules will help enforce the decisions in the NCA RMP.

DATES: These supplementary rules are effective May 20, 2013.

ADDRESSES: You may direct your inquiries to the Bureau of Land Management, Morley Nelson Snake River Birds of Prey National Conservation Area, 3948 Development Ave, Boise, Idaho 83705; or by email: *jfluckiger@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Jared Fluckiger, Outdoor Recreation Planner, at 208–384–3342 or by email at *jfluckiger@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Mr. Fluckiger.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Public Comments
III. Discussion of Supplementary Rules
IV. Procedural Matters

I. Background

Public Law 103–64 established the NCA in 1993 for the ''* * * conservation, protection, and enhancement of raptor populations and habitats and the natural and environmental resources and values associated therewith * * *'' The NCA's RMP was completed in September 2008.

The NCA is located in southwestern Idaho, within a 30-minute drive of Idaho's capital, Boise, where almost half of the State's population resides. It is located in Ada, Canyon, Elmore, and Owyhee counties and encompasses approximately 483,700 public land acres extending 81 miles along the Snake River. The NCA includes the 138,000-acre Orchard Training Area, used by the Idaho Army National Guard for military training since 1953. Within its boundary are approximately 41,200 State, 4,800 private, and 1,600 military acres, and 9,300 acres covered by water. These lands are not affected by the NCA designation or subsequent RMP decisions.

These final supplementary rules will help the BLM achieve management objectives and implement RMP decisions. They will also provide the BLM with enforcement capability to help prevent damage to natural resources, and provide for public health and safety.

II. Discussion of Public Comments

The BLM published the proposed supplementary rules in the **Federal Register** on July 18, 2012 (77 FR 42327). Public comments were accepted for a 60-day period ending on September 17, 2012. The BLM received two comments. Both comments expressed concern that the prohibition against rock climbing and rappelling will apply to a style of climbing commonly referred to as ''bouldering.'' In response to these comments, the proposed supplementary rules have been revised to define and allow bouldering, except on the canyon walls of the Snake River within the NCA.

III. Discussion of Supplementary Rules

In keeping with the BLM performance goal of reducing threats to public health, safety, and property, supplementary rules are necessary to protect the natural and cultural resources within the NCA as described in the NCA RMP; allow for safe public recreation and protection of public health; reduce the potential for environmental damage; and enhance the safety of visitors and neighboring residents.

The final supplementary rules will prohibit rock climbing and rappelling on BLM-administered public land within the Morley Nelson Snake River Birds of Prey NCA because these activities adversely effect the 16 species of raptors that nest in or on canyon walls at various times of the year. This prohibition will help protect a unique assemblage of raptors that occupy the Snake River Canyon and adjacent lands of southwestern Idaho. This raptor aggregation, considered to be one of the densest in North America, and perhaps the world, was the reason for designating the NCA in 1993.

Additionally, the final supplementary rules will prohibit rock climbing and rappelling on BLM-administered public land within the NCA because of the widespread distribution of unstable basalt rock. This unstable basalt rock exists throughout the NCA in cliffs, rimrocks, and rocky outcroppings and poses a significant safety hazard to those climbing and rappelling on them.

In their comments, the public requested that the BLM reconsider whether bouldering will be considered a prohibited act under the prohibition against rock climbing and rappelling. Bouldering is a style of rock climbing that occurs without a rope and is normally limited to very short climbs. The BLM has determined that bouldering does not present safety hazards or potential harm to raptors. Therefore, bouldering will be allowed throughout the NCA and prohibited only on the cliff walls, which are primarily unstable basalt.

Prohibiting open fires outside of BLM-approved fire rings will help avert human-caused wildfire, which in turn will help prevent damage to archeological sites and slickspot peppergrass (*Lepidium papilliferum*), a federally listed species under the Endangered Species Act. The final supplementary rules state that additional restrictions on building, maintaining, attending, or using a fire, campfire, or stove fire may be imposed during periods of high fire danger. For example, statewide Fire Prevention Orders or Stage II fire restrictions may be implemented for all BLM-managed lands in a given geographic area when conditions warrant and may involve prohibition of all open fires, even in approved fire rings.

In the past, some of the NCA's significant cultural resources have been damaged by paintball gun use. Prohibiting paintball activities within the Snake River Canyon and within ¼ mile of the canyon rim eliminates the adverse effects to early cabin architecture, ferry crossings, Oregon Trail segments, and petroglyphs.

IV. Procedural Matters

Executive Orders 12866 and 13563, Regulatory Planning and Review

The final supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Orders 12866 and 13563. They will not have an effect of $100 million or more on the economy. They will not adversely affect, in a material way, the economy; productivity; competition; jobs; environment; public health or safety; or State, local, or tribal governments or communities. The final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They will not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor will they raise novel legal or policy issues. The supplementary rules merely contain rules of conduct for public use of a limited selection of public lands to protect public health and safety.

National Environmental Policy Act (NEPA)

The BLM prepared an environmental impact statement as part of the development of the NCA RMP. During that NEPA process, many alternative decisions for the NCA were fully analyzed and offered for public comment, including the substance of these final supplementary rules. The pertinent analysis can be found in Chapter 4 of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Snake River Birds of Prey National Conservation Area, April 2006. The ROD for the RMP was signed by the Idaho BLM State Director on September

30, 2008. These supplementary rules provide for enforcement of plan decisions. The rationale for the decisions made in the plan is fully covered in the ROD. It is available for review in the BLM administrative record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule will have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These final supplementary rules will merely establish rules of conduct for use of a limited area of public lands and will have no effect on business entities of any size. Therefore, the BLM has determined, under the RFA, that the final supplementary rules will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These final supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). They will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. These final supplementary rules will merely establish rules of conduct for use of a limited area of public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These final supplementary rules will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year nor do they have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, the BLM is not required to prepare a statement or plan under Subchapter II of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1571).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These final supplementary rules will not have significant takings implications nor will they be capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that these rules will not cause a ''taking'' of private property or require preparation of a takings assessment.

Executive Order 13132, Federalism

The final supplementary rules will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The final supplementary rules will not conflict with any law or regulation of the State of Idaho. Therefore, in accordance with Executive Order 13132, the BLM has determined that these final supplementary rules will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

The BLM has determined that these final supplementary rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The BLM has found that these final supplementary rules do not include policies that will have tribal implications.

Information Quality Act

The Information Quality Act (Section 515 of Pub. L. 106–554) requires Federal agencies to maintain adequate quality, objectivity, utility, and integrity of the information that they disseminate. In developing these supplementary rules, the BLM did not conduct or use a study, experiment, or survey or disseminate any information to the public.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These final supplementary rules will not constitute a significant energy action. The final supplementary rules will not have an adverse effect on energy supplies, production, or consumption, and have no connection with energy policy.

Paperwork Reduction Act

These final supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

Author

The principal author of these supplementary rules is Stanley Buchanan, Boise District Law Enforcement Ranger, Bureau of Land Management.

For the reasons stated in the Preamble, and under the authority of 43 CFR 8365.1–6, the State Director establishes supplementary rules for BLM-administered lands covered under the Snake River Birds of Prey NCA RMP, to read as follows:

Supplementary Rules for the Morley Nelson Snake River Birds of Prey National Conservation Area

Definitions:

Rock Climbing: A sport/technique in which participants climb up, down or across natural rock formations, usually with ropes and other equipment. Rock climbing is similar to scrambling (another activity involving the scaling of hills and similar formations), but climbing is generally differentiated by its sustained use of hands to support the climber's weight as well as to provide balance.

Bouldering: A style of rock climbing undertaken without a rope and normally limited to very short climbs over a crash pad (called a bouldering mat) so that a fall will not result in serious injury.

Rappelling: A descent of a vertical surface, as a cliff or wall, by sliding down a belayed rope that is passed under one thigh and over the opposite shoulder or through a device that provides friction, typically while facing the surface and performing a series of short backward leaps to control the descent.

Improved Campsite: A specific location identified by the BLM for camping. Improved campsites include individual sites in developed campgrounds and developed recreation sites for camping that may or may not contain picnic tables, shelters, parking sites, and/or grills. All improved campsites are identified by a BLM map or sign.

Open Fires: Any fire not in a BLM-approved metal fire ring.

On BLM-administered public land within the Morley Nelson Snake River Birds of Prey National Conservation Area, you must comply with the following supplementary rules:

1. Rock climbing and rappelling are prohibited on all lands administered by the BLM within the NCA. Bouldering is permitted, provided it does not occur on

the canyon walls of the Snake River within the NCA.

2. Open fires are prohibited on all lands administered by the BLM within the NCA. Campfires may only be located on improved campsites within BLM-approved metal fire rings on all lands administered by the BLM within the NCA. Additional restrictions may be imposed during periods of high fire danger.

3. Paintball guns and equipment may not be used within the Snake River Canyon or within ¼ mile of the canyon rim.

Penalties: On public lands under Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8360.0–7), any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months or both. Such violations may also be subject to enhanced fines provided for by 18 U.S.C. 3571.

Steven A. Ellis,

Bureau of Land Management, State Director, Idaho.

[FR Doc. 2013–09272 Filed 4–18–13; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–828]

Certain Video Displays and Products Using and Containing Same; Investigations: Terminations, Modifications and Rulings

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned based on a settlement agreement between the parties. The investigation is terminated in its entirety, and the initial determination previously under review by the Commission is set aside.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 21, 2012, based on a complaint filed by Mondis Technology, Inc., of London, England (''Mondis''). 77 FR 9964 (Feb. 21, 2012). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (''section 337''), by reason of infringement of U.S. Patent Nos. 6,247,090 and 7,089,342. The notice of investigation names Chimei Innolux Corporation of Taiwan and Innolux Corporation of Austin, Texas (collectively, ''Innolux''), as the only respondents.

On August 1, 2012, the presiding administrative law judge (''ALJ'') granted a motion by Innolux for summary determination of no violation of section 337 and issued an initial determination (''ID'') terminating the investigation (Order No. 9). The ALJ held that an ongoing royalty order issued by the U.S. District Court for the Eastern District of Texas constitutes a license authorizing Innolux to practice the inventions and accordingly there can be no violation of section 337.

On August 16, 2012, Mondis filed a petition for the Commission to review the ID. On October 16, 2012, the Commission issued a notice stating that it had determined to review the ID.

On March 14, 2013, while the Commission was reviewing the ID, Mondis and Innolux filed a joint motion to terminate the investigation based on a settlement agreement between Mondis and Innolux. On March 25, 2013, the IA filed a response supporting termination.

The Commission has determined that the motion to terminate the investigation based on a settlement agreement complies with Commission Rule 210.21 (19 CFR 210.21). The Commission has further determined that terminating the investigation based on the settlement agreement between Mondis and Innolux is not contrary to the public interest. Accordingly, the Commission has determined to grant the joint motion and terminate the investigation in its entirety.

The issues under review by the Commission in relation to the summary determination ID (Order No. 9) are now moot in view of the parties' settlement. Since the ID was under review by the Commission and the Commission has terminated the investigation based on a settlement agreement during the period of review, the ID does not constitute a Commission determination and is hereby set aside. *See* Commission Rule 210.45(c) (19 CFR 210.45(c)).

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.
Issued: April 15, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–09184 Filed 4–18–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–659 (Enforcement)]

Certain Prepregs, Laminates, and Finished Circuit Boards

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant a petition to rescind a consent order and not to review an ID (Order No. 20) of the administrative law judge (''ALJ'') terminating the above-captioned enforcement proceeding on the basis of a settlement agreement. Thus, the Commission hereby rescinds the April 10, 2009, consent order against Taiwan Union Technology Corp. (''TUC'') and terminates the enforcement proceeding.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation

may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation in this matter on November 12, 2008, based upon a complaint filed on behalf of Isola USA Corp. of Chandler, Arizona (''Isola'') on October 6, 2008, and supplemented on October 28, 2008. 73 FR 66919 (November 12, 2008). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain prepregs, laminates, and finished circuit boards that infringe certain claims of United States Patent Nos. 6,187,852 (''the '852 patent''); 6,322,885 (''the '885 patent''); and 6,509,414 (''the '414 patent''). The notice of investigation named seven firms as respondents. On December 22, 2008, the Commission issued notice of its determinations not to review IDs terminating the investigation with respect to respondents Sanmina-SCI Corp. and ITEQ Corp. based on settlement agreements. On January 9, 2009, the Commission issued notice of its determination not to review an ID terminating the investigation with respect to the '414 patent.

On March 19, 2009, the Commission issued notice of its determination not to review an ID terminating the investigation as to respondents VENTEC Electronics (Suzhou) Co., Ltd., VENTEC Electronics (HK) Co., Ltd., and VENTEC-Global Laminates USA LLC based on a consent order. On April 10, 2009, the Commission issued notice of its determination not to review an ID granting a joint motion to terminate the investigation as to TUC based on a consent order. The consent orders prohibit the sale for importation, importation, or sale after importation into the United States of certain prepregs and laminates that are the subject of the investigation or that otherwise infringe, induce, and/or contribute to the infringement of claims 1–3, 5, and 8 of the '852 patent and claims 1, 2, 4, and 7–9 of the '885 patent. On May 11, 2009, the Commission issued notice of its determination not to review an ID granting Isola's motion to withdraw the complaint as to respondent Guangdong Shengyi Sci. Tech Co., Ltd., and terminated the investigation.

On August 14, 2012, Isola filed a complaint for enforcement proceedings against TUC under Commission Rule 210.75(b). On October 2, 2012, the Commission determined that the criteria for institution of enforcement proceedings were satisfied and instituted enforcement proceedings, naming TUC as a respondent. 77 FR 61025 (October 5, 2012). The complaint for enforcement asserts that TUC has violated the April 10, 2009, consent order by importing or causing to be imported infringing articles identified as TU–862 HF and TU–86P HF.

On February 25, 2013, Isola and TUC jointly petitioned the Commission to rescind the consent order issued against TUC on April 10, 2009, based on a settlement agreement and license. Also on February 25, 2013, Isola and TUC filed a joint motion to terminate the enforcement proceeding on the basis of a settlement agreement. On March 7, 2013, the Commission investigative attorney filed separate responses in support.

On March 18, 2013, the ALJ issued the subject ID, granting the motion. The ALJ found that termination of the enforcement proceeding does not impose any undue burdens on the public health and welfare, competitive conditions in the United States economy, or United States consumers. No petitions for review were filed.

Having considered the ID and the relevant portions of the record, the Commission has determined (1) to grant the joint petition to rescind the consent order and (2) not to review the subject ID. Thus, the Commission hereby rescinds the April 10, 2009, consent order against TUC and terminates the enforcement proceeding.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 210.42(h), 210.21(c)(3)(ii), and 210.76 of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h), 210.21(c)(3)(ii), and 210.76).

Issued: April 15, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–09183 Filed 4–18–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–870]

Certain Electronic Bark Control Collars, Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 3) of the presiding administrative law judge (''ALJ'') terminating the investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *at http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *at http://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 25, 2013, based on a complaint filed on behalf of Radio Systems Corporation of Knoxville, Tennessee. 78 FR 12788–89. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic bark control collars by reason of infringement of certain claims of U.S. Patent No. 5,927,233. The complaint further alleged the existence of a domestic industry. The Commission's notice of investigation named Sunbeam Products, Inc. (d/b/a Jarden Consumer Solutions) of Boca Raton, Florida as the sole respondent.

On February 27, 2013, complainant and respondent jointly moved to

terminate the investigation based on a settlement agreement. The Commission investigative attorney filed a response in support of the motion.

The ALJ issued the subject ID on March 25, 2013, granting the joint motion for termination of the investigation. He found that the joint motion for termination based on a settlement agreement satisfied Commission rule 210.21(b)(1). He further found, pursuant to Commission rule 210.50(b)(2), that termination of this investigation based on a settlement agreement is in the public interest. No party petitioned for review of the ID.

The Commission has determined not to review the subject ID, and has terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42(h)).

Issued: April 15, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–09170 Filed 4–18–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–834]

Certain Mobile Electronic Devices Incorporating Haptics; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 35) terminating the investigation on the basis of withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 6, 2012, based on a complaint filed by Immersion Corporation of San Jose, California (''Immersion''). The complaint alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation, sale for importation, and sale within the United States after importation of certain mobile electronic devices incorporating haptics that infringe certain claims of six Immersion patents. 77 FR 20847 (Apr. 6, 2012). The notice of institution named as respondents HTC Corporation of Taoyuan, Taiwan and HTC America, Inc. of Bellevue, Washington (collectively, ''HTC''); and Motorola Mobility, Inc. and Motorola Mobility Holdings, Inc., both of Libertyville, Illinois (collectively, ''Motorola''). On February 13, 2013, the Commission determined not to review the ALJ's ID (Order No. 30) terminating the investigation as to the Motorola respondents on the basis of a settlement agreement.

On March 12, 2013, Immersion moved to terminate the investigation on the basis of withdrawal of the complaint. *See* 19 CFR 210.21(a)(1). On March 14, 2013, HTC responded, agreeing that the investigation should be terminated.

On March 27, 2013, the ALJ granted the motion as an ID. Order No. 35. The ALJ found that Immersion complied with the requirements of 19 CFR 210.21(a), and that ''extraordinary circumstances'' did not prevent termination of the investigation. Order No. 35 at 2 (citing *Certain Ultrafiltration Membrane Systems, and Components Thereof, Including Ultrafiltration Membranes,* Inv. No. 337–TA–107, Comm'n Action and Order, at 2 (Mar. 11, 1982)).

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21 and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42).

Issued: April 15, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–09179 Filed 4–18–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Notice is hereby given that on April 11, 2013, a proposed Consent Decree (''proposed Decree'') in *United States* v. *Jay-Cee Cleaners, Inc., et al.,* Civil Action No. 2:13CV186 was lodged with the United States District Court for the Eastern District of Virginia.

In this action under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a) (''CERCLA''), the United States sought reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Jay-Cee Cleaners Superfund Site (''Site'') located at 16163 Lankford Highway in Nelsonia, Accomack County, Virginia. The proposed Decree requires Settling Defendants to pay 100% of the proceeds from the sale of the Site property to the United States in reimbursement of response costs. The proposed Decree also requires Settling Defendants to pay 50% of the proceeds from the sale of an adjacent property located behind the Site, known as ''Poulson Lot 3,'' and designated as Parcel Identification No. 069C00200000300 in the County of Accomack, Virginia Real Estate Taxable Landbook, as payment of a civil penalty for the alleged failure to comply with Section 104(e)(2) of CERCLA, 42 U.S.C. 9604(e)(2).

The publication of this notice opens a period for public comment on the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Jay-Cee Cleaners, Inc., et al.,* D.J. Ref. No. 90–11–3–09938/1. 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 email ..	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed 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 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 $13.25 (.25 cents per page reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–09203 Filed 4–18–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Rhodes Technologies

This is notice that on March 6, 2013, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Opium, Raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances in order to bulk manufacture controlled substances in Active Pharmaceutical Ingredient (API) form. The company distributes the manufactured APIs in bulk to its customers.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745, all applicants for registration to import basic classes of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: April 10, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–09305 Filed 4–18–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Catalent CTS., Inc.

Pursuant to Title 21, of the Code of Federal Regulations 1301.34(a), this is notice that on August 6, 2012, Catalent Cts., Inc., 10245 Hickman Mills Drive, Kansas City, Missouri 64137, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Marihuana (7360)	I
Poppy Straw Concentrate (9670)	II

The company plans to import a finished pharmaceutical product containing cannabis extracts in dosage form, to package for a clinical trial study. In addition, the company also plans to import an ointment for the treatment of wounds which contain trace amounts of the controlled substances normally found in poppy straw concentrate for packaging and labeling for clinical trials.

Comments and requests for any hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417(2007).

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, VA 22152; and must be filed no later than May 20, 2013.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: April 10, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–09293 Filed 4–18–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances, Notice of Application, Almac Clinical Services, Inc., (ACSI)

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on March 5, 2013, Almac Clinical Services, Inc., (ACSI), 25 Fretz Road, Souderton, Pennsylvania 18964, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Oxycodone (9143)	II
Hydromorphone (9150)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to import small quantities of the listed controlled substances in dosage form to conduct clinical trials.

The import of the above listed basic classes of controlled substances will be granted only for analytical testing and clinical trials. This authorization does not extend to the import of a finished FDA approved or non-approved dosage forms for commercial distribution in the United States.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule II, which falls under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than May 20, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic classes of any controlled substances in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: April 10, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–09302 Filed 4–18–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; GE Healthcare

By Notice dated January 31, 2013, and published in the **Federal Register** on February 6, 2013, 78 FR 8583, GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to import small quantities of ioflupane, in the form of three separate analogues of Cocaine, to validate production and quality control systems, for a reference standard, and for producing material for a future investigational new drug (IND) submission.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of GE Healthcare to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated GE Healthcare to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: April 10, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–09290 Filed 4–18–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated January 16, 2013, and published in the **Federal Register** on January 25, 2013, 78 FR 5497, Nebraska State Penitentiary, 4201 South 14th Street, Lincoln, Nebraska 68502, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Pentobarbital (2270), a basic class of controlled substance listed in schedule II.

The facility intends to import the above listed controlled substance for legitimate use. Supplies of this particular controlled substance are inadequate and are not available in the form needed within the current domestic supply of the United States.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Nebraska State Penitentiary to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.

DEA has investigated Nebraska State Penitentiary to ensure that its registration is consistent with the public interest. The investigation has included inspection and testing of the Nebraska State Penitentiary facility's physical security systems, verification of its compliance with state and local laws, and a review of its background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named facility is granted registration as an importer of the basic class of controlled substance listed.

Dated: April 11, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–09299 Filed 4–18–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Penick Corporaton

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 1, 2013, Penick Corporation, 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II

Drug	Schedule
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances as bulk controlled substance intermediates for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 18, 2013.

Dated: April 10, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–09317 Filed 4–18–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application, Rhodes Technologies

Pursuant to § 1301.33(a) Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 6, 2013, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for conversion and sale to dosage form manufacturers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 18, 2013.

Dated: April 10, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–09283 Filed 4–18–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application, American Radiolabeled Chemicals, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 11, 2013, American Radiolabeled Chemicals, Inc., 101 Arc Drive, St. Louis, Missouri 63146, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Dimethyltryptamine (7435)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Metazocine (9240)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Phenazocine (9715)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances as radiolabeled compounds for biochemical research.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 18, 2013.

Dated: April 10, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–09315 Filed 4–18–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application, Navinta, LLC

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 13, 2013, Navinta, LLC., 1499 Lower Ferry Road, Ewing, New Jersey 08618–1414, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances:

Drug	Schedule
Pentobarbital (2270)	II
Remifentanil (9739)	II

The company plans initially to manufacture API quantities of the listed controlled substances for validation purposes and FDA approval, then to produce commercial size batches for distribution to dosage form manufacturers upon FDA approval.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance,

may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 18, 2013.

Dated: April 10, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–09318 Filed 4–18–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration, National Center for Natural Products Research—NIDA

By Notice dated November 1, 2012 and published in the **Federal Register** on November 9, 2012, 77 FR 67398, National Center for Natural Products Research-NIDA MProject, University of Mississippi, 135 Coy Waller Lab Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Marihuana (7360)	II
Tetrahydrocannabinols (7370)	II

The company plans to cultivate marihuana for the National Institute on Drug Abuse for research approved by the Department of Health and Human Services.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of National Center for Natural Products Research-NIDA MProject, University of Mississippi to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated National Center for Natural Products Research-NIDA MProject, University of Mississippi to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: April 10, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–09325 Filed 4–18–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Longitudinal Survey of Youth 1997

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''National Longitudinal Survey of Youth 1997,'' (NLSY97) 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 May 20, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 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 NLSY97 includes respondents born from 1980 through 1984 and lived in the United States when the survey began in 1997. The primary objective of the survey is to study the transition from full-time schooling to the establishment of careers and families. The longitudinal focus of the survey requires information to be collected about the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation. Research based on the NLSY97 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that 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 1220–0157. For additional information, see the related notice published in the **Federal Register** on January 24, 2013 (78 FR 5211).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0157. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: National Longitudinal Survey of Youth 1997.

OMB Control Number: 1220–0157.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 7,550.

Total Estimated Number of Responses: 8,697.

Total Estimated Annual Burden Hours: 7,852.

Total Estimated Annual Other Costs Burden: $0.

Dated: April 15, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–09230 Filed 4–18–13; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–050]

National Space-Based Positioning, Navigation, and Timing (PNT) Advisory Board; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, and the President's 2004 U.S. Space-Based Positioning, Navigation, and Timing (PNT) Policy, the National Aeronautics and Space Administration (NASA) announces a meeting of the National Space-Based Positioning, Navigation, and Timing (PNT) Advisory Board.

DATES: Tuesday, May 7, 2013, 9:00 a.m. to 5:00 p.m.; and Wednesday, May 8, 2013, 9:00 a.m. to 12:00 p.m., Local Time.

ADDRESSES: The Melrose Hotel, 2430 Pennsylvania Ave NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Miller, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4417, fax (202) 358–2830, or *jj.miller@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

The agenda for the meeting includes the following topics:

- Update on U.S. Space-Based Positioning, Navigation and Timing (PNT) Policy and Global Positioning System (GPS) modernization.
- Explore opportunities for enhancing the interoperability of GPS with other emerging international Global Navigation Satellite Systems (GNSS).
- Examine emerging trends and requirements for PNT services in U.S. and international arenas through PNT Board technical assessments.
- Prioritize current and planned GPS capabilities and services while assessing future PNT architecture options.
- Assess the current and projected economic impact of GPS on the United States, and consider the effects of potential PNT service degradation if adjacent radio-band spectrum interference is introduced.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–09224 Filed 4–18–13; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance for this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than three years.

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information of respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by June 18, 2013, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 295, Arlington, VA 22230, or by email to *splimpton@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpton@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: International Cover Page Addendum.

OMB Control No.: 3145–0205.

Expiration Date of Approval: July 31, 2013.

Abstract: The Office of International Science and Engineering within the Office of the NSF Director will use the International Cover Page Addendum. Principal Investigators submitting proposals to this Office will be asked to complete an electronic version of the International Cover Page Addendum. The Addendum requests foreign counterpart investigator/host information and participant demographics not requested elsewhere in NSF proposal documents.

The information gathered with the International Cover Page Addendum serves four purposes. The first is to enable proposal assignment to the program officer responsible for activity with the primary countries involved. No current component of a standard NSF proposal requests this information. (The international cooperative activities box on the standard NSF Cover Page applies only to one specific type of activity, not the wide range of activities supported by OISE.) NSF proposal assignment applications are program element-based and therefore can not be used to determine assignment by country. The second use of the information is program management. OISE is committed to investing in activities in all regions of the world. With data from this form, the Office can determine submissions by geographic region. Thirdly, funding decisions can not be made without details for the

international partner not included in any other part of the submission process. The fourth section, counts of scientists and students to be supported by the project, are also not available elsewhere in the proposal since OISE budgets do not include participant support costs. These factors are all important for OISE program management.

Estimated Number of Annual Respondents: 600.

Burden on the Public: 150 hours (15 mins each respondent).

Dated: April 16, 2013.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–09212 Filed 4–18–13; 8:45 am]

BILLING CODE 7555–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application to Act as Representative Payee; OMB 3220–0052.

Under Section 12 of the Railroad Retirement Act, the Railroad Retirement Board (RRB) may pay benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or is a minor. A representative payee may be a court-appointed guardian, a statutory conservator or an individual selected by the RRB. The procedures pertaining to the appointment and responsibilities of a representative payee are prescribed in 20 CFR part 266.

The forms furnished by the RRB to apply for representative payee status, and for securing the information needed to support the application follow. RRB Form AA–5, *Application for Substitution of Payee,* obtains information needed to determine the selection of a representative payee who will serve in the best interest of the beneficiary. RRB Form G–478, *Statement Regarding Patient's Capability to Manage Benefits,* obtains information about an annuitant's capability to manage their own benefits. The form is completed by the annuitant's personal physician or by a medical officer, if the annuitant is in an institution. It is not required when a court has appointed an individual or institution to manage the annuitant's funds or, in the absence of such appointment, when the annuitant is a minor. The RRB also provides representative payees with a booklet at the time of their appointment. The booklet, RRB Form RB–5, *Your Duties as Representative Payee-Representative Payee's Record,* advises representative payees of their responsibilities under 20 CFR 266.9 and provides a means for the representative payee to maintain records pertaining to the receipt and use of RRB benefits. The booklet is provided for the representative payee's convenience. The RRB also accepts records that are kept by representative payee's as part of a common business practice.

Completion is voluntary. One response is requested of each respondent. The RRB is proposing non-burden impacting editorial changes to Form AA–5 and the RB–5 booklet. No changes are proposed for Form G–478.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–5	3,000		850
Individuals	2,250	17	637.5
Institutions	750		212.5
G–478	2,000	6	200.0
RB–5	15,300		15,300
Individuals	11,475	60	11,475
Institutions	3,825		3,825
Total	20,300		16,350

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV*. Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2013–09195 Filed 4–18–13; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding two Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3)

ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. *Title and purpose of information collection:* Repayment of Debt; OMB 3220–0169. When the Railroad Retirement Board (RRB) determines that an overpayment of Railroad Retirement Act (RRA) or Railroad Unemployment Insurance Act (RUIA) benefits has occurred, it initiates prompt action to notify the annuitant of the overpayment and to recover the money owed the RRB. To effect payment of a debt by credit card, the RRB utilizes Form G–421F, Repayment by Credit Card. RRB procedures pertaining to benefit overpayment determinations and the recovery of such benefits are prescribed in 20 CFR part 255 and 340. One form is completed by each respondent. Completion is voluntary.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (78 FR 6152 on January 29, 2013) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Repayment of Debt.
OMB Control Number: 3220–0169.
Form(s) submitted: G–421F.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: When the RRB determines that an overpayment of benefits under the Railroad Retirement Act or Railroad Unemployment Insurance Act has occurred, it initiates action to notify the claimant of the overpayment and to recover the amount owed. The collection obtains information needed to allow for repayment by the claimant by credit card, in addition to the customary form of payment by check or money order.

Changes proposed: The RRB proposes minor non-burden impacting editorial changes to Form G–421F.

The burden estimate for the ICR is as follows:

Form number	Annual responses	Time (minutes)	Burden (hours)
G–421F	535	5	45
Total	535		45

2. *Title and Purpose of information collection:* Job Information Report; OMB 3220–0193. In July of 1997, the Railroad Retirement Board (RRB) adopted standards for the adjudication of occupational disabilities under the Railroad Retirement Act (RRA). As part of these standards, the RRB requests job information to determine an applicant's eligibility for an occupational disability. The job information received from the railroad employer and railroad employee is compared, reconciled (if needed), and then used in the occupational disability determination process. The process of obtaining information from railroad employers used to determine an applicant's eligibility for an occupational disability is outlined in 20 CFR 220.13(b)(2)(e).

To determine an occupational disability, the RRB must decide if the employee is precluded from performing the full range of duties of his or her regular railroad occupation. This is accomplished by comparing the restrictions an impairment(s) causes against an employee's ability to perform his/her normal duties. To collect information needed to determine the effect of a disability on an employee applicant's ability to work, the RRB needs the employee applicant's work history. To obtain this information from the employee applicant, the RRB utilizes Form G–251, *Vocational Report* (OMB 3220–0141). **Note:** Form G–251 is provided to all applicants for employee disability annuities and to those applicants for a widow or widower's disability annuity who indicate that they have been employed at some time.

In accordance with the standards, the RRB also requests pertinent job information from employers. The employer is given thirty days from the date of the notice to respond. The responses are not required, but are voluntary. If the job information is received timely, it is compared to the job information provided by the employee. Any material differences are resolved by an RRB disability examiner. Once resolved, the information is compared to the restrictions caused by the medical impairment. If the restrictions prohibit the performance of the regular railroad occupation, the claimant is found occupationally disabled.

To obtain the job information from the railroad employer, the RRB uses the following two forms. RRB Form G–251a, *Employer Job Information—Job Description,* is released to an employer when an application for an occupational disability is filed by an employee whose regular railroad occupation is one of the more common types of railroad jobs (locomotive engineer, conductor, switchman, etc.). It is accompanied by a ''generic job description'' for that particular railroad job. The generic job description describes how the select occupation is generally performed in the railroad industry. However, because not all occupations are performed the same way from railroad to railroad, the employer is given an opportunity to comment on whether the job description matches the employee's actual duties. If the employer concludes that the generic job description accurately describes the work performed by the applicant, no further action is necessary. If the employer determines that the tasks are different, it may provide the RRB with a description of the actual job tasks. The employer has thirty days from the date the form is released to respond.

Form G–251b, *Employer Job Information—General,* is released to an employer when an application for an RRB occupational disability is filed by an employee whose regular railroad occupation does not have a generic job description. It notifies the employer that the employee has filed for a disability annuity and that, if the employer wishes, it may provide the RRB with job duty information. The type of information the RRB is seeking is outlined on the form. The employer has thirty days from the date the form is released to reply. Completion is voluntary.

Previous Requests for Comments: The RRB has published the initial 60-day notice (77 FR 63359 on October 16, 2012) required by 44 U.S.C. 3506(c)(2).

Information Collection Request (ICR)

Title: Job Information Report.
OMB Control Number: 3220–0193.

Form(s) submitted: G–251a and G–251b.

Type of request: Extension without change of a currently approved collection.

Affected public: Business or other for profit.

Abstract: The collection obtains information used by the Railroad Retirement Board (RRB) to assist in determining whether a railroad employee is disabled from his or her regular occupation. It provides, under certain conditions, railroad employers with the opportunity to provide information to the RRB regarding the employee applicant's job duties.

Changes proposed: The RRB proposes no changes to the forms in the information collection.

The burden estimate for the ICR is as follows:

Form number	Annual responses	Time (minutes)	Burden (hours)
G–251a	125	20	42
G–251b	305	20	102
Total	430		144

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.*

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2013–09209 Filed 4–18–13; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69373; File No. SR–NYSEArca–2012–108]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Shares of the NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund Under NYSE Arca Equities Rule 5.2(j)(3)

April 15, 2013.

I. Introduction

On September 27, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund (''Fund'') under NYSE Arca Equities Rule 5.2(j)(3). On October 2, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1 thereto, was published in the **Federal Register** on October 18, 2012.[4] On November 29, 2012, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On January 16, 2013, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7] The Commission thereafter received one comment letter on the proposal.[8] This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units. The Shares will be issued by the ALPS ETF Trust (''Trust'').[9] ALPS Advisors, Inc. will be the Fund's investment adviser (''Adviser''), and Rich Investment Solutions, LLC will be the Fund's investment sub-adviser (''Sub-Adviser'').[10]

The Bank of New York Mellon (''BNY'') will serve as custodian, fund accounting agent, and transfer agent for the Fund. ALPS Distributors, Inc. will be the Fund's distributor (''Distributor''). NYSE Arca will be the ''Index Provider'' for the Fund.[11]

Description of the Fund

The Fund will seek investment results that correspond generally to the performance, before the Fund's fees and expenses, of the NYSE Arca U.S. Equity Synthetic Reverse Convertible Index (''Index''). The Index reflects the performance of a portfolio consisting of over-the-counter (''OTC'') ''down-and-in'' put options that have been written on 20 of the most volatile U.S. stocks that also have market capitalization of at least $5 billion.

In seeking to replicate, before expenses, the performance of the Index,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange amended the filing to specify that a list of components of the Index (as defined below), with percentage weightings, will be available on the Exchange's Web site, and that the Exchange may halt trading in the Shares (as defined below) if the Index value, or the value of the components of the Index, is not available or not disseminated as required.

[4] *See* Securities Exchange Act Release No. 68043 (October 12, 2012), 77 FR 64153 (''Notice'').

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 68320, 77 FR 72429 (Dec. 5, 2012).

[7] *See* Securities Exchange Act Release No. 68671, 78 FR 4919 (Jan. 23, 2013) (''Order Instituting Proceedings'').

[8] *See* Letter from Kevin Rich, Rich Investment Solutions, LLC, dated February 12, 2013 (''Rich Letter'').

[9] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On June 22, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N–1A (''Registration Statement'') under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333–148826 and 811–22175). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28262 (May 1, 2008) (File No. 812–13430).

[10] The Adviser is affiliated with a broker-dealer and will implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio. The Sub-Adviser is not affiliated with a broker-dealer. In the event (a) the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

[11] NYSE Arca is not affiliated with the Trust, the Adviser, the Sub-Adviser, or the Distributor. NYSE Arca is affiliated with a broker-dealer and will implement a fire wall and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

the Fund will generally sell (*i.e.,* write) 90-day OTC down-and-in put options, as described below, in proportion to their weightings in the Index on economic terms which mirror those of the Index. Each option written by the Fund will be covered through investments in three-month Treasury bills (''T-bills'') at least equal to the Fund's maximum liability under the option *(i.e.,* the strike price). The Sub-Adviser will seek a correlation over time of 0.95 or better between the Fund's performance and the performance of the Index. A figure of 1.00 would represent perfect correlation.[12]

The Exchange submitted this proposed rule change because the Index for the Fund does not meet all of the ''generic'' listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Investment Company Units based upon an index of ''U.S. Component Stocks.'' [13] Specifically, Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) sets forth the requirements to be met by components of an index or portfolio of U.S. Component Stocks. Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) states, in relevant part, that the components of an index of U.S. Component Stocks, upon the initial listing of a series of Investment Company Units pursuant to Rule 19b-4(e) under the Exchange Act, shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Exchange Act.[14] As described further below, the Index consists of OTC down-and-in put options. The Exchange has represented that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index includes OTC down-and-in put options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS.

Index Methodology and Construction

The Index measures the return of a hypothetical portfolio consisting of OTC down-and-in put options which have been written on each of 20 stocks and a cash position calculated as described below. The 20 stocks that will underlie the options in the Index are those 20 stocks from a selection of the largest capitalized (over $5 billion in market capitalization) stocks which also have listed options and which have the highest volatility, as determined by the Index Provider. These stocks will be required to be NMS stocks, as defined in Rule 600 of Regulation NMS.

A down-and-in option is a contract that becomes a typical option (*i.e.,* the option ''knocks in'' at a predetermined strike price) once the underlying stock declines to a specified price (''barrier price''). These types of options have the same return as ''reverse convertible'' securities, which convert into the underlying stock (or settle in cash) only upon a decline in the value of the underlying stock rather than a rise (as is the case with typical convertible instruments).

Each option included in the Index will be a ''European-style'' option (*i.e.,* an option which can only be exercised at its expiration) with a 90-day term. The strike prices of the option positions included in the Index will be determined based on the closing prices of the options' underlying stocks as of the beginning of each 90-day period. The barrier price of each such option will be 80% of the strike price. At the expiration of each 90-day period, if an underlying stock closes at or below its respective barrier price, a cash settlement payment in an amount equal to the difference between the strike price and the closing price of the stock will be deemed to be made, and the Index value will be correspondingly reduced. If the underlying stock does not close at or below the barrier price, then the option expires worthless and the entire amount of the premium payment will be retained within the Index.

The components of the Index will be OTC down-and-in put options written on 20 NMS stocks selected based on the following screening parameters:

1. U.S. listing of U.S. companies;
2. Publicly listed and traded options available;
3. Market capitalization greater than $5 billion;
4. Top 20 stocks when ranked by 3-month implied volatility;
5. Each underlying NMS stock will have a minimum trading volume of at least 50 million shares for the preceding six months; and
6. Each underlying NMS stock will have a minimum average daily trading volume of at least one million shares and a minimum average daily trading value of at least $10 million for the preceding six months.

The selection of the 20 underlying NMS stocks will occur each quarter (March, June, September, and December) two days prior to the third Friday of the month, in line with option expiration for listed options. The selection of the 20 underlying stocks will not, however, be limited to those with listed options expiring in March, June, September, or December.

The Index value will reflect a cash amount invested in on-the-run three-month T-Bills, plus the premium collected on the short position in the 20 down-and-in put options written by the Index each quarter. The notional amount of each of the 20 down-and-in put options will be equal to 1/20th of the cash amount in the Index at the beginning of each quarter. The cash amount (initially 1,000 for the origination date of the Index) will be incremented by premiums generated each quarter from the 20 down-and-in put options sold, then decremented by cash settlements of any down-and-in put options expiring in-the-money and the distribution amount (as described below). The cash amount will be invested in T-Bills and will accrete by interest earned on the T-Bills.

The End of Day Index Value will be calculated as follows: End of Day Index Value = Beginning of Quarter Index Value + Premium Generated—Option Values + Accrued Interest—distribution amount, where:

- Beginning of Quarter Index Value is 1,000 for the origination date of the Index; thereafter, it is the previous quarter-end End of Day Index Value;
- Premium Generated is the sum of Option Values for each of the 20 down-and-in put options sold by the Index at the end of the previous quarter;
- Option Value is the settlement value of each of the 20 down-and-in put options written by the Index at the end of each quarter. The notional amount of each down-and-in put option sold by the Index for the current quarter is 1/20th of the Beginning of Quarter Index Value;
- Accrued Interest is the daily interest earned on the cash amount held by the Index and invested in T-Bills;
- Cash amount of the Index for any quarter is the Beginning of Quarter Index Value plus the Premium Generated for that quarter; and
- Distribution amount for any quarter and paid out at the beginning of the next quarter is 2.5% of the End of Day Index Value for the final day of the quarter. If such an amount exceeds the amount of the Premium Generated, then the

[12] While the Fund will not invest in traditional reverse convertible securities (i.e., those which convert into the underlying stock), the down-and-in put options written by the Fund will have the effect of exposing the Fund to the return of reverse convertible securities (based on equity securities) as if the Fund owned such reverse convertible securities directly.

[13] NYSE Arca Equities Rule 5.2(j)(3) provides that the term ''US Component Stock'' shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

[14] *See* 17 CFR 242.600(b)(47) (defining ''NMS Stock'' as any NMS Security other than an option).

distribution amount will equal the Premium Generated.

A total return level for the Index will be calculated and published at the end of each day. The total return calculation will assume the quarterly index distribution is invested directly in the Index at the beginning of the quarter in which it is paid.

The Exchange has provided the following example. Stock ''ABC'' trades at $50 per share at the start of the 90-day period, and a down-and-in 90-day put option was written at an 80% barrier (resulting in a strike price of $50 per share and a barrier price of $40 per share) for a premium of $4 per share:

- *Settlement above the barrier price:* If at the end of 90 days the ABC stock closed at any value above the barrier price of $40, then the option would expire worthless and the Index's value would reflect the retention of the $4 per share premium. The Index's value thus would be increased by $4 per share on the ABC option position.
- *Settlement at the barrier price:* If at the end of 90 days ABC closed at the barrier price of $40, then the option would settle in cash at the closing price of $40, and the Index's value would be reduced by $10 per share to reflect the settlement of the option. However, the Index's value would reflect the retention of the $4 per share premium, so the net loss to the Index's value would be $6 per share on the ABC option position.
- *Settlement below the barrier price:* If at the end of 90 days, ABC closed at $35, then the option would settle in cash at the closing price of $35, and the Index's value would be reduced by $15 per share to reflect the settlement of the option. However, the Index's value would reflect the retention of the $4 per share premium, so the net loss to the Index's value would be $11 per share on the ABC option position.

As discussed above, the Index's value is equal to the value of the options positions comprising the Index, plus a cash position. The cash position starts at a base of 1,000. The cash position is increased by option premiums generated by the option positions comprising the Index and interest on the cash position at an annual rate equal to the three month T-Bill rate. The cash position is decreased by cash settlement on options which ''knock in'' (*i.e.,* where the closing price of the underlying stock at the end of the 90-day period is at or below the barrier price). The cash position is also decreased by a deemed quarterly cash distribution, currently targeted at the rate of 2.5% of the value of the Index. However, if the option premiums generated during the quarter are less than 2.5%, the deemed distribution will be reduced by the amount of the shortfall.

The Fund's Investments

The Fund, under normal circumstances,[15] will invest at least 80% of its total assets in component securities that comprise the Index and in T-Bills which will be collateral for the options positions. The Fund will enter into the option positions determined by the Index Provider by writing (*i.e.,* selling) OTC 90-day down-and-in put options in proportion to their weightings in the Index on economic terms which mirror those of the Index. By writing an option, the Fund will receive premiums from the buyer of the option, which will increase the Fund's return if the option does not ''knock in'' and thus expires worthless. However, if the option's underlying stock declines by a specified amount (or more), the option will ''knock in'' and the Fund will be required to pay the buyer the difference between the option's strike price and the closing price. Therefore, by writing a down-and-in put option, the Fund will be exposed to the amount by which the price of the underlying is less than the strike price. Accordingly, the potential return to the Fund will be limited to the amount of option premiums it receives, while the Fund can potentially lose up to the entire strike price of each option it sells. Further, if the value of the stocks underlying the options sold by the Fund increases, the Fund's returns will not increase accordingly.

Typically, the writer of a put option incurs an obligation to buy the underlying instrument from the purchaser of the option at the option's exercise price, upon exercise by the option purchaser. However, the down-and-in put options to be sold by the Fund will be settled in cash only. The Fund may need to sell down-and-in put options on stocks other than those underlying the option positions contained in the Index if the Fund is unable to obtain a competitive market from OTC option dealers on a stock underlying a particular option position in the Index, thus preventing the Fund from writing an option on that stock.[16]

Every 90 days, the options included within the Index are cash settled or expire, and new option positions are established. The Fund will enter into new option positions accordingly. This 90-day cycle likely will cause the Fund to have frequent and substantial portfolio turnover. If the Fund receives additional inflows (and issues more Shares accordingly in large numbers known as ''Creation Units'') during a 90-day period, the Fund will sell additional OTC down-and-in put options which will be exercised or expire at the end of such 90-day period. Conversely, if the Fund redeems Shares in Creation Unit size during a 90-day period, the Fund will terminate the appropriate portion of the options it has sold accordingly.

Secondary Investment Strategies

The Fund may invest its remaining assets in money market instruments,[17] including repurchase agreements [18] or other funds which invest exclusively in money market instruments, convertible securities, structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular stock or stock index), forward foreign currency exchange

[15] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equities or options markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[16] The Fund will transact only with OTC options dealers that have in place an International Swaps and Derivatives Association agreement with the Fund.

[17] The Fund may invest a portion of its assets in high-quality money market instruments on an ongoing basis to provide liquidity. The instruments in which the Fund may invest include: (i) Short-term obligations issued by the U.S. Government; (ii) negotiable certificates of deposit (''CDs''), fixed time deposits, and bankers' acceptances of U.S. and foreign banks and similar institutions; (iii) commercial paper rated at the date of purchase ''Prime-1'' by Moody's Investors Service, Inc. or ''A–1+'' or ''A–1'' by Standard & Poor's or, if unrated, of comparable quality as determined by the Adviser; (iv) repurchase agreements; and (v) money market mutual funds. CDs are short-term negotiable obligations of commercial banks. Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Banker's acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

[18] Repurchase agreements are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of $500 million and (ii) securities dealers (''Qualified Institutions''). The Adviser will monitor the continued creditworthiness of Qualified Institutions. The Fund also may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing.

contracts, and in swaps,[19] options (other than options the Fund principally will write), and futures contracts.[20] Swaps, options (other than options the Fund principally will write), and futures contracts (and convertible securities and structured notes) may be used by the Fund in seeking performance that corresponds to the Index and in managing cash flows.[21] The Fund will not invest in money market instruments as part of a temporary defensive strategy to protect against potential stock market declines. The Adviser anticipates that it may take approximately three business days (*i.e.,* each day the New York Stock Exchange (''NYSE'') is open) for additions and deletions to the Index to be reflected in the portfolio composition of the Fund.

The Fund may invest in the securities of other investment companies (including money market funds). Under the 1940 Act, the Fund's investment in investment companies is limited to, subject to certain exceptions, (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund's total assets with respect to any one investment company, and (iii) 10% of the Fund's total assets of investment companies in the aggregate.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended

The Fund will not invest in non-U.S. equity securities. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

Pricing Fund Shares

The Fund's OTC down-and-in put options on equity securities will be valued pursuant to a third-party option pricing model. Debt securities will be valued at the mean between the last available bid and ask prices for such securities or, if such prices are not available, at prices for securities of comparable maturity, quality, and type. Securities for which market quotations are not readily available, including restricted securities, will be valued by a method that the Fund's Board of Trustees believe accurately reflects fair value. Securities will be valued at fair value when market quotations are not readily available or are deemed unreliable, such as when a security's value or meaningful portion of the Fund's portfolio is believed to have been materially affected by a significant event. Such events may include a natural disaster, an economic event like a bankruptcy filing, trading halt in a security, an unscheduled early market close, or a substantial fluctuation in domestic and foreign markets that has occurred between the close of the principal exchange and the NYSE. In such a case, the value for a security is likely to be different from the last quoted market price. In addition, due to the subjective and variable nature of fair market value pricing, it is possible that the value determined for a particular asset may be materially different from the value realized upon such asset's sale.

Creations and Redemptions of Shares

The Trust will issue and sell Shares of the Fund only in ''Creation Units'' of 100,000 Shares each on a continuous basis through the Distributor, without a sales load, at its net asset value (''NAV'') next determined after receipt, on any business day, of an order in proper form. Creation Units of the Fund generally will be sold for cash only, calculated based on the NAV per Share multiplied by the number of Shares representing a Creation Unit (''Deposit Cash''), plus a transaction fee.

The Custodian, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, prior to the opening of business on NYSE Arca (currently 9:30 a.m. Eastern Time (''E.T.'')), the amount of the Deposit Cash to be deposited in exchange for a Creation Unit of the Fund.

To be eligible to place orders with the Distributor and to create a Creation Unit of the Fund, an entity must be (i) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC; or (ii) a Depository Trust Company (''DTC'') participant, and, in each case, must have executed an agreement with the Distributor, with respect to creations and redemptions of Creation Units.

All orders to create Creation Units, whether through a Participating Party or a DTC participant, must be received by the Distributor no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) in each case on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

Fund Shares may be redeemed only in Creation Units at the NAV next determined after receipt of a redemption request in proper form by the Fund through BNY and only on a business day. The Fund will not redeem Shares in amounts less than a Creation Unit.

With respect to the Fund, BNY, through the NSCC, will make available prior to the opening of business on NYSE Arca (currently 9:30 a.m. E.T.) on each business day, the amount of cash that will be paid (subject to possible amendment or correction) in respect of redemption requests received in proper form on that day (''Redemption Cash'').

The redemption proceeds for a Creation Unit generally will consist of the Redemption Cash, as announced on the business day of the request for redemption received in proper form, less a redemption transaction fee.

Initial and Continued Listing

The Exchange represents that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and

[19] Swap agreements are contracts between parties in which one party agrees to make periodic payments to the other party (''counterparty'') based on the change in market value or level of a specified rate, index, or asset. In return, the counterparty agrees to make periodic payments to the first party based on the return of a different specified rate, index, or asset. Swap agreements will usually be done on a net basis, the Fund receiving or paying only the net amount of the two payments. The net amount of the excess, if any, of the Fund's obligations over its entitlements with respect to each swap will be accrued on a daily basis and an amount of cash or highly liquid securities having an aggregate value at least equal to the accrued excess will be maintained in an account at the Trust's custodian bank.

[20] The Fund may utilize U.S. listed exchange-traded futures. In connection with its management of the Trust, the Adviser has claimed an exclusion from registration as a commodity pool operator under the Commodity Exchange Act (''CEA''). Therefore, it is not subject to the registration and regulatory requirements of the CEA, and there are no limitations on the extent to which the Fund may engage in non-hedging transactions involving futures and options thereon, except as set forth in the Registration Statement.

[21] Swaps, options (other than options the Fund principally will write), and futures contracts will not be included in the Fund's investment, under normal market circumstances, of at least 80% of its total assets in component securities that comprise the Index and in T-Bills, as described above.

5.5(g)(2), except that the Index is comprised of down-and-in put options based on ''U.S. Component Stocks'' [22] rather than U.S. Component Stocks themselves. The Exchange further represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[23] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and made available to all market participants at the same time.

Availability of Information

The Fund's Web site (*www.alpsetfs.com*), which will be publicly available prior to the public offering of the Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''),[24] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.[25]

On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security and financial instrument, number of securities or dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Fund's portfolio holdings, including information regarding its option positions, will be disclosed each day on the Fund's Web site. The Web site information will be publicly available at no charge.

The NAV per Share for the Fund will be determined once daily as of the close of the NYSE, usually 4:00 p.m. E.T., each day the NYSE is open for trading. NAV per Share will be determined by dividing the value of the Fund's portfolio securities, cash and other assets (including accrued interest), less all liabilities (including accrued expenses), by the total number of Shares outstanding. As discussed above, the OTC down-and-in put options will be valued pursuant to a third-party option pricing model.[26]

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. The value of the Index and the values of the OTC down-and-in put options components in the Index (which will each be weighted at 1/20 of the Index value) will be published by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. A list of components of the Index, with percentage weightings, will be available on the Exchange's Web site. Each of the stocks underlying the OTC down-and-in put options in the Index also will underlie standardized options contracts traded on U.S. options exchanges, which will disseminate quotation and last-sale information with respect to such contracts. In addition, the Intraday Indicative Value will be calculated and disseminated by the Exchange, and widely disseminated by one or more major market data vendors, at least every 15 seconds during the Core Trading Session.[27] The Exchange states that the dissemination of the Intraday Indicative Value will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange states that it may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[28] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Fund's portfolio holdings and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

If the Intraday Indicative Value, the Index value, or the value of the components of the Index is not available or is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange will obtain a representation from the Fund that the NAV for the Fund will be calculated daily and will be made available to all market participants at the same time. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV for the Fund is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading

[22] NYSE Arca Equities Rule 5.2(j)(3) defines the term ''U.S. Component Stock'' to mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

[23] 17 CFR 240.10A–3.

[24] The Bid/Ask Price of the Fund would be determined using the mid-point of the highest bid and the lowest offer for Shares on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices would be retained by the Fund and its service providers.

[25] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') would be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund would be able to disclose at the beginning of the business day the portfolio that would form the basis for the NAV calculation at the end of the business day.

[26] *See* ''Pricing Fund Shares'' *supra.*

[27] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values taken from the CTA or other data feeds. *See* Notice, *supra* note 4, at 64157. The IIV calculations are based on local market prices and may not reflect events that occur subsequent to the local market's close. *See* Registration Statement, *supra* note 9, at 11.

[28] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange states that it has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Investment Company Units) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[29]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Suitability

Currently, NYSE Arca Equities Rule 9.2(a) (Diligence as to Accounts) provides that an Equity Trading Permit (''ETP'') Holder, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin (''Information Bulletin'' or ''Bulletin''). Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that members must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

In addition, FINRA has issued a regulatory notice relating to sales practice procedures applicable to recommendations to customers by FINRA members of reverse convertibles, as described in FINRA Regulatory Notice 10–09 (February 2010) (''FINRA Regulatory Notice'').[30] As described above, while the Fund will not invest in traditional reverse convertible securities, the down-and-in put options written by the Fund will have the effect of exposing the Fund to the return of reverse convertible securities as if the Fund owned such reverse convertible securities directly. Therefore, the Bulletin will state that ETP Holders that carry customer accounts should follow the FINRA guidance set forth in the FINRA Regulatory Notice.

The Registration Statement states that the Fund is designed for investors who seek to obtain income through selling options on select equity securities which the Index Provider determines to have the highest volatility. It further states that because of the high volatility of the stocks underlying the options sold by the Fund, it is possible that the value of such stocks would decline in sufficient magnitude to trigger the exercise of the options and cause a loss which may outweigh the income from selling such options. The Registration Statement states that, accordingly, the Fund should be considered a speculative trading instrument and is not necessarily appropriate for investors who seek to avoid or minimize their exposure to stock market volatility. The Exchange's Information Bulletin regarding the Fund will provide information regarding the suitability of an investment in the Shares, as stated in the Registration Statement.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in the Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Intraday Indicative Value would not be calculated or publicly disseminated; (4) how information regarding the Intraday Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares would be calculated after 4:00 p.m. E.T. each trading day.

Additional information regarding the Trust, the Fund, and the Shares,

[29] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[30] The Exchange notes that NASD Rule 2310 relating to suitability, referenced in the FINRA Regulatory Notice, has been superseded by FINRA Rule 2111. *See* FINRA Regulatory Notice 12–25 (May 2012).

including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.[31]

III. Summary of Comment Letters

In the Order Instituting Proceedings, the Commission asked a number of detailed questions about the proposal, including questions related to the trading of the Shares of the Fund, such as the extent to which the down-and-in put options written by the Fund could be subject to manipulation as well as the extent to which market makers would be able to effectively arbitrage the Shares to help keep the intra-day market price in line with the intra-day NAV.[32] The Commission did not receive any comment letters expressing concern about the Shares or the Fund.

The Commission received one comment letter in support of the proposal from the Sub-Adviser.[33] The commenter states that the Fund will provide the benefits of investing in reverse convertible notes while mitigating some negative features associated with reverse convertible notes, including that the Fund will offer diversification by selling options of twenty underlying issuers, rather than just one underlying issuer; the Fund's structure will give investors a lower initial and ongoing cost due to the economies of scale rather than incurring deal by deal imbedded costs for privately placed reverse convertible notes; the Fund will not carry the credit risk of banks and financial firms imbedded into reverse convertible notes; and the Fund will sell options and collect premium upfront, thereby decreasing risks to the Fund as compared to a reverse convertible note.[34]

A. Disclosure Relating to the Shares

In the Order Instituting Proceedings, the Commission requested comment on whether investors would be able to understand the strategy, risks and potential rewards, assumptions and expected performance of the Fund, including the effect of the Fund's exposure to its down-and-in put options.[35] In response, the commenter states its belief that investors in the Fund will clearly under these characteristics of the Fund. First, the commenter states that the name of the Fund is very descriptive and will not be misleading to potential investors.[36] In addition, the commenter states that the Fund's prospectus clearly describes the Fund's strategy and index methodology and construction, provides examples of how the options are structured and hypothetical scenarios regarding changes in stock prices, and contains a ''Who Should Invest'' section.[37]

In the Order Instituting Proceedings, the Commission requested comment on whether the Exchange's rules governing sales practices are adequately designed to ensure the suitability of recommendations regarding the Fund's Shares.[38] In response, the commenter states its belief that the Exchange's rules governing sales practices adequately ensure the suitability of recommendations regarding the Fund's Shares, and that the Exchange's rules governing sales practices should not be altered for the Fund.[39] The commenter notes that NYSE Arca Equities Rule 9.2(a) (Diligence as to Accounts) imposes obligations on ETP Holders relating to suitability and due diligence, and that the Exchange has represented that, prior to the commencement of trading, it will provide ETP Holders with an Information Bulletin which will describe the suitability requirements of NYSE Arca Equities Rule 9.2(a) and will state that ETP Holders that carry customer accounts should follow the FINRA guidance set forth in the FINRA Regulatory Notice.[40]

In the Order Instituting Proceedings, the Commission requested comment on whether the proposed disclosure of the nature of, and the risks of investing in, the Shares is sufficient.[41] The commenter states that such disclosure is sufficient, as the Exchange has provided a detailed description of the Fund and the Shares in the Notice, and the Fund is required to deliver a prospectus to investors pursuant to Commission rules which will contain key information relating to the Shares necessary to make informed investment decisions.[42]

B. Potential for Manipulation of the Down-and-in Put Options Written by the Fund

In the Order Instituting Proceedings, the Commission requested comment on whether the discontinuous payoff structure of down-and-in put options could give rise to the potential for manipulation.[43] The commenter responds that the down-and-in put options in which the Fund will invest do have the potential to provide an incentive for someone who has a position in an option sold by the Fund, or the Fund itself, to manipulate the price of the underlying stock when it is near the knock-in price on the expiration date, but argues that this potential is very limited because the diversification of the Fund greatly restricts gains from the manipulation of any one underlying stock.[44] The commenter provides examples to illustrate that due to the diversification of the Fund and the market capitalization and daily trading volume requirements for the stock underlying the options positions written by the Fund, the cost of attempting to force a particular underlying stock either higher or lower is not proportional to the prospective gain.[45]

C. Valuation and Arbitrage Relating to the Shares

In the Order Instituting Proceedings, the Commission requested comment on whether the market for OTC down-and-in put options is sufficiently liquid and the pricing of those options is sufficiently transparent (1) for investors to be able to accurately value such options, and (2) for authorized participants and market makers to effectively arbitrage the OTC market and the market for the Shares throughout the trading day.[46] The commenter responds that the market for OTC down-and-in put options is sufficiently liquid and pricing is sufficiently transparent so that the down-and-in put options can be priced uniformly by investors, market makers, and authorized participants.[47]

First, the commenter states that the down-and-in puts sold by the Fund are very short dated (with terms to expiration of only 3 months), European-style (meaning the down-and-in put will only knock in if the price of the underlying stock finishes at or below the knock-in price on the expiration

[31] *See* Notice and Registration Statement, *supra* notes 4 and 9.

[32] *See* Order Instituting Proceedings, *supra* note 7, at 4925–6.

[33] *See* Rich Letter, *supra* note 8.

[34] *Id.* at 3.

[35] *See* Order Instituting Proceedings, *supra* note 7, at 4925.

[36] *See* Rich Letter, *supra* note 8, at 6.

[37] *Id.* at 7–9.

[38] *See* Order Instituting Proceedings, *supra* note 7, at 4925.

[39] *See* Rich Letter, *supra* note 8, at 9.

[40] *Id.* at 9–10. *See also* ''Suitability'' *supra.*

[41] *See* Order Instituting Proceedings, *supra* note 7, at 4925.

[42] *See* Rich Letter, *supra* note 8, at 10.

[43] *See* Order Instituting Proceedings, *supra* note 7, at 4925.

[44] *See* Rich Letter, *supra* note 8, at 10.

[45] *Id.* at 11–12.

[46] *See* Order Instituting Proceedings, *supra* note 7, at 4925–6.

[47] *See* Rich Letter, *supra* note 8, at 12–16.

date of the option), and have very liquid underlying stocks with exchange traded options on those underlying stocks.[48] The commenter states that there is a well-known model for pricing European-style, very short dated down-and-in puts using pricing inputs easily obtained from the listed option and stock markets.[49] In addition, the commenter states that the down-and-in puts in the Fund may also be priced without an explicit model through the use of plain vanilla puts and put spreads.[50] The commenter notes that the OTC market for barrier options is the largest exotic option OTC market.[51] Furthermore, the commenter states that the Fund will provide to the public on its Web site the model used to calculate the down-and-in put option values used by the Index provider and its calculation agent, with detailed explanations of the formula calculation and inputs.[52]

In addition, with respect to the ability of market makers and authorized participants to engage in arbitrage, the commenter further states that initially, many market makers will be associated with the dealers buying and selling the down-and-in put options from and to the Fund, and therefore these market makers will have the necessary infrastructure and knowledge to price, make markets in, and hedge their positions in the Shares throughout the trading day.[53] The commenter also states that authorized participants only clear the Shares when there are creates or redeems and do not arbitrage throughout the day to ensure that prices of the Shares closely track the NAV per Share of the Fund.[54] The commenter states that the only situation in which significant discounts or premiums to the intraday NAV per Share of a Fund could develop is when a large number of the down-and-in put options in the Fund are close to maturity and the underlying stock price is very close to the knock-in barrier.[55] The commenter states that such a situation would cause market makers to widen bid and offer spreads for the Shares as a reflection of the economics of the down-and-in put option possible payout.[56]

In the Order Instituting Proceedings, the Commission requested comment on ways for market makers and authorized participants to arbitrage the value of a down-and-in put option against the price of the Shares.[57] The commenter responds that in many cases, the purchase and sale of specific listed options would be an effective way for market makers to arbitrage the value of the down-and-in put options against the price of the Shares because the down-and-in puts written by the Fund will be European-style.[58] Therefore, the purchase or sale of the down-and-in puts written by the Fund may be efficiently hedged by selling or purchasing a static portfolio of listed puts and put spreads, and such a strategy would be most effective when the listed options have the same maturity date as the down-and-in put, option in the Fund, when the strike prices of the listed options are very close to the knock-in price of the down-and-in put option in the Fund, and when the available listed options have strikes relatively close to one another[59] When this is not the case, however, the commenter states that hedging with a static portfolio of listed puts and put spreads may not be the most efficient hedging methodology, and using a dynamic portfolio of options and stock to hedge may be more efficient and effective.[60]

IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change, as modified by Amendment No. 1 thereto, and finds that it is consistent with the requirements of Section 6 of the Act[61] and the rules and regulations thereunder applicable to a national securities exchange.[62] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[63] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the applicable requirements of NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[64] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. The Index value and the values of the OTC put options components in the Index will be published by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session (9:30 a.m. to 4:00 p.m., Eastern Time). A list of components of the Index, with percentage weightings, will be available on the Exchange's Web site. Each of the stocks underlying the OTC put options in the Index also will underlie standardized options contracts traded on U.S. options exchanges, which will disseminate quotation and last-sale information with respect to such options contracts. In addition, an Intraday Indicative Value (''IIV'') for the Shares will be widely disseminated at least every 15 seconds during the NYSE Arca Core Trading Session by one or more major market data vendors.[65] The Fund's portfolio holdings, including information regarding its options positions, will be disclosed each day on the Fund's Web site, which Web site information will be publicly available at no charge.[66] The Fund's NAV per Share will be determined once daily as of the close of the NYSE (normally 4:00 p.m., Eastern Time) on each day the NYSE is open for trading. BNY, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business on NYSE Arca (currently

[48] *Id.*

[49] *Id.* at 13–16.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.* at 15.

[56] *Id.* at 17.

[57] *See* Order Instituting Proceedings, *supra* note 7, at 4925.

[58] *See* Rich Letter, *supra* note 8, at 14.

[59] *Id.*

[60] *Id.*

[61] 15 U.S.C. 78f.

[62] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[63] 15 U.S.C. 78f(b)(5).

[64] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[65] *See* NYSE Arca Equities Rule 5.2(j)(3), Commentaries .01(b)(2) and .01(c). According to the Exchange, several major market data vendors widely disseminate IIVs taken from the CTA or other data feeds. *See* Notice, *supra* note 4, at 64157.

[66] On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security and financial instrument, number of securities or dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio.

9:30 a.m., Eastern Time), the amount of cash to be deposited in exchange for a Creation Unit[67] and the amount of cash that will be paid by the Fund in respect of redemption requests. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Fund's Web site will also include a form of the prospectus for the Fund, information relating to NAV (updated daily), and other quantitative and trading information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and will be made available to all market participants at the same time.[68] If the IIV, the Index value, or the value of the components of the Index is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs. If the interruption to the dissemination of the applicable IIV, Index value, or value of the components of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[69] In addition, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares on the Exchange until such time as the NAV is available to all market participants. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that the Index Provider is affiliated with a broker-dealer and will implement a firewall and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Index. The Exchange further states that the Adviser is affiliated with a broker-dealer and will implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.[70] The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The Commission notes that, prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin.[71] Specifically, the Exchange will remind ETP Holders that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that members must make reasonable efforts to obtain the following information: (a) The customer's financial status; (b) the customer's tax status; (c) the customer's investment objectives; and (d) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

As described above, the Fund will seek to track the performance of the Index by selling OTC 90-day down-and-in put options in proportion to their weightings in the Index on economic terms which mirror those of the Index. If the option's underlying stock declines by a specified amount (or more), the option will ''knock in'' and the Fund will be required to pay the buyer the difference between the option's strike price and the closing price. Therefore, by writing a put option, the Fund will be exposed to the amount by which the price of the underlying stock is less than the strike price. FINRA has issued a regulatory notice relating to sales practice procedures applicable to recommendations to customers by FINRA members of reverse convertibles, as described in FINRA Regulatory Notice 10–09 (February 2010) (''FINRA Regulatory Notice'').[72] While the Fund will not invest in traditional reverse convertible securities, the down-and-in put options written by the Fund will have the effect of exposing the Fund to the return of reverse convertible securities as if the Fund owned such reverse convertible securities directly. Therefore, the Information Bulletin will state that ETP Holders that carry customer accounts should follow the FINRA Regulatory Notice with respect to suitability.

The Registration Statement states that the Fund is designed for investors who seek to obtain income through selling options on select equity securities which the Index Provider determines to have the highest volatility. It further

[67] Creation Units (100,000 Shares) of the Fund generally will be sold for cash only, calculated based on the NAV per Share, multiplied by the number of Shares representing a Creation Unit, plus a transaction fee.

[68] *See* NYSE Arca Equities Rule 5.2(j)(3)(A)(v).

[69] With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Fund's portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[70] The Commission also notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[71] NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

[72] NASD Rule 2310 relating to suitability, referenced in the FINRA Regulatory Notice, has been superseded by FINRA Rule 2111. *See* FINRA Regulatory Notice 12–25 (May 2012).

states that because of the high volatility of the stocks underlying the options sold by the Fund, it is possible that the value of such stocks will decline in sufficient magnitude to trigger the exercise of the options and cause a loss which may outweigh the income from selling such options. The Registration Statement states that, accordingly, the Fund should be considered as a speculative trading instrument and is not necessarily appropriate for investors who seek to avoid or minimize their exposure to stock market volatility. The Exchange's Information Bulletin regarding the Fund will provide information regarding the suitability of an investment in the Shares, as stated in the Registration Statement.

The Index will consist of 20 OTC down-and-in put options, selected in accordance with NYSE Arca's rules-based methodology, and the stocks underlying the put options must be U.S. exchange-listed and must also underlie exchange-listed and traded options. In addition, the stocks underlying the down-and-in put options contained in the Index must meet minimum market capitalization and trading volume requirements as described above. The diversification of the Index (20 components) and the nature of the market for the underlying securities (largest capitalized stocks with minimum trading volume requirements) should serve to mitigate concerns about manipulation. In addition, the Commission did not receive any comments or information questioning or expressing concern about manipulation or the ability of market makers to perform intraday arbitrage on a product whose underlying holdings include positions in down-and-in put options, such as the Fund. Furthermore, as stated by the Sub-Adviser, the availability of listed equity options on the securities underlying the down-and-in put options contained in the Index should mitigate concerns regarding the ability of market makers to arbitrage the value of the down-and-in put options against the price of the Shares.[73]

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index is comprised of OTC put options.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Investment Company Units, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (d) how information regarding the IIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information. The Information Bulletin will also advise ETP Holders of their suitability obligations with respect to recommended transactions to customers in the Shares, and will state that ETP Holders that carry customer accounts should follow the FINRA Regulatory Notice with respect to suitability.

(5) The Index will consist of 20 OTC put options, selected in accordance with NYSE Arca's rules-based methodology, and the Fund, under normal circumstances, will invest at least 80% of its total assets in the components of the Index and in T-Bills. Each option written by the Fund will be covered through investments in three month T-Bills at least equal to the Fund's maximum liability under the option (*i.e.,* the strike price). A total return level for the Index will be calculated and published at the end of each day. The Fund will transact only with OTC options dealers that have in place an International Swaps and Derivatives Association agreement with the Fund.

(6) The stocks underlying the Index Components must be U.S. exchange listed and must meet the following additional criteria: (a) The availability of publicly listed and traded options; (b) minimum market capitalization of greater than $5 billion; (c) minimum trading volume of at least 50 million shares during the preceding 6 months; (d) minimum average daily trading volume of at least one million shares during the preceding 6 months; and (e) minimum average daily trading value of at least $10 million during the preceding 6 months.

(7) The Sub-Adviser will seek a correlation over time of 0.95 or better between the Fund's performance and the performance of the Index. A figure of 1.00 would represent perfect correlation.

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities. In addition, the Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund will not invest in non-U.S. equity securities.

(9) Swaps, options (other than options in which the Fund principally will invest), and futures contracts will not be included in the Fund's investment, under normal market circumstances, of at least 80% of its total assets in component securities that comprise the Index and in T-Bills.

(10) A minimum of 100,000 Shares of the Fund will be outstanding as of the start of trading on the Exchange.

(11) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act,[74] as provided by NYSE Arca Equities Rule 5.3.

The Commission further notes that the Fund and the Shares must comply with all other requirements as set forth in Exchange rules applicable to Investment Company Units and prior Commission releases relating to, and orders approving, the generic listing rules (and amendments thereto) applicable to the listing and trading of Investment Company Units. This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act [75] and the rules and

[73] *See* Rich Letter, *supra* note 8, at 12–16.

[74] 17 CFR 240.10A–3.

[75] 15 U.S.C. 78f(b)(5).

regulations thereunder applicable to a national securities exchange.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[76] that the proposed rule change (SR–NYSEArca–2012–108) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[77]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–09193 Filed 4–18–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69376; File No. SR–NASDAQ–2013–063]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 7014 and 7018

April 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on April 1, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing changes to its schedule of fees and rebates for execution of orders for securities priced at $1 or more under Rule 7018, as well as changes to its Qualified Market Maker (''QMM'') and NBBO Setter Incentive Programs under Rule 7014. The changes pursuant to this proposal are effective upon filing, and the Exchange will implement the proposed rule changes on April 1, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Designated Retail Orders

In March 2013,[3] NASDAQ introduced new liquidity provider credit tiers for orders designated by a member as Designated Retail Orders. The change was part of an ongoing effort by NASDAQ to use financial incentives to encourage greater participation in NASDAQ by members that represent retail customers.[4] For purposes of the new tiers and credits, a Designated Retail Order is defined as an agency or riskless principal [5] order that originates from a natural person and is submitted to NASDAQ by a member that designates it pursuant to Rule 7018, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. As originally adopted, if a member enters Designated Retail Orders through a market participant identifier (''MPID'') through which (i) at least 90% of the shares of liquidity provided during the month are provided through Designated Retail Orders, *and* (ii) the member accesses, provides, or routes shares of liquidity that represent at least 0.10% of Consolidated Volume [6] during the month, the member would receive a credit of $0.0034 per share executed for Designated Retail Orders that provide liquidity if they are displayed orders. NASDAQ is proposing to modify the criteria for this tier in two respects. First, NASDAQ is removing the 0.10% of Consolidated Volume requirement, such that any member that satisfies the requirement to provide 90% of the shares of liquidity provided through a particular MPID using Designated Retail Orders will be eligible for the $0.0034 per share executed rate. In addition, NASDAQ is proposing an additional means by which a member may receive the $0.0034 per share executed rate. If the member provides shares of liquidity through Designated Retail Orders that represent at least 0.30% of Consolidated Volume, and the member also qualifies for the Penny Pilot Tier 4 Customer and Professional Rebate to Add Liquidity under Chapter XV, Section 2 of the NASDAQ Options Market (''NOM'') rules during the month through one or more of its NOM MPIDs, it will also qualify for the $0.0034 rate. Under a proposed rule change for NOM being filed contemporaneously,[7] a NOM Participant qualifies for the Tier 4 Customer and Professional Rebate if it adds a number of contracts of Customer and Professional [8] liquidity that equals or exceeds 0.5% of total industry customer equity and ETF option average daily volume (''ADV'') during the month.

As is currently the case, Designated Retail Orders not qualifying for the

[76] 15 U.S.C. 78s(b)(2).

[77] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69133 (March 14, 2013), 78 FR 17272 (March 20, 2013) (SR–NASDAQ–2013–042).

[4] The Commission has expressed concern that a significant percentage of the orders of individual investors are executed in over-the-counter markets, that is, at off-exchange markets. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, ''Concept Release''). In the Concept Release, the Commission recognized the strong policy preference under the Act in favor of price transparency and displayed markets. See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (''Schapiro Speech,'' available on the Commission Web site) (comments of former Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that a significant percentage of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

[5] To qualify as a Designated Retail Order, a riskless principal order must satisfy the criteria set forth in FINRA Rule 5320.03. These criteria include that that the member maintain supervisory systems to reconstruct, in a time-sequenced manner, all orders that are entered on a riskless principal basis; and the member submits a report, contemporaneously with the execution of the facilitated order, that identifies the trade as riskless principal.

[6] ''Consolidated Volume'' is defined as the total consolidated volume reported to all consolidated transaction plans by all exchanges and trade reporting facilities.

[7] SR–NASDAQ–2013–062 (April 1, 2013).

[8] The term ''Customer'' applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of a broker or dealer or for the account of a Professional. The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48) of the NOM Rules.

$0.0034 per share executed tier will receive a credit of $0.0033 per share executed if they are displayed, and will receive NASDAQ's existing credits for midpoint pegged and midpoint peg post-only orders (''midpoint orders'') and other forms of non-displayed orders if they are not displayed.[9]

New Tiers for Members Active in the NASDAQ Market Center and the NASDAQ Options Market

In March 2013,[10] NASDAQ adopted a new liquidity provider credit tier for members that are active in both the Nasdaq Market Center and NOM. Under that tier, NASDAQ provides a credit of $0.0030 per share executed for displayed orders that provide liquidity if a member (i) has shares of liquidity provided in all securities during the month representing at least 0.45% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) qualifies for the Penny Pilot Tier 8 [11] Customer and Professional Rebate to Add Liquidity under Chapter XV, Section 2 of the NOM rules during the month through one or more of its NOM MPIDs. A NOM Participant may qualify for the Tier 8 Customer and Professional Rebate if it (i) has Total Volume [12] of 325,000 or more contracts per day in a month, (2) adds Customer and Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month, or (iii) adds Customer and Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 40,000 (formerly 30,000) or more contracts per day per month.

In this proposed rule change, NASDAQ is proposing two additional tiers with similar criteria. Specifically, NASDAQ will provide a credit of $0.0029 per share executed for displayed orders that provide liquidity if a member (i) has shares of liquidity provided in all securities during the month representing at least 0.10% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) qualifies for the Penny Pilot Tier 4 NOM Market Maker Rebate to Add Liquidity under Chapter XV, Section 2 of the NOM rules during the month through one or more of its NOM MPIDs. Similarly, NASDAQ will provide a credit of $0.0027 per share executed for displayed orders that provide liquidity if a member (i) has shares of liquidity provided in all securities during the month representing at least 0.05% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) qualifies for the Penny Pilot Tier 4 NOM Market Maker Rebate to Add Liquidity under Chapter XV, Section 2 of the NOM rules during the month through one or more of its NOM MPIDs. Under a contemporaneous NOM proposed rule change,[13] a NOM Participant will qualify for the Tier 4 NOM Market Maker Rebate if it adds Market Maker liquidity in Penny Pilot Options of 110,000 or more contracts per day in a month.

As with existing tiers that require participation in both the Nasdaq Market Center and NOM, the criteria for these new tiers, as well as the new tier for Designated Retail Orders, establish volume thresholds that must be met on both markets in order to receive a higher rebate. In doing so, the pricing incentives recognize the prevalence of trading in which members simultaneously trade different asset classes within the same strategy. Because cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other, NASDAQ believes that pricing incentives that encourage market participant activity in NOM also support price discovery and liquidity provision in the Nasdaq Market Center.

QMM and NBBO Setter Incentive Programs

In November 2012,[14] NASDAQ introduced two new pricing programs designed to create incentives for members to improve market quality. The programs are in effect on a pilot basis from November 1, 2012 until April 30, 2013, and NASDAQ expects to file a proposed rule change next month to remove the pilot limitation on the programs.[15] In this proposed rule change, NASDAQ is making several changes to the pilot programs as currently in effect.

Under the QMM Program, a member may be designated as a QMM with respect to one or more of its MPIDs if:

- The member is not assessed any ''Excess Order Fee'' under Rule 7018 during the month; [16] and
- through such MPID the member quotes at the national best bid or best offer (''NBBO'') at least 25% of the time during regular market hours [17] in an average of at least 1,000 securities during the month.[18]

Currently, a member that is a QMM with respect to a particular MPID (a ''QMM MPID'') is eligible to receive certain financial benefits. These benefits, and proposed modifications to them, are described below:

- The QMM may receive an NBBO Setter Incentive credit of $0.0005 with

[9] Specifically, NASDAQ provides a credit of $0.0017 per share executed for midpoint orders if the member provides an average daily volume of more than 3 million shares through midpoint orders during the month, $0.0015 per share executed for midpoint orders if the member provides an average daily volume of 3 million or fewer shares through midpoint orders during the month, and $0.0010 per share executed for other orders that are not displayed.

[10] Securities Exchange Act Release No. 69133 (March 14, 2013), 78 FR 17272 (March 20, 2013) (SR–NASDAQ–2013–042).

[11] Formerly Tier 7, but redesignated as Tier 8 in SR–NASDAQ–2013–062 (April 1, 2013). SR–NASDAQ–2013–062 also increases the Tier's requirement for NOM Market Maker liquidity from 30,000 to 40,000 contracts per day during the month.

[12] ''Total Volume'' is defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options that either adds or removes liquidity on NOM. The term ''Non-NOM Market Maker'' means a registered market maker on another options exchange that is not a NOM Market Maker. The term ''NOM Market Maker'' means a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2 of the NOM Rules, and must also remain in good standing pursuant to Chapter VII, Section 4 of the NOM Rules. The term ''Firm'' applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. The term ''Broker-Dealer'' applies to any transaction that is not subject to any of the other transaction fees applicable within a particular category.

[13] SR–NASDAQ–2013–062 (April 1, 2013).

[14] Securities Exchange Act Release No. 68209 (November 9, 2012), 77 FR 69519 (November 19, 2012) (SR–NASDAQ–2012–126).

[15] As noted in the original filing to establish the programs, NASDAQ will report to the Commission on the effects of the programs on bid-ask spreads, depth of liquidity at the inside, and such other factors as may be deemed relevant.

[16] Rule 7018(m). Last year, NASDAQ introduced an Excess Order Fee, aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of NASDAQ and its members and that may negatively impact the usefulness and life cycle cost of market data. In general, the determination of whether to impose the fee on a particular MPID is made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the NBBO, and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs that have an ''Order Entry Ratio'' of more than 100.

[17] Defined as 9:30 a.m. through 4:00 p.m., or such shorter period as may be designated by NASDAQ on a day when the securities markets close early (such as the day after Thanksgiving).

[18] A member MPID is considered to be quoting at the NBBO if it has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, NASDAQ will determine the number of securities in which the member satisfied the 25% NBBO requirement. To qualify for QMM designation, the MPID must meet the requirement for an average of 1,000 securities per day over the course of the month. Thus, if a member MPID satisfied the 25% NBBO requirement in 900 securities for half the days in the month, and satisfied the requirement for 1,100 securities for the other days in the month, it would meet the requirement for an average of 1,000 securities.

respect to orders that qualify for the NBBO Setter Incentive Program (*i.e.,* displayed orders with a size of at least one round lot that set the NBBO or join another trading center at the NBBO)[19] and that are entered through the QMM MPID. Beginning April 1, 2013, in order to receive an NBBO Setter Incentive credit at the $0.0005 rate, the QMM must also have a volume of liquidity provided through the QMM MPID (as a percentage of Consolidated Volume) that exceeds *the lesser of* the volume of liquidity provided through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume) *or* 1.0% of Consolidated Volume.[20] If a QMM does not satisfy these volume requirements, it will receive an NBBO Setter Incentive credit of $0.0002 per share executed with respect to orders that qualify for the NBBO Setter Incentive Program.[21]

• Currently, the QMM receives a credit of $0.0001 per share executed with respect to all other displayed orders in securities priced at $1 or more per share that provide liquidity and that are entered through a QMM MPID (in addition to any credit payable under Rule 7018).[22] This aspect of the program is being changed only to stipulate that Designated Retail Orders are not eligible to receive this additional credit.

• Currently, the QMM may receive a 25% discount on fees for ports used for entering orders for that MPID, up to a total discount of $10,000 per MPID per month.[23] As provided in Rule 7015, the specific fees subject to this discount are: (i) all ports using the NASDAQ Information Exchange (''QIX'') protocol,[24] (ii) Financial Information Exchange (''FIX'') trading ports,[25] and (iii) ports using other trading telecommunications protocols.[26] Beginning April 1, 2013, the discount will be equal to the lesser of the QMM's total fees for such ports or $5,000.

• Currently, the QMM may receive a credit of $0.0020 per share executed for all midpoint orders in securities priced at $1 or more per share entered through a QMM MPID (in lieu of any credit payable under Rule 7018). Effective April 1, 2013, NASDAQ will eliminate this provision, such that the applicable credit will be the credit payable under Rule 7018.

• Currently, for a number of shares not to exceed the number of shares of liquidity provided through a QMM MPID (the ''Numerical Cap''), NASDAQ charges a fee of $0.0028 per share executed for orders in securities priced at $1 or more per share that access liquidity on the NASDAQ Market Center and that are entered through the same QMM MPID; provided, however, that orders that would otherwise be charged $0.0028 per share executed under Rule 7018 do not count toward the Numerical Cap. For shares above the Numerical Cap, NASDAQ charges the rate otherwise applicable under Rule 7018. Beginning on April 1, 2013, the Numerical Cap will be *the lower of* the number of shares of liquidity provided through a QMM MPID *or* 20 million shares per trading day. Moreover, in order to be charged the execution rate of $0.0028 per share executed, the QMM's volume of liquidity added, provided, and/or routed through the QMM MPID during the month (as a percentage of Consolidated Volume) must be not less than 0.05% lower than the volume of liquidity added, provided, and/or routed through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume).[27]

Under the NBBO Setter Incentive program, NASDAQ provides an enhanced liquidity provider rebate with respect to displayed liquidity-providing orders that set the NBBO or join another trading center with a protected quotation at the NBBO. The NBBO Setter Incentive credit is paid on a monthly basis, and the amount is determined by multiplying the applicable rate by the number of shares of displayed liquidity provided to which a particular rate applies.[28] Currently, a member receives an NBBO Setter Incentive credit at the $0.0002 rate with respect to all shares of displayed liquidity that are executed at a price of $1 or more in the Nasdaq Market Center during a given month if posted through an order that:

• Displayed a quantity of at least one round lot at the time of execution; and

• either established the NBBO or was the first order posted on NASDAQ that had the same price as an order posted at another trading center with a protected quotation that established the NBBO.

Beginning April 1, 2013, members must also provide a daily average volume of at least 5 million shares of liquidity through orders that satisfy the foregoing criteria (*i.e.,* that qualify for an NBBO Setter Incentive credit) in order to receive a credit at the $0.0002 rate. Members with a lower daily average volume will receive a NBBO Setter Incentive credit at a rate of $0.0001 per shares executed. Alternatively, a member may receive a credit at the $0.0002 per share executed rate if it is a QMM but does not satisfy new volume criteria to be required for a QMM to receive a credit at the $0.0005 per share executed rate.

Under the current program, a member receives an NBBO Setter Incentive credit at the $0.0005 rate with respect to all shares of displayed liquidity that are executed at a price of $1 or more in the NASDAQ Market Center during a given month if posted through an order that:

• Displayed a quantity of at least one round lot at the time of execution;

• either established the NBBO or was the first order posted on Nasdaq that had the same price as an order posted at another trading center with a protected quotation that established the NBBO; and

• was entered through a QMM MPID.

As discussed above, beginning April 1, 2013, in order to receive an NBBO Setter Incentive credit at the $0.0005 rate, the QMM must also have a volume of liquidity provided through the QMM MPID (as a percentage of Consolidated Volume) that exceeds the lesser of the volume of liquidity provided through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume) or 1.0% of Consolidated Volume. If it does not satisfy this volume requirement, the QMM MPID will receive a credit at the $0.0002 per share executed rate.

Modification to Tier for Members Entering Orders in the NASDAQ Closing Cross

Currently, NASDAQ charges $0.0029 per share executed for orders that access liquidity when entered by a member with Market-on-Close and/or Limit-on-Close orders executed in the NASDAQ

[19] The NBBO Setter Incentive program is described in more detail below.

[20] The QMM will also receive the $0.0005 per share rate during the first month in which an MPID becomes a QMM MPID.

[21] Beginning April 1, 2013, Designated Retail Orders will not be eligible to receive an NBBO Setter Incentive credit.

[22] If the QMM also participates in NASDAQ Investor Support Program (the ''ISP'') NASDAQ will pay the greater of any applicable credit under the ISP or the QMM program, but not a credit under both programs.

[23] The ports subject to the discount are not used for receipt of market data.

[24] The applicable undiscounted fees are $1,200 per month for a port pair or ECN direct connection port pair, and $1,000 per month for an unsolicited message port. *See* Rule 7015(a).

[25] The applicable undiscounted fee is $500 per port per month. *See* Rule 7015(b).

[26] The applicable undiscounted fee is $500 per port pair per month. *See* Rule 7015(g).

[27] This limitation will not apply during the first month in which an MPID becomes a QMM MPID.

[28] Beginning April 1, 2013, a member will not be eligible to receive an NBBO Setter Incentive credit with respect to a Designated Retail Order.

Closing Cross that represent more than 0.06% of Consolidated Volume during the month. NASDAQ is proposing to modify the requirements for this tier, such that the member must enter the required volume of orders through a single MPID. As with other provisions of the fee schedule requiring activity to be concentrated through a single MPID, the change is designed to avoid providing excessive encouragement to members aggregating the activity of several firms (some of whom may not themselves be members of the Exchange) for the sole purpose of earning a higher rebate or reducing fees.[29]

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[30] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[31] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the $0.0034 per share pricing tier for Designated Retail Orders are reasonable because they will make it easier for a wider range of members to achieve this pricing tier, thereby resulting in a higher credit for members introducing Designated Retail Orders to the market. The change is consistent with an equitable allocation of fees because it broadens the availability of fee reductions used as a means to encourage greater retail participation in NASDAQ. Because retail orders are likely to reflect long-term investment intentions, they promote price discovery and dampen volatility. Accordingly, their presence in the NASDAQ market has the potential to benefit all market participants, and it is therefore equitable to provide financial incentives with respect to such orders. NASDAQ further believes that the change is not unreasonably discriminatory because it will continue to broaden the retail pricing incentives already provided through Designated Retail Order pricing, the Routable Order Program (the ''ROP'') and the ISP by offering a meaningful pricing incentive ($0.0034 per share executed) to all members that are able to concentrate Designated Retail Orders through a single MPID, while also continuing to offer a credit of $0.0033 per share executed that is available to all members that are able to attest that orders designated by them for participation in the program meet the definition of a Designated Retail Order.

The new tiers for members active in both the NASDAQ Market Center and NOM are reasonable because they reflect the availability of a significant price reduction for members that support liquidity on both markets. The changes are consistent with an equitable allocation of fees because the pricing tiers require significant levels of liquidity provision, which benefits all market participants, and because activity in NOM also supports price discovery and liquidity provision in the NASDAQ Market Center due to the increasing propensity of market participants to be active in both markets and the influence of each market on the pricing of securities in the other. The new tiers are not unreasonably discriminatory because market participants may qualify for a comparable or a higher rebate through alternative means that do not require participation in NOM, including through existing volume-based NASDAQ Market Center tiers, the use of Designated Retail Orders, participation in the ROP, or through a combination of qualification for volume-based tiers and participation in the ISP.[32]

The changes to the QMM Program and the NBBO Setter Incentive Program are reasonable, equitable, and not unreasonably discriminatory because they merely serve to limit the extent of the incentives associated with the programs, thereby causing the credits received by program participants to become more consistent with credits received by members that are not participants, while maintaining an incentive structure designed to benefit all market participants by encouraging quoting at or near the NBBO in a wide range of securities. NASDAQ hopes thereby to maintain the benefits associated with the programs while reducing their costs and making the programs sustainable in the longer term. Specifically:

- The change with respect to the availability of an NBBO Setter Incentive Credit of $0.0005 per share executed for QMMs is reasonable because it does not prevent a QMM from earning the credit at the specified level, but does provides an incentive for QMMs to increase their participation in NASDAQ above a prior benchmark level (or 1.0% of Consolidated Volume), thereby benefitting the Exchange and other market participants through high levels of liquidity provision. The change is consistent with an equitable allocation of fees because members that contribute significantly to market quality by satisfying the requirements of both the QMM and the NBBO Setter Incentive program while participating actively in the NASDAQ Market Center justifiably earn the higher credit of $0.0005 per share executed. The change is not unreasonably discriminatory because a QMM that does not achieve the higher requirements may still receive a credit of $0.0002 for orders that set the NBBO.
- Similarly, the modified requirements for the $0.0002 per share NBBO Setter Incentive credit to be earned by a non-QMM are reasonable because volume thresholds are widely used by NASDAQ and other exchanges as requirements for the receipt of favorable pricing, and NASDAQ is introducing a credit of $0.0001 per share for NBBO setting orders of a member that do not meet the requirement to ensure that financial incentives continue to be provided with respect to these beneficial orders. The change is consistent with an equitable allocation of fees in that it introduces a volume-based requirement for one tier of the program: such volume-based tiers are widely used by NASDAQ and other exchanges as a means of increasing participation or other desirable activity in their markets. The change is not unreasonably discriminatory because a credit of $0.0001 will now offered for NBBO setting orders that do not meet the volume requirement, and because comparable credits may be earned through other means, including participation in the ISP.
- The modification with respect to port fees is reasonable because it does not alter the fact that QMMs continue to be provided a discount as compared with other members, thereby resulting in lower overall fees for QMMs. The change is consistent with an equitable allocation of fees and not unreasonably discriminatory because the discount, like other QMM incentives, serves to encourage beneficial quoting conduct by QMMs, but the change will make the

[29] *See* Securities Exchange Act Release No. 64003 (March 2, 2011), 76 FR 12784 (March 8, 2011) (SR–NASDAQ–2011–028) (discussing introduction of fees designed to discourage aggregation for purposes of earning a rebate).

[30] 15 U.S.C. 78f.

[31] 15 U.S.C. 78f(b)(4) and (5).

[32] The change made by NOM with respect to the requirements for the Penny Pilot Tier 8 Customer and Profession Rebate to Add Liquidity is reasonable because it is intended to incentivize NOM Market Makers to post additional liquidity, an incentive that is strengthened by the availability of a higher rebate in the NASDAQ Market Center. The change is consistent with an equitable allocation of fees because it has the potential to increase liquidity provided on both markets, and is not unreasonably discriminatory because members have alternative means to earn a comparable rebate on NASDAQ that do not require use of NOM.

fees paid by QMMs for ports more consistent with the fees paid by others.

• The elimination of the QMM credit for midpoint orders is reasonable because QMMs, like other members, will continue to receive a higher credit with respect to midpoint orders, which provide price improvement, than with respect to other forms of non-displayed orders. The change is consistent with an equitable allocation of fees and not unreasonably discriminatory because the change will cause the credits paid to QMMs with respect to midpoint orders to be identical to the credits paid to other members with respect to the same orders.

• The change with respect to the $0.0028 per share executed pricing tier for QMMs is reasonable because it will maintain the availability of the pricing incentive in question while limiting the associated cost (by altering the number of shares to which the discount may apply) and providing an incentive for QMMs to maintain their participation in NASDAQ near or above a prior benchmark level. The change is consistent with an equitable allocation of fees because members that contribute significantly to market quality by satisfying the requirements of the QMM program while participating actively in the NASDAQ Market Center justifiably may be charged a lower fee with respect to order executions. The change is not unreasonably discriminatory because a QMM that does not achieve the higher requirements would pay a fee that is only slightly higher ($0.0029 or $0.0030 per share executed, depending on other aspects of its participation in NASDAQ).

• The change to provide that NBBO Setter Incentive credits and QMM credits will not be paid with respect to Designated Retail Orders is reasonable because Designated Retail Orders are already eligible to receive a high credit of $0.0034 or $0.0033 per share executed. The change is consistent with an equitable allocation of fees and is not unreasonably discriminatory because NASDAQ believes that the credit provided with respect to Designated Retail Orders provides sufficient incentive with respect to the market benefits associated with the orders in question, such that an additional credit is not warranted.

The change with respect to the tier for members active in the NASDAQ Closing Cross is reasonable because it does not materially alter the availability of the discount in question, but merely requires a member receiving the discount to concentrate its activity through a single MPID. Accordingly, the change is consistent with an equitable allocation of fees and not unreasonably discriminatory because it is consistent with other provisions of NASDAQ's fee schedule that are designed to avoid providing excessive encouragement to members aggregating the activity of several firms (some of whom may not themselves be members of the Exchange) for the sole purpose of earning a higher rebate or paying reduced fees.[33]

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, although some of the proposed changes impose conditions on the availability of certain previously introduced pricing incentives, the incentive programs in question remain in place and are themselves reflective of the need for exchanges to offer significant financial incentives to attract order flow. Moreover, if the changes are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. Similarly, certain of the changes broaden the availability of incentive programs, thereby reducing costs to market participants and possibly encouraging competitive responses from other trading venues. Accordingly, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

[33] *See* Securities Exchange Act Release No. 64003 (March 2, 2011), 76 FR 12784 (March 8, 2011) (SR–NASDAQ–2011–028) (discussing introduction of fees designed to discourage aggregation for purposes of earning a rebate).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[34] and paragraph (f) of Rule 19b–4 thereunder.[35] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–063 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–063. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f).

public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–063 and should be submitted on or before May 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–09191 Filed 4–18–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69374; File No. SR–CME–2013–05]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Acquisition of the Kansas City Board of Trade Clearing Corporation

April 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 4, 2013, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(ii)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME proposes to adopt revisions to certain CME rules in connection with the November 30, 2012, acquisition of the Kansas City Board of Trade Clearing Corporation (''KCBTCC'') by CME Group Inc., the parent holding company of CME. The proposed changes that are the subject of this filing would establish the eligibility of the Board of Trade of the City of Chicago, Inc. (''CBOT'') and CME Clearing Members to clear trades executed on the Board of Trade of Kansas City, Missouri, Inc. (''KCBT'').

The proposed revisions became effective upon filing but will not become operational until April 15, 2013, or the effective date established by a Commodity Futures Trading Commission (''CFTC'') order permitting the transfer of open interest from the KCBTCC to CME.

II. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME is proposing certain revisions to its rulebook related to its November 30, 2012, acquisition of KCBTCC by CME Group Inc., the parent holding company of CME. KCBTCC is currently the derivatives clearing organization (''DCO'') for transactions executed on the KCBT. CME is the DCO for transactions executed on CME, CBOT, the New York Mercantile Exchange, Inc., and Commodity Exchange, Inc. In a letter dated January 14, 2013, CME and KCBTCC jointly petitioned the CFTC for approval to transfer all open interest from KCBTCC to CME on April 15, 2013. Upon the transfer of open interest from KCBTCC to CME, KCBTCC will cease clearing transactions for KCBT and CME will assume the role of DCO for all trades executed on or through KCBT. To facilitate clearing of KCBT products by CME, the proposed changes that are the subject of this filing would simply establish the eligibility of CBOT and CME Clearing Members (collectively, the ''Clearing Members'') to clear trades executed on KCBT.

CME also certified the proposed changes that are the subject of this filing to its primary regulator, the CFTC, in CME Submission 13–115. Although these changes are effective on filing, CME proposes to make them operational on April 15, 2013, or the effective date established by a CFTC order permitting the transfer of open interest from the KCBTCC to CME.

The proposed CME changes relate to CME's activities as a derivatives clearing organization clearing futures transactions. As such, CME believes the proposed changes do not significantly affect the security-based swap clearing operations of CME or any related rights or obligations of CME security-based swap clearing participants. CME believes the proposed change is therefore properly filed under Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(4)(ii)[6] thereunder because it effects a change in an existing service of a registered clearing agency that primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(4)(ii)[8] thereunder and was effective upon filing but will not become operational until April 15, 2013, or the effective date established by a CFTC order permitting

[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(4)(ii).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(4)(ii).

the transfer of open interest from the KCBTCC to CME. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CME–2013–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CME–2013–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/files/SEC_19b-4_13-05.pdf*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CME–2013–05 and should be submitted on or before May 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–09190 Filed 4–18–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69378; File No. SR–EDGX–2013–13]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Footnote 4 of the Exchange's Fee Schedule Regarding Retail Orders

April 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2013, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes [sic] Footnote 4 of the Exchange's fee schedule regarding Retail Orders. All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–EDGX–2012–47,[3] the Exchange introduced new Flags ZA (Retail Order, adds liquidity) and ZR (Retail Order, removes liquidity) and appended to each flag Footnote 4 to the Exchange's fee schedule. Footnote 4 defined a ''Retail Order,'' provided an attestation requirement for Members[4] to comply with when sending Retail Orders to the Exchange, and noted that Members may designate orders as Retail Orders on an order-by-order basis. In SR–EDGX–2012–48,[5] the Exchange subsequently expanded Members' ability to send the Exchange Retail Orders by designating certain of their FIX ports at the Exchange as ''Retail Order Ports.'' The attestation requirement, as described in SR–EDGX–2012–47,[6] will continue to apply to all Members who submit Retail Orders, whether on an order-by-order basis or via Retail Order Ports.

Proposed Amendment to Definition of ''Retail Order''

Footnote 4 on the Exchange's fee schedule currently defines a Retail Order as: ''(i) an agency order that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized

[9] 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR–EDGX–2012–47).

[4] As defined in Exchange Rule 1.5(n).

[5] *See* Securities Exchange Act Release No. 68554 (December 31, 2012), 78 FR 966 (January 7, 2013) (SR–EDGX–2012–48).

[6] *See* Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR–EDGX–2012–47).

methodology.'' [7] The Exchange believes that its definition of a ''Retail Order'' is unnecessarily restrictive compared to that of other exchanges in that the Exchange does not include ''riskless principal orders'' in its definition.[8] The Exchange believes that its comparatively narrow definition may create confusion among the Exchange's Members, preventing Members from submitting Retail Orders and benefiting from the enhanced rebate and transparency of such orders. In addition, the Exchange believes that the restrictiveness of the Exchange's definition may inadvertently put the Exchange at a competitive disadvantage in relation to other exchanges that provide a less restrictive definition of a ''Retail Order.''

Accordingly, the Exchange proposes to amend the definition of a ''Retail Order'' in Footnote 4 to add riskless principal orders to the types of orders that may qualify as Retail Orders.[9] The Exchange proposes to amend Footnote 4 to state ''[w]here a Retail Order is defined as (i) an agency order *or riskless principal order that satisfies the criteria of FINRA Rule 5320.03* that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology.'' (emphasis added).[10]

The Exchange believes that, for purposes of determining whether an order should qualify as a Retail Order, there is no difference between a riskless principal order that meets the requirements of FINRA Rule 5320.03 and an agency order. A riskless principal transaction is a transaction in which a Member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and, contemporaneously, satisfies the original order by selling (buying) as principal at the same price. Generally, a riskless principal transaction involves two orders, the execution of one being dependent upon the receipt or execution of the other; thus, there is no ''risk'' in the interdependent transactions when completed. Unlike a riskless principal transaction, an agency order is entered directly in the System [11] by a Member on behalf of a customer. Ultimately, however, the results of a riskless principal transaction and an agency order are the same: the customer receives an execution while the involved Member acts as an intermediary to effect the transaction.[12]

The Exchange believes that the requirement that the entry of such riskless principal orders satisfy FINRA Rule 5320.03 provides sufficient protection against Members submitting orders for their own account to the Exchange. A Member entering a riskless principal transaction will have to, contemporaneously with the execution of the customer's order, submit a report identifying the trade as riskless principal to FINRA. Additionally, the Member will need to have written policies and procedures to ensure that riskless principal transactions comply with applicable FINRA rules. The policies and procedures, at a minimum, must require that the customer order be received prior to the offsetting principal transaction, and that the offsetting principal transaction is at the same price as the customer order exclusive of any markup or markdown, commission equivalent, or other fee, and is allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution. Additionally, the Member must have supervisory systems in place that produce records that enable the Member and FINRA to reconstruct accurately, readily, and in a time-sequenced manner all Retail Orders that are entered on a riskless principal basis.

The Exchange believes that the Member must also ensure that non-Retail Orders from customers are not included with the Retail Orders as part of a riskless principal transaction. The above requirements ensure that despite the procedural differences between the execution of a riskless principal transaction and an agency order, the only difference will be the procedure in which the transactions are effected and not the result.

The Exchange further believes that clarifying that riskless principal orders that meet the requirements of FINRA Rule 5320.03 are able to be submitted as Retail Orders on the same basis as agency orders will enable Members, and in turn, their retail customers, to benefit from the enhanced rebate (Flag ZA) and transparency offered by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that riskless principal orders that meet the requirements of FINRA Rule 5320.03 will have the same opportunity to be submitted as Retail Orders as agency orders. As discussed above, there is no functional distinction for purposes of Retail Orders between an order entered by a Member on an agency basis and one entered on a riskless principal basis. The Exchange believes that the proposed change would tend to reduce any potential discrimination between similarly situated customers or brokers by ensuring that the ability of retail customers to benefit from the use of Retail Orders does not depend on a distinction in capacity that is not meaningful for purposes of submitting Retail Orders. As a result of the change, a retail customer would be able to benefit from the rebate (Flag ZA) for utilizing Retail Orders without regards to whether the Member enters the order on a riskless principal or agency basis.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will clarify that riskless principal orders that meet the requirements of FINRA Rule 5320.03 are eligible to be submitted as Retail Orders on the same basis as agency orders. By allowing all orders that are functionally equivalent to agency orders to be submitted as Retail Orders, the proposed change would potentially stimulate further competition for retail order flow.

[7] *See* EDGX Fee Schedule, *http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx.*

[8] The Exchange notes that other market centers include ''riskless principal orders'' as part of their definitions of ''Retail Orders.'' *See, e.g.,* Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) (SR–NASDAQ–2012–129); Securities Exchange Act Release No. 69103 (March 11, 2013), 78 FR 16547 (March 15, 2013) (SR–NYSE–2013–20); Securities Exchange Release No. 69104 (March 11, 2013), 78 FR 16556 (March 15, 2013) (SR–NYSEMKT–2013–22).

[9] The Exchange notes that in order to qualify as a ''Retail Order,'' a ''riskless principal'' order must satisfy the criteria set forth in FINRA Rule 5320.03.

[10] The Exchange notes that it will amend its attestation form for Members designating Retail Orders to conform with these new requirements.

[11] As defined in Exchange Rule 1.5(cc).

[12] A principal transaction differs from both a riskless principal transaction and an agency order in that it is an order for the principal account of the entering Member.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed change would protect investors and the public interest by expanding the access of Members to the rebate for Flag ZA and the transparency offered by the Exchange as well as the access of the public to an exchange sponsored alternative to broker-operated internalization venues. In this regard, the Exchange believes that maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed amendment to allow Members to submit Retail Orders on a riskless principal basis will not burden intramarket competition because the ability to submit Retail Orders on a riskless principal basis would be open to all Members that wish to send Retail Orders to the Exchange.

The Exchange believes that the proposed amendment, by increasing the eligible orders that qualify as Retail Orders, would reduce burdens on competition around retail executions such that Members would receive better rebates than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of designating Retail Orders on an exchange market would result in better rebates for Members, and ultimately benefit retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-Exchange venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to add riskless principal orders to the types of orders that may qualify as Retail Orders for purposes of the Exchange's fee schedule.[17] The Commission also notes that several other market centers have recently added riskless principal orders to its definition of retail orders.[18] Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2013–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2013–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement in this case.

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] *See* Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) (SR–NASDAQ–2012–129); Securities Exchange Act Release No. 69103 (March 11, 2013), 78 FR 16547 (March 15, 2013) (SR–NYSE–2013–20); Securities Exchange Release No. 69104 (March 11, 2013), 78 FR 16556 (March 15, 2013) (SR–NYSEMKT–2013–22).

2013–13 and should be submitted on or before May 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–09192 Filed 4–18–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69372; File No. SR–NYSE–2013–26]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List To Provide Relief for Floor Brokers From the Annual Telephone Line Charge for January, February and March 2013

April 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 2, 2013, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to provide relief for Floor brokers from the Annual Telephone Line Charge for January, February and March 2013, which the Exchange proposes to become operative as of January 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to provide relief for Floor brokers from the Annual Telephone Line Charge for January, February and March 2013, which the Exchange proposes to become operative as of January 1, 2013. The Exchange previously amended its Price List to provide such relief for November and December 2012.[3]

Currently, member organizations are charged an Annual Telephone Line Charge of $400 per phone number. The Exchange proposes to waive the fee for Floor brokers for January, February and March 2013 on a prorated basis because Hurricane Sandy affected the ability of Floor brokers to communicate with customers from the Floor.

As noted in the Prior Waiver Filing, the damage to the telephone connections was very extensive. While telephone connections became fully operational by March 31, 2013, a majority of telephone line connections for Floor brokers were not fully operational during the January through mid-March 2013 period. In particular, the Exchange notes that the telephone lines that support both the wired and wireless connections for Floor brokers were based in an area of lower Manhattan that suffered extensive damage as a result of Hurricane Sandy.[4] In addition to the damage to telephone lines, internet bandwidth was reduced considerably; however, internet service has been significantly restored as of March 31, 2013. The Exchange notes that it is waiving the fee for Floor brokers only because off-Floor member firms were not impacted by these services. In addition, DMMs are on the Floor but do not engage in an agency business with customers from the Floor and, therefore, were not impacted by the telecommunications issues. The proposed waiver would be $33.33 for each month.

As stated above, Hurricane Sandy had a disproportionate impact on Floor brokers compared with off-Floor member firms and DMMs, including limited telephone service, no direct customer telephone lines, limited Internet service, intermittent cellular telephone service at the Exchange, and persistent busy signals. As a result, Floor brokers faced greater operating challenges and have experienced reduced activity from certain accounts and customers compared with pre-Hurricane Sandy levels. Therefore, Floor brokers are not getting the full benefit of their licenses.

The proposed waiver would apply retroactively to January 1, 2013 and would be reflected in the March 2013 billing statement.

The proposed changes are not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected member organizations would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to,

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 68538 (December 27, 2012), 78 FR 335 (January 3, 2013) (SR–NYSE–2012–71) (''Prior Waiver Filing'').

[4] The Exchange filed a rule change to temporarily suspend those aspects of Rules 36.20, 36.21, and 36.30 that would not permit Floor brokers and Designated Market Makers (''DMMs'') to use personal portable phone devices on the Floor following the aftermath of Hurricane Sandy and during the period that phone service was not fully functional. *See* Securities Exchange Act Release No. 68137 (November 1, 2012), 77 FR 66893 (November 7, 2012) (SR–NYSE–2012–58). The Exchange subsequently filed to extend the temporary suspension. *See* Securities Exchange Act Release Nos. 68161 (Nov. 5, 2012), 77 FR 67704 (Nov. 13, 2012) (SR–NYSE–2012–61); 68211 (Nov. 9, 2012), 77 FR 69534 (Nov. 19, 2012) (SR–NYSE–2012–64); 68271 (Nov. 20, 2012), 77 FR 70862 (Nov. 27, 2012) (SR–NYSE–2012–67); 68452 (Dec. 17, 2012), 77 FR 75683 (Dec. 21, 2012) (SR–NYSE–2012–73); 68704 (Jan. 22, 2013), 78 FR 5851 (Jan. 28, 2013) (SR–NYSE–2013–06); and 68958 (Feb. 20, 2013), 78 FR 13127 (Feb. 26, 2013) (SR–NYSE–2013–14).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that waiving the Annual Telephone Line Charge for Floor brokers for January, February and March 2013 is reasonable because Hurricane Sandy affected the ability of Floor brokers to communicate with customers and the ease with which they could represent public orders on the Floor. Therefore, the Exchange believes it is reasonable to provide relief for Floor brokers in this regard.

The Exchange believes the proposed change to the Annual Telephone Line Charge for Floor brokers is equitable and not unfairly discriminatory because Floor brokers are the only class of member organization that was affected by the telecommunications issues, which has impacted their ability to conduct their regular business and has resulted in reduced activity from certain accounts and customers. Therefore, it is equitable and not unfairly discriminatory to offer the fee waiver only to Floor brokers, which is the only class of Floor members not getting the full benefit of their licenses. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent, during the period when phone service continues to be intermittent, Floor brokers should receive relief from the Annual Telephone Line Charge.

The Exchange believes that the proposed relief for Floor brokers removes impediments to and perfects the mechanism of a free and open market and national market system because it would provide relief for Floor brokers that are experiencing ongoing issues with telephone service while they are conducting their regular business on the Floor. The Exchange further believes that the proposed waiver does not permit unfair discrimination because they would provide relief for Floor brokers that have been disproportionately impacted in their ability to operate as agents for customers during this time of unprecedented weather disruptions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change to the Annual Telephone Line Charge is limited in duration (January through March, 2013) and Floor brokers are the only class of member organization affected by the telecommunications issues described above, which have impacted their ability to conduct their regular business and have resulted in reduced activity from certain accounts and customers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Doing so will allow the Exchange to provide the proposed relief during the billing period in which the Floor brokers were affected. Accordingly, the Commission designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov. Please include File Number* SR–NYSE–2013–26 *on the subject line.*

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(2)(B).

2013–26 and should be submitted on or before May 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–09189 Filed 4–18–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Xvariant, Inc. (n/k/a China Bionanometer Industries Corp.); Order of Suspension of Trading

April 17, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Xvariant, Inc. (n/k/a China Bionanometer Industries Corp.) because it has not filed any periodic reports since the period ended September 30, 2006.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on April 17, 2013, through 11:59 p.m. EDT on April 30, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–09355 Filed 4–17–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of NewTech Brake Corp., Order of Suspension of Trading

April 17, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NewTech Brake Corp. because it has not filed any periodic reports since the period ended November 30, 2005.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on April 17, 2013, through 11:59 p.m. EDT on April 30, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–09354 Filed 4–17–13; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13536 and #13537]

Oklahoma Disaster #OK–00070

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–4109–DR), dated 04/08/2013.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 02/24/2013 through 02/26/2013.

Effective Date: 04/08/2013.

Physical Loan Application Deadline Date: 06/07/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 01/08/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/08/2013, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Alfalfa, Beaver, Beckham, Blaine, Custer, Dewey, Ellis, Garfield, Grant, Kay, Kingfisher, Major, Noble, Roger Mills, Washita, Woods, Woodward.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-profit Organizations with Credit Available Elsewhere	2.875
Non-profit Organizations without Credit Available Elsewhere	2.875
For Economic Injury:	
Non-profit Organizations without Credit Available Elsewhere	2.875

The number assigned to this disaster for physical damage is 13536B and for economic injury is 13537B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–09185 Filed 4–18–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meetings.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the 3rd quarter meetings of the National Small Business Development Center (SBDC) Advisory Board.

DATES: The meetings for the 3rd quarter will be held on the following dates:

Tuesday, April 16, 2013 at 1:00pm EST—Face to Face meeting. Address will be SBA Headquarters, 409 Third Street SW., OED Conference Room, 6th Floor, Washington, DC 20416;

Tuesday, May 21, 2013 at 1:00pm EST—Via Conference Call;

Tuesday, June 18, 2013 at 1:00pm EST—Via Conference Call.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of these meetings is to discuss following issues pertaining to the SBDC Advisory Board:

—SBA Update
—Annual Conferences
—Board Assignments
—Member Roundtable

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however

[12] 17 CFR 200.30–3(a)(12).

advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Alanna Falcone by fax or email. Her contact information is Alanna Falcone, Program Analyst, 409 Third Street SW., Washington, DC 20416, Phone, 202–619–1612, Fax 202–481–0134, email, *alanna.falcone@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Alanna Falcone at the information above.

Dan S. Jones,

Committee Management Officer.

This notice is late due to a last minute opportunity to pull everyone together for a face to face meeting on April 16th. Some of the members originally had scheduling conflicts.

[FR Doc. 2013–09187 Filed 4–18–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 8285]

60-Day Notice of Proposed Information Collection: Nonimmigrant Fiancé(e) Visa Application

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to June 18, 2013.

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Public Notice 8285'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: PRA_BurdenComments@state.gov.*
- *Mail:* Chief, Legislation and Regulation Division, Visa Services DS–156K Reauthorization, 2401 E Street NW., Washington, DC 20520.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Sydney Taylor, Visa Services, U.S. Department of State, 2401 E Street NW., L–603, Washington, DC 20522, who may be reached at *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Nonimmigrant Fiance(e) Visa Application
- *OMB Control Number:* 1405–0096
- *Type of Request:* Extension of a Currently Approved Collection
- *Originating Office:* CA/VO/L/R
- *Form Number:* DS–156K
- *Respondents:* Foreign Nationals applying for a nonimmigrant visa to enter the United States as the fiancé(e)
- *Estimated Number of Respondents:* 35,000
- *Estimated Number of Responses:* 35,000
- *Average Time per Response:* 1 hour
- *Total Estimated Burden Time:* 35,000 hours
- *Frequency:* Once per respondent
- *Obligation to Respond:* Required to Obtain or Retain a Benefit

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

Under INA Section 101(a)(15)(K) [8 U.S.C. 1101] Form DS–156K will be used by consular officers to determine the eligibility of a foreign national for a non-immigrant fiancé(e) visa.

Methodology:

Form DS–156K is used by consular officers at post to determine the eligibility of an alien applicant for a non-immigrant fiancé(e) visa.

Dated: April 10, 2013.

Edward J. Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2013–09252 Filed 4–18–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8286]

Culturally Significant Objects Imported for Exhibition Determinations: ''American Encounters: Genre Painting and Everyday Life''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''American Encounters: Genre Painting and Everyday Life,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Crystal Bridges Museum of American Art, Bentonville, Arkansas, from on or about May 11, 2013, until on or about August 12, 2013, the High Museum of Art, Atlanta, Georgia, from on or about September 14, 2013, until on or about January 12, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 12, 2013.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–09253 Filed 4–18–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8287]

Determination and Certification Under the Foreign Assistance Act Relating to the Largest Exporting and Importing Countries of Certain Precursor Chemicals

Pursuant to Section 490(b)(1)(A) of the Foreign Assistance Act of 1961, as amended, I hereby determine and certify that the top five exporting and importing countries and economies of pseudoephedrine and ephedrine (Belgium, China, Egypt, Germany, India, Indonesia, Poland, Singapore, South Korea, Switzerland, Taiwan, and the United Kingdom) have cooperated fully with the United States, or have taken adequate steps on their own, to achieve full compliance with the goals and objectives established by the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

This determination and certification shall be published in the **Federal Register**, and copies shall be provided to the Congress together with the accompanying Memorandum of Justification.

Dated: March 12, 2013.

William J. Burns,

Deputy Secretary.

[FR Doc. 2013–09248 Filed 4–18–13; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF STATE

[Public Notice 8288]

Removal of Sanctions on Person on Whom Sanctions Have Been Imposed Under the Iran Sanctions Act of 1996, as Amended

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Secretary of State has determined and certified to Congress that the following persons are no longer engaging in sanctionable activity described in section 5(a) of the Iran Sanctions Act of 1996 (Pub. L. 104–172) (50 U.S.C. 1701 note) (''ISA''), as amended, and that these persons have provided reliable assurances that they will not knowingly engage in such activities in the future. Therefore, certain sanctions that were imposed on on Allvale Maritime Inc., Société Anonyme Monégasque D'Administration Maritime Et Aérienne, and Tanker Pacific Management (Singapore) Pte. Ltd. on August 26, 2011 are hereby lifted.

DATES: *Effective Date:* The sanctions on Allvale Maritime Inc., Société Anonyme Monégasque D'Administration Maritime Et Aérienne, and Tanker Pacific Management (Singapore) Pte. Ltd. are lifted effective April 12, 2013.

FOR FURTHER INFORMATION CONTACT: On general issues: Office of Sanctions Policy and Implementation, Department of State, Telephone: (202) 647–7489.

SUPPLEMENTARY INFORMATION: On September 14, 2011, the Department of State issued a public notice that the Secretary of State made a determination to impose certain sanctions on, *inter alia,* Allvale Maritime Inc., Société Anonyme Monégasque D'Administration Maritime Et Aérienne, and Tanker Pacific Management (Singapore) Pte. Ltd. under the Iran Sanctions Act of 1996, as amended (Pub. L. 104–172) (50 U.S.C. 1701 note). 76 FR 56866.

At that time, pursuant to section 5(a) of the ISA and the authority delegated to the Secretary of State in the Presidential Memorandum of September 23, 2010, 75 FR 67025 (the ''Delegation Memorandum''), the Secretary determined to impose on Allvale Maritime Inc., Société Anonyme Monégasque D'Administration Maritime Et Aérienne, and Tanker Pacific Management (Singapore) Pte. Ltd. the following sanctions described in section 6 of the ISA:

1. Export-Import Bank assistance for exports to sanctioned persons. The Export-Import Bank of the United States shall not give approval to the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to Allvale Maritime Inc., Société Anonyme Monégasque D'Administration Maritime Et Aérienne, or Tanker Pacific Management (Singapore) Pte. Ltd.

2. Export sanction. The United States Government shall not issue any specific license and shall not grant any other specific permission or authority to export any goods or technology to Allvale Maritime Inc., Société Anonyme Monégasque D'Administration Maritime Et Aérienne, or Tanker Pacific Management (Singapore) Pte. Ltd. under—

a. The Export Administration Act of 1979 (50 U.S.C. Appx. 2401 *et seq.*);

b. The Arms Export Control Act (*22 U.S.C. 2751 et seq.*);

c. The Atomic Energy Act of 1954 (*42 U.S.C. 2011 et seq.*); or

d. Any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.

3. Loans from U.S. financial institutions: United States financial institutions shall be prohibited from making loans or providing credits to Allvale Maritime Inc., Société Anonyme Monégasque D'Administration Maritime Et Aérienne, or Tanker Pacific Management (Singapore) Pte. Ltd. totaling more than $10,000,000 in any 12-month period unless such persons are engaged in activities to relieve human suffering and the loans or credits are provided for such activities.

Pursuant to section 9(b)(2) of the ISA and the authority delegated to the Secretary of State in the Delegation Memorandum, the Secretary now has determined and certified to Congress that Allvale Maritime Inc., Société Anonyme Monégasque D'Administration Maritime Et Aérienne, and Tanker Pacific Management (Singapore) Pte. Ltd. are no longer engaging in sanctionable activity described in section 5(a) of the ISA, as amended, and that these persons have provided reliable assurances that they will not knowingly engage in such activities in the future. The Secretary, therefore, has determined to lift the above-referenced sanctions imposed on Allvale Maritime Inc. Société Anonyme Monégasque D'Administration Maritime Et Aérienne, and Tanker Pacific Management (Singapore) Pte. Ltd.

The sanctions described above with respect to each of the persons listed are no longer in effect. Pursuant to the authority delegated to the Secretary of State in the Delegation Memorandum, relevant agencies and instrumentalities of the United States Government shall take all appropriate measures within their authority to carry out the provisions of this notice.

The following constitutes a current, as of this date, list of persons on whom sanctions are imposed under the ISA. The particular sanctions imposed on an individual person are identified in the relevant **Federal Register** Notice.

—Associated Shipbroking (a.k.a. SAM) (see Public Notice 7585, 76 FR 56866, September 14, 2011)

—Belarusneft (see Public Notice 7408, 76 FR 18821, April 5, 2011)

—Bimeh Markazi-Central Insurance of Iran

—Cambis, Dimitris

—FAL Oil Company Limited (see Public Notice 7776, 77 FR 4389, Jan. 27, 2012)

—Impire Shipping

—Kish Protection and Indemnity (a.k.a. Kish P&I)

—Kuo Oil (S) Pte. Ltd. (see Public Notice 7776, 77 FR 4389, Jan. 27, 2012)

—Naftiran Intertrade Company (see Public Notice 7197, 75 FR 62916, Oct. 13, 2010)

—Petrochemical Commercial Company International (a.k.a. PCCI) (see Public Notice 7585, 76 FR 56866, September 14, 2011)

—Petro´leos de Venezuela S.A. (see Public Notice 7585, 76 FR 56866, September 14, 2011)

—Royal Oyster Group (see Public Notice 7585, 76 FR 56866, September 14, 2011)

—Speedy Ship (a.k.a. SPD) (see Public Notice 7585, 76 FR 56866, September 14, 2011)

—Sytrol (see Public Notice 8040, XX FR XXXXX, September 18, 2012)

—Zhuhai Zhenrong Company (see Public Notice 7776, 77 FR 4389, Jan. 27, 2012)

Dated: April 12, 2013.

William E. Craft,

Acting Assistant Secretary for Economic and Business Affairs.

[FR Doc. 2013–09250 Filed 4–18–13; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 8281]

Waiver of Restriction on Assistance to the Central Government of Saudi Arabia

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, P.L.112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Saudi Arabia, and I hereby report the waiver of this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: May 29, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

[FR Doc. 2013–09284 Filed 4–18–13; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice 8284]

Waiver of Restriction on Assistance to the Central Government of Egypt

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Egypt and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: April 13, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

Editorial Note: This document was received at the Office of the Federal Register April 16, 2013.

[FR Doc. 2013–09270 Filed 4–18–13; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice 8282]

Waiver of Restriction on Assistance to the Central Government of Lebanon

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Lebanon and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: March 22, 2012.

Thomas R. Nides,

Deputy Secretary, for Management and Resources.

[FR Doc. 2013–09281 Filed 4–18–13; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice 8279]

Waiver of Restriction on Assistance to the Central Government of Yemen

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L.112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Yemen and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: March 22, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

Editorial Note: This document was received at the Office of the Federal Register April 16, 2013.

[FR Doc. 2013–09303 Filed 4–18–13; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice 8280]

Waiver of Restriction on Assistance to the Central Government of Algeria

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Algeria and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be made published in the **Federal Register**.

Dated: May 14, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

Editorial Note: This document was received at the Office of the Federal Register April 16, 2013.

[FR Doc. 2013–09300 Filed 4–18–13; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice 8283]

Waiver of Restriction on Assistance to the Central Government of Libya

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Libya and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: March 29, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

Editorial Note: This document was received at the Office of the Federal Register April 16, 2013.

[FR Doc. 2013–09277 Filed 4–18–13; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments; Clearance of Renewed Approval of Information Collection: Automatic Dependent Surveillance—Broadcast (ADS–B) Out Performance Requirements To Support Air Traffic Control (ATC) Service

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The final rule titled ''Automatic Dependent Surveillance—Broadcast (ADS–B) Equipage Mandate To Support Air Traffic Control Service'' (75 FR 30160) requires performance requirements for certain avionics equipment on aircraft operating in specified classes of airspace within the United States National Airspace System. The rule facilitates the use of ADS–B for aircraft surveillance by FAA air traffic controllers to accommodate the expected increase in demand for air transportation.

DATES: Written comments should be submitted by June 18, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0728.

Title: Automatic Dependent Surveillance—Broadcast (ADS–B) Out Performance Requirements to Support Air Traffic Control (ATC) Service.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: 14 CFR part 91 includes requirements for certain avionics equipment on aircraft operating in specified airspace within the United States National Airspace System (NAS). This collection supports the information needs of the FAA by requiring avionics equipment that continuously transmits aircraft information to be received by the FAA, via automation, for use in providing air traffic surveillance services. This information is collected electronically without input from the human operator. Old information is overwritten on a continuous basis. A 1-hour burden is submitted as a placeholder to allow entry in OMB's burden inventory.

Respondents: Approximately 64,339 aircraft operators will install ADS–B Out equipment.

Frequency: Information is collected automatically via the ADS–B Out equipment.

Estimated Average Burden per Response: 1 hour (placeholder for automated collection).

Estimated Total Annual Burden: 1 hour (placeholder for automated collection).

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on April 15, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–09231 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments; Clearance of Renewed Approval of Information Collection: Report of Inspections Required by Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. OMB has requested that this information collection request (ICR) be converted to a generic ICR. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 7, 2012, vol. 77, no. 236, page 73114. Airworthiness Directives are regulations issued to require action to correct unsafe conditions in aircraft, engines, propellers, and appliances. Reports of inspections are often needed when emergency corrective action is taken to determine if the action was adequate to correct the unsafe condition.

DATES: Written comments should be submitted by May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0056.

Title: Report of Inspections Required by Airworthiness Directives.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Title 14 CFR part 39, Airworthiness Directives (AD), authorized by §§ 40113(a), 44701, and 44702 of Title 49 United States Code, prescribes how the FAA issues ADs. The FAA issues ADs when an unsafe condition is discovered on a specific aircraft type. If the condition is serious enough and more information is needed to develop corrective action, specific information may be required from aircraft owners/operators. If it is necessary for the aircraft manufacturer or airworthiness authority to evaluate the information, owners/operators will be instructed to send the information to them.

Respondents: Approximately 1,120 aircraft owners/operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 5 minutes.

Estimated Total Annual Burden: 3,080 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on April 15, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–09233 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Fractional Aircraft Ownership Programs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Fractional Ownership is a program that offers increased flexibility in aircraft ownership. Owners purchase shares of an aircraft and agree to share their aircraft with others having an ownership share in that same aircraft. Owners agree to put their aircraft into a ''pool'' of other shared aircraft and to lease their aircraft to another owner in that pool. The aircraft owners use a common management company to maintain the aircraft and administer the leasing of the aircraft among the owners.

DATES: Written comments should be submitted by June 18, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0684.

Title: Fractional Aircraft Ownership Programs.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Each fractional ownership program manager and each fractional owner must comply with the requirements of 14 CFR part 91, subpart K. Information is used to determine if these entities are operating in accordance with the minimum safety standards of these regulations. The FAA will use the information it reviews and collects to evaluate the effectiveness of the program and make improvements as needed, and ensure compliance and adherence to regulations.

Respondents: 11 fractional aircraft program managers/operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 46 minutes.

Estimated Total Annual Burden: 19,609 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on April 15, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–09234 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Information is maintained by owners and operators of light-sport aircraft and is collected to be used by FAA safety inspectors in determining whether required maintenance actions have been accomplished on light-sport aircraft. The information is also used when investigating accidents.

DATES: Written comments should be submitted by June 18, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0730.

Title: Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: 14 CFR 91.417 requires the owners and operators of light-sport aircraft to maintain a record of the current status of applicable safety directives and transfer that information at the time of sale of the aircraft. The information is used by FAA safety inspectors in determining whether required maintenance actions have been accomplished on aircraft. The information is also used when investigating accidents.

Respondents: Approximately 1,000 owners/operators of light-sport aircraft.

Frequency: Information is maintained and reported to the FAA as needed.

Estimated Average Burden per Response: 2 hours.

Estimated Total Annual Burden: 2,133 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on April 15, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–09239 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Noise Certification Documents for International Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection ensures that U.S. operators have proper noise certification information when they fly outside the U.S., in compliance with ICAO, Annex 16, Volume 1, Amendment 8.

DATES: Written comments should be submitted by June 18, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–073.

Title: Aircraft Noise Certification Documents for International Operations.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: 14 CFR part 91 requires operators of U.S. registered civil aircraft flying outside the United States to carry aircraft noise certification information on board. This rule is needed to ensure consistent compliance with the ICAO, Annex 16, Volume 1, Amendment 8 that requires certain noise information be carried on board the aircraft. The rule requires that this information be easily accessible to the flight crew and presentable upon request to the appropriate foreign officials.

Respondents: Approximately 5,066 operators of aircraft currently registered to U.S. mainline air carriers.

Frequency: One-time initial response per aircraft subject to the rule, for the information to be recorded and maintained.

Estimated Average Burden per Response: 25 minutes.

Estimated Total Annual Burden: 2,111 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on April 15, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–09240 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments; Clearance of Renewed Approval of Information Collection: Bird/Other Wildlife Strike Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Wildlife strike data are collected to develop standards and monitor hazards to aviation.

DATES: Written comments should be submitted by June 18, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0045.

Title: Bird/Other Wildlife Strike Report.

Form Numbers: FAA Form 5200–7.

Type of Review: Renewal of an information collection.

Background: 14 CFR 139.337—Wildlife Hazard Management requires that wildlife strike data is collected to develop standards and monitor hazards to aviation. Data identify wildlife strike control requirements and provide in

service data on aircraft component failure. The FAA form 5200–7, Bird/Other Wildlife Strike Report, is most often completed by the pilot-in-charge of an aircraft involved in a wildlife collision or by Air Traffic Control Tower personnel, or other airline or airport personnel who have knowledge of the incident.

Respondents: Approximately 7,666 pilots, air traffic control personnel, or other airline or airport personnel.

Frequency: Information is collected as needed.

Estimated Average Burden per Response: 5 minutes.

Estimated Total Annual Burden: 613 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on April 15, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–09232 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation; Notice of Availability and Request for Comment on the Draft Environmental Impact Statement for the SpaceX Texas Launch Site

AGENCY: DOT, Federal Aviation Administration (FAA), lead Federal agency; and National Aeronautics and Space Administration, National Park Service, U.S. Army White Sands Missile Range, U.S. Army Corps of Engineers, cooperating agencies.

ACTION: Notice of Availability, Notice of Public Comment Period, Notice of Public Hearing, and Request for Comment.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA; 42 United States Code [U.S.C.] 4321 et seq.), Council on Environmental Quality NEPA implementing regulations (40 Code of Federal Regulations parts 1500 to 1508), and FAA Order 1050.1E, Change 1, the FAA, Office of Commercial Space Transportation (AST) is announcing the availability of and requesting comments on the *Draft Environmental Impact Statement for the SpaceX Texas Launch Site* (Draft EIS). This Draft EIS is also submitted for review pursuant to the following public law requirements: Section 4(f) of the Department of Transportation Act (49 U.S.C. Section 303); Section 106 of the National Historic Preservation Act (16 U.S.C. 470); Executive Order 11988, *Floodplain Management;* DOT Order 5650.2, *Floodplain Management and Protection;* Executive Order 11990, *Protection of Wetlands;* and DOT Order 5660.1A, *Preservation of the Nation's Wetlands.*

An electronic version of the Draft EIS is available on the FAA/AST Web site: *http://www.faa.gov/about/office_org/headquarters_offices/ast/environmental/nepa_docs/review/documents_progress/spacex_texas_launch_site_environmental_impact_statement/.* In addition, copies of the Draft EIS were sent to persons and agencies on the distribution list (found in Chapter 11 of the Draft EIS). A paper copy and an electronic version of the Draft EIS may be reviewed during regular business hours at the following Brownsville locations:

- Brownsville Public Library Main Branch, 2600 Central Blvd.
- Southmost Branch Library, 4320 Southmost Blvd.
- University of Texas at Brownsville, Oliveira Library, 80 Fort Brown St.

The FAA will hold a public hearing to solicit comments from the public concerning the scope and content of the Draft EIS.

- May 7, 2013, 5:00 p.m. to 8:00 p.m., at the International Technology, Education, and Commerce (ITEC) Center, located at 301 Mexico Boulevard, Suite G–1, Brownsville, TX 78520.

The public hearing will include a poster information session from 5:00 p.m. to 6:00 p.m., FAA presentation from 6:00 p.m. to 6:15 p.m., followed by a public statement period in which members of the public may provide up to a 3-minute statement. The FAA will transcribe all oral comments. All comments received during the comment period will be given equal weight and be taken into consideration in the preparation of the Final EIS.

DATES: The public comment period for the Draft EIS begins with the issuance of this Notice of Availability and last 45 days. The FAA encourages interested agencies, organizations, Native American tribes, and members of the public to submit comments concerning the scope and content of the Draft EIS by June 3, 2013. Comments on the Draft EIS should be as specific as possible and address the analysis of potential environmental impacts and the adequacy of the Proposed Action or merits of alternatives and the mitigation being considered. Reviewers should organize their participation so that it is meaningful and makes the agency aware of the reviewer's interests and concerns using quotations and other specific references to the text of the Draft EIS and related documents. Matters that could have been raised with specificity during the comment period on the Draft EIS may not be considered if they are raised for the first time later in the decision process. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely manner so that the FAA has an opportunity to address them.

ADDRESSES: Please submit comments or questions regarding the Draft EIS to Ms. Stacey M. Zee, FAA Environmental Specialist, SpaceX EIS c/o Cardno TEC Inc., 275 West Street, Suite 110, Annapolis, MD 21401. Comments may also be submitted via email to *faaspacexeis@cardnotec.com* or by fax to (410) 990–0455.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey M. Zee, Environmental Specialist, Federal Aviation Administration, 800 Independence Avenue SW., Suite 325, Washington, DC 20591; email *Stacey.Zee@faa.gov;* or phone (202) 267–9305.

Additional Information

The Proposed Action is for the FAA to issue launch licenses and/or experimental permits to SpaceX that would allow SpaceX to launch the Falcon 9 and Falcon Heavy orbital vertical launch vehicles and a variety of reusable suborbital launch vehicles from a launch site on privately-owned property in Cameron County, Texas. As part of the Proposed Action, SpaceX plans to construct facilities, structures, and utility connections in order to support the launch of the Falcon 9 and Falcon Heavy launch vehicles. The facilities would be located in two areas:

vertical launch area and control center area. The proposed vertical launch area site is currently undeveloped and is located directly adjacent to the eastern terminus of Texas State Highway 4 (Boca Chica Boulevard) and approximately 3 miles north of the Mexican border on the Gulf Coast. It is located approximately 5 miles south of Port Isabel and South Padre Island. At the vertical launch area, the new facilities required would include an integration and processing hangar, a launch pad and stand with its associated flame duct, a water tower, a retention basic for deluge water, propellant storage and handling areas, a workshop and office area, and a warehouse for parts storage.

The command and control functions for a launch are required to be conducted at a safe separation distance from the actual launch pad. The control center area would be located inland, approximately 2 miles west of the vertical launch area and would include control center buildings, payload processing facilities, a launch vehicle processing hangar, generators and diesel storage facilities, and a satellite fuels storage facility. All facilities would be constructed through private funding, on currently undeveloped private property that would be purchased or leased by SpaceX. In addition, new underground power lines would be installed in the State Highway 4 Right-of-Way from the control center area to the vertical launch area.

Operations would consist of up to 12 launches per year with a maximum of two Falcon Heavy launches. All Falcon 9 and Falcon Heavy launches would be expected to have commercial payloads, including satellites or experimental payloads. In addition to standard payloads, the Falcon 9 and Falcon Heavy may also carry a capsule, such as the SpaceX Dragon capsule. All launch trajectories would be to the east over the Gulf of Mexico.

Alternatives under consideration include the Proposed Action and the No Action Alternative. Under the No Action Alternative, the FAA would not issue a license or experimental permit to SpaceX. The Draft EIS evaluates the direct, indirect, and cumulative environmental impacts of the Proposed Action and No Action Alternative on several environmental impact categories, including compatible land use (including farmlands and coastal resources); Section 4(f) properties; noise; visual resources and light emissions; historical, architectural, archaeological, and cultural resources; air quality; water resources (including wetlands, floodplains, surface waters, groundwater, and wild and scenic rivers); biological resources (including fish, wildlife, and plants); hazardous materials, pollution prevention, and solid waste; socioeconomics, environmental justice, and children's environmental health risks and safety risks; energy supply and natural resources; and secondary (induced) impacts. Additional resources were also considered including airspace, health and safety, and ground traffic and transportation. The Proposed Action would include a significant encroachment on floodplains per DOT Order 5650.2, *Floodplain Management Protection.*

Issued in Washington, DC, on April 11, 2013.

Daniel Murray,

Deputy Manager, Space Transportation Development Division.

[FR Doc. 2013–09161 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on State Highway 99 (Segment C) in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA 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, Grand Parkway (State Highway 99) Segment C, from US 59 (S) to SH 288 in Fort Bend and Brazoria Counties, Texas. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 16, 2013. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Punske, P.E., District Engineer, District B (South), Federal Highway Administration, 300 East 8th Street, Room 826 Austin, Texas 78701; telephone: (512) 536–5960; email: *gregory.punske@fhwa.dot.gov.* The FHWA Texas Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. (central time) Monday through Friday. You may also contact Mr. Carlos Swonke, Environmental Affairs Division, Texas Department of Transportation, 118 E. Riverside Drive, Austin, Texas 78704; telephone: (512) 416–2734; email: *Carlos.Swonke@txdot.gov.* The Texas Department of Transportation normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: Grand Parkway (State Highway 99) Segment C from US 59 (S) to SH 288 in Fort Bend and Brazoria Counties; FHWA Project Reference Number: FHWA–TX–EIS–03–03–F. The project will be a 41.8 km (26 mi) long, four-lane controlled access toll road with intermittent frontage roads, grade-separated intersections with exit and entrance ramps at eight intersections, while the need for elevated directional interchanges will be determined during final design. It will begin at SH 288 in Brazoria County and then proceeds northwest through Fort Bend County and end at US 59. The purpose of the project is to efficiently link the suburban communities and major roadways, enhance mobility and safety, and respond to economic growth. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on August 8, 2012, in the FHWA Record of Decision (ROD) issued on March 29, 2013, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Texas Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the Grand Parkway Association Web site at *http://www.grandpky.com/segments/c/.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4335]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Air: Clean Air Act, 42 U.S.C. 7401–7671(q).

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544] Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1342; Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604.

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11514 Protection and Enhancement of Environmental Quality.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: April 4, 2013.

Gregory S. Punske,

District Engineer.

[FR Doc. 2013–08853 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a Locally Administered federal aid project (RPSTPLE 5914 (042) and (043)) being carried out by Lake County with NEPA oversight being conducted by the State of California. The project takes place in Lake County, immediately adjacent to the town of Lakeport on South Main Street and Soda Bay Rd. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 16, 2013. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Brandon Larsen, Senior Environmental Planner Office of Local Assistance, telephone (707) 445–6410, email *Brandon_Larsen@dot.ca.gov.* For Lake County: Lars Ewing, Assistant Public Works Director, telephone (707) 263–2341, email *Lars.Ewing@lakecountyca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following locally administered project in the State of California: The federal aid project is RPSTPLE 5914 (042) and (043). The Lake County Department of Public Works (DPW) proposes to add a center turning lane, construct Class II bicycle lanes, underground overhead utility lines, and improve utility infrastructure on South Main Street and Soda Bay Road in the Lakeport area of Lake County, California. The South Main Street and Soda Bay Road Widening and Bike Lanes Project consists of a 0.5-mile segment of South Main Street, from the Lakeport city limits to the State Route (SR) 175 extension, and a 0.75-mile segment of Soda Bay Road extending south from SR 175 to approximately 0.1 mile west of Manning Creek.

The goal of the project is to improve traffic flow and pedestrian safety along South Main Street and Soda Bay Road. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) for the project, approved on 12/19/12, in the FHWA Finding Of No Significant Impact (FONSI) issued on 02/05/13, and in other documents in the FHWA project records. The FEA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA)
2. Section 106 of the National Historic Preservation Act
3. Endangered Species Act
4. Civil Rights Act
5. E.O. 11990 Protection of Wetlands
6. E.O. 11988 Floodplain Management
7. E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
8. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
9. Resource Conservation and Recovery Act (RCRA)

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: April 11, 2013.

Gary Sweeten,

Team Leader, Local Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2013–09007 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Intent To Grant Buy America Waiver to Amtrak To Use Three Non-Domestic Component Parts in No. 32.75 136RE Special Turnouts Manufactured in the U.S. by voestalpine Nortrak, Inc.

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

ACTION: Notice of intent to grant Buy America waiver.

SUMMARY: FRA is issuing this notice to advise the public that it intends to grant the National Railroad Passenger Corporation (''Amtrak'') a waiver to purchase four (4) No. 32.75 136RE Special Turnouts (''Turnouts'') manufactured by voestalpine Nortrak,

Inc. (''Nortrak'') for use in the New York City to Trenton, NY, High-Speed Rail Improvements Program (the ''High-Speed Rail Improvements Program'' or ''Program''). The Turnouts will be manufactured by Nortrak in the United States at its facility in Birmingham, Alabama, but will contain two components (ZU1–60 steel switch point rail sections and Schwihag roller assemblies and plates) that are not produced in the U.S. The cost of the Turnouts is approximately $2 million. The foreign material comprises approximately thirteen percent of the Turnouts' cost or approximately $260,000. FRA intends to grant the waiver because domestically-produced components meeting the specific needs of Amtrak for this application (i.e., specialized high-speed turnouts) are not produced in sufficient and reasonably available amount or are not of a satisfactory quality.

DATES: Written comments on FRA's determination to grant Amtrak's Buy America waiver request should be provided to FRA on or before April 22, 2013.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FRA–2012–0033. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov.* Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493–2251;

(3) *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590–0001; or

(4) *Hand Delivery:* Room W12–140 on the first floor of the West Building, 1200 New Jersey Avenue SE., Washington DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Railroad Administration'' and include docket number FRA–2012–0033. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Ms. Linda Martin, Senior Attorney-Advisor, FRA Office of Chief Counsel, (202) 493–6062 or via email at *Linda.Martin@dot.gov.*

SUPPLEMENTARY INFORMATION: FRA is issuing this notice to advise the public that it intends to grant Amtrak's request for a waiver from FRA's Buy America requirement, 49 U.S.C. 24405(a). The letter granting Amtrak's request provides as follows:

Mr. Jeff Martin, Chief Logistics Officer, National Railroad Passenger Corporation, 30th Street Station, Box 12, 5th Floor, SE Tower, Philadelphia, Pennsylvania 19104.

Re: Request for Waiver of Buy America Requirement

Dear Mr. Martin: This letter is in response to your August 8, 2012 request that the National Railroad Passenger Corporation (''Amtrak'') be granted a waiver from the Federal Railroad Administration's (''FRA'') Buy America provision, at 49 U.S.C. § 24405(a)(1) to purchase four (4) No. 32.75 136RE Special Turnouts (''Turnouts'') manufactured by voestalpine Nortrak, Inc. (''Nortrak'') for use in the New York City to Trenton, NY, High-Speed Rail Improvements Program (''NY-NJ HSR Program''). For the reasons set forth below, FRA is granting Amtrak's request.

The NY-NJ HSR Program, funded through a $449,944,000 American Recovery and Reinvestment Act grant from FRA, will upgrade and improve the catenary, power, track and signal systems on the Northeast Corridor primarily between New Brunswick, New Jersey and Trenton, New Jersey. It will also improve the western approach tracks in New York Penn Station to facilitate increased speeds and improved reliability for all users and eventual higher levels of service. As you know, the Turnouts will be used as part of track and structures upgrades that will progress between New Brunswick, NJ and Trenton, NJ. Specifically, the Turnouts will be included in the design of new high speed interlockings known as ''Delco'' and ''Adams'' to support high speed train operations by adding high speed diverging moves not currently possible. The new interlockings will allow New Jersey Transit (''NJT'') zone express trains to diverge from the high speed tracks to the local tracks. The new interlockings will allow an 80 mph (possibly higher) movement for NJT trains and other Regional Amtrak services operating simultaneously.

The cost of the Turnouts is approximately $2 million. The foreign material comprises approximately thirteen percent of the Turnouts' cost or approximately $260,000. The Turnouts will be manufactured by Nortrak at its plant in Birmingham, Alabama, but will contain several components (ZU1–60 steel left and right switch point rail sections and Schwihag roller assemblies and plates) that are not produced in the U.S.

Section 24405(a)(1) authorizes the Secretary of Transportation (''Secretary'') to obligate grant funds only if the steel, iron, and manufactured goods used in the project are produced in the United States. FRA believes a waiver is appropriate under 49 U.S.C. § 24405(a)(2)(B) for the ZUI–60 steel switch point rail sections and Schwihag roller assemblies and plates because domestically-produced components meeting the specific needs of Amtrak for this application (i.e., specialized high-speed turnouts) are not currently ''produced in sufficient and reasonably available amount or are not of a satisfactory quality.'' Amtrak also requested a waiver for the Turnout's vee point. However, FRA determined that a waiver is not necessary with regard to the vee point. FRA considers manufactured goods produced in the U.S. if they are manufactured in the U.S. from components that are manufactured in the U.S. No restrictions are placed upon the subcomponents of the manufactured goods. See *http://www.fra.dot.gov/Page/P0391* (FAQ no. 6). Because the vee point is a subcomponent of one of the Turnout's components (the moveable point frog), a waiver from the Buy America requirement is not necessary.

In order to determine whether to grant Amtrak's request, FRA provided notice and an opportunity for comment on its public Web site. FRA received six comments to the Web site notice. All commenters encouraged finding domestic sources for the components. Two commenters stated that the cost information should be considered when evaluating the waiver request. No commenter identified a supplier for the components. FRA also used the services of the National Institute for Standards and Technology Manufacturing

Extension Partnership (MEP) in order to scout for domestic sources for the components. The MEP supplier scouting revealed that the ZU1–60 steel sections from which the switch point rails are machined (by Nortrak) appeared to be currently available from a domestic manufacturing source. However, follow up discussions between MEP, Amtrak, and that potential source revealed that though it was determined that the source could roll the necessary steel it was not currently doing so. Moreover, the source reported that it would take, at best, six months to one year to produce the rail sections and questioned whether the quantity needed for these types of rails (four left and four right rails for this project) would justify the business expense of doing so.

MEP also found that roller assemblies and plates potentially meeting the specific requirements of the Turnouts were available from domestic manufacturers. However, follow up discussions with these companies revealed that though several companies made similar items, the current ability to produce the items to the specification required by Amtrak did not exist without retool and retest in the No. 32.75 136RE Special Turnout needed for this project.

Importantly, FRA is currently funding a grant to Nortrak for the research and development of a high speed rail turnout design that is based on U.S. specifications. The goal of the research is to yield a ''Buy America'' compliant high speed turnout. The grant runs through June 2013 and is expected to yield as a deliverable a drawing package suitable for bid. The next phase of the project (if funded) would be construction and test of the turnout at FRA's Transportation Testing Center in Pueblo, Colorado. Despite this research, the potential for a compliant turnout that may be available in the future and the timing of this waiver, the current availability of compliant components is at issue.

As you know, Amtrak is currently in the early stages of procurement of the Turnouts, which require approximately 300 days for delivery. Once delivered, Amtrak must assemble the Turnouts at one of its Maintenance of Way facilities, which takes approximately one to two months. Then, once assembled, Amtrak must deliver the Turnouts by train to the locations where they will be installed. The tracks at Adams and Delco are scheduled to go out of service in February 2014 in order for the Turnouts to be installed. This outage has been planned with and agreed to by NJT. Accordingly, in order to have enough time to assemble the Turnouts prior to their installation in February 2014, the Turnouts must be delivered to Amtrak no later than early January 2014. This means that Amtrak must be able to place its order for the Turnouts not later than the end of March 2013. For this reason, even if a U.S. specification could be designed and steel switch point rail sections rolled and roller assemblies and plates meeting the needs of these specific turnouts fabricated and retested, it would happen too late to meet the tight project deadline for the long lead time Turnouts needed for this project.

Pursuant to 49 U.S.C. § 24405(a)(4), FRA will publish this letter granting Amtrak's request in the **Federal Register** and provide notice of such finding and an opportunity for public comment after which this waiver will become effective. This waiver applies only to the ZUI–60 steel switch point rail sections and Schwihag roller assemblies and plates as manufactured into the four No. 32.75 Turnouts installed on the NY-NJ HSR Program. As you are aware, discussions between MEP, Amtrak, Nortrak, and other companies that have the potential to produce these items are ongoing and future requests for a waiver will not be granted without a specific showing that significant good faith efforts to obtain a domestic source for the items have been made. FRA staff will stay involved in these discussions and will assist in whatever way needed.

Question about this letter can be directed to, Linda Martin, Senior Attorney-Advisor, at *Linda.Martin@dot.gov* or (202) 493–6062.

Joseph C. Szabo,

Administrator.

This **Federal Register** notice is issued in Washington, DC on April 16, 2013.

Melissa Porter,

Chief Counsel, Federal Railroad Administration.

[FR Doc. 2013–09295 Filed 4–18–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35727]

Union Pacific Railroad Company—Trackage Rights Exemption—Illinois Central Railroad Company

Illinois Central Railroad Company (IC), pursuant to a written agreement dated December 18, 2012, has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over IC's Chicago Subdivision between milepost 21.0 at or near Markham, Ill., and milepost 29.0 at or near Matteson, Ill., a distance of approximately 8.0 miles.[1]

The transaction is scheduled to be consummated on May 5, 2013, the effective date of the exemption (30 days after the exemption was filed).

According to UP, through predecessor railroads, it currently maintains trackage rights over approximately 60 miles of IC's rail line between milepost A0–36.7 near Joliet, Ill., and milepost 21.0 near Markham, Ill.[2] The purpose of the transaction is to permit UP to connect to its existing trackage rights over the Wisconsin Central Ltd. (formerly Elgin, Joliet and Eastern Railway Company) line[3] near Matteson, Ill., which UP states would facilitate efficient train and rail operations throughout the Chicago area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by April 26, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35727, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jeremy Berman, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: April 16, 2013.

[1] A redacted trackage rights agreement between IC and UP was filed with the notice of exemption. An unredacted version was filed under seal along with a motion for protective order, which will be addressed in a separate decision.

[2] *See Chi., Mo. & W. Ry.—Exemption Acquis. and Operation—Ill. Cent. Gulf R.R.,* FD 30911 (ICC served Oct. 23, 1986, as supplemented May 8, 1987); and *Rio Grande Indus., Inc.—Purchase and Trackage Rights—Chi., Mo. & W. Ry. Line between St. Louis, Mo. and Chi., Ill.,* 5 I.C.C.2d 952 (1989).

[3] *See Union Pac. R.R.—Trackage Rights Exemption—Elgin, Joliet & E. Ry.,* FD 35728 (filed Apr. 5, 2013) for a description of these trackage rights.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2013–09242 Filed 4–18–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35728]

Union Pacific Railroad Company—Trackage Rights Exemption—Elgin, Joliet and Eastern Railway Company

Pursuant to a written trackage rights agreement dated December 18, 2012, Elgin, Joliet and Eastern Railway Company (EJ&E) [1] has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over approximately 25.2 miles of the EJ&E rail line between milepost 0.0 (at or near Joliet, Ill.) and milepost 25.2 (at or near Chicago Heights, Ill.), approximately 9.2 miles between milepost 36.2 (at or near Griffith, Ind.) and milepost 45.4 (at or near Gary, Ind.), and approximately 6.6 miles between milepost 45.4 (at or near Gary, Ind.) and milepost 6.0 (at or near Goff, Ind.), for a total distance of approximately 41.0 miles.[2]

The transaction is scheduled to be consummated on May 5, 2013, the effective date of the exemption (30 days after the verified notice was filed).

The purpose of the transaction is to provide UP with connections to its existing trackage rights over the EJ&E line in Joliet, Chicago Heights, and Griffith, thereby providing UP a complete route, via trackage rights, around the Chicago area.[3]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980). This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by April 26, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35728, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jeremy Berman, Union Pacific Railroad Company, 1400 Douglas Street STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov*.''

Decided: April 16, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2013–09243 Filed 4–18–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 15, 2013.

The Department of the Treasury will submit the following information collection requests 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 May 20, 2013 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 may be found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0219.

Type of Review: Extension without change of a currently approved collection.

Title: Work Opportunity Credit.

Form: 5884.

Abstract: IRC section 38(b)(2) allows a credit against income tax to employers hiring individuals from certain targeted groups such as welfare recipients, etc. The employer uses Form 5884 to figure the credit. IRS uses the information on the form to verify that the correct amount of credit was claimed.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 415,144.

OMB Number: 1545–0687.

Type of Review: Extension without change of a currently approved collection.

Title: Exempt Organization Business Income Tax Return.

Form: 990–T.

Abstract: Form 990–T is needed to compute the section 511 tax on unrelated business income of a charitable organization. IRS uses the information to enforce the tax.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 5,262,319.

OMB Number: 1545–0946.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Renewal of Enrollment to Practice before the Internal Revenue Service.

Form: 8554, 8554–EP.

Abstract: This information relates to the approval of continuing professional education programs and the renewal of the enrollment status for those individuals admitted (enrolled) by the Internal Revenue Service.

Affected Public: Individuals or Households; Private Sector: Businesses or other for-profits.

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[1] On January 1, 2013, EJ&E was merged into Wisconsin Central Ltd. (WCL). *See Wis. Cent. Ltd.—Intra-Corporate Family Merger Exemption—Elgin, Joliet & E. Ry.,* FD 35630 (STB served June 8, 2012) and Notice of Consummation filed January 4, 2013. In its verified notice of exemption in this docket, UP indicates that, as of January 1, 2013, the trackage rights agreement with EJ&E is valid and binding on WCL as EJ&E's successor-in-interest. The trackage rights agreement limits the number of trains UP may operate. *See* Verified Notice of Exemption, Exh. 2 at 7, 10.

[2] A redacted version of the trackage rights agreement between UP and EJ&E was filed with the notice of exemption. As required by 49 CFR 1180.6(a)(7)(ii), the unredacted version was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

[3] In 1997, UP acquired trackage rights over 11 miles of EJ&E's rail line between milepost 25.2, near Chicago Heights, and milepost 36.2, near Griffith. *See Union Pac. R.R.—Trackage Rights Exemption—Elgin, Joliet & E. Ry.,* FD 33347 (STB served Feb. 18, 1997). UP later acquired trackage rights over EJ&E's rail line between milepost 1.8, near Joliet, through West Chicago (milepost 29), to milepost 75.0, near Waukegan, Ill., a distance of approximately 76 miles. *See Union Pac. R.R.—Trackage Rights Exemption—Elgin, Joliet & E. Ry.,* FD 33821 (STB served Dec. 20, 1999).

Estimated Total Burden Hours: 48,000.

OMB Number: 1545–1143.

Type of Review: Extension without change of a currently approved collection.

Title: Notification of Distribution From a Generation-Skipping Trust.

Form: 706–GS (D–1).

Abstract: Form 706–GS (D–1) is used by trustees to notify the IRS and distributees of information needed by distributees to compute the Federal GST tax imposed by IRC section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.

Affected Public: Individuals and Households.

Estimated Total Burden Hours: 348,800.

OMB Number: 1545–1697.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2000–35—Section 1445 Withholding Certificates.

Abstract: Revenue Procedure 2000–35 provides guidance concerning applications for withholding certificates under Code section 1445.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 60,000.

OMB Number: 1545–1855.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9285—Limitation on Use of the Nonaccrual-Experience Method of Accounting Under Section 448(d)(5).

Abstract: Final regulations provide four safe harbor nonaccrual-experience methods that will be presumed to clearly reflect a taxpayer's nonaccrual experience, and for taxpayers who wish to compute their nonaccrual experience using a computation or formula other than the one of the four safe harbors provided, the requirements that must be met in order to use an alternative computation or formula to compute their nonaccrual experience.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 24,000.

OMB Number: 1545–2171.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9490—Carryback of Consolidated Net Operating Losses to Separate Return Years.

Abstract: This project amends § 1.1502–21 to implement the revisions to Code section 172(b)(1)(H), which extend the carryback period for NOLs to five years, enacted by the Worker, Homeownership, and Business Assistance Act of 2009 (''WHBAA'') that the President signed on Nov. 6, 2009 (Pub. L. 111–92).

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,000.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–09169 Filed 4–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Citizens Coinage Advisory Committee; Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee April 19, 2013, Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for April 19, 2013.

Date: April 19, 2013.

Time: 9:00 a.m. to 2:00 p.m.

Location: Conference Room A, United States Mint, 801 9th Street NW., Washington, DC 20220.

Subject: Review and consideration of the obverse candidate designs for the 2014 Presidential $1 Coin Program, candidate designs for the Edith Wilson 2013 First Spouse Gold Coin and Medal, themes for the 2014 First Spouse Gold Coin and Medal Program, themes for the Fallen Heroes of 9/11 Congressional Gold Medals, additional candidate designs for the Code Talkers Recognition Congressional Medals, and the Fiscal Year 2012 CCAC Annual Report.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: April 15, 2013.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2013–09210 Filed 4–18–13; 8:45 am]

BILLING CODE 4810–02–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—April 25, 2013, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: William A. Reinsch, Chairman of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Ames, IA on April 25, 2013, ''China's Agriculture Policy and U.S. Access to China's Market.''

Background: This is the fourth public hearing the Commission will hold during its 2013 report cycle to collect input from academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. This hearing will examine China's approach to developing its agricultural sector, how that development presents opportunities and constraints for U.S. producers, and what safety and public health issues continue to plague China's agriculture and food processing industries.

The hearing will be co-chaired by Commissioners Daniel M. Slane and Michael R. Wessel. Any interested party may file a written statement by April 25,

2013, by mailing to the contact below. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Location, Date and Time: Curtiss Hall, Room 127, Iowa State University, Ames, Iowa. Thursday, April 25, 2013, 8:00 a.m.–4:30 p.m. Central Time. A detailed agenda for the hearing is posted to the Commission's Web site at *www.uscc.gov.* Also, please check our Web site for possible changes to the hearing schedule. Reservations are not required to attend the hearing.

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Reed Eckhold, 444 North Capitol Street NW., Suite 602, Washington, DC 20001; phone: 202–624–1496, or via email at *reckhold@uscc.gov.* Reservations are not required to attend the hearing.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: April 16, 2013.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2013–09238 Filed 4–18–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that meetings of the Advisory Committee on Minority Veterans will be held in Chicago, Illinois from April 23–25, 2013, at the below times and locations:

On April 23, from 8:15 a.m. to 3 p.m., at the Edward Hines, Jr. VA Medical Hospital, 5000 South 5th Avenue, Hines, Illinois; 4:30 p.m. to 5 p.m., at the VA Regional Office, 2122 West Taylor Street, Chicago, IL;.

On April 24, from 9 a.m. to 11 a.m., at the Abraham Lincoln National Cemetery, 20953 West Hoff Road, Elwood Illinois; from 2 p.m. to 3 p.m., at the VA Joliet Community Outpatient Center (CBOC), 1201 Eagle Street, Joliet, Illinois; St. Luke Church of God in Christ, 914 North Orleans Street, Chicago, IL; 6:30 to 8:30 p.m., St. Luke Church of God in Christ, 914 North Orleans Street, Chicago, IL; and

On April 25, from 8:30 a.m. to 5:30 p.m., at the Edward Hines, Jr. VA Medical Hospital.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority Veterans, to assess the needs of minority Veterans and to evaluate whether VA compensation and pension, medical and rehabilitation services, memorial services outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities subsequent to the meeting.

On the morning of April 23, the Committee will meet in open session with key staff at the Edward Hines, Jr. VA Medical Hospital to discuss services, benefits, delivery challenges, and successes. From 11:45 a.m. to noon, the Committee will convene a closed session in order to protect patient privacy as the Committee tours the VA Polytrauma Center. In the afternoon, the Committee will reconvene in open session to meet with local Veterans Service Organizations to discuss Chicago area Veterans' issues and be briefed by senior Veterans Benefits Administration staff. The Committee will travel to the VA Regional Office and reconvene in a closed session from 4:30 p.m. to 5 p.m. in order to protect patient privacy as the Committee tours the facility. Closing these sessions is in accordance with 5 U.S.C. 552b(c)(6).

On the morning of April 24, the Committee will convene in open session at the Abraham Lincoln National Cemetery. The Committee will meet with key staff to discuss services, benefits, delivery challenges and successes. In the afternoon from 2 p.m. to 3 p.m., the Committee will convene a closed session to meet with key staff at the VA Joliet CBOC to tour the facility. In the evening, the Committee will hold a Veterans Town Hall meeting at the St. Luke Church of God in Christ, beginning at 6:30 p.m.

On the morning of April 25, the Committee will convene in open session to conduct an exit briefing with leadership from the VA Hospital, Chicago Regional Office, and Abraham Lincoln National Cemetery. In the afternoon, the Committee will work on their report to the Secretary.

Time will be allocated for receiving public comments on April 25, at 10 a.m. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come first served basis. Individuals who speak are invited to submit a 1–2 page summaries of their comments at the time of the meeting for inclusion in the official record. The Committee will accept written comments from interested parties on issues outlined in the meeting agenda, as well as other issues affecting minority Veterans. Such comments should be sent to Mr. Ronald Sagudan, Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or email at *Ronald.sagudan@va.gov.* For additional information about the meeting, please contact Mr. Sagudan or Mr. Dwayne E. Campbell at (202) 461–6191.

Dated: April 15, 2013.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2013–09186 Filed 4–18–13; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 78 Friday,
No. 76 April 19, 2013

Part II

Commodity Futures Trading Commission

7 CFR Part 162

Securities and Exchange Commission

17 CFR Part 248

Identity Theft Red Flags Rules; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 162

RIN 3038–AD14

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 248

[Release Nos. 34–69359, IA–3582, IC–30456; File No. S7–02–12]

RIN 3235–AL26

Identity Theft Red Flags Rules

AGENCY: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint final rules and guidelines.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC'') (together, the ''Commissions'') are jointly issuing final rules and guidelines to require certain regulated entities to establish programs to address risks of identity theft. These rules and guidelines implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which amended the Fair Credit Reporting Act and directed the Commissions to adopt rules requiring entities that are subject to the Commissions' respective enforcement authorities to address identity theft. First, the rules require financial institutions and creditors to develop and implement a written identity theft prevention program designed to detect, prevent, and mitigate identity theft in connection with certain existing accounts or the opening of new accounts. The rules include guidelines to assist entities in the formulation and maintenance of programs that would satisfy the requirements of the rules. Second, the rules establish special requirements for any credit and debit card issuers that are subject to the Commissions' respective enforcement authorities, to assess the validity of notifications of changes of address under certain circumstances.

DATES: *Effective date:* May 20, 2013; *Compliance date:* November 20, 2013.

FOR FURTHER INFORMATION CONTACT: CFTC: Sue McDonough, Counsel, at Commodity Futures Trading Commission, Office of the General Counsel, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, telephone number (202) 418–5132, facsimile number (202) 418–5524, email *smcdonough@cftc.gov;* SEC: with regard to investment companies and investment advisers, contact Andrea Ottomanelli Magovern, Senior Counsel, Amanda Wagner, Senior Counsel, Thoreau Bartmann, Branch Chief, or Hunter Jones, Assistant Director, Office of Regulatory Policy, Division of Investment Management, (202) 551–6792, or with regard to brokers, dealers, or transfer agents, contact Brice Prince, Special Counsel, Joseph Furey, Assistant Chief Counsel, or David Blass, Chief Counsel, Office of Chief Counsel, Division of Trading and Markets, (202) 551–5550, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commissions are adopting new rules and guidelines on identity theft red flags for entities subject to their respective enforcement authorities. The CFTC is adding new subpart C (''Identity Theft Red Flags'') to part 162 of the CFTC's regulations [17 CFR part 162] and the SEC is adding new subpart C (''Regulation S–ID: Identity Theft Red Flags'') to part 248 of the SEC's regulations [17 CFR part 248], under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x], the Commodity Exchange Act [7 U.S.C. 1–27f], the Securities Exchange Act of 1934 [15 U.S.C. 78a–78pp], the Investment Company Act of 1940 [15 U.S.C. 80a], and the Investment Advisers Act of 1940 [15 U.S.C. 80b].

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I. Background

The growth and expansion of information technology and electronic communication have made it increasingly easy to collect, maintain, and transfer personal information about individuals.[1] Advancements in technology also have led to increasing threats to the integrity and privacy of personal information.[2] During recent decades, the federal government has taken steps to help protect individuals, and to help individuals protect themselves, from the risks of theft, loss, and abuse of their personal information.[3]

The Fair Credit Reporting Act of 1970 (''FCRA''),[4] as amended in 2003,[5] required several federal agencies to issue joint rules and guidelines regarding the detection, prevention, and mitigation of identity theft for entities that are subject to their respective enforcement authorities (also known as

[1] *See, e.g.,* U.S. Government Accountability Office, Information Security: Federal Guidance Needed to Address Control Issues with Implementing Cloud Computing (May 2010), *available at http://www.gao.gov/new.items/d10513.pdf* (discussing information security implications of cloud computing); Department of Commerce, Internet Policy Task Force, Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework, at Section I (2010), *available at http://www.ntia.doc.gov/reports/2010/iptf_privacy_greenpaper_12162010.pdf* (reviewing recent technological changes that necessitate a new approach to commercial data protection). *See also* Fred H. Cate, Privacy in the Information Age, at 13–16 (1997) (discussing the privacy and data security issues that arose during early increases in the use of digital data).

[2] A recent survey found that in 2012, over 5% of Americans were victims of identity fraud. *See* Javelin Strategy & Research, 2013 Identity Fraud Report: Data Breaches Becoming a Treasure Trove for Fraudsters (Feb. 2013), *available at https://www.javelinstrategy.com/uploads/web_brochure/1303.R_2013IdentityFraudBrochure.pdf; see also* Comment Letter of Tyler Krulla (''Tyler Krulla Comment Letter'') (Apr. 27, 2012) (''In today's technology driven world it is easier than ever for anyone to acquire and exploit someone's identity and cause severe financial problems.'').

[3] *See, e.g.,* Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy (Feb. 2012), *available at http://www.whitehouse.gov/sites/default/files/privacy-final.pdf* (a White House proposal to establish a consumer privacy bill of rights); The President's Identity Theft Task Force Report (Sept. 2008), *available at http://www.ftc.gov/os/2008/10/081021taskforcereport.pdf;* Securities and Exchange Commission, Online Brokerage Accounts: What you can do to Safeguard Your Money and Your Personal Information, *available at http://www.sec.gov/investor/pubs/onlinebrokerage.htm.*

[4] Pub. L. 91–508, 84 Stat. 1114 (1970), *codified at* 15 U.S.C. 1681–1681x.

[5] *See* Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108–159, 117 Stat. 1952 (2003) (''FACT Act'').

the ''identity theft red flags rules'').[6] Those agencies were the Office of the Comptroller of the Currency (''OCC''), the Board of Governors of the Federal Reserve System (''Federal Reserve Board''), the Federal Deposit Insurance Corporation (''FDIC''), the Office of Thrift Supervision (''OTS''), the National Credit Union Administration (''NCUA''), and the Federal Trade Commission (''FTC'') (together, the ''Agencies'').[7] In 2007, the Agencies issued joint final identity theft red flags rules.[8] At the time the Agencies adopted their rules, the FCRA did not require or authorize the CFTC and SEC to issue identity theft red flags rules. Instead, the Agencies' rules applied to entities that registered with the CFTC and SEC, such as futures commission merchants, broker-dealers, investment companies, and investment advisers.[9]

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') [10] amended the FCRA to add the CFTC and SEC to the list of federal agencies that must jointly adopt and individually enforce identity theft red flags rules.[11] Thus, the Dodd-Frank Act provides for the transfer of rulemaking responsibility and enforcement authority to the CFTC and SEC with respect to the entities subject to each agency's enforcement authority. In February 2012, the Commissions jointly proposed for public notice and comment identity theft red flags rules and guidelines and card issuer rules.[12]

The CFTC and SEC received a total of 27 comment letters on the proposal.[13] Most commenters generally supported the proposal, and many stated that the rules would benefit individuals.[14] Commenters expressed concern about the prevalence of identity theft and supported our efforts to reduce it.[15] Commenters also supported the Commissions' proposal to adopt rules that would be substantially similar to the rules the Agencies adopted in 2007.[16] Some commenters raised questions about the scope of the proposal and the meaning of certain definitions.[17] One commenter stated that benefits to consumers would outweigh the costs of the rules,[18] while another took issue with the estimated costs of complying with the rules.[19]

Today, the CFTC and SEC are adopting the identity theft red flags rules. The final rules are substantially similar to the rules the Commissions proposed,[20] and to the rules the Agencies adopted in 2007.[21] The final rules apply to ''financial institutions'' and ''creditors'' subject to the Commissions' respective enforcement authorities, and as discussed further below, do not exclude any entities registered with the Commissions from their scope. The Commissions recognize that entities subject to their respective enforcement authorities, whose activities fall within the scope of the rules, should already be in compliance with the Agencies' joint rules. The rules we are adopting today do not contain requirements that were not already in the Agencies' rules, nor do they expand the scope of those rules to include new categories of entities that the Agencies' rules did not already cover. The rules and this adopting release do contain examples and minor language changes designed to help guide entities within the SEC's enforcement authority in complying with the rules, which may lead some entities that had not previously complied with the Agencies' rules to determine that they fall within the scope of the rules we are adopting today.

[6] *See* FCRA sections 615(e)(1)(A)–(B), 15 U.S.C. 1681m(e)(1)(A)–(B). Section 615(e)(1)(A) of the FCRA requires the Agencies to jointly ''establish and maintain guidelines for use by each financial institution and each creditor regarding identity theft with respect to account holders at, or customers of, such entities, and update such guidelines as often as necessary.'' Section 615(e)(1)(B) requires the Agencies to jointly ''prescribe regulations requiring each financial institution and each creditor to establish reasonable policies and procedures for implementing the guidelines established pursuant to [section 615(e)(1)(A)], to identify possible risks to account holders or customers or to the safety and soundness of the institution or customers.''

[7] The FCRA also required the Agencies to prescribe joint rules applicable to issuers of credit and debit cards, to require that such issuers assess the validity of notifications of changes of address under certain circumstances (the ''card issuer rules''). *See* FCRA section 615(e)(1)(C), 15 U.S.C. 1681m(e)(1)(C).

[8] *See* Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003, 72 FR 63718 (Nov. 9, 2007) (''2007 Adopting Release''). The rules included card issuer rules. *See supra* note 7. The OCC, Federal Reserve Board, FDIC, OTS, and NCUA began enforcing their identity theft red flags rules on November 1, 2008. The FTC began enforcing its identity theft red flags rules on January 1, 2011.

[9] *See* 2007 Adopting Release, *supra* note 8.

[10] Pub. L. 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act is available at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[11] *See* FCRA section 615(e)(1), 15 U.S.C. 1681m(e)(1). In addition, section 1088(a)(10)(A) of the Dodd-Frank Act added the Commissions to the list of federal administrative agencies responsible for enforcement of rules pursuant to section 621(b) of the FCRA. *See infra* note 24. Section 1100H of the Dodd-Frank Act provides that the Commissions' new enforcement authority (as well as other changes in various agencies' authority under other provisions) becomes effective as of the ''designated transfer date'' to be established by the Secretary of the Treasury, as described in section 1062 of that Act. On September 20, 2010, the Secretary of the Treasury designated July 21, 2011 as the transfer date. *See* Designated Transfer Date, 75 FR 57252 (Sept. 20, 2010).

[12] The Commissions' joint proposed rules and guidelines were published in the **Federal Register** on March 6, 2012. *See* Identity Theft Red Flags Rules, 77 FR 13450 (Mar. 6, 2012) (''Proposing Release''). For ease of reference, unless the context indicates otherwise, our general use of the terms ''identity theft red flags rules'' or ''rules'' in this release will refer to both the identity theft red flags rules and guidelines. In addition, unless the context indicates otherwise, the general use of these terms in this preamble and Section III of this release will refer to both the identity theft red flags rules and guidelines, and the card issuer rules (which are discussed in further detail later in this release).

[13] Comments on the proposal, including comments referenced in this release, are available on the SEC's Web site at *http://www.sec.gov/comments/s7-02-12/s70212.shtml* and the CFTC's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1171.*

[14] *See, e.g.,* Comment Letter of MarketCounsel (Apr. 25, 2012) (''MarketCounsel Comment Letter'') (''MarketCounsel supports the Commission's attempt to help protect individuals from the risk of theft, loss, and abuse of their personal information through the Proposed Rule.''); Comment Letter of Erik Speicher (''Erik Speicher Comment Letter'') (Mar. 17, 2012) (''Identity theft is a major concern of all citizens. The effects and burdens associated with having ones [sic] identity stolen necessitate these proposed regulations. The affirmative duty placed on the covered entities will better protect all of us from the possibility of having our identity stolen.''); Comment Letter of Lauren L. (Mar. 12, 2012) (''Lauren L. Comment Letter'') (''[R]equirements to implement an identity theft prevention plan and to verify change of personal information [have] the [potential] to protect people.'').

[15] *See, e.g.,* Tyler Krulla Comment Letter; Lauren L. Comment Letter (''I agree with the proposed changes. With the market shifting to an IT based world, identity theft is increasing. Therefore, more stringent rules and regulations should be in place to protect those that may be affected.'').

[16] *See, e.g.,* Comment Letter of the Investment Company Institute (May 1, 2012) (''ICI Comment Letter'').

[17] *See, e.g.,* Comment Letter of the Investment Adviser Association (May 7, 2012) (''IAA Comment Letter'') (requesting that the SEC and CFTC clarify the definitions of ''financial institution'' and ''creditor'' and exclude investment advisers from the categories of entities specifically mentioned in the scope section of the rule); Comment Letter of the Options Clearing Corporation (May 3, 2012) (''OCC Comment Letter'') (requesting that the SEC and CFTC clarify the definition of ''creditor'' and expressly exclude clearing organizations from the scope section of the rule); Comment Letter of the Financial Services Roundtable and the Securities Industry and Financial Markets Association (May 2, 2012) (''FSR/SIFMA Comment Letter'') (requesting that the SEC specifically exclude certain categories of entities from the definitions of ''financial institution'' and ''covered account,'' and that the SEC and CFTC specifically define the types of accounts that would qualify as covered accounts).

[18] *See* Erik Speicher Comment Letter.

[19] *See* FSR/SIFMA Comment Letter. We discuss estimated costs and benefits in the Section III of this release.

[20] *See infra* Section II.A.1.ii (discussing a revision to proposed definition of ''creditor''); *see also* § 248.201(b)(2)(i) (SEC) (revising the term ''non U.S. based financial institution or creditor,'' which was included in the proposed definition of ''board of directors,'' to ''foreign financial institution or creditor,'' for clarity and consistency with the CFTC's and Agencies' respective identity theft red flags rules).

[21] *See* 2007 Adopting Release.

II. Explanation of the Final Rules and Guidelines

A. Final Identity Theft Red Flags Rules

Sections 615(e)(1)(A) and (B) of the FCRA, as amended by the Dodd-Frank Act, require that the Commissions jointly establish and maintain guidelines for ''financial institutions'' and ''creditors'' regarding identity theft, and adopt rules requiring such institutions and creditors to establish reasonable policies and procedures for the implementation of those guidelines.[22] Under the final rules, a financial institution or creditor that offers or maintains ''covered accounts'' must establish an identity theft red flags program designed to detect, prevent, and mitigate identity theft. To that end, the final rules discussed below specify: (1) Which financial institutions and creditors must develop and implement a written identity theft prevention program (''Program''); (2) the objectives of the Program; (3) the elements that the Program must contain; and (4) the steps financial institutions and creditors need to take to administer the Program.

1. Which Financial Institutions and Creditors Are Required To Have a Program

The ''scope'' subsections of the rules generally set forth the types of entities that are subject to the Commissions' identity theft red flags rules.[23] Under these subsections, the rules apply to entities over which Congress recently granted the Commissions enforcement authority under the FCRA.[24] The Commissions' scope provisions are similar to those contained in the rules adopted by the Agencies, which limit the rules' scope to entities that are within the Agencies' respective enforcement authorities.[25]

As noted above, the CFTC's ''scope'' subsection ''applies to financial institutions and creditors that are subject to'' the CFTC's enforcement authority under the FCRA.[26] The CFTC's proposed definitions of ''financial institution'' and ''creditor'' describe the entities to which its identity theft red flags rules and guidelines apply. In the Proposing Release, the CFTC defined ''financial institution'' as having the same meaning as in section 603(t) of the FCRA.[27] In addition, the CFTC's proposed definition of ''financial institution'' also specified that the term includes any futures commission merchant (''FCM''), retail foreign exchange dealer (''RFED''), commodity trading advisor (''CTA''), commodity pool operator (''CPO''), introducing broker (''IB''), swap dealer (''SD''), or major swap participant (''MSP'') that directly or indirectly holds a transaction account belonging to a consumer.[28] Similarly, in the CFTC's proposed definition of ''creditor,'' the CFTC applies the definition of ''creditor'' from 15 U.S.C. 1681m(e)(4) to any FCM, RFED, CTA, CPO, IB, SD, or MSP that ''regularly extends, renews, or continues credit; regularly arranges for the extension, renewal, or continuation of credit; or in acting as an assignee of an original creditor, participates in the decision to extend, renew, or continue credit.'' [29] The CFTC has determined that the final identity theft red flags rules apply to these entities because of the increased likelihood that these entities open or maintain covered accounts, or pose a reasonably foreseeable risk to customers, or to the safety and soundness of the financial institution or creditor, from identity theft. This approach is consistent with the general scope of part 162 of the CFTC's regulations.[30]

One commenter suggested that the CFTC follow the SEC's approach and simply cross-reference the FCRA definition of ''financial institution'' and the FCRA definition of ''creditor'' as amended by the Red Flag Program Clarification Act of 2010 (''Clarification Act'') [31] rather than including named entities in the definition.[32] The commenter argued that cross-referencing the FCRA definitions, as amended by the Clarification Act, rather than including specific types of entities that are subject to the CFTC's enforcement authority in the definitions of ''financial institution'' and ''creditor,'' would be more consistent with the SEC's and the Agencies' regulations and would allow the agencies to easily adapt to any changes to the FCRA over time.[33]

After considering these concerns, the CFTC has concluded that if it were to follow the SEC's approach and simply cross-reference the FCRA definitions of ''financial institution'' and ''creditor,'' the general scope provisions of 17 CFR part 162 would still apply and specify that part 162 applies to FCMs, RFEDs, CTAs, CPOs, IBs, MSPs, and SDs. As a practical matter, a cross-reference to the FCRA definitions of ''financial institution'' and ''creditor'' would not change the result because under the general scope provisions of part 162, the CFTC's identity theft red flags rules would still apply to the same list of entities. As a result, the CFTC believes that it should retain the same definition of ''financial institution'' and ''creditor'' contained in the Proposing Release.

The SEC's ''scope'' subsection provides that the final rules apply to a financial institution or creditor, as defined by the FCRA, that is:

- A broker, dealer or any other person that is registered or required to be registered under the Securities Exchange Act of 1934 (''Exchange Act'');
- An investment company that is registered or required to be registered under the Investment Company Act of 1940 (''Investment Company Act''), that has elected to be regulated as a business

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[22] 15 U.S.C. 1681m(e)(1)(A) and (B). Key terms such as ''financial institution'' and ''creditor'' are defined in the rules and discussed later in this Section.

[23] § 162.30(a) (CFTC); § 248.201(a) (SEC).

[24] Section 1088(a)(10)(A) of the Dodd-Frank Act amended section 621(b) of the FCRA to add the Commissions to the list of federal agencies responsible for enforcement of the FCRA. As amended, section 621(b) of the FCRA specifically provides that enforcement of the requirements imposed under the FCRA ''shall be enforced under * * * the Commodity Exchange Act, with respect to a person subject to the jurisdiction of the [CFTC]; [and under] the Federal securities laws, and any other laws that are subject to the jurisdiction of the [SEC], with respect to a person that is subject to the jurisdiction of the [SEC] * * *'' 15 U.S.C. 1681s(b)(1)(F)–(G). *See also* 15 U.S.C. 1681a(f) (defining ''consumer reporting agency'').

[25] *See, e.g.,* 12 CFR 334.90(a) (stating that the FDIC's red flags rule ''applies to a financial institution or creditor that is an insured state nonmember bank, insured state licensed branch of a foreign bank, or a subsidiary of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers)''); 12 CFR 717.90(a) (stating that the NCUA's red flags rule ''applies to a financial institution or creditor that is a federal credit union'').

[26] § 162.30(a); *see also supra* note 24.

[27] *See* 15 U.S.C. 1681a(t) (defining ''financial institution'' to include certain banks and credit unions, and ''any other person that, directly or indirectly, holds a transaction account (as defined in Section 19(b) of the Federal Reserve Act) belonging to a consumer''). Section 19(b) of the Federal Reserve Act defines a transaction account as ''a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders or withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third parties or others.'' 12 U.S.C. 461(b)(1)(C).)

[28] § 162.30(b)(7).

[29] § 162.30(b)(5).

[30] § 162.1(b) (specifying that ''[t]his part applies to certain consumer information held by * * * futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers, major swap participants and swap dealers.'')

[31] In December 2010, President Obama signed into law the Red Flag Program Clarification Act of 2010, which amended the definition of ''creditor'' in the FCRA for purposes of identity theft red flags rules. Red Flag Program Clarification Act of 2010, Public Law 111–319 (2010) (inserting new section 4 at the end of section 615(e) of the FCRA), *codified at* 15 U.S.C. 1681m(e)(4).

[32] IAA Comment Letter.

[33] The commenter also noted that the CFTC's proposed definition of ''creditor'' would include certain entities such as CPOs and CTAs—entities that do not extend credit.

development company (''BDC'') under that Act, or that operates as an employees' securities company (''ESC'') under that Act; or

• An investment adviser that is registered or required to be registered under the Investment Advisers Act of 1940 (''Investment Advisers Act'').[34]

The types of entities listed by name in the scope section are the registered entities regulated by the SEC that are most likely to be financial institutions or creditors, *i.e.,* brokers or dealers (''broker-dealers''), investment companies, and investment advisers.[35] The scope section also includes any other entities that are registered or are required to register under the Exchange Act.[36] Some types of entities required to register under the Exchange Act, such as nationally recognized statistical rating organizations (''NRSROs''), self-regulatory organizations (''SROs''), municipal advisors, and municipal securities dealers, are not listed by name in the scope section because they may be less likely to qualify as financial institutions or creditors under the FCRA.[37] Nevertheless, if any entity of a type not listed qualifies as a financial institution or creditor, it is covered by the SEC's rules. The scope section does not include entities that are not themselves registered or required to register with the SEC (with the exception of certain non-registered investment companies that nonetheless are regulated by the SEC[38]), even if they register securities under the Securities Act of 1933 or the Exchange Act, or report information under the federal securities laws.[39]

The SEC received four comment letters arguing that it should specifically exclude certain entities from the scope of the rules.[40] These commenters recommended that the scope section exclude registered investment advisers,[41] clearing organizations,[42] SROs, municipal securities dealers, municipal advisors, or NRSROs.[43] The commenters argued that these entities are unlikely to be financial institutions or creditors and that, without a specific exclusion, the scope of the rules is unclear and the rules would require these entities to periodically review their operations to ensure compliance with rules that are not relevant to their businesses.[44] Another commenter recommended that the rules not list any of the types of entities subject to the rules, because such a list could confuse entities that are on the list but do not qualify as financial institutions or creditors.[45]

We appreciate these concerns, and seek to minimize potential unnecessary burdens on regulated entities. As we acknowledge above, the entities that are not listed in the rule's scope section may be less likely to qualify as financial institutions or creditors under the FCRA, *e.g.,* because they do not hold transaction accounts for consumers.[46] The Dodd-Frank Act required the SEC to adopt identity theft red flags rules with respect to persons that are ''subject to the jurisdiction of the Securities and Exchange Commission.'' [47] Expressly excluding from certain requirements of the rules any entities that are registered with the SEC, are subject to the SEC's enforcement authority, and are covered by the scope of the rules likely would not effectively implement the purposes of the Dodd-Frank Act and the FCRA, which are described in this release. In addition, we continue to believe that specifically listing in the scope section the entities that are likely to be subject to the rules—if they qualify as financial institutions or creditors—will provide useful guidance to those entities in determining their status under the rules. Therefore, we are adopting the scope section of the rules as proposed.

i. Definition of Financial Institution

As discussed above, the Commissions' final red flags rules apply to ''financial institutions'' and ''creditors.'' As in the proposed rules, the Commissions are defining the term ''financial institution'' in the final rules by reference to the definition of the term in section 603(t) of the FCRA.[48] That section defines a

[34] § 248.201(a).

[35] The SEC's final rules define the scope of the identity theft red flags rules, section 248.201(a), differently than Regulation S–AM, the affiliate marketing rule the SEC adopted under the FCRA, defines its scope. *See* 17 CFR 248.101(b) (providing that Regulation S–AM applies to any brokers or dealers (other than notice-registered brokers or dealers), any investment companies, and any investment advisers or transfer agents registered with the SEC). Section 214(b) of the FACT Act, pursuant to which the SEC adopted Regulation S–AM, did not specify the types of entities that would be subject to the SEC's rules, and did not state that the affiliate marketing rules should apply to all persons subject to the SEC's enforcement authority. By contrast, the Dodd-Frank Act specifies that the SEC's identity theft red flags rules should apply to a ''person that is subject to the jurisdiction'' of the SEC. *See* Dodd-Frank Act sections 1088(a)(8), (10). Therefore, the SEC's identity theft red flags rules apply to BDCs, ESCs, and ''any * * * person that is registered or required to be registered under the Securities Exchange Act of 1934,'' as well as to those entities within the scope of Regulation S–AM.

The scope of the SEC's final rules also differs from that of Regulation S–P, 17 CFR part 248, subpart A, the privacy rule the SEC adopted in 2000 pursuant to the Gramm-Leach-Bliley Act. Public Law 106–102 (1999). Regulation S–P was adopted under Title V of that Act, which, unlike the FCRA, limited the SEC's regulatory authority to: (i) Brokers and dealers; (ii) investment companies; and (iii) investment advisers registered under the Investment Advisers Act. *See* 15 U.S.C. 6805(a)(3)–(5).

[36] The Dodd-Frank Act defines a ''person regulated by the [SEC],'' for other purposes of the Act, as certain entities that are registered or required to be registered with the SEC, and certain employees, agents, and contractors of those entities. *See* Dodd-Frank Act section 1002(21).

[37] The SEC believes that municipal advisors and municipal securities dealers may be less likely to qualify as financial institutions because they may be less likely to maintain transaction accounts for consumers. A commenter agreed with us that municipal advisors and municipal securities dealers may be less likely to qualify as financial institutions. *See* FSR/SIFMA Comment Letter. For further discussion, see *infra* notes 43–47 and accompanying text.

[38] As noted above, the scope of the final rules covers BDCs and ESCs, which typically do not register as investment companies with the SEC but are regulated by the SEC. BDCs file with the SEC notices of reliance on the BDC provisions of the Investment Company Act and the SEC's rules thereunder. *See* Form N–54A (''Notification of Election to be Subject to Sections 55 through 65 of the Investment Company Act of 1940 Filed Pursuant to Section 54(a) of the Act'') [17 CFR 274.53]. ESCs operate pursuant to individual exemptive orders issued by the SEC that govern the companies' operations. *See* Investment Company Act section 6(b) [15 U.S.C. 80a-6(b)].

[39] *See, e.g.,* Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers, Investment Advisers Act Release No. 3222 (June 22, 2011) [76 FR 39646 (July 6, 2011)] (adopting rules related to investment advisers exempt from registration with the SEC, including ''exempt reporting advisers'').

[40] *See* IAA Comment Letter; Comment Letter of the National Society of Compliance Professionals, Inc. (May 4, 2012) (''NSCP Comment Letter''); OCC Comment Letter; FSR/SIFMA Comment Letter.

[41] *See, e.g.,* IAA Comment Letter (''[W]e believe a cleaner approach would be to eliminate investment advisers from the entities specifically mentioned in the scope section.''); NSCP Comment Letter (''We would urge the Commission to specifically exclude investment advisers from the scope of the rule since it is our view that any adviser that is a financial institution would already be covered by FCRA.''). For further discussion, *see infra* notes 55–60 and 73–76 and accompanying text.

[42] *See* OCC Comment Letter (''[W]e encourage the Commissions to expressly exclude clearing organizations from the scope of the Proposed Rules because, as explained below, clearing organizations like OCC should not be considered 'creditors' for these purposes.''). For further discussion, *see infra* note 75.

[43] *See* FSR/SIFMA Comment Letter (''Specifically, we ask that the SEC exclude * * * those entities that are unlikely to be deemed financial institutions or creditors under the FCRA, such as NRSROs, SROs, municipal advisors, municipal securities dealers, and registered investment advisers.'').

[44] *See, e.g.,* NSCP Comment Letter.

[45] *See* MarketCounsel Comment Letter.

[46] *See supra* note 37 and accompanying text. For further discussion of the extent to which investment advisers, which are specifically listed in the rules' scope section, may qualify as financial institutions or creditors, *see infra* notes 55–60 and 73–76 and accompanying text.

[47] 15 U.S.C. 1681s(b)(1)(G).

[48] 15 U.S.C. 1681a(t). *See* § 162.30(b)(7) (CFTC); § 248.201(b)(7) (SEC). The Agencies also defined ''financial institution,'' in their identity theft red flags rules, by reference to the FCRA. *See, e.g.,* 16 CFR 681.1(b)(7) (FTC) (''Financial institution has the same meaning as in 15 U.S.C. 1681a(t).'').

financial institution to include certain banks and credit unions, and ''any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act) belonging to a consumer.'' [49] Section 19(b) of the Federal Reserve Act defines ''transaction account'' to include an ''account on which the * * * account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others.'' [50] Section 603(c) of the FCRA defines ''consumer'' as an individual; [51] thus, to qualify as a financial institution, an entity must hold a transaction account belonging to an individual. The following are illustrative examples of an SEC-regulated entity that could fall within the meaning of the term ''financial institution'' because it holds transaction accounts belonging to individuals: (i) A broker-dealer that offers custodial accounts; (ii) a registered investment company that enables investors to make wire transfers to other parties or that offers check-writing privileges; and (iii) an investment adviser that directly or indirectly holds transaction accounts and that is permitted to direct payments or transfers out of those accounts to third parties.[52]

A few commenters raised concerns about the SEC's statements in the Proposing Release regarding the possibility that some investment advisers could be financial institutions under certain circumstances. These commenters argued that investment advisers generally do not ''hold'' transaction accounts, thus meaning that they would *not* be financial institutions under the definition.[53] One commenter requested that we state that investment advisers who are authorized to withdraw assets from investors' accounts to pay bills, or otherwise direct payments to third parties, on behalf of investors do not ''indirectly'' hold such accounts and therefore are not financial institutions.[54]

The SEC has concluded otherwise. As described below, some investment advisers do hold transaction accounts, both directly and indirectly, and thus may qualify as financial institutions under the rules as we are adopting them. As discussed further in Section III of this release, SEC staff anticipates that the following examples of circumstances in which certain entities, particularly investment advisers, may qualify as financial institutions may lead some of these entities that had not previously complied with the Agencies' rules to now determine that they should comply with Regulation S–ID.[55]

Investment advisers who have the ability to direct transfers or payments from accounts belonging to individuals to third parties upon the individuals' instructions, or who act as agents on behalf of the individuals, are susceptible to the same types of risks of fraud as other financial institutions, and individuals who hold transaction accounts with these investment advisers bear the same types of risks of identity theft and loss of assets as consumers holding accounts with other financial institutions. If such an adviser does not have a program in place to verify investors' identities and detect identity theft red flags, another individual may deceive the adviser by posing as an investor. The red flags program of a bank or other qualified custodian [56] that maintains physical custody of an investor's assets would not adequately protect individuals holding transaction accounts with such advisers, because the adviser could give an order to withdraw assets, but at the direction of an impostor.[57] Investors who entrust their assets to registered investment advisers that directly or indirectly hold transaction accounts should receive the protections against identity theft provided by these rules.

For instance, even if an investor's assets are physically held with a qualified custodian, an adviser that has authority, by power of attorney or otherwise, to withdraw money from the investor's account and direct payments to third parties according to the investor's instructions would hold a transaction account. However, an adviser that has authority to withdraw money from an investor's account solely to deduct its own advisory fees would not hold a transaction account, because the adviser would not be making the payments to third parties.[58]

Registered investment advisers to private funds also may directly or indirectly hold transaction accounts.[59] If an individual invests money in a private fund, and the adviser to the fund has the authority, pursuant to an arrangement with the private fund or the individual, to direct such individual's investment proceeds (*e.g.,* redemptions, distributions, dividends, interest, or other proceeds related to the individual's account) to third parties, then that adviser would indirectly hold a transaction account. For example, a private fund adviser would hold a transaction account if it has the authority to direct an investor's redemption proceeds to other persons upon instructions received from the investor.[60]

ii. Definition of Creditor

The Commissions' final definitions of ''creditor'' refer to the definition of

[49] 15 U.S.C. 1681a(t). In full, the FCRA defines ''financial institution'' to mean ''a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account [as defined in section 19(b) of the Federal Reserve Act] belonging to a consumer.'' *Id.*

[50] 12 U.S.C. 461(b)(1)(C). Section 19(b) further states that a transaction account ''includes demand deposits, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.'' *Id.*

[51] 15 U.S.C. 1681a(c).

[52] The CFTC's definition specifies that financial institution ''includes any futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, swap dealer, or major swap participant that directly or indirectly holds a transaction account belonging to a consumer.'' *See* § 162.30(b)(7).

[53] *See, e.g.,* IAA Comment Letter (''Investment advisers are not banks or credit unions and do not hold transaction accounts, such as custodial accounts or accounts with check-writing privileges. Instead, any cash or securities managed by investment advisers must be held in custody with financial institutions that are qualified custodians (broker-dealers or banks, primarily).'').

[54] *See* MarketCounsel Comment Letter (''MarketCounsel requests additional clarification in the Proposed Rule to make it clear that an investment adviser will not be deemed to indirectly hold a transaction account simply because it has control over, or access to, the transaction account.'').

[55] SEC staff understands, based on comment letters and communications with industry representatives, that a number of investment advisers may not currently have identity theft red flags Programs. *See* MarketCounsel Comment Letter; IAA Comment Letter. SEC staff also expects, based on Investment Adviser Registration Depository (IARD) data, that certain private fund advisers could potentially meet the definition of ''financial institution'' or ''creditor.'' *See infra* note 190.

[56] *See* 17 CFR 275.206(4)–2(d)(6) (setting forth the entities that fall within the definition of ''qualified custodian'').

[57] *See, e.g.,* Byron Acohido, *Cybercrooks fool financial advisers to steal from clients,* USA Today, Aug. 26, 2012, *available at http://usatoday30.usatoday.com/money/perfi/basics/story/2012-08-26/wire-transfer-fraud/57335540/1* (last visited March 4, 2013) (''In a new twist, cyber-robbers are using ginned-up email messages in attempts to con financial advisers into wiring cash out of their clients' online investment accounts. If the adviser falls for it, a wire transfer gets legitimately executed, and cash flows into a bank account controlled by the thieves—leaving the victim in a dispute with the financial adviser over getting made whole.'').

[58] *See supra* note 50 and accompanying text.

[59] A ''private fund'' is ''an issuer that would be an investment company, as defined in section 3 of the Investment Company Act, but for section 3(c)(1) or 3(c)(7) of that Act.'' 15 U.S.C. 80b–2(a)(29).

[60] On the other hand, an investment adviser may not hold a transaction account if the adviser has a narrowly-drafted power of attorney with an investor under which the adviser has no authority to redirect the investor's investment proceeds to third parties or others upon instructions from the investor.

''creditor'' in the FCRA as amended by the Clarification Act.[61] The FCRA now defines ''creditor,'' for purposes of the red flags rules, as a creditor as defined in the Equal Credit Opportunity Act[62] (''ECOA'') (*i.e.,* a person that regularly extends, renews or continues credit,[63] or makes those arrangements) that ''regularly and in the course of business * * * advances funds to or on behalf of a person, based on an obligation of the person to repay the funds or repayable from specific property pledged by or on behalf of the person.''[64] The FCRA excludes from this definition a creditor that ''advances funds on behalf of a person for expenses incidental to a service provided by the creditor to that person * * *''[65]

The CFTC's definition of ''creditor'' includes certain entities (such as FCMs and CTAs) that regularly extend, renew or continue credit or make those credit arrangements.[66] The proposed definition applies the definition of ''creditor'' from 15 U.S.C. 1681m(e)(4) to ''any futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, swap dealer, or major swap participant that regularly extends, renews, or continues credit; regularly arranges for the extension, renewal, or continuation of credit; or in acting as an assignee of an original creditor, participates in the decision to extend, renew, or continue credit.''[67] One commenter stated that the proposed definition was overly broad and unclear because it did not appear to include derivative clearing organizations (''DCOs'') such as the Options Clearing Corporation, while the SEC's definition could be read to include DCOs, and recommended that DCOs be explicitly excluded from the definition.[68] The commenter further requested that the Commissions specifically exclude DCOs from the scope of the Proposed Rules.

As the commenter noted, the CFTC's definition of ''creditor'' excludes DCOs because DCOs are not included on the list of entities that may qualify as creditors under the rule. Under the proposed CFTC rules, a ''creditor'' includes any FCM, RFED, CTA, CPO, IB, SD, or MSP that regularly extends, renews, or continues credit or makes credit arrangements. Unlike DCOs, the listed entities which are included in the CFTC definition of ''creditor'' engage in retail customer business and maintain retail customer accounts. These entities are included as potential creditors in the definition because they are the CFTC registrants most likely to collect personal consumer data. Moreover, this list of potential creditors is consistent with the general scope provisions of the part 162 rules, which also apply to FCMs, RFEDs, CTAs, CPOs, IBs, SDs, or MSPs.[69] Accordingly, the CFTC declines to provide a specific exclusion for DCOs from the scope of the rule.

As proposed, the SEC's definition of ''creditor'' referred to the definition of ''creditor'' under FCRA, and stated that it ''includes lenders such as brokers or dealers offering margin accounts, securities lending services, and short selling services.''[70] The SEC proposed to name these entities in the definition because they are likely to qualify as ''creditors,'' since the funds advanced in these accounts do not appear to be for ''expenses incidental to a service provided.'' One commenter, the Options Clearing Corporation, argued that the proposed definition's reference to securities lending services could be read to mean that an intermediary in securities lending transactions is a ''creditor'' under the SEC's rules, even if the entity does not meet FCRA's definition of ''creditor.''[71] The SEC intended the proposed definition of ''creditor'' to be limited to the FCRA definition, and to include relevant examples of activities that could qualify an entity as a creditor. In order to clarify this definition and avoid an inadvertently broad meaning of the term ''creditor,'' we are revising the definition to rely on FCRA's statutory definition of the term and omit the references to specific types of lending, such as margin accounts, securities lending services, and short selling services.[72]

Some commenters stated that most investment advisers would probably not qualify as creditors under the definition.[73] One commenter believed that the proposal might have implied that investment advisers were subject to a different standard than other entities under the definition of ''creditor,'' and requested that we clarify that investment advisers may, like all other entities, take advantage of the exception in the definition to advance funds on behalf of a person for expenses incidental to a service provided by the creditor to that person.[74] Our final rules do not treat investment advisers differently than any other entity under the definition of ''creditor.''[75] An investment adviser could potentially qualify as a creditor if it ''advances funds'' to an investor that are not for expenses incidental to services provided by that adviser. For example, a private

[61] *See* § 162.30(b)(5) (CFTC); § 248.201(b)(5) (SEC); *see also supra* note 31.

[62] Section 702(e) of the ECOA defines ''creditor'' to mean ''any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.'' 15 U.S.C. 1691a(e).

[63] The Commissions are defining ''credit'' by reference to its definition in the FCRA. *See* § 162.30(b)(4) (CFTC); § 248.201(b)(4) (SEC). That definition refers to the definition of credit in the ECOA, which means ''the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.'' The Agencies defined ''credit'' in the same manner in their identity theft red flags rules. *See, e.g.,* 16 CFR 681.1(b)(4) (FTC) (defining ''credit'' as having the same meaning as in 15 U.S.C. 1681a(r)(5), which defines ''credit'' as having the same meaning as in section 702 of the ECOA).

[64] 15 U.S.C. 1681m(e)(4)(A)(iii). The FCRA defines a ''creditor'' also to include a creditor (as defined in the ECOA) that ''regularly and in the ordinary course of business (i) obtains or uses consumer reports, directly or indirectly, in connection with a credit transaction; (ii) furnishes information to consumer reporting agencies * * * in connection with a credit transaction * * *'' 15 U.S.C. 1681m(e)(4)(A)(i)–(ii).

[65] FCRA section 615(e)(4)(B), 15 U.S.C. 1681m(e)(4)(B). The Clarification Act does not define the extent to which the advancement of funds for expenses would be considered ''incidental'' to services rendered by the creditor. The legislative history indicates that the Clarification Act was intended to ensure that lawyers, doctors, and other small businesses that may advance funds to pay for services such as expert witnesses, or that may bill in arrears for services provided, should not be considered creditors under the red flags rules. *See* 156 Cong. Rec. S8288–9 (daily ed. Nov. 30, 2010) (statements of Senators Thune and Dodd).

[66] *See* § 162.30(b)(5).

[67] *See* § 162.30(b)(7).

[68] OCC Comment Letter.

[69] *See* § 162.1(b).

[70] *See* proposed § 248.201(b)(5).

[71] OCC Comment Letter.

[72] *See* § 248.201(b)(5).

[73] *See, e.g.,* MarketCounsel Comment Letter; NSCP Comment Letter (''We agree with the proposal that investment advisers are not creditors for purposes of the proposal because advisers generally do not bill in arrears. We are not aware of any situation where an investment adviser would advance funds and we would note that such advisers would likely run afoul of state rules that prohibit an adviser from loaning funds or borrowing funds from a client.'').

[74] MarketCounsel Comment Letter.

[75] The definition of ''creditor'' in FCRA also authorizes the Agencies and the Commissions to include other entities in the definition of ''creditor'' if the Commissions determine that those entities offer or maintain accounts that are subject to a reasonably foreseeable risk of identity theft. 15 U.S.C. 1681m(e)(4)(C). One commenter urged the Commissions not to exercise this authority, and particularly not to include clearing organizations as creditors under the definition. *See* OCC Comment Letter (''We believe there is no reasonable basis for concluding that the securities loan clearing services offered by OCC as described above would pose a reasonably foreseeable risk of identity theft or that such services should cause OCC to be considered a 'creditor.'''). The Commissions did not propose to specifically include clearing organizations in the definition of ''creditor'' under this authority, and the final rules do not include any additional types of entities in the definition of ''creditor'' that are not already included in the statutory definition.

fund adviser that regularly and in the ordinary course of business lends money, short-term or otherwise, to permit investors to make an investment in the fund, pending the receipt or clearance of an investor's check or wire transfer, could qualify as a creditor.[76]

iii. Definition of Covered Account and Other Terms

Under the final rules, a financial institution or creditor must establish a red flags Program if it offers or maintains ''covered accounts.'' As in the proposed rules, the Commissions are defining the term ''covered account'' in the final rules as: (i) An account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions; and (ii) any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers [77] or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation, or litigation risks.[78] The CFTC's definition includes a margin account as an example of a covered account.[79] The SEC's definition includes, as examples of a covered account, a brokerage account with a broker-dealer or an account maintained by a mutual fund (or its agent) that permits wire transfers or other payments to third parties.[80]

The Commissions are defining an ''account'' as a ''continuing relationship established by a person with a financial institution or creditor to obtain a product or service for personal, family, household or business purposes.''[81] The CFTC's definition specifically includes an extension of credit, such as the purchase of property or services involving a deferred payment.[82] The SEC's definition includes, as examples of accounts, ''a brokerage account, a mutual fund account (*i.e.,* an account with an open-end investment company), and an investment advisory account.'' [83]

In the Proposing Release, the Commissions noted that ''entities that adopt red flags Programs would focus their attention on 'covered accounts' for indicia of possible identity theft.''[84] In response to this statement, one commenter recommended revising the definition of ''covered account'' such that entities adopting red flags Programs would focus particularly on protecting various types of information provided by customers, rather than focusing on particular categories of accounts.[85] The Commissions have decided not to revise the definition of ''covered account'' as suggested by this commenter, because the Commissions believe that by focusing the rules on the types of accounts that might pose a reasonably foreseeable risk of identity theft, financial institutions and creditors are best able to protect the information that customers provide in the course of holding these accounts. Moreover, the current definition and scope of the term ''covered account'' are similar to the provisions of the other Agencies' identity theft red flags rules.[86] As discussed below, the Commissions believe that the final rules' terms should be defined as the Agencies defined them in their respective final rules, where appropriate, to foster consistent regulations.[87]

Two commenters argued that insurance company separate accounts are unlikely to be covered accounts because they are not established for personal, family, or household purposes and do not pose a reasonably foreseeable risk of identity theft.[88] They contended that insurance company separate accounts are investment vehicles underlying variable life and annuity insurance products, and generally individual customers do not have a direct relationship with these accounts. One of the commenters requested that the definition of ''covered account'' specifically exclude insurance company separate accounts.[89] The commenter noted that because third parties and customers do not have direct access to insurance company separate accounts, there is little risk of identity theft in these accounts.[90]

The final rules require all financial institutions and creditors to assess whether they offer or maintain covered accounts. Although, as discussed above, some commenters suggested that insurance company separate accounts may not qualify as covered accounts under the definition, the final rule does not exclude insurance company separate accounts from the definition of ''covered account'' because it would be impracticable to provide an exhaustive list of account types that are not covered accounts. Similarly, one commenter requested that the SEC list all of the types of accounts that would be ''covered accounts'' under the rules.[91] The rules provide examples of covered accounts, but we cannot anticipate all of the types of accounts that could be covered accounts. Any list that attempts to encompass all types of covered accounts would likely be under-inclusive and would not take into account future business practices.[92] The

[76] However, a private fund adviser would not qualify as a creditor solely because its private funds regularly borrow money from third-party credit facilities pending receipt of investor contributions, as the definition of ''creditor'' does not include ''indirect'' creditors.

[77] To be a financial institution, an entity must hold a transaction account with at least one ''consumer'' (defined as an ''individual'' in 15 U.S.C. 1681a(c)). However, once an entity is a financial institution, it must periodically determine whether it offers or maintains ''covered accounts'' to or on behalf of its customers, which may be individuals or business entities. Sections 162.30(b)(6) (CFTC) and 248.201(b)(6) (SEC) define ''customer'' to mean a person that has a covered account with a financial institution or creditor. The Commissions are including this definition for two reasons. First, this definition is the same as the definition of ''customer'' in the Agencies' final rules. Second, because the definition uses the term ''person,'' it covers various types of business entities (*e.g.,* small businesses) that could be victims of identity theft. 15 U.S.C. 1681a(b). Although the definition of ''customer'' is broad, not every account held by or offered to a customer will be considered a covered account, as the identification of covered accounts under the identity theft red flags rules is based on a risk-based determination. *See infra* notes 95–100 and accompanying text.

[78] § 162.30(b)(3) (CFTC) and § 248.201(b)(3) (SEC). The Agencies' 2007 Adopting Release (which included an identical definition of the term ''account'') noted that ''the definition of 'account' still applies to fiduciary, agency, custodial, brokerage and investment advisory activities.'' 2007 Adopting Release *supra* note 8, at 63721.

[79] *See* § 162.30(b)(3)(i).

[80] *See* § 248.201(b)(3)(i).

[81] § 162.30(b)(1) (CFTC) and § 248.201(b)(1) (SEC). Two commenters requested further guidance on the meaning of ''continuing relationship'' in the proposed definition of the term ''account.'' Comment Letter of Nathaniel Washburn (April 12, 2012); Comment Letter of Chris Barnard (''Chris Barnard Comment Letter'') (Mar. 29, 2012). The SEC and the CFTC's definition of ''account'' is the same as that adopted by the Agencies. The Agencies' 2007 Adopting Release provides further guidance on the meaning of continuing relationship, noting that it is designed to exclude single, non-continuing transactions by non-customers. 2007 Adopting Release *supra* note 8, at 63721.

[82] § 162.30(b)(1).

[83] § 248.201(b)(1).

[84] 77 FR 13450, 13454.

[85] *See* Comment Letter of Kenneth Orgoglioso (May 7, 2012).

[86] *See, e.g.,* 16 CFR 681.1(b)(3).

[87] *See infra* note 93 and accompanying text.

[88] Comment Letter of the American Council of Life Insurers (May 7, 2012); FSR/SIFMA Comment Letter.

[89] FSR/SIFMA Comment Letter.

[90] *See id.* (''Further, third parties, including customers, do not have direct access to Separate Accounts, which means that the types of identity theft risks anticipated by the proposed Red Flags Rules are essentially nonexistent.'').

[91] *Id.*

[92] For example, an institution that holds only business accounts may decide later to offer accounts for personal, family, or household purposes that permit multiple payments. The rule's requirement that a financial institution or creditor periodically determine whether it holds covered accounts is designed to require that these entities re-evaluate whether they in fact hold any covered accounts. *See infra* notes 95 and 96 and accompanying text.

definition of ''covered account'' is deliberately designed to be flexible to allow the financial institution or creditor to determine which accounts pose a reasonably foreseeable risk of identity theft and protect them accordingly. Therefore, we are adopting the definitions of ''account'' and ''covered account'' as they were proposed.

The identity theft red flags rules also define several other terms as the Agencies defined them in their final rules, where appropriate, to foster consistent regulations.[93] In addition, terms that the SEC's rules do not define have the same meaning they have in FCRA.[94]

iv. Determination of Whether a Covered Account Is Offered or Maintained

As under the proposed rules, under the final rules, each financial institution or creditor must periodically determine whether it offers or maintains covered accounts.[95] As a part of this periodic determination, a financial institution or creditor must conduct a risk assessment that takes into consideration: (1) The methods it provides to open its accounts; (2) the methods it provides to access its accounts; and (3) its previous experiences with identity theft.[96] A financial institution or creditor should consider whether, for example, a reasonably foreseeable risk of identity theft may exist in connection with accounts it offers or maintains that may be opened or accessed remotely or through methods that do not require face-to-face contact, such as through email or the Internet, or by telephone. In addition, if financial institutions or creditors offer or maintain accounts that have been the target of identity theft, they should factor those experiences into their determination. The Commissions anticipate that entities will be able to demonstrate that they have complied with applicable requirements, including their recurring determinations regarding covered accounts.[97]

The Commissions acknowledge that some financial institutions or creditors regulated by the Commissions do not offer or maintain accounts for personal, family, or household purposes,[98] and engage predominantly in transactions with businesses, where the risk of identity theft is minimal. In these instances, the financial institution or creditor may determine after a preliminary risk assessment that the accounts it offers or maintains do not pose a reasonably foreseeable risk to customers or to its own safety and soundness from identity theft, and therefore it does not need to develop and implement a Program because it does not offer or maintain any ''covered accounts.'' [99] Alternatively, the financial institution or creditor may determine that only a limited range of its accounts present a reasonably foreseeable risk to customers, and therefore may decide to develop and implement a Program that applies only to those accounts or types of accounts.[100] As proposed, under the final rules, a financial institution or creditor that initially determines that it does not need to have a Program is required to periodically reassess whether it must develop and implement a Program in light of changes in the accounts that it offers or maintains and the various other factors set forth in sections 162.30(c) (CFTC) and 248.201(c) (SEC).

2. The Objectives of the Program

The final rules provide that each financial institution or creditor that offers or maintains one or more covered accounts must develop and implement a written Program designed to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account.[101] These provisions also require that each Program be appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities. Thus, the final rules are designed to be scalable, by permitting Programs that take into account the operations of smaller institutions. We received no comment on the proposed objectives of the Program and are adopting them as proposed.

3. The Elements of the Program

The final rules set out the four elements that financial institutions and creditors must include in their Programs.[102] These elements are being adopted as proposed and are identical to the elements required under the Agencies' final identity theft red flags rules.[103]

First, the final rules require a financial institution or creditor to develop a Program that includes reasonable policies and procedures to identify relevant red flags [104] for the covered accounts that the financial institution or creditor offers or maintains, and incorporate those red flags into the Program.[105] Rather than

[93] *See* § 162.30(b)(4) (CFTC) and § 248.201(b)(4) (SEC) (definition of ''credit''); § 162.30(b)(6) (CFTC) and § 248.201(b)(6) (SEC) (definition of ''customer''); § 162.30(b)(7) (CFTC) and § 248.201(b)(7) (SEC) (definition of ''financial institution''); § 162.30(b)(10) (CFTC) and § 248.201(b)(10) (SEC) (definition of ''red flag''); § 162.30(b)(11) (CFTC) and § 248.201(b)(11) (SEC) (definition of ''service provider'').

The Agencies defined ''identity theft'' in their identity theft red flags rules by referring to a definition previously adopted by the FTC. *See, e.g.,* 12 CFR 334.90(b)(8) (FDIC). The FTC defined ''identity theft'' as ''a fraud committed or attempted using the identifying information of another person without authority.'' *See* 16 CFR 603.2(a). The FTC also has defined ''identifying information,'' a term used in its definition of ''identity theft.'' *See* 16 CFR 603.2(b). The Commissions are defining the terms ''identifying information'' and ''identity theft'' by including the same definitions of the terms as they appear in 16 CFR 603.2. *See* § 162.30(b)(8) and (9) (CFTC); § 248.201(b)(8) and (9) (SEC). One commenter suggested that we add the following highlighted language to the definition of ''identity theft'' so that it would read a ''fraud, deception, or other crime committed or attempted using the identifying information of another person without authority.'' Chris Barnard Comment Letter. Changing the definition of ''identity theft'' so that it differs from the definition used by the Agencies could lead to higher compliance costs, reduce comparability of the Agencies' rules in contravention of the statutory mandate, and pose difficulties for entities within the enforcement authority of multiple agencies. Accordingly, we are adopting the definition of ''identity theft'' as it was proposed.

[94] *See* § 248.201(b)(12)(vi) (SEC).

[95] § 162.30(c) (CFTC) and § 248.201(c) (SEC).

[96] § 162.30(c) (CFTC) and § 248.201(c) (SEC).

[97] *See, e.g.,* Frequently Asked Questions: Identity Theft Red Flags and Address Discrepancies at I.1, *available at http://www.ftc.gov/os/2009/06/090611redflagsfaq.pdf* (noting in joint interpretive guidance provided by the Agencies' staff that, while the Agencies' 2007 identity theft rules do not contain specific record retention requirements, financial institutions and creditors must be able to demonstrate that they have complied with the rules' requirements).

[98] *See* § 162.30(b)(3)(i) (CFTC) and § 248.201(b)(3)(i) (SEC).

[99] *See* § 162.30(b)(3)(ii) (CFTC) and § 248.201(b)(3)(ii) (SEC). For example, an FCM that is otherwise subject to the identity theft red flags rules and that handles accounts only for large, institutional investors might make a risk-based determination that because it is subject to a low risk of identity theft, it does not need to develop and implement a Program. Similarly, a money market fund that is otherwise subject to the identity theft red flags rules but that permits investments only by other institutions and separately verifies and authenticates transaction requests might make such a risk-based determination that it need not develop a Program.

[100] Even a Program limited in scale, however, needs to comply with all of the provisions of the rules. *See, e.g.,* § 162.30(d)–(f) (CFTC) and § 248.201(d)–(f) (SEC) (program requirements).

[101] *See* § 162.30(d)(1) (CFTC) and § 248.201(d)(1) (SEC).

[102] *See* § 162.30(d)(2) (CFTC) and § 248.201(d)(2) (SEC).

[103] *See* 2007 Adopting Release, *supra* note 8, at 63726–63730.

[104] § 162.30(b)(10) (CFTC) and § 248.201(b)(10) (SEC) define ''red flag'' to mean a pattern, practice, or specific activity that indicates the possible existence of identity theft.

[105] *See* § 162.30(d)(2)(i) (CFTC) § 248.201(d)(2)(i) (SEC). The board of directors, appropriate committee thereof, or designated senior management employee may determine that a Program designed by a parent, subsidiary, or affiliated entity is also appropriate for use by the financial institution or creditor. In making such a

Continued

singling out specific red flags as mandatory or requiring specific policies and procedures to identify possible red flags, this first element provides financial institutions and creditors with flexibility in determining which red flags are relevant to their businesses and the covered accounts they manage over time. The list of factors that a financial institution or creditor should consider (as well as examples) are included in Section II of the guidelines, which appear at the end of the final rules.[106] Given the changing nature of identity theft, the Commissions believe that this element allows financial institutions or creditors to respond and adapt to new forms of identity theft and the attendant risks as they arise.

Second, the final rules require financial institutions and creditors to have reasonable policies and procedures to detect the red flags that the Program incorporates.[107] This element does not provide a specific method of detection. Instead, section III of the guidelines provides examples of various means to detect red flags.[108]

Third, the final rules require financial institutions and creditors to have reasonable policies and procedures to respond appropriately to any red flags that they detect.[109] This element incorporates the requirement that a financial institution or creditor assess whether the red flags that are detected evidence a risk of identity theft and, if so, determine how to respond appropriately based on the degree of risk. Section IV of the guidelines sets out a list of aggravating factors and examples that a financial institution or creditor should consider in determining the appropriate response.[110]

Finally, the rules require financial institutions and creditors to have reasonable policies and procedures to periodically update the Program (including the red flags determined to be relevant), to reflect changes in risks to customers and to the safety and soundness of the financial institution or creditor from identity theft.[111] As discussed above, financial institutions and creditors are required to determine which red flags are relevant to their businesses and the covered accounts they offer or maintain. The Commissions are requiring a periodic update, rather than immediate or continuous updates, to be parallel with the identity theft red flags rules of the Agencies and to avoid unnecessary regulatory burdens. Section V of the guidelines provides a set of factors that should cause a financial institution or creditor to update its Program.[112] We received no comment on the proposed elements of Programs and are adopting them as proposed.

4. Administration of the Program

The final rules provide direction to financial institutions and creditors regarding the administration of Programs as a means of enhancing the effectiveness of those Programs.[113] First, the final rules require that a financial institution or creditor obtain approval of the initial written Program from either its board of directors, an appropriate committee of the board of directors, or if the entity does not have a board, from a designated senior management employee.[114] This requirement highlights the responsibility of the board of directors in approving a Program. One commenter asked us to clarify that an entity that already has an existing Program in place, in compliance with the other Agencies' rules, need not have the board reapprove the Program to comply with this requirement.[115] We agree that if a financial institution or creditor already has a Program in place, the board is not required to reapprove the existing Program in response to this requirement, provided the Program otherwise meets the requirements of the final rules.

Second, the final rules provide that financial institutions and creditors must involve the board of directors, an appropriate committee thereof, or a designated senior management employee in the oversight, development, implementation, and administration of the Program.[116] The designated senior management employee who is responsible for the oversight of a broker-dealer's, investment company's or investment adviser's Program may be the entity's chief compliance officer.[117] Third, the final rules provide that financial institutions and creditors must train staff, as necessary, to effectively implement their Programs.[118]

Finally, the rules provide that financial institutions and creditors must exercise appropriate and effective oversight of service provider arrangements.[119] The Commissions believe that it is important that the rules address service provider arrangements so that financial institutions and creditors remain legally responsible for compliance with the rules, irrespective of whether such financial institutions and creditors outsource their identity theft red flags detection, prevention, and mitigation operations to a service provider.[120] The final rules do not prescribe a specific manner in which appropriate and effective oversight of service provider arrangements must occur. Instead, the requirement provides flexibility to financial institutions and creditors in maintaining their service provider arrangements, while making clear that such institutions and creditors are still required to fulfill their legal compliance obligations.[121] We received no comments on the substance of this aspect of the proposal[122] and are adopting the requirements related to the administration of Programs as proposed.

determination, the board (or committee or designated employee) must conduct an independent review to ensure that the Program is suitable and complies with the requirements of the red flags rules. *See* 2007 Adopting Release, *supra* note 8, at 63730.

[106] *See* Section II.B.2 below.

[107] *See* § 162.30(d)(2)(ii) (CFTC) and § 248.201(d)(2)(ii) (SEC).

[108] *See* Section II.B.3 below.

[109] *See* § 162.30(d)(2)(iii) (CFTC) and § 248.201(d)(2)(iii) (SEC).

[110] *See* Section II.B.4 below.

[111] *See* § 162.30(d)(2)(iv) (CFTC) and § 248.201(d)(2)(iv) (SEC).

[112] *See* Section II.B.5 below.

[113] *See* § 162.30(e) (CFTC) and § 248.201(e) (SEC).

[114] *See* § 162.30(e)(1) (CFTC) and § 248.201(e)(1) (SEC), *see also* § 162.30(b)(2) (CFTC) and § 248.201(b)(2) (SEC).

[115] ICI Comment Letter.

[116] *See* § 162.30(e)(2) (CFTC) and § 248.201(e)(2) (SEC). Section VI of the guidelines elaborates on this provision.

[117] *See, e.g.,* rule 38a–1(a)(4) under the Investment Company Act (addressing the chief compliance officer position), 17 CFR 270.38a–1(a)(4); rule 206(4)–7(c) under the Investment Advisers Act, 17 CFR 275.206(4)–7 (same).

[118] *See* § 162.30(e)(3) (CFTC) and § 248.201(e)(3) (SEC).

[119] *See* § 162.30(e)(4) (CFTC) and § 248.201(e)(4) (SEC). § 162.30(b)(11) (CFTC) and § 248.201(b)(11) (SEC) define the term ''service provider'' to mean a person that provides a service directly to the financial institution or creditor.

[120] For example, a financial institution or creditor that uses a service provider to open accounts on its behalf, could reserve for itself the responsibility to verify the identity of a person opening a new account, may direct the service provider to do so, or may use another service provider to verify identity. Ultimately, however, the financial institution or creditor remains responsible for ensuring that the activity is conducted in compliance with a Program that meets the requirements of the identity theft red flags rules.

[121] These legal compliance obligations include, but are not limited to, the maintenance of records in connection with any service provider arrangements. *See* 17 CFR 240.17a–4(b)(7) (requiring that each broker-dealer maintain a record of all written agreements entered into by the broker-dealer relating to its business as such); 17 CFR 275.204–2(a)(10) (requiring that each investment adviser maintain a record of all written agreements entered into by the investment adviser with any client or otherwise relating to the business of the investment adviser as such).

[122] *But see infra* note 143 and accompanying text (discussing a comment received on the costs associated with this aspect of the proposal).

B. Final Guidelines

As amended by the Dodd-Frank Act, section 615(e)(1)(A) of the FCRA provides that the Commissions must jointly ''establish and maintain guidelines for use by each financial institution and each creditor regarding identity theft with respect to account holders at, or customers of, such entities, and update such guidelines as often as necessary.'' [123] Accordingly, the Commissions are jointly adopting guidelines in an appendix to the final identity theft red flags rules that are intended to assist financial institutions and creditors in the formulation and maintenance of a Program that satisfies the requirements of the rules. These guidelines are substantially similar to the guidelines adopted by the Agencies.

The final rules require each financial institution or creditor that is required to implement a Program to consider the guidelines and include in its Program those guidelines that are appropriate.[124] The Program needs to contain reasonable policies and procedures to fulfill the requirements of the final rules, even if a financial institution or creditor determines that one or more guidelines are not appropriate for its circumstances. We received no comment on the guidelines, and the Commissions are adopting them as proposed.

1. Section I of the Guidelines—Identity Theft Prevention Program

Section I of the guidelines makes clear that a financial institution or creditor may incorporate into its Program, as appropriate, its existing policies, procedures, and other arrangements that control reasonably foreseeable risks to customers or to the safety and soundness of the financial institution or creditor from identity theft. An example of such existing policies, procedures, and other arrangements may include other policies, procedures, and arrangements that the financial institution or creditor has developed to prevent fraud or otherwise ensure compliance with applicable laws and regulations.

2. Section II of the Guidelines—Identifying Relevant Red Flags

Section II(a) of the guidelines sets out several risk factors that a financial institution or creditor must consider in identifying relevant red flags for covered accounts, as appropriate. These risk factors are: (i) The types of covered accounts a financial institution or creditor offers or maintains; (ii) the methods it provides to open or access its covered accounts; and (iii) its previous experiences with identity theft. Thus, for example, red flags relevant to one type of covered account may differ from those relevant to another type of covered account. Under the guidelines, a financial institution or creditor also should consider identifying as relevant those red flags that directly relate to its previous experiences with identity theft.

Section II(b) of the guidelines sets out examples of sources from which financial institutions and creditors should derive relevant red flags. As discussed in the Proposing Release, this section of the guidelines does not require financial institutions and creditors to incorporate relevant red flags strictly from these sources. Instead, financial institutions and creditors must consider them when developing a Program.

Section II(c) of the guidelines identifies five categories of red flags that financial institutions and creditors must consider including in their Programs, as appropriate:

- Alerts, notifications, or other warnings received from consumer reporting agencies or service providers, such as fraud detection services;
- Presentation of suspicious documents, such as documents that appear to have been altered or forged;
- Presentation of suspicious personal identifying information, such as a suspicious address change;
- Unusual use of, or other suspicious activity related to, a covered account; and
- Notice from customers, victims of identity theft, law enforcement authorities, or other persons regarding possible identity theft in connection with covered accounts held by the financial institution or creditor.

Supplement A to the guidelines includes a non-comprehensive list of examples of red flags from each of these categories.

3. Section III of the Guidelines—Detecting Red Flags

Section III of the guidelines provides examples of policies and procedures that a financial institution or creditor must consider including in its Program's policies and procedures for the purpose of detecting red flags. As discussed in the Proposing Release, entities that are currently subject to the Agencies' identity theft red flags rules,[125] the federal customer identification program (''CIP'') rules [126] or other Bank Secrecy Act rules,[127] the Federal Financial Institutions Examination Council's guidance on authentication,[128] or the Interagency Guidelines Establishing Information Security Standards [129] may already be engaged in detecting red flags. These entities may wish to integrate the policies and procedures already developed for purposes of complying with these rules and standards into their Programs. However, such policies and procedures may need to be supplemented.[130]

4. Section IV of the Guidelines—Preventing and Mitigating Identity Theft

Section IV of the guidelines states that a Program's policies and procedures should provide for appropriate responses to the red flags that a financial institution or creditor has detected, that are commensurate with the degree of risk posed by each red flag. In determining an appropriate response, under the guidelines, a financial institution or creditor is required to consider aggravating factors that may heighten the risk of identity theft. Section IV of the guidelines also provides several examples of appropriate responses. These examples are identical to those included in the Agencies' final guidelines. Financial institutions and creditors also may consider adopting measures to prevent and mitigate identity theft that are not listed in the guidelines.

5. Section V of the Guidelines—Updating the Identity Theft Prevention Program

Section V of the guidelines includes a list of factors on which a financial institution or creditor could base the periodic updates to its Program. These factors are: (i) The experiences of the financial institution or creditor with identity theft; (ii) changes in methods of

[123] 15 U.S.C. 1681m(e)(1)(A).

[124] *See* § 162.30(f) (CFTC) and § 248.201(f) (SEC).

[125] *See* 2007 Adopting Release, *supra* note 8.

[126] *See, e.g.,* 31 CFR 1023.220 (broker-dealers), 1024.220 (mutual funds), and 1026.220 (futures commission merchants and introducing brokers). The CIP regulations implement section 326 of the USA PATRIOT Act, codified at 31 U.S.C. 5318(l).

[127] *See, e.g.,* 31 CFR 103.130 (anti-money laundering programs for mutual funds).

[128] *See* ''Authentication in an Internet Banking Environment,'' *available at http://www.ffiec.gov/pdf/authentication_guidance.pdf.*

[129] *See* 12 CFR part 30, app. B (national banks); 12 CFR part 208, app. D–2 and part 225, app. F (state member banks and bank holding companies); 12 CFR part 364, app. B (state non-member banks); 12 CFR part 570, app. B (savings associations); 12 CFR part 748, app. A (credit unions).

[130] For example, the CIP rules were written to implement section 326 (31 U.S.C. 5318(*l*)) of the USA PATRIOT Act (Pub. L. 107–56 (2001)), and certain types of ''accounts,'' ''customers,'' and products are exempted or treated specially in the CIP rules because they pose a lower risk of money laundering or terrorist financing. Such special treatment may not be appropriate to accomplish the broader objective of detecting, preventing, and mitigating identity theft.

identity theft; (iii) changes in methods to detect, prevent, and mitigate identity theft; (iv) changes in the types of accounts that the financial institution or creditor offers or maintains; and (v) changes in the business arrangements of the financial institution or creditor, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

6. Section VI of the Guidelines—Methods for Administering the Identity Theft Prevention Program

Section VI of the guidelines provides additional guidance for financial institutions and creditors to consider in administering their Programs. These guideline provisions are substantially identical to those prescribed by the Agencies in their final guidelines.

i. Oversight of Identity Theft Prevention Program

Section VI(a) of the guidelines states that oversight by the board of directors, an appropriate committee of the board, or a designated senior management employee should include: (i) Assigning specific responsibility for the Program's implementation; (ii) reviewing reports prepared by staff regarding compliance by the financial institution or creditor with the final rules; and (iii) approving material changes to the Program as necessary to address changing identity theft risks.

ii. Reporting to the Board of Directors

Section VI(b) of the guidelines states that staff of the financial institution or creditor responsible for development, implementation, and administration of its Program should report to the board of directors, an appropriate committee of the board, or a designated senior management employee, at least annually, on compliance by the financial institution or creditor with the final rules. In addition, section VI(b) of the guidelines provides that the report should address material matters related to the Program and evaluate issues such as recommendations for material changes to the Program.[131]

iii. Oversight of Service Provider Arrangements

Section VI(c) of the guidelines provides that whenever a financial institution or creditor engages a service provider to perform an activity in connection with one or more covered accounts, the financial institution or creditor should take steps to ensure that the activity of the service provider is conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft. As discussed in the Proposing Release, the Commissions believe that these guidelines make clear that a service provider that provides services to multiple financial institutions and creditors may do so in accordance with its own program to prevent identity theft, as long as the service provider's program meets the requirements of the identity theft red flags rules.

Section VI(c) of the guidelines also includes, as an example of how a financial institution or creditor may comply with this provision, that a financial institution or creditor could require the service provider by contract to have policies and procedures to detect relevant red flags that may arise in the performance of the service provider's activities, and either report the red flags to the financial institution or creditor, or to take appropriate steps to prevent or mitigate identity theft. In those circumstances, the Commissions expect that the contractual arrangements would include the provision of sufficient documentation by the service provider to the financial institution or creditor to enable it to assess compliance with the identity theft red flags rules.

7. Section VII of the Guidelines—Other Applicable Legal Requirements

Section VII of the guidelines identifies other applicable legal requirements from the FCRA and USA PATRIOT Act that financial institutions and creditors should keep in mind when developing, implementing, and administering their Programs.

8. Supplement A to the Guidelines

Supplement A to the guidelines provides illustrative examples of red flags that financial institutions and creditors are required to consider incorporating into their Programs, as appropriate. These examples are substantially similar to the examples identified in the Agencies' final guidelines. The examples are organized under the five categories of red flags that are set forth in section II(c) of the guidelines.

The Commissions recognize that some of the examples of red flags may be more reliable indicators of identity theft, while others are more reliable when detected in combination with other red flags. The Commissions intend that Supplement A to the guidelines be flexible and allow a financial institution or creditor to tailor the red flags it chooses for its Program to its own operations. Although the final rules do not require a financial institution or creditor to justify to the Commissions failure to include in its Program a specific red flag from the list of examples, a financial institution or creditor has to account for the overall effectiveness of its Program, and ensure that the Program is appropriate to the entity's size and complexity, and to the nature and scope of its activities.

C. Final Card Issuer Rules

Section 615(e)(1)(C) of the FCRA provides that the CFTC and SEC must ''prescribe regulations applicable to card issuers to ensure that, if a card issuer receives notification of a change of address for an existing account, and within a short period of time (during at least the first 30 days after such notification is received) receives a request for an additional or replacement card for the same account, the card issuer may not issue the additional or replacement card, unless the card issuer applies certain address validation procedures.''[132] Accordingly, the Commissions are adopting rules that set out the duties of card issuers regarding changes of address.[133] These rules are similar to the final card issuer rules adopted by the Agencies.[134] The rules apply only to a person that issues a debit or credit card (''card issuer'') and that is subject to the enforcement authority of either Commission.[135] The Commissions did not receive any comments on the card issuer rules, and are adopting them as proposed.

As discussed in the Proposing Release, the CFTC is not aware of any entities subject to its enforcement authority that issue debit or credit cards and, as a matter of practice, believes that it is highly unlikely that CFTC-regulated entities would issue debit or credit cards. As also discussed in the Proposing Release, the SEC understands that a number of entities within its enforcement authority issue cards in partnership with affiliated or unaffiliated banks and financial institutions, but that these cards are generally issued by the partner bank, and not by the SEC-regulated entity. The SEC therefore expects that no entities within its enforcement authority will be subject to the card issuer rules.

[131] The other issues referenced in the guideline are: (i) The effectiveness of the policies and procedures of the financial institution or creditor in addressing the risk of identity theft in connection with the opening of covered accounts and with respect to existing covered accounts; (ii) service provider arrangements; and (iii) significant incidents involving identity theft and management's response.

[132] 15 U.S.C. 1681m(e)(1)(C).

[133] *See* § 162.32 (CFTC) and § 248.202 (SEC).

[134] *See, e.g.,* 16 CFR 681.3 (FTC).

[135] *See supra* Section II.A.1.

III. Related Matters

A. Cost-Benefit Considerations (CFTC) and Economic Analysis (SEC)

CFTC

Section 15(a) of the CEA [136] requires the CFTC to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The CFTC considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations.[137] In the paragraphs that follow, the CFTC summarizes the proposal and comments to the same before considering the costs and benefits of the final rule in light of the 15(a) considerations.

Cost-Benefit Considerations of Identity Theft Red Flags Rules

Background and Proposal. As discussed above, section 1088 of the Dodd-Frank Act transferred authority over certain parts of FCRA from the Agencies to the CFTC and the SEC for entities they regulate. On February 28, 2012, the CFTC, together with the SEC, issued proposed rules to help protect investors from identity theft by ensuring that FCMs, IBs, CPOs, and other CFTC-regulated entities create programs to detect and respond appropriately to red flags.[138] The proposed rules, which were substantially similar to rules adopted in 2007 by the FTC and other federal financial regulatory agencies, would require CFTC-regulated entities to adopt written identity theft programs that include reasonable policies and procedures to: (1) Identify relevant red flags; (2) detect the occurrence of red flags; (3) respond appropriately to the detected red flags; and (4) periodically update their programs. The proposed rules also included guidelines and examples of red flags to help regulated entities administer their programs.

In its proposed consideration of costs and benefits pursuant to CEA section 15(a), the CFTC stated that section 162.30 should not result in any significant new costs or benefits because it generally reflects a statutory transfer of enforcement authority from the FTC to the CFTC. The CFTC requested comment on all aspects of its proposed consideration of costs and benefits.

Comments. The CFTC received two comments on its consideration of the costs and benefits of the joint proposal. These two commenters were divided on the reasonableness of the Commissions' estimated costs of compliance. In a letter focused on the SEC's proposed regulations (which are, of course, substantially similar to the CFTC's proposed regulations), one commenter stated that because Regulation S–ID ''is substantially similar to'' the existing FTC rules and guidelines, broker-dealers should not bear ''any new costs in coming into compliance with proposed Regulation S–ID.''[139] This commenter further stated that ''broker-dealers should already have in place a program that complies with the FTC rule. While firms will need to update some of their procedures to reflect the SEC's new responsibility for the oversight of the application of this rule, many of the changes would be cosmetic and grammatical in nature.'' [140] In marked contrast, another comment letter, submitted on behalf of the Financial Services Roundtable (''FSR'') and the Securities Industry and Financial Markets Association (''SIFMA''), stated that the ''consensus of our members is that the estimated compliance costs for the proposed Rules are extremely low and unrealistic.'' [141]

The FSR/SIFMA Comment Letter also stated that the FSR and SIFMA members estimated that the initial compliance burden to implement the rules would average 2,000 hours for each line of business conducted by a ''large, complex financial institution,'' noting that the estimate would vary based on the number of ''covered accounts'' for each line of business. In addition, this comment letter also stated that continuing compliance monitoring for such an institution would average 400 hours annually. They did not provide any data or information from which the CFTC could replicate its estimates.

The FSR/SIFMA Comment Letter also stated that ''financial institutions with an existing Red Flags program would experience an incremental burden due to reassessing the scope of the 'covered accounts' and reevaluating whether a business activity would be defined as a 'financial institution' or as a 'creditor' for purposes of the Agencies' Rules.''[142] The letter did not attribute a time estimate to this ''incremental burden.''

Finally, the FSR/SIFMA Comment Letter contended that the Commissions' ''estimated compliance costs further fail to consider the cost to third-party service providers, many of which may be required to implement an identity theft program even though they are not financial institutions or creditors.'' [143]

CFTC Response to Comments Regarding Costs and Benefits. In considering the costs and benefits of the final rules, the CFTC assumes that each CFTC-regulated entity covered by the final rules is already in existence and acting in compliance with the law, including the FTC's identity theft rules.[144] Under this assumption, the CFTC believes, as one of the commenters did,[145] that entities will incur few if any new costs in complying with the CFTC's regulations because they are largely unchanged in terms of scope and substance from the FTC's rules. The CFTC believes that the costs of compliance for such entities may actually decrease as a result of the additional guidance provided in this rulemaking. Without such guidance from the CFTC, entities might incur the costs of seeking advice from third parties. With respect to the comment that CFTC-regulated entities will experience an ''incremental burden'' in reassessing covered accounts and determining whether their activities fall within the scope of the rules,[146] the CFTC notes that the FTC's identity theft rules also include the requirement to periodically reassess covered accounts, and thus costs associated with this requirement are not new costs.

With regard to the estimate in the FSR/SIFMA Comment Letter that a ''large, complex financial institution'' will incur 2,000 hours of ''initial compliance burden,''[147] the CFTC is unaware of any such institution that is not already acting in compliance with the FCRA and the FTC's rules. But even if such a large, complex financial institution exists and is not already in compliance with FCRA and the FTC's rules, the ''initial burden'' that such an entity would incur is largely attributable to the FCRA, as amended by the Dodd-Frank Act. As discussed above,

[136] 7 U.S.C. 19(a).

[137] *Id.*

[138] 77 FR 13450 (Mar. 6, 2012).

[139] *See* NSCP Comment Letter.

[140] *Id.*

[141] *See* FSR/SIFMA Comment Letter.

[142] *Id.*

[143] *Id.*

[144] As discussed above, the final rules implement a shift in oversight of identity theft red flags rules for CFTC-regulated entities from the FTC to the CFTC. The rules do not contain new requirements, nor do they substantially expand the scope of the FTC's rules. Most entities should already be in compliance with the FTC's existing rules, which the FTC began enforcing on January 1, 2011.

[145] *See* NSCP Comment Letter.

[146] *See supra* note 142 and accompanying text.

[147] *See* FSR/SIFMA Comment Letter.

Congress mandated that the CFTC promulgate rules to bring its regulated entities into compliance with FCRA, and the CFTC has elected to do so in a manner that imposes minimal incremental cost on CFTC-regulated entities. In response to the comments concerning the costs to ''third-party service providers,'' the CFTC stresses these costs have already been taken into account, as CFTC-regulated entities that have outsourced identity theft detection, prevention, and mitigation operations to affiliates or third-party service providers have effectively shifted a burden that the CFTC-regulated entities otherwise would have carried themselves.

One commenter also stated that since it maintains no covered accounts and has no plans to, it should be specifically excluded from the scope of the rules to avoid any potential that it would be subject to the requirements of the final rules. According to this commenter, to include it within the scope of the final rules would require it needlessly to incur compliance costs associated with periodically reassessing whether they maintain any covered accounts and documenting the same.[148]

The majority of the per-entity costs associated with the final rules would be incurred by those financial institutions and creditors that maintain covered accounts.[149] Additionally, even if financial institutions and creditors do not currently maintain, or intend to maintain, covered accounts, such entities must nevertheless periodically assess whether they maintain covered accounts, as certain accounts may be deemed to be ''covered accounts'' if reasonably foreseeable identity theft risks are associated with these accounts.[150] Moreover, the CFTC reiterates that the final rules do not contain any new requirements or significantly expand the scope of the pre-existing FTC rules. Therefore, no financial institutions or creditors, regardless of whether they maintain covered accounts, should incur any additional costs other than the costs already being incurred under the previous regulatory framework.

Consideration of Costs and Benefits in Light of CEA Section 15(a). As discussed above, the Dodd-Frank Act shifted enforcement authority over CFTC-regulated entities that are subject to section 615(e) of the FCRA from the FTC to the CFTC. Section 615(e) of the FCRA, as amended by the Dodd-Frank Act, requires that the CFTC, jointly with the Agencies and the SEC, adopt identity theft red flags rules. To carry out this requirement, the CFTC is adopting section 162.30, which is substantially similar to the identity theft red flags rules adopted by the Agencies in 2007.

Section 162.30 will shift oversight of identity theft rules of CFTC-regulated entities from the FTC to the CFTC. These entities should already be in compliance with the FTC's existing identity theft red flags rules, which the FTC began enforcing on January 1, 2011. Because section 162.30 is substantially similar to those existing rules, these entities should not bear any significant costs in coming into compliance with section 162.30. The new regulation does not contain new requirements, nor does it expand the scope of the rules significantly. The new regulation does contain examples and minor language changes designed to help guide entities within the CFTC's enforcement authority in complying with the rules, which the CFTC expects will mitigate costs of compliance. Moreover, section 162.30 would not impose any significant new costs on new entities since any newly-formed entities would already be covered under the FTC's existing rules.

In the analysis for the Paperwork Reduction Act of 1995 (''PRA'') below, the staff identified certain initial and ongoing hour burdens and associated time costs related to compliance with section 162.30. However, these costs are not new costs, but are current costs associated with compliance with the Agencies' existing rules. CFTC-regulated entities will incur these hours and costs regardless of whether the CFTC adopts section 162.30. These hours and costs would be transferred from the Agencies' PRA allotment to the CFTC. No new costs should result from the adoption of section 162.30.

These existing costs related to section 162.30 would include, for newly-formed CFTC-regulated entities, the one-time cost for financial institutions and creditors to conduct initial assessments of covered accounts, create a Program, obtain board approval of the Program, and train staff.[151] The existing costs would also include the ongoing cost to periodically review and update the Program, report periodically on the Program, and conduct periodic assessments of covered accounts.[152]

The benefits related to adoption of section 162.30, which already exist in connection with the Agencies' identity theft red flags rules, would include a reduction in the risk of identity theft for investors (consumers) and cardholders, and a reduction in the risk of losses due to fraud for financial institutions and creditors. It is not practicable for the CFTC to estimate with precision the dollar value associated with the benefits that will inure to the public from the adoption of section 162.30, as the quantity or value of identity theft

[148] *See* OCC Comment Letter.

[149] *See infra* notes 151 and 152.

[150] *See supra* notes 95–100 and accompanying text.

[151] CFTC staff estimates that the one-time burden of compliance would include 2 hours to conduct initial assessments of covered accounts, 25 hours to develop and obtain board approval of a Program, and 4 hours to train staff. CFTC staff estimates that, of the 31 hours incurred, 12 hours would be spent by internal counsel at an hourly rate of $354, 17 hours would be spent by administrative assistants at an hourly rate of $66, and 2 hours would be spent by the board of directors as a whole, at an hourly rate of $4000, for a total cost of $13,370 per entity for entities that need to come into compliance with proposed subpart C to Part 162. This estimate is based on the following calculations: $354 × 12 hours = $4,248; $66 × 17 = $1,122; $4,000 × 2 = $8,000; $4,248 + $1,122 + $8,000 = $13,370.

As discussed in the PRA analysis, CFTC staff estimates that there are 702 CFTC-regulated entities that newly form each year and that would fall within the definitions of ''financial institution'' or ''creditor.'' Of these 702 entities, 54 entities would maintain covered accounts. *See infra* note 168 and text following note 168. CFTC staff estimates that 2 hours of internal counsel's time would be spent conducting an initial assessment to determine whether they have covered accounts and whether they are subject to the proposed rule (or 702 entities). The cost associated with this determination is $497,016 based on the following calculation: $354 × 2 = $708; $708 × 702 = $497,016. CFTC staff estimates that 54 entities would bear the remaining specified costs for a total cost of $683,748 (54 × $12,662 = $683,748). *See* SIFMA's Office Salaries in the Securities Industry 2011.

Staff also estimates that in response to Dodd-Frank, there will be approximately 125 newly registered SDs and MSPs. Staff believes that each of these SDs and MSPs will be a financial institution or creditor with covered accounts. The additional cost of these SDs and MSPs is $1,671,250 (125 × $13,370 = $1,671,250).

[152] CFTC staff estimates that the ongoing burden of compliance would include 2 hours to conduct periodic assessments of covered accounts, 2 hours to periodically review and update the Program, and 4 hours to prepare and present an annual report to the board, for a total of 8 hours. CFTC staff estimates that, of the 8 hours incurred, 7 hours would be spent by internal counsel at an hourly rate of $354 and 1 hour would be spent by the board of directors as a whole, at an hourly rate of $4,000, for a total hourly cost of $6,500. This estimate is based on the following calculations rounded to two significant digits: $354 × 7 hours = $2,478; $4,000 × 1 hour = $4,000; $2,478 + $4,000 = $6,478 ≈ $6,500.

As discussed in the PRA analysis, CFTC staff estimates that 2,946 existing CFTC-regulated entities would be financial institutions or creditors, of which 260 maintain covered accounts. CFTC staff estimates that 2 hours of internal counsel's time would be spent conducting periodic assessments of covered accounts and that all financial institutions or creditors subject to the proposed rule (or 2,946 entities) would bear this cost for a total cost of $2,100,000 based on the following calculations rounded to two significant digits: $354 × 2 = $708; $708 × 2,946 = $2,085,768 ≈ $2,100,000. CFTC staff estimates that 260 entities would bear the remaining specified ongoing costs for a total cost of $1,500,000 (260 × $5,770 = $1,500,200 ≈ $1,500,000).

deterred or prevented is not knowable. The CFTC, however, recognizes that the cost of any given instance of identity theft may be substantial to the individual involved. Joint adoption of identity theft red flags rules in a form that is substantially similar to the Agencies' identity theft red flags rules might also benefit financial institutions and creditors because entities regulated by multiple federal agencies could comply with a single set of standards, which would reduce potential compliance costs. As is true of the Agencies' identity theft red flags rules, the CFTC has designed section 162.30 to provide financial institutions and creditors significant flexibility in developing and maintaining a Program that is tailored to the size and complexity of their business and the nature of their operations, as well as in satisfying the address verification procedures.

Accordingly, as previously discussed, section 162.30 should not result in any significant new costs or benefits, because it generally reflects a statutory transfer of enforcement authority from the FTC to the CFTC, does not include any significant new requirements, and does not include new entities that were not previously covered by the Agencies' rules.

Section 15(a) Analysis. As stated above, the CFTC is required to consider costs and benefits of proposed CFTC action in light of (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. These rules protect market participants and the public by detecting, preventing, and mitigating identity theft, an illegal act that may be costly to them in both time and money.[153] Because, however, these rules create no new requirements — rather, as explained above, the CFTC is adopting rules that reflect requirements already in place — the impact of the rules on the protection of market participants and the public will remain the same. The Commission is not aware of any effect of these rules on the efficiency, competitiveness, and financial integrity of futures markets, price discovery, sound risk management practices, or other public interest considerations. Customers of CFTC registrants will continue to benefit from these rules in the same way they have benefited from the rules as they were administered by the Agencies.

Cost-Benefit Considerations of Card Issuer Rules

With respect to specific types of identity theft, section 615(e) of the FCRA identified the scenario involving credit and debit card issuers as being a possible indicator of identity theft. Accordingly, the card issuer rules in section 162.32 set out the duties of card issuers regarding changes of address. The card issuer rules will apply only to a person that issues a debit or credit card and that is subject to the CFTC's enforcement authority. The card issuer rules require a card issuer to comply with certain address validation procedures in the event that such issuer receives a notification of a change of address for an existing account from a cardholder, and within a short period of time (during at least the first 30 days after such notification is received) receives a request for an additional or replacement card for the same account. The card issuer may not issue the additional or replacement card unless it complies with those procedures. The procedures include: (1) Notifying the cardholder of the request in writing or electronically either at the cardholder's former address, or by any other means of communication that the card issuer and the cardholder have previously agreed to use; or (2) assessing the validity of the change of address in accordance with established policies and procedures.

Section 162.32 will shift oversight of card issuer rules of CFTC-regulated entities from the FTC to the CFTC. These entities should already be in compliance with the FTC's existing card issuer rules, which the FTC began enforcing on January 1, 2011. Because section 162.32 is substantially similar to those existing card issuer rules, these entities should not bear any new costs in coming into compliance. The new regulation does not contain new requirements, nor does it expand the scope of the rules to include new entities that were not already previously covered by the Agencies' card issuer rules.

The existing costs related to section 162.32 would include the cost for card issuers to establish policies and procedures that assess the validity of a change of address notification submitted shortly before a request for an additional card and, before issuing an additional or replacement card, either notify the cardholder at the previous address or through another previously agreed-upon form of communication, or alternatively assess the validity of the address change through existing policies and procedures. As discussed in the PRA analysis, CFTC staff does not expect that any CFTC-regulated entities would be subject to the requirements of section 162.32.

The benefits related to adoption of section 162.32, which already exist in connection with the Agencies' card issuer rules, would include a reduction in the risk of identity theft for cardholders, and a reduction in the risk of losses due to fraud for card issuers. However, it is not practicable for the CFTC to estimate with precision the dollar value associated with the benefits that will inure to the public from these card issuer rules. As is true of the Agencies' card issuer rules, the CFTC has designed section 162.32 to provide card issuers significant flexibility in developing and maintaining a Program that is tailored to the size and complexity of their business and the nature of their operations.

Accordingly, as previously discussed, the card issuer rules should not result in any significant new costs or benefits, because they generally reflect a statutory transfer of enforcement authority from the FTC to the CFTC, do not include any significant new requirements, and do not include new entities that were not previously covered by the Agencies' rules.

Section 15(a) Analysis. As stated above, the CFTC is required to consider costs and benefits of proposed CFTC action in light of (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. These rules protect market participants and the public by preventing identity theft, an illegal act that may be costly to them in both time and money.[154] Because, however, these rules create no new requirements—rather, as explained above, the CFTC is adopting rules that reflect requirements already in place—their cost and benefits have no incremental impact on the five section 15(a) factors. Customers of CFTC registrants will continue to benefit from these rules in the same way they have benefited from the rules as they were administered by the Agencies.

[153] According to the Javelin 2011 Identity Fraud Survey Report, consumer costs (the average out-of-pocket dollar amount victims pay) increased in 2010. *See Javelin 2011 Identity Fraud Survey Report* (2011). The report attributed this increase to new account fraud, which showed longer periods of misuse and detection and therefore more dollar losses associated with it than any other type of fraud. Notwithstanding the increase in cost, the report stated that the number of identity theft victims has decreased in recent years. *Id.*

[154] *See id.*

SEC

The SEC is sensitive to the costs and benefits imposed by its rules. As discussed above, the Dodd-Frank Act shifted enforcement authority over SEC-regulated entities that are subject to section 615(e) of the FCRA from the Agencies to the SEC. Section 615(e) of the FCRA, as amended by the Dodd-Frank Act, requires that the SEC, jointly with the Agencies and the CFTC, adopt identity theft red flags rules and guidelines. To carry out this requirement, the SEC is adopting Regulation S–ID, which is substantially similar to the identity theft red flags rules and guidelines adopted by the Agencies in 2007, and whose scope covers the same categories of SEC-regulated entities that were covered under the Agencies' red flags rules.

Regulation S–ID requires a financial institution or creditor that is subject to the SEC's enforcement authority and that offers or maintains covered accounts to develop, implement, and administer a written identity theft prevention Program. A financial institution or creditor must design its Program to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. A financial institution or creditor also must appropriately tailor its Program to its size and complexity, and to the nature and scope of its activities. In addition, a financial institution or creditor must take certain steps to comply with the requirements of the identity theft red flags rules, including training staff, providing annual reports to the board of directors, an appropriate committee thereof, or a designated senior management employee, and, if applicable, oversight of service providers.

Section 615(e)(1)(C) of the FCRA singles out change of address notifications sent to credit and debit card issuers as a possible indicator of identity theft, and requires the SEC to prescribe regulations concerning such notifications. Accordingly, the card issuer rules in this release set out the duties of card issuers regarding changes of address. The card issuer rules apply only to SEC-regulated entities that issue credit or debit cards.[155] The card issuer rules require a card issuer to comply with certain address validation procedures in the event that such issuer receives a notification of a change of address for an existing account, and within a short period of time (during at least the first 30 days after it receives such notification) receives a request for an additional or replacement card for the same account. The card issuer may not issue the additional or replacement card unless it complies with those procedures. The procedures include: (1) Notifying the cardholder of the request either at the cardholder's former address, or by any other means of communication that the card issuer and the cardholder have previously agreed to use; or (2) assessing the validity of the change of address in accordance with established policies and procedures.

The baseline we use to analyze the economic effects of Regulation S–ID is the identity theft red flags regulatory scheme administered by the Agencies. Regulation S–ID, as discussed above, implements the transfer of oversight of identity theft red flags rules for SEC-regulated entities from the Agencies to the SEC. Entities that qualify as a financial institution or creditor and offer or maintain covered accounts should already have existing identity theft red flags Programs. Regulation S–ID does not contain new requirements, nor does it expand the scope of the Agencies' rules to include new entities that the Agencies' rules did not previously cover. Regulation S–ID does contain examples and minor language changes designed to help guide entities within the SEC's enforcement authority in complying with the rules. Because Regulation S–ID is substantially similar to the Agencies' rules, the entities within its scope should not bear new costs in coming into compliance with Regulation S–ID.[156]

Costs

The costs of complying with section 248.201 of Regulation S–ID include both ongoing costs and initial, one-time costs.[157] These are the same costs that were associated with the requirements of the Agencies' red flags rules, and these costs will continue to apply after the adoption of the SEC's identity theft red flags rules (section 248.201 of Regulation S–ID). The ongoing costs include the costs to periodically review and update the Program, report on the Program, and conduct assessments of covered accounts.[158] All entities that qualify as financial institutions or creditors and that maintain covered accounts will bear these costs. Existing entities subject to Regulation S–ID should already bear, and will continue to be subject to, the ongoing costs.

Initial, one-time costs relate to the initial assessments of covered accounts, creation of a Program, board approval of the Program, and the training of staff.[159] New entities will bear these costs.

[155] *See* § 248.202(a) (defining scope of the SEC's rules).

[156] *See, e.g.,* NSCP Comment Letter (''Because proposed Regulation S–ID is substantially similar to [the Agencies'] existing rules and guidelines, broker-dealer firms should not bear any new costs in coming into compliance with proposed Regulation S–ID.''). As previously indicated, the SEC staff understands that a number of investment advisers may not currently have identity theft red flags Programs. *See supra* note 55 and *infra* notes 186 and 190. The new guidance in this release may lead some of these entities to determine that they should comply with Regulation S–ID. Although the costs and benefits of Regulation S–ID discussed below would be new to these entities, the costs would result not from Regulation S–ID but instead from the entities' recognition that these rules and the previously-existing rules apply to them. In that regard, the initial, one-time costs of Regulation S–ID could be up to $756 for each investment adviser that qualifies as a financial institution or creditor, and additional one-time costs of $13,885 for each such investment adviser that maintains covered accounts. *See infra* notes 158 and 159. Not all investment advisers will bear the full extent of these costs, however, as some may already have in place certain identity theft protections. And, the guidance in this release could have the benefit of further reducing identity theft. *See infra* discussion of benefits in Part III.A of this release.

[157] *See infra* note 182 and accompanying text.

[158] Unless otherwise stated, all cost estimates for personnel time are derived from SIFMA's Management & Professional Earnings in the Securities Industry 2011, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, entity size, employee benefits, and overhead. The estimates in this release, both for salary rates and numbers of entities affected, have been updated from those in the Proposing Release to reflect recent SIFMA management and professional salary data.

SEC staff estimates that the ongoing burden of compliance will include 2 hours to conduct periodic assessments of covered accounts, 2 hours to periodically review and update the Program, and 4 hours to prepare and present an annual report to the board, for a total of 8 hours. SEC staff estimates that, of the 8 hours incurred, 7 hours will be spent by internal counsel at an hourly rate of $378 and 1 hour will be spent by the board of directors as a whole, at an hourly rate of $4500, for a total hourly cost of $7146 per entity. This estimate is based on the following calculations: $378 × 7 hours = $2646; $4500 × 1 hour = $4500; $2646 + $4500 = $7146. The cost estimate for the board of directors is derived from estimates made by SEC staff regarding typical board size and compensation that is based on information received from fund representatives and publicly available sources.

As discussed in the PRA analysis, SEC staff estimates that 10,339 existing SEC-regulated entities will be financial institutions or creditors under Regulation S–ID, and approximately 90%, or 9305, of these entities will maintain covered accounts. *See infra* notes 190 and 191 and accompanying text. SEC staff estimates that 2 hours of internal counsel's time will be spent conducting periodic assessments of covered accounts and that all financial institutions or creditors subject to the rule (or 10,339 entities) will bear this cost for a total cost of $7,816,284 based on the following calculations: $378 × 2 = $756; $756 × 10,339 = $7,816,284. SEC staff estimates that 9305 entities will bear the remaining specified ongoing costs for a total cost of $59,458,950 (9305 × (($378 × 5) + ($4500 × 1)) = $59,458,950).

[159] SEC staff estimates that the incremental one-time burden of compliance includes 2 hours to conduct initial assessments of covered accounts, 25 hours to develop and obtain board approval of a Program, and 4 hours to train staff. SEC staff estimates that, of the 31 hours incurred, 12 hours will be spent by internal counsel at an hourly rate of $378, 17 hours will be spent by administrative

As discussed above, the final rules require financial institutions and creditors to tailor their Programs to the size and complexity of the entity and to the nature and scope of the entity's activities. Ongoing and one-time costs will therefore depend on the size and complexity of the SEC-regulated entity. Entities may already have other policies and procedures in place that are designed to reduce the risks of identity theft for their customers. The presence of other related policies and procedures could reduce the ongoing and one-time costs of compliance.

Two commenters agreed with the SEC that the substantial similarity of Regulation S–ID to the Agencies' rules should minimize any compliance costs for entities that have previously complied with the Agencies' rules,[160] and another commenter stated that the benefits of reduced risk of identity theft would outweigh the costs associated with the rules.[161] Another commenter raised concerns with the cost estimates in the Proposing Release, and argued that actual costs of compliance could be much greater than estimated.[162] This commenter provided hour burden estimates for large, complex financial institutions that were significantly higher than the estimates made for those entities in the Proposing Release. Additionally, the commenter stated that the Commissions' estimated compliance costs did not consider the costs to third-party service providers that may be required to implement an identity theft red flags Program, even though they are not financial institutions or creditors. The commenter also noted, however, that burdens placed upon entities currently complying with the Agencies' rules would be the same burdens that each of these entities already incurs in regularly assessing whether it maintains covered accounts and evaluating whether it falls within the rules' scope.

We note that the commenter who suggested that significantly higher hour burdens would be associated with the rules focused on large, complex financial institutions. Regulation S–ID requires each financial institution and creditor to tailor its Program to its size and complexity, and to the nature and scope of its activities. Our estimates take into account the hour burdens for small financial institutions and creditors, which we understand, based on discussions with industry representatives, to be significantly less than the estimates provided by this commenter. We also note that costs to service providers have already been taken into account, as SEC-regulated entities that have outsourced identity theft detection, prevention, and mitigation operations to service providers have effectively shifted a burden that the SEC-regulated entities otherwise would have carried themselves.[163] As mentioned above, the costs of Regulation S–ID are not new, and existing entities should already have identity theft red flags Programs and bear the ongoing costs associated with Regulation S–ID.

The existing costs related to the card issuer rules (section 248.202 of Regulation S–ID) include the cost for card issuers to establish policies and procedures that assess the validity of a change of address notification submitted shortly before a request for an additional or replacement card and, before issuing an additional or replacement card, either notify the cardholder at the previous address or through another previously agreed-upon form of communication, or alternatively assess the validity of the address change through existing policies and procedures. As discussed in the PRA analysis, SEC staff does not expect that any SEC-regulated entities will be subject to the card issuer rules.

In the PRA analysis below, the staff identifies certain ongoing and initial hour burdens and associated time costs related to compliance with Regulation S–ID. These hour burdens and costs are consistent with those associated with the requirements of the Agencies' existing rules.

Benefits

The benefits related to adoption of Regulation S–ID, which already exist in connection with the Agencies' identity theft red flags rules, include a reduction in the risk of identity theft for investors (consumers) and cardholders, and a reduction in the risk of losses due to fraud for financial institutions and creditors. The SEC is the federal agency best positioned to oversee the financial institutions and creditors subject to its enforcement authority because of its experience in overseeing these entities. Adoption of Regulation S–ID therefore may have the added benefit of increasing entities' adherence to their identity theft red flags Programs, thus further reducing the risk of identity theft for investors. As is true of the Agencies' identity theft red flags rules, the SEC has designed Regulation S–ID to provide financial institutions, creditors, and card issuers significant flexibility in developing and maintaining a Program that is tailored to the size and complexity of their business and the nature of their operations, as well as in satisfying the address verification procedures. Many of the benefits and costs discussed are difficult to quantify, in particular when discussing the potential reduction in the risk of identity theft. The SEC staff cannot quantify the benefits of the potential reduction in the risk of identity theft because of the uncertainty of its effect on customer behavior. Therefore, we discuss much of the benefits qualitatively but, where possible, the SEC staff attempted to quantify the costs.

Alternatives

In analyzing the costs and benefits that could result from the implementation of Regulation S–ID, the

assistants at an hourly rate of $65, and 2 hours will be spent by the board of directors as a whole, at an hourly rate of $4500, for a total cost of $14,641 per new entity. This estimate is based on the following calculations: $378 × 12 hours = $4536; $65 × 17 = $1105; $4500 × 2 = $9000; $4536 + $1105 + $9000 = $14,641. The cost estimate for administrative assistants is derived from SIFMA's Office Salaries in the Securities Industry 2011, modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, entity size, employee benefits, and overhead.

As discussed in the PRA analysis, SEC staff estimates that there are 1271 SEC-regulated entities that newly form each year and that could be financial institutions or creditors, of which 668 are likely to qualify as financial institutions or creditors. *See infra* note 186. Of these 668 entities that are likely to qualify as financial institutions or creditors, SEC staff estimates that approximately 90%, or 601, of these entities will maintain covered accounts. *See infra* note 188 and accompanying text. SEC staff estimates that 2 hours of internal counsel's time will be spent conducting an initial assessment of covered accounts and that all newly-formed financial institutions or creditors subject to Regulation S–ID (or 668 entities) will bear this cost for a total cost of $505,008 based on the following calculation: $378 × 2 = $756; $756 × 668 = $505,008. SEC staff estimates that the 601 entities that will maintain covered accounts will bear the remaining specified costs for a total cost of $8,344,885 (601 × (($378 × 10) + ($65 × 17) + ($4500 × 2)) = $8,344,885).

[160] *See* NSCP Comment Letter (''Because proposed Regulation S–ID is substantially similar to [the Agencies'] existing rules and guidelines, broker-dealer firms should not bear any new costs in coming into compliance with proposed Regulation S–ID.''); ICI Comment Letter (''We commend the Commission for proposing requirements that are consistent with those that have applied to certain SEC registrants since 2008 pursuant to rules of the [FTC] under [the FACT Act]. This consistency will facilitate registrants' transition from compliance with the FTC's rule to the Commission's rule with little or no disruption or added expense.'')

[161] *See* Eric Speicher Comment Letter.

[162] *See* FSR/SIFMA Comment Letter. FSR/SIFMA estimated that ''the initial compliance burden to implement the [proposed rules] would average 2,000 hours for each line of business conducted by a large, complex financial institution . . .'' and that ''the continuing compliance monitoring for a large, complex financial institution . . . would average 400 hours annually.'' FSR/SIFMA also noted that ''financial institutions with an existing Red Flags program would experience an incremental burden'' in connection with the SEC's rules.

[163] *See infra* Section III.C. (describing the SEC's PRA collection of information requirements).

SEC also considered the costs and benefits of any plausible alternatives to the final rules as set forth in this release. As discussed above, section 615(e) of the FCRA, as amended by the Dodd-Frank Act, requires that the SEC, jointly with the Agencies and the CFTC, adopt identity theft red flags rules and guidelines that are substantially similar to those adopted by the Agencies. The rules the SEC promulgates should achieve a similar outcome with respect to the reduction in the risk of identity theft as the rules of other Agencies. Alternatives to the identity theft red flags rules that would achieve a similar outcome may impose additional costs, especially for those entities that would need to alter existing Programs to conform to a new set of rules. The SEC does provide additional guidance in this release to better enable entities to determine whether they fall within the rules' scope. Although the SEC could have provided different guidance with this release, the SEC believes that the release provides sufficient guidance to enable entities to determine whether they need to adopt identity theft red flags Programs. Lastly, for the reasons discussed above, the SEC is not exempting certain entities from certain requirements of the identity theft red flags rules. The SEC believes that if an entity determines that it is a financial institution or a creditor that offers or maintains covered accounts, then the risk of identity theft that the rules are designed to address is present. Under such circumstances, we believe that the benefits of the rules justify the costs to the financial institution or creditor subject to the rules and, therefore, no exemptions are appropriate.

B. Analysis of Effects on Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act and section 2(c) of the Investment Company Act require the SEC, whenever it engages in rulemaking and must consider or determine if an action is necessary, appropriate, or consistent with the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. In addition, section 23(a)(2) of the Exchange Act requires the SEC, when making rules under the Exchange Act, to consider the impact the rules may have upon competition. Section 23(a)(2) of the Exchange Act prohibits the SEC from adopting any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[164]

As discussed in the cost-benefit analysis above, Regulation S–ID will carry out the requirement in the Dodd-Frank Act that the SEC adopt rules governing identity theft protections, pursuant to section 615(e) of the FCRA with regard to entities that are subject to the SEC's enforcement authority. This requirement was designed to transfer regulatory oversight of identity theft red flags rules for SEC-regulated entities from the Agencies to the SEC. Regulation S–ID is substantially similar to the identity theft red flags rules adopted by the Agencies in 2007, and does not contain new requirements. The entities covered by Regulation S–ID should already be in compliance with existing identity theft red flags rules.

For the reasons discussed above, Regulation S–ID should have a negligible effect on efficiency, competition, and capital formation because it does not include new requirements and does not include new entities that were not previously covered by the Agencies' rules.[165] The SEC thereby finds that, pursuant to Exchange Act section 23(a)(2), the adoption of Regulation S–ID would not result in any burden on competition, efficiency, or capital formation that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

[164] *See infra* Section IV (setting forth statutory authority under, among other things, the Exchange Act and Investment Company Act for rulemakings).

[165] *See infra* note 182 (discussing the entities that the SEC staff expects, based on discussions with industry representatives and a review of applicable law, will fall within the scope of Regulation S–ID). The SEC staff understands, however, that a number of investment advisers may not currently have identity theft red flags Programs. *See supra* note 55. The guidance in this release regarding situations in which certain SEC-regulated entities could qualify as financial institutions or creditors should not produce any significant effects. These entities may experience a negligible increase to business efficiency due to the industry-specific guidance in this release regarding the types of activities that could cause an entity to fall within the scope of Regulation S–ID. The guidance should also have a negligible effect on capital formation. Prior to Regulation S–ID, investors preferring to base their capital allocations on the existence of identity theft red flags Programs could have allocated capital with entities adhering to the Agencies' rules. The guidance therefore should have a negligible effect on the amount of capital allocated for investment purposes. In addition, all entities that conclude based on this guidance that they are subject to the final rules will be subject to the same requirements, and experience the same costs and benefits, as all other entities currently adhering to the Agencies' existing rules. The guidance therefore should have a negligible effect on competition.

C. Paperwork Reduction Act

CFTC

Provisions of sections 162.30 and 162.32 contain collection of information requirements within the meaning of the PRA. The CFTC submitted the proposal to the Office of Management and Budget (''OMB'') for review and public comment, in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is ''Part 162 Subpart C—Identity Theft.'' Responses to this new collection of information are mandatory.

1. Information Provided by Reporting Entities/Persons

Under part 162, subpart C, CFTC regulated entities—which presently would include approximately 260 CFTC registrants [166] plus 125 new CFTC registrants pursuant to Title VII of the Dodd-Frank Act [167]—are required to design, develop and implement reasonable policies and procedures to identify relevant red flags, and potentially to notify cardholders of identity theft risks. In addition, CFTC-regulated entities are required to: (i) Collect information and keep records for the purpose of ensuring that their Programs met requirements to detect, prevent, and mitigate identity theft in

[166] *See* the NFA's Internet Web site at *http://www.nfa.futures.org/NFA-registration/NFA-membership-and-dues.HTML* for the most up-to-date number of CFTC regulated entities. For the purposes of the PRA calculation, CFTC staff used the number of registered FCMs, CTAs, CPOs IBs and RFEDs on the NFA's Internet Web site as of November 20, 2012. The NFA's site states that there are 3,485 CFTC registrants as of October 31, 2012. (The total number of registrants also includes 7 exchanges which are not subject to this rule and not included in the calculation.) Of the 3,485 registrants, there are 104 FCMs, 1,284 IBs, 1,041 CTAs, 1,035 CPOs, and 14 RFEDs. CFTC staff has observed that approximately 50 percent of all CPOs (518) are dually registered as CTAs. Moreover, CFTC staff also has observed that all entities registering as RFEDs (14) also register as FCMs. Based on these observations, the CFTC has determined that the total number of entities is 2,946 (this total excludes the 7 exchanges that are not subject to this rule, the 518 CPOs that are also registered as CTAs, and the 14 RFEDs that are also registered as FCMs).

Of the total 2,946 entities, all of the FCMs (104) are likely to qualify as financial institutions or creditors carrying covered accounts, approximately 10 percent of CTAs (104) and CPOs (52) are likely to qualify as financial institutions or creditors carrying covered accounts and none of the IBs are likely to qualify as a financial institution or creditor carrying covered accounts, for a total of 260 financial institutions or creditors that would bear the initial one-time burden of compliance with the CFTC's rules.

[167] CFTC staff estimates that 125 SDs and MSPs will register with the CFTC upon the issuance of final rules under the Dodd-Frank Act further defining the terms ''swap dealers'' and ''major swap participants'' and setting forth a registration regime for these entities. The CFTC estimates the number of MSPs to be quite small, at six or fewer.

connection with the opening of a covered account or any existing covered account; (ii) develop and implement reasonable policies and procedures to identify, detect and respond to relevant red flags, as well as periodic reports related to the Program; and (iii) from time to time, notify cardholders of possible identity theft with respect to their covered accounts, as well as assess the validity of those accounts.

These burden estimates assume that CFTC-regulated entities already comply with the identity theft red flags rules jointly adopted by the FTC with the Agencies, as of January 1, 2011. Consequently, these entities may already have in place many of the customary protections addressing identity theft and changes of address required by these regulations.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. Because compliance with identity theft red flags rules jointly adopted by the FTC with the Agencies may have occurred, the CFTC estimates the time and cost burdens of complying with part 162 to be both one-time and ongoing burdens. However, any initial or one-time burdens associated with compliance with part 162 would apply only to newly-formed entities, and the ongoing burden to all CFTC-regulated entities.

i. Initial Burden

The CFTC estimates that the one-time burden of compliance with part 162 for its regulated entities with covered accounts would be: (i) 25 hours to develop and obtain board approval of a Program; (ii) 4 hours for staff training; and (iii) 2 hours to conduct an initial assessment of covered accounts, totaling 31 hours. Of the 31 hours, the CFTC estimates that 15 hours would involve internal counsel, 14 hours expended by administrative assistants, and 2 hours by the board of directors in total, for those newly-regulated entities.

The CFTC estimates that approximately 702 FCMs, CTAs and CPOs [168] would need to conduct an initial assessment of covered accounts. As noted above, the CFTC estimates that approximately 125 newly registered SDs and MSPs would need to conduct an initial assessment of covered accounts. The total number of newly registered CFTC registrants would be 827 entities. Each of these 827 entities would need to conduct an initial assessment of covered accounts, for a total of 1,654 hours.[169] Of these 827 entities, CFTC staff estimates that approximately 179 of these entities may maintain covered accounts. Accordingly, the CFTC estimates the one-time burden for these 179 entities to be 5,191 hours,[170] for a total burden among newly registered entities of 6,845 hours.[171]

ii. Ongoing Burden

The CFTC staff estimates that the ongoing compliance burden associated with part 162 would include: (i) 2 hours to periodically review and update the Program, review and preserve contracts with service providers, and review and preserve any documentation received from such providers; (ii) 4 hours to prepare and present an annual report to the board; and (iii) 2 hours to conduct periodic assessments to determine if the entity offers or maintains covered accounts, for a total of 8 hours. The CFTC staff estimates that of the 8 hours expended, 7 hours would be spent by internal counsel, and 1 hour would be spent by the board of directors as a whole.

The CFTC estimates that approximately 3,071 entities may maintain covered accounts, and that they would be required to periodically review their accounts to determine if they comply with these rules, for a total of 6,142 hours for these entities.[172] Of these 3,071 entities, the CFTC estimates that approximately 385 maintain covered accounts, and thus would need to incur the additional burdens related to complying with the rule, for a total of 2,310 hours.[173] The total ongoing burden for all CFTC registrants is 8,452 hours.[174]

SEC:

Provisions of sections 248.201 and 248.202 contain ''collection of information'' requirements within the meaning of the PRA. In the Proposing Release, the SEC solicited comment on the collection of information requirements. The SEC also submitted the proposed collections of information to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is ''Part 248, Subpart C—Regulation S–ID.'' In response to this submission, the OMB issued control number 3235–0692.[175] Responses to the new collection of information provisions are mandatory, and the information, when provided to the SEC in connection with staff examinations or investigations, is kept confidential to the extent permitted by law.

1. Description of the Collections

Under Regulation S–ID, SEC-regulated entities are required to develop and implement reasonable policies and procedures to identify, detect and respond to relevant red flags and, in the case of entities that issue credit or debit cards, to assess the validity of, and communicate with cardholders regarding, address changes. Section 248.201 of Regulation S–ID includes the following ''collections of information'' by SEC-regulated entities that are financial institutions or creditors if the entity maintains covered accounts: (1) Creation and periodic updating of a Program that is approved by the board of directors, an appropriate committee thereof, or a designated senior management employee; (2) periodic staff reporting on compliance with the identify theft red flags rules and guidelines, as required to be considered by section VI of the guidelines; and (3) training of staff to implement the Program. Section 248.202 of Regulation S–ID includes the following ''collections of information'' by SEC-regulated entities that are credit or debit card issuers: (1) Establishment of policies and procedures that assess the validity

[168] Based on a review of new registrations typically filed with the CFTC each year, CFTC staff estimates that approximately 7 FCMs, 225 IBs, 400 CTAs, and 140 CPOs are newly formed each year, for a total of 772 entities. CFTC staff also has observed that approximately 50 percent of all CPOs are duly registered as CTAs. With respect to RFEDs, CFTC staff has observed that all entities registering as RFEDs also register as FCMs. Based on these observations, CFTC has determined that the total number of newly-formed financial institutions and creditors is 702 (772 − 70 CPOs that are also registered as CTAs). Each of these 702 financial institutions or creditors would bear the initial one-time burden of compliance with the proposed rules. Of the total 702 newly-formed entities, staff estimates that all of the FCMs are likely to carry covered accounts, 10 percent of CTAs and CPOs are likely to carry covered accounts, and none of the IBs are likely to carry covered accounts, for a total of 54 newly-formed financial institutions or creditors carrying covered accounts that would be required to conduct an initial one-time burden of compliance with subpart C or Part 162.

[169] This estimate is based on the following calculation: 827 entities × 2 hours = 1,654 hours.

[170] This estimate is based on the following calculation: 179 entities × 29 hours = 5,191 hours.

[171] This estimate is based on the following calculation: 1,654 hours for all newly registered CFTC registrants + 5,191 hours for the one-time burden of newly registered entities with covered accounts, for a total of 6,845 hours.

[172] This estimate is based on the following calculation: 3,071 entities x 2 hours = 6,142 hours. (The Proposing Release contained an arithmetic error in the calculation for the total ongoing burden for all CFTC registrants. The total number of hours was erroneously calculated to total 76,498 hours rather than 6,498. *See* 77 FR 13450, 13467.)

[173] This estimate is based on the following calculation: 385 entities x 6 hours = 2,310 hours.

[174] This estimate is based on the following calculation: 6,142 hours + 2,310 hours = 8,452 hours.

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

of a change of address notification if a request for an additional or replacement card on the account follows soon after the address change; and (2) notification of a cardholder, before issuance of an additional or replacement card, at the previous address or through some other previously agreed-upon form of communication, or alternatively, assessment of the validity of the address change request through the entity's established policies and procedures.

SEC-regulated entities that must comply with the collections of information required by Regulation S–ID should already be in compliance with the identity theft red flags rules that the Agencies jointly adopted in 2007.[176] The requirements of those rules are substantially similar and comparable to the requirements of Regulation S–ID.[177]

In addition, SEC staff understands that most SEC-regulated entities that are financial institutions or creditors may otherwise have in place many of the protections regarding identity theft and changes of address that Regulation S–ID requires because they are usual and customary business practices that they engage in to minimize losses from fraud. Furthermore, SEC staff believes that many of them are likely to have already effectively implemented most of the requirements as a result of having to comply (or an affiliate having to comply) with other, existing statutes, regulations and guidance, such as the federal CIP rules implementing section 326 of the USA PATRIOT Act,[178] the Interagency Guidelines Establishing Information Security Standards that implement section 501(b) of the Gramm-Leach-Bliley Act (GLBA),[179] section 216 of the FACT Act,[180] and guidance issued by the Agencies or the Federal Financial Institutions Examination Council regarding information security, authentication, identity theft, and response programs.[181]

SEC staff estimates of time and cost burdens represent the one-time burden of complying with Regulation S–ID for newly-formed SEC-regulated entities, and the ongoing costs of compliance for all SEC-regulated entities.[182] SEC staff estimates also attribute all burdens to entities that are directly subject to the requirements of the rulemaking. An entity directly subject to Regulation S–ID that outsources activities to a service provider is, in effect, shifting to that service provider the burden that it would otherwise have carried itself. Under these circumstances, the burden is, by contract, shifted from the entity that is directly subject to Regulation S–ID to the service provider, but the total amount of burden is not increased. Thus, service provider burdens are already included in the burden estimates provided for entities that are directly subject to Regulation S–ID. The time and cost estimates made here are based on conversations with industry representatives and on a review of comments received on the proposed rules as well as the estimates made in the regulatory analyses of the identity theft red flags rules previously issued by the Agencies.

2. Section 248.201 (Duties Regarding the Detection, Prevention, and Mitigation of Identity Theft)

The collections of information required by section 248.201 apply to SEC-regulated entities that are financial institutions or creditors.[183] As stated above, SEC staff expects that SEC-regulated entities should already have incurred initial or one-time burdens associated with compliance with Regulation S–ID because they should already be in compliance with the substantially identical requirements of the Agencies' identity theft red flags rules.[184] Any initial or one-time burden estimates associated with compliance with section 248.201 of Regulation S–ID apply only to newly-formed entities. The ongoing burden estimates apply to all SEC-regulated entities that are financial institutions or creditors. Existing entities subject to Regulation S–ID should already bear, and will continue to be subject to, this burden. In the Proposing Release, the SEC solicited comment on its estimates of the burdens associated with the collections of information required by section 248.201; one commenter raised concerns with the estimates in the Proposing Release, arguing that actual burdens could be greater than estimated.[185]

i. Initial Burden

SEC staff estimates that the one-time burden of compliance with section 248.201 for SEC-regulated financial institutions and creditors with covered accounts is: (i) 25 hours to develop and obtain board approval of a Program; (ii) 4 hours to train staff; and (iii) 2 hours to conduct an initial assessment of covered accounts, for a total of 31 hours. SEC staff estimates that, of the 31 hours incurred, 12 hours will be spent by internal counsel, 17 hours will be spent by administrative assistants, and 2 hours will be spent by the board of directors as a whole for newly-formed entities.

SEC staff estimates that approximately 668 SEC-regulated financial institutions and creditors are newly formed each year.[186] Each of these 668 entities will need to conduct an initial assessment of covered accounts, for a total of 1336 hours.[187] Of these 668 entities, SEC staff estimates that approximately 90% (or

[176] SEC staff, however, understands that a number of investment advisers may not currently have identity theft red flags Programs. *See supra* note 55. Under the new guidance, for entities having now determined that they should comply with Regulation S–ID, the collections of information required by Regulation S–ID and the estimates of time and costs discussed below may be new. As discussed further below, SEC staff estimates that there are approximately 3791 investment advisers that are currently registered with the SEC and are likely to qualify as financial institutions or creditors. SEC staff is unable to estimate how many of these investment advisers previously complied with the Agencies' identity theft red flags rules.

[177] *See* 2007 Adopting Release, *supra* note 8, at Section VI.A (discussing the PRA analysis with respect to the Agencies' identity theft red flags rules); ''FTC Extends Enforcement Deadline for Identity Theft Red Flags Rule'' at *http://www.ftc.gov/opa/2010/05/redflags.shtm.*

[178] 31 U.S.C. 5318(l) (requiring verification of the identity of persons opening accounts).

[179] 15 U.S.C. 6801.

[180] 15 U.S.C. 1681w.

[181] *See* 2007 Adopting Release, *supra* note 8, at nn.55–57 (describing applicable statutes, regulations, and guidance).

[182] Based on discussions with industry representatives and a review of applicable law, SEC staff expects that, of the SEC-regulated entities that fall within the scope of Regulation S–ID, most broker-dealers, many investment companies (including almost all open-end investment companies and ESCs), and some registered investment advisers will likely qualify as financial institutions or creditors. SEC staff expects that other SEC-regulated entities described in the scope section of Regulation S–ID, such as BDCs, transfer agents, NRSROs, SROs, and clearing agencies may be less likely to be financial institutions or creditors as defined in the rules, and therefore we do not include these entities in our estimates.

[183] § 248.201(a).

[184] *See* 2007 Adopting Release, *supra* note 8, at Section VI.A (discussing the PRA analysis with respect to the Agencies' identity theft red flags rules). Because the requirements of Regulation S–ID are substantially identical to the requirements of the Agencies' identity theft red flags rules, the SEC staff took the Agencies' PRA analysis into account in estimating the regulatory burdens of Regulation S–ID.

[185] *See supra* note 162 and accompanying text.

[186] Based on a review of new registrations typically filed with the SEC each year, SEC staff estimates that approximately 900 investment advisers, 231 broker-dealers, 139 investment companies, and 1 ESC typically apply for registration with the SEC or otherwise are newly formed each year, for a total of 1271 entities that could be financial institutions or creditors. Of these, SEC staff estimates that all of the investment companies, ESCs, and broker-dealers are likely to qualify as financial institutions or creditors, and 33% (or 297) of investment advisers are likely to qualify, for a total of 668 total financial institutions or creditors that will bear the initial one-time burden of assessing covered accounts under Regulation S–ID. Information regarding the method used to estimate that 33% of investment advisers are likely to qualify as financial institutions or creditors can be found in note 190 below.

[187] This estimate is based on the following calculation: 668 entities × 2 hours = 1336 hours.

601) maintain covered accounts.[188] Accordingly, SEC staff estimates that the total initial burden for the 601 newly formed SEC-regulated entities that are likely to qualify as financial institutions or creditors and maintain covered accounts is 18,631 hours, and the total initial burden for all newly formed SEC-regulated entities is 18,765 hours.[189]

ii. Ongoing Burden

SEC staff estimates that the ongoing burden of compliance with section 248.201 includes: (i) 2 hours to conduct periodic assessments to determine if the entity offers or maintains covered accounts; (ii) 4 hours to prepare and present an annual report to the board; and (iii) 2 hours to periodically review and update the Program, including review and preservation of contracts with service providers, and review and preservation of any documentation received from service providers, for a total of 8 hours. SEC staff estimates that, of the 8 hours incurred, 7 hours will be spent by internal counsel and 1 hour will be spent by the board of directors as a whole.

SEC staff estimates that there are 10,339 SEC-regulated entities that are either financial institutions or creditors, and that all of these are required to periodically review their accounts to determine if they offer or maintain covered accounts, for a total of 20,678 hours for these entities.[190] Of these 10,339 entities, SEC staff estimates that approximately 90%, or 9305, maintain covered accounts, and thus will bear the additional burdens related to complying with the rules.[191] Accordingly, SEC staff estimates that the total ongoing burden for these 9305 financial institutions and creditors that maintain covered accounts will be 74,440 hours.[192] The estimated total ongoing burden for the 10,339 SEC-regulated entities that are financial institutions or creditors covered by Regulation S–ID will be 76,508 hours.[193]

2. *Section 248.202 (Duties of Card Issuers Regarding Changes of Address).*

The collections of information required by section 248.202 apply only to SEC-regulated entities that issue credit or debit cards.[194] SEC staff understands that SEC-regulated entities generally do not issue credit or debit cards, but instead have arrangements with other entities, such as banks, that issue cards on their behalf. These other entities, which are not regulated by the SEC, are already subject to substantially similar change of address obligations pursuant to the Agencies' identity theft red flags rules. In addition, SEC staff understands that card issuers already assess the validity of change of address requests and, for the most part, have automated the process of notifying the cardholder or using other means to assess the validity of changes of address. Therefore, implementation of this requirement poses no further burden.

SEC staff does not expect that any SEC-regulated entities will be subject to the information collection requirements of section 248.202. Accordingly, SEC staff estimates that there is no hourly or cost burden for SEC-regulated entities related to section 248.202. In the Proposing Release, the SEC solicited comment on this same estimate of the burdens associated with the collections of information required by section 248.202 and received no comments on its burden estimate.

D. Regulatory Flexibility Act

CFTC

The Regulatory Flexibility Act (''RFA'') requires that federal agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[195] The CFTC has already established certain definitions of ''small entities'' to be used in evaluating the impact of its rules on such small entities in accordance with the RFA.[196] The CFTC's final identity theft red flags regulations affect FCMs, RFEDs, IBs, CTAs, CPOs, SDs, and MSPs. SDs and MSPs are new categories of registrants. Accordingly, the CFTC has noted in other rule proposals that it has not previously addressed the question of whether such persons were, in fact, small entities for purposes of the RFA.[197]

In this regard, the CFTC has previously determined that FCMs should not be considered to be small entities for purposes of the RFA, based, in part, upon FCMs' obligation to meet the minimum financial requirements established by the CFTC to enhance the protection of customers' segregated funds and protect the financial condition of FCMs generally.[198] Like FCMs, SDs will be subject to minimum capital and margin requirements, and

[188] In the Proposing Release, the SEC requested comment on the estimate that approximately 90% of all financial institutions and creditors maintain covered accounts; the SEC received no comments on this estimate.

[189] These estimates are based on the following calculations: 601 financial institutions and creditors that maintain covered accounts × 31 hours = 18,631 hours; 17,429 hours (601 financial institutions and creditors that maintain covered accounts x 29 hours) + 1336 hours (burden for all SEC-regulated entities that are financial institutions or creditors to conduct an initial assessment of covered accounts) = 18,765 hours.

[190] Based on a review of entities that the SEC regulates, SEC staff estimates that, as of July 1, 2012, there are approximately 11,622 investment advisers, 4706 broker-dealers, 1692 active open-end investment companies, and 150 ESCs. Of these, SEC staff estimates that all of the broker-dealers, open-end investment companies and ESCs are likely to qualify as financial institutions or creditors, and approximately 3791 investment advisers (or about 33%, as explained further below) are likely to qualify, for a total of 10,339 total financial institutions or creditors that will bear the ongoing burden of assessing covered accounts under Regulation S–ID. (The SEC staff estimates that the other types of entities that are covered by the scope of the SEC's rules will not be financial institutions or creditors and therefore will not be subject to the rules' requirements. *See supra* note 182.) The total hours estimate is based on the following calculation: 10,339 entities × 2 hours = 20,678 hours.

The SEC staff estimate that 33% of SEC-registered investment advisers will be subject to the requirements of Regulation S–ID is based on the following calculation. According to Investment Adviser Registration Depository (IARD) data, there are approximately 11,622 investment advisers registered with the SEC as of July 1, 2012. Of these advisers, approximately 7327 could potentially be subject to the rule as financial institutions because they indicate they have customers who are natural persons. We estimate that approximately 16%, or 1202 of these 7327 advisers, hold transaction accounts belonging to natural persons and therefore would qualify as financial institutions under the rule. Additionally, 4055 of the 11,622 advisers registered with the SEC have private fund clients. We expect that most of the funds advised by these advisers would have at least one natural person investor, and thus they could potentially meet the definition of ''financial institution.'' In addition, some of these private fund advisers may engage in lending activities that would also qualify them as creditors under the rule. In order to avoid duplication, however, we are deducting 1466 private fund advisers from the total number of advisers we estimate will be subject to the rule, because they also indicated on Form ADV that they have individual or high net worth clients and are already accounted for in our estimates above. Accordingly, the staff estimates that approximately 3791 (*i.e.,* 1202 + 4055 − 1466) advisers registered with the SEC will be subject to the rule. These 3791 advisers are about 33% of the 11,622 SEC-registered advisers.

[191] In the Proposing Release, the SEC requested comment on the estimate that approximately 90% of all financial institutions and creditors maintain covered accounts; the SEC received no comments on this estimate. *See supra* note 188 and accompanying text. If a financial institution or creditor does not maintain covered accounts, there will be no ongoing annual burden for purposes of the PRA.

[192] This estimate is based on the following calculation: 9305 financial institutions and creditors that maintain covered accounts × 8 hours = 74,440 hours.

[193] This estimate is based on the following calculation: 20,678 hours (10,339 financial institutions and creditors × 2 hours (for review of accounts)) + 55,830 hours (9305 financial institutions and creditors that maintain covered accounts × 6 hours (for report to board, and review and update of Program)) = 76,508 hours.

[194] § 248.202(a).

[195] *See* 5 U.S.C. 601–612.

[196] 47 FR 18618 (Apr. 30, 1982).

[197] *See* 75 FR 81519 (Dec. 28, 2010); 76 FR 6708 (Feb. 8, 2011); 76 FR 6715 (Feb. 8, 2011).

[198] *See, e.g.,* 75 FR 81519 (Dec. 28, 2010).

are expected to comprise the largest global financial institutions—and the CFTC is required to exempt from designation as an SD entities that engage in a de minimis level of swaps dealing in connection with transactions with or on behalf of customers. Accordingly, for purposes of the RFA, the CFTC has determined that SDs not be considered ''small entities'' for essentially the same reasons that it has previously determined FCMs not to be small entities.[199]

The CFTC also has previously determined that large traders are not ''small entities'' for RFA purposes, with the CFTC considering the size of a trader's position to be the only appropriate test for the purpose of large trader reporting.[200] The CFTC also has noted that MSPs maintain substantial positions in swaps, creating substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.[201] Accordingly, for purposes of the RFA, the CFTC has determined that MSPs not be considered ''small entities'' for essentially the same reasons that it has previously determined large traders not to be small entities.[202]

The CFTC did not receive any comments on its analysis of the application of the RFA to SDs and MSPs. Moreover, the CFTC has issued final rules in which it determined that the registration and regulation of SDs and MSPs would not have a significant economic impact on a substantial number of small entities.[203]

Further, the CFTC has determined that the requirements on financial institutions and creditors, and card issuers set forth in the identity theft red flags rules, respectively, will not have a significant economic impact on a substantial number of small entities because many of these entities are already complying with the identity theft red flags rules of the Agencies. Moreover, the CFTC believes that the rules include a great deal of flexibility to assist its regulated entities in complying with such rules and guidelines.

In accordance with 5 U.S.C. 605(b), the CFTC Chairman, on behalf of the CFTC, certifies that these rules will not have a significant economic impact on a substantial number of small entities.

[199] *Id.*

[200] *See* 47 FR 18618 (Apr. 30, 1982).

[201] *See, e.g.,* 75 FR 81519 (Dec. 28, 2010).

[202] *Id.*

[203] *See, e.g.,* 77 FR 2613 (Jan. 19, 2012); 77 FR 20128 (Apr. 3, 2012).

SEC

The SEC has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') regarding Regulation S–ID in accordance with 5 U.S.C. 604. The SEC included an Initial Regulatory Flexibility Analysis (''IRFA'') in the Proposing Release in February 2012.[204]

1. Need for Regulation S–ID

The FACT Act, which amended FCRA to address identity theft red flags, was enacted in part to help prevent the theft of consumer information. The statute contains several provisions relating to the detection, prevention, and mitigation of identity theft. Section 1088(a) of the Dodd-Frank Act amended section 615(e) of the FCRA by adding the SEC (and CFTC) to the list of federal agencies required to adopt rules related to the detection, prevention, and mitigation of identity theft. Regulation S–ID implements the statutory directives in section 615(e) of the FCRA, which require the SEC to adopt identity theft rules jointly with the Agencies and the CFTC.

Section 615(e) requires the SEC to adopt rules that require financial institutions and creditors to establish policies and procedures to implement guidelines established by the SEC that address identity theft with respect to account holders and customers. Section 615(e) also requires the SEC to adopt rules applicable to credit and debit card issuers to implement policies and procedures to assess the validity of change of address requests.

2. Significant Issues Raised by Public Comment

In the Proposing Release, we requested comment on the IRFA. None of the comment letters we received specifically addressed the IRFA. None of the comment letters made specific comments about Regulation S–ID's impact on smaller financial institutions and creditors.

3. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act (''RFA''), an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. SEC staff estimates that approximately 119 of the 1692 active open-end investment companies registered on Form N–1A meet this definition.[205]

[204] *See* Proposing Release, *supra* note 12.

[205] This information is based on staff analysis of information from filings on Form N–SAR and from databases compiled by third-party information providers, including Lipper Inc.

Under SEC rules, for purposes of the Investment Advisers Act and the RFA, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[206] Based on information in filings submitted to the SEC, 561 of the approximately 11,622 investment advisers registered with the SEC are small entities.[207]

For purposes of the RFA, a broker-dealer is a small business if it had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to rule 17a–5(d) of the Exchange Act or, if not required to file such statements, a broker-dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter) and if it is not an affiliate of an entity that is not a small business.[208] SEC staff estimates that approximately 797 broker-dealers meet this definition.[209]

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Section 615(e) of the FCRA, as amended by section 1088 of the Dodd-Frank Act, requires the SEC to adopt rules that require financial institutions and creditors to establish reasonable policies and procedures to implement guidelines established by the SEC that address identity theft with respect to account holders and customers. Section 248.201 of Regulation S–ID implements this mandate by requiring a covered financial institution or creditor that offers or maintains certain accounts to create an identity theft prevention Program that detects, prevents, and

[206] 17 CFR 275.0–7(a).

[207] This information is based on data from the Investment Adviser Registration Depository (IARD) as of July 1, 2012.

[208] 17 CFR 240.0–10(c).

[209] This estimate is based on information provided in FOCUS Reports filed with the SEC as of July 1, 2012. There are approximately 4706 broker-dealers registered with the SEC.

mitigates the risk of identity theft applicable to these accounts.

Section 615(e) also requires the SEC to adopt rules applicable to credit and debit card issuers to implement policies and procedures to assess the validity of change of address requests. Section 248.202 of Regulation S–ID implements this requirement by requiring credit and debit card issuers to establish reasonable policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a credit or debit card account and within a short period of time afterwards (within 30 days), the issuer receives a request for an additional or replacement card for the same account.

Because all SEC-regulated entities, including small entities, should already be in compliance with the substantially similar identity theft red flags rules that the Agencies began enforcing in 2008 and 2011,[210] Regulation S–ID should not impose new compliance, recordkeeping, or reporting burdens. If a SEC-regulated small entity is not already in compliance with the existing identity theft red flags rules issued by the Agencies, the burden of compliance with Regulation S–ID should be minimal because we understand that these entities already engage in various activities to minimize losses due to fraud as part of their usual and customary business practices. In particular, the rules allow these entities to consolidate their existing policies and procedures into their written Program and may require some additional staff training. Accordingly, the impact of the requirements should be largely incremental and not significant, and we do not anticipate that Regulation S–ID will disproportionately affect small entities.

The SEC has estimated the costs of Regulation S–ID for all entities (including small entities) in the PRA and economic analysis included in this release. No new classes of skills are required to comply with Regulation S–ID. SEC staff does not anticipate that small entities will face unique or special burdens when complying with Regulation S–ID.

5. Agency Action To Minimize Effect on Small Entities

The RFA directs the SEC to consider significant alternatives that would accomplish our stated objective, while minimizing any significant economic impact on small issuers. In connection with Regulation S–ID, the SEC considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance requirements under Regulation S–ID for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of Regulation S–ID, or any part thereof, for small entities.

Regulation S–ID requires covered financial institutions and creditors that offer or maintain certain accounts to create an identity theft prevention Program and report to the board of directors, an appropriate committee thereof, or a designated senior management employee at least annually on compliance with the regulations. Credit and debit card issuers are required to respond to a change of address request by notifying the cardholder or using other means to assess the validity of a change of address.

The standards in Regulation S–ID are flexible, and take into account a covered financial institution or creditor's size and sophistication, as well as the costs and benefits of alternative compliance methods. A Program under Regulation S–ID should be tailored to the risk of identity theft in a financial institution or creditor's covered accounts, thereby permitting small entities whose accounts pose a low risk of identity theft to avoid much of the cost of compliance. Because small entities maintain covered accounts that pose a risk of identity theft for consumers just as larger entities do, providing an exemption from Regulation S–ID for small entities could subject consumers with covered accounts at small entities to a higher risk of identity theft.

Pursuant to section 615(e) of the FCRA, as amended by section 1088 of the Dodd-Frank Act, the SEC and the CFTC are jointly adopting identity theft red flags rules that are substantially similar and comparable to the identity theft red flags rules previously adopted by the Agencies. Providing a new exemption for small entities, or further consolidating or simplifying the regulations for small entities, could result in significant differences between the identity theft red flags rules adopted by the Commissions and the rules adopted by the Agencies. Because SEC-regulated entities, including small entities, should already be in compliance with the substantially similar identity theft red flags rules that the Agencies began enforcing in 2008 and 2011, SEC staff does not expect that small entities will need a delayed effective or compliance date beyond that already provided to all entities subject to the rules.

IV. Statutory Authority and Text of Amendments

The CFTC is amending Part 162 under the authority set forth in sections 1088(a)(8), 1088(a)(10), and 1088(b) of the Dodd-Frank Act,[211] and sections 615(e), 621(b), 624, and 628 of the FCRA.[212]

The SEC is adopting Regulation S–ID under the authority set forth in sections 1088(a)(8), 1088(a)(10), and 1088(b) of the Dodd-Frank Act,[213] section 615(e) of the FCRA,[214] sections 17 and 23 of the Exchange Act,[215] sections 31 and 38 of the Investment Company Act,[216] and sections 204 and 211 of the Investment Advisers Act.[217]

List of Subjects

17 CFR Part 162

Cardholders, Card issuers, Commodity pool operators, Commodity trading advisors, Confidential business information, Consumer reports, Credit, Creditors, Consumer, Customer, Financial institutions, Futures commission merchants, Identity theft, Introducing brokers, Major swap participants, Privacy, Red flags, Reporting and recordkeeping requirements, Retail foreign exchange dealers, Self-regulatory organizations, Service provider, Swap dealers.

17 CFR Part 248

Affiliate marketing, Brokers, Cardholders, Card issuers, Confidential business information, Consumers, Consumer financial information, Consumer reports, Credit, Creditors, Customers, Dealers, Financial institutions, Identity theft, Investment advisers, Investment companies, Privacy, Red flags, Reporting and recordkeeping requirements, Securities, Security measures, Self-regulatory organizations, Service providers, Transfer agents.

Text of Final Rules

Commodity Futures Trading Commission

For the reasons stated above in the preamble, the Commodity Futures

[210] *See supra* note 8.

[211] Pub. L. 111–203, §§ 1088(a)(8), 1088(a)(10), and § 1088(b), 124 Stat. 1376 (2010).

[212] 15 U.S.C 1681–(e), 1681s(b), 1681s–3 and note, and 1681w(a)(1).

[213] Pub. L. 111–203, §§ 1088(a)(8), 1088(a)(10), 1088(b), 124 Stat. 1376 (2010).

[214] 15 U.S.C. 1681m(e).

[215] 15 U.S.C. 78q and 78w.

[216] 15 U.S.C. 80a–30 and 80a–37.

[217] 15 U.S.C. 80b–4 and 80b–11.

Trading Commission is amending 17 CFR part 162 as follows:

PART 162—PROTECTION OF CONSUMER INFORMATION UNDER THE FAIR CREDIT REPORTING ACT

■ 1. The authority citation for part 162 continues to read as follows:

Authority: Sec. 1088, Pub. L. 111–203; 124 Stat. 1376 (2010).

■ 2. Add subpart C to part 162 read as follows:

Subpart C—Identity Theft Red Flags

Sec.

162.30 Duties regarding the detection, prevention, and mitigation of identity theft.
162.31 [Reserved]
162.32 Duties of card issuers regarding changes of address.

Subpart C—Identity Theft Red Flags

§ 162.30 Duties regarding the detection, prevention, and mitigation of identity theft.

(a) *Scope of this subpart.* This section applies to financial institutions or creditors that are subject to administrative enforcement of the FCRA by the Commission pursuant to Sec. 621(b)(1) of the FCRA, 15 U.S.C. 1681s(b)(1).

(b) *Special definitions for this subpart.* For purposes of this section, and Appendix B to this part, the following definitions apply:

(1) Account means a continuing relationship established by a person with a financial institution or creditor to obtain a product or service for personal, family, household or business purposes. Account includes an extension of credit, such as the purchase of property or services involving a deferred payment.

(2) The term *board of directors* includes:

(i) In the case of a branch or agency of a foreign bank, the managing official in charge of the branch or agency; and

(ii) In the case of any other creditor that does not have a board of directors, a designated senior management employee.

(3) *Covered account* means:

(i) An account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a margin account; and

(ii) Any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation, or litigation risks.

(4) *Credit* has the same meaning in Sec. 603(r)(5) of the FCRA, 15 U.S.C. 1681a(r)(5).

(5) *Creditor* has the same meaning as in 15 U.S.C. 1681m(e)(4), and includes any futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, swap dealer, or major swap participant that regularly extends, renews, or continues credit; regularly arranges for the extension, renewal, or continuation of credit; or in acting as an assignee of an original creditor, participates in the decision to extend, renew, or continue credit.

(6) *Customer* means a person that has a covered account with a financial institution or creditor.

(7) *Financial institution* has the same meaning as in 15 U.S.C. 1681a(t) and includes any futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, swap dealer, or major swap participant that directly or indirectly holds a transaction account belonging to a consumer.

(8) *Identifying information* means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any—

(i) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

(ii) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(iii) Unique electronic identification number, address, or routing code; or

(iv) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

(9) *Identity theft* means a fraud committed or attempted using the identifying information of another person without authority.

(10) *Red Flag* means a pattern, practice, or specific activity that indicates the possible existence of identity theft.

(11) *Service provider* means a person that provides a service directly to the financial institution or creditor.

(c) *Periodic identification of covered accounts.* Each financial institution or creditor must periodically determine whether it offers or maintains covered accounts. As a part of this determination, a financial institution or creditor shall conduct a risk assessment to determine whether it offers or maintains covered accounts described in paragraph (b)(3)(ii) of this section, taking into consideration:

(1) The methods it provides to open its accounts;

(2) The methods it provides to access its accounts; and

(3) Its previous experiences with identity theft.

(d) *Establishment of an Identity Theft Prevention Program*–(1) Program requirement. Each financial institution or creditor that offers or maintains one or more covered accounts must develop and implement a written Identity Theft Prevention Program that is designed to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. The Identity Theft Prevention Program must be appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities.

(2) *Elements of the Identity Theft Prevention Program.* The Identity Theft Prevention Program must include reasonable policies and procedures to:

(i) Identify relevant Red Flags for the covered accounts that the financial institution or creditor offers or maintains, and incorporate those Red Flags into its Identity Theft Prevention Program;

(ii) Detect Red Flags that have been incorporated into the Identity Theft Prevention Program of the financial institution or creditor;

(iii) Respond appropriately to any Red Flags that are detected pursuant to paragraph (d)(2)(ii) of this section to prevent and mitigate identity theft; and

(iv) Ensure the Identity Theft Prevention Program (including the Red Flags determined to be relevant) is updated periodically, to reflect changes in risks to customers and to the safety and soundness of the financial institution or creditor from identity theft.

(e) *Administration of the Identity Theft Prevention Program.* Each financial institution or creditor that is required to implement an Identity Theft Prevention Program must provide for the continued administration of the Identity Theft Prevention Program and must:

(1) Obtain approval of the initial written Identity Theft Prevention Program from either its board of directors or an appropriate committee of the board of directors;

(2) Involve the board of directors, an appropriate committee thereof, or a

designated employee at the level of senior management in the oversight, development, implementation and administration of the Identity Theft Prevention Program;

(3) Train staff, as necessary, to effectively implement the Identity Theft Prevention Program; and

(4) Exercise appropriate and effective oversight of service provider arrangements.

(f) *Guidelines.* Each financial institution or creditor that is required to implement an Identity Theft Prevention Program must consider the guidelines in appendix B of this part and include in its Identity Theft Prevention Program those guidelines that are appropriate.

§ 162.31 [Reserved]

§ 162.32 Duties of card issuers regarding changes of address.

(a) *Scope.* This section applies to a person described in § 162.30(a) that issues a debit or credit card (card issuer).

(b) *Definition of cardholder.* For purposes of this section, a cardholder means a consumer who has been issued a credit or debit card.

(c) *Address validation requirements.* A card issuer must establish and implement reasonable policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a consumer's debit or credit card account and, within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account. Under these circumstances, the card issuer may not issue an additional or replacement card, until, in accordance with its reasonable policies and procedures and for the purpose of assessing the validity of the change of address, the card issuer:

(1)(i) Notifies the cardholder of the request:

(A) At the cardholder's former address; or

(B) By any other means of communication that the card issuer and the cardholder have previously agreed to use; and

(ii) Provides to the cardholder a reasonable means of promptly reporting incorrect address changes; or

(2) Otherwise assesses the validity of the change of address in accordance with the policies and procedures the card issuer has established pursuant to § 162.30.

(d) *Alternative timing of address validation.* A card issuer may satisfy the requirements of paragraph (c) of this section if it validates an address pursuant to the methods in paragraph (c)(1) or (c)(2) of this section when it receives an address change notification, before it receives a request for an additional or replacement card.

(e) *Form of notice.* Any written or electronic notice that the card issuer provides under this paragraph must be clear and conspicuous and provided separately from its regular correspondence with the cardholder.

■ 3. Add Appendix B to part 162 to read as follows:

Appendix B to Part 162—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

Section 162.30 requires each financial institution or creditor that offers or maintains one or more covered accounts, as defined in § 162.30(b)(3), to develop and provide for the continued administration of a written Identity Theft Prevention Program to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. These guidelines are intended to assist financial institutions and creditors in the formulation and maintenance of an Identity Theft Prevention Program that satisfies the requirements of § 162.30.

I. The Identity Theft Prevention Program

In designing its Identity Theft Prevention Program, a financial institution or creditor may incorporate, as appropriate, its existing policies, procedures, and other arrangements that control reasonably foreseeable risks to customers or to the safety and soundness of the financial institution or creditor from identity theft.

II. Identifying Relevant Red Flags

(a) *Risk factors.* A financial institution or creditor should consider the following factors in identifying relevant Red Flags for covered accounts, as appropriate:

(1) The types of covered accounts it offers or maintains;

(2) The methods it provides to open its covered accounts;

(3) The methods it provides to access its covered accounts; and

(4) Its previous experiences with identity theft.

(b) *Sources of Red Flags.* Financial institutions and creditors should incorporate relevant Red Flags from sources such as:

(1) Incidents of identity theft that the financial institution or creditor has experienced;

(2) Methods of identity theft that the financial institution or creditor has identified that reflect changes in identity theft risks; and

(3) Applicable supervisory guidance.

(c) *Categories of Red Flags.* The Identity Theft Prevention Program should include relevant Red Flags from the following categories, as appropriate. Examples of Red Flags from each of these categories are appended as Supplement A to this Appendix B.

(1) Alerts, notifications, or other warnings received from consumer reporting agencies or service providers, such as fraud detection services;

(2) The presentation of suspicious documents;

(3) The presentation of suspicious personal identifying information, such as a suspicious address change;

(4) The unusual use of, or other suspicious activity related to, a covered account; and

(5) Notice from customers, victims of identity theft, law enforcement authorities, or other persons regarding possible identity theft in connection with covered accounts held by the financial institution or creditor.

III. Detecting Red Flags

The Identity Theft Prevention Program's policies and procedures should address the detection of Red Flags in connection with the opening of covered accounts and existing covered accounts, such as by:

(a) Obtaining identifying information about, and verifying the identity of, a person opening a covered account; and

(b) Authenticating customers, monitoring transactions, and verifying the validity of change of address requests, in the case of existing covered accounts.

IV. Preventing and Mitigating Identity Theft

The Identity Theft Prevention Program's policies and procedures should provide for appropriate responses to the Red Flags the financial institution or creditor has detected that are commensurate with the degree of risk posed. In determining an appropriate response, a financial institution or creditor should consider aggravating factors that may heighten the risk of identity theft, such as a data security incident that results in unauthorized access to a customer's account records held by the financial institution or creditor, or third party, or notice that a customer has provided information related to a covered account held by the financial institution or creditor to someone fraudulently claiming to represent the financial institution or creditor or to a fraudulent Internet Web site. Appropriate responses may include the following:

(a) Monitoring a covered account for evidence of identity theft;

(b) Contacting the customer;

(c) Changing any passwords, security codes, or other security devices that permit access to a covered account;

(d) Reopening a covered account with a new account number;

(e) Not opening a new covered account;

(f) Closing an existing covered account;

(g) Not attempting to collect on a covered account or not selling a covered account to a debt collector;

(h) Notifying law enforcement; or

(i) Determining that no response is warranted under the particular circumstances.

V. Updating the Identity Theft Prevention Program

Financial institutions and creditors should update the Identity Theft Prevention Program (including the Red Flags determined to be relevant) periodically, to reflect changes in risks to customers or to the safety and

soundness of the financial institution or creditor from identity theft, based on factors such as:

(a) The experiences of the financial institution or creditor with identity theft;

(b) Changes in methods of identity theft;

(c) Changes in methods to detect, prevent, and mitigate identity theft;

(d) Changes in the types of accounts that the financial institution or creditor offers or maintains; and

(e) Changes in the business arrangements of the financial institution or creditor, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

VI. Methods for Administering the Identity Theft Prevention Program

(a) *Oversight of Identity Theft Prevention Program.* Oversight by the board of directors, an appropriate committee of the board, or a designated senior management employee should include:

(1) Assigning specific responsibility for the Identity Theft Prevention Program's implementation;

(2) Reviewing reports prepared by staff regarding compliance by the financial institution or creditor with § 162.30; and

(3) Approving material changes to the Identity Theft Prevention Program as necessary to address changing identity theft risks.

(b) *Reports.* (1) *In general.* Staff of the financial institution or creditor responsible for development, implementation, and administration of its Identity Theft Prevention Program should report to the board of directors, an appropriate committee of the board, or a designated senior management employee, at least annually, on compliance by the financial institution or creditor with § 162.30.

(2) *Contents of report.* The report should address material matters related to the Identity Theft Prevention Program and evaluate issues such as: The effectiveness of the policies and procedures of the financial institution or creditor in addressing the risk of identity theft in connection with the opening of covered accounts and with respect to existing covered accounts; service provider arrangements; significant incidents involving identity theft and management's response; and recommendations for material changes to the Identity Theft Prevention Program.

(c) *Oversight of service provider arrangements.* Whenever a financial institution or creditor engages a service provider to perform an activity in connection with one or more covered accounts the financial institution or creditor should take steps to ensure that the activity of the service provider is conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft. For example, a financial institution or creditor could require the service provider by contract to have policies and procedures to detect relevant Red Flags that may arise in the performance of the service provider's activities, and either report the Red Flags to the financial institution or creditor, or to take appropriate steps to prevent or mitigate identity theft.

VII. Other Applicable Legal Requirements

Financial institutions and creditors should be mindful of other related legal requirements that may be applicable, such as:

(a) For financial institutions and creditors that are subject to 31 U.S.C. 5318(g), filing a Suspicious Activity Report in accordance with applicable law and regulation;

(b) Implementing any requirements under 15 U.S.C. 1681c-1(h) regarding the circumstances under which credit may be extended when the financial institution or creditor detects a fraud or active duty alert;

(c) Implementing any requirements for furnishers of information to consumer reporting agencies under 15 U.S.C. 1681s-2, for example, to correct or update inaccurate or incomplete information, and to not report information that the furnisher has reasonable cause to believe is inaccurate; and

(d) Complying with the prohibitions in 15 U.S.C. 1681m on the sale, transfer, and placement for collection of certain debts resulting from identity theft.

Supplement A to Appendix B

In addition to incorporating Red Flags from the sources recommended in section II(b) of the Guidelines in Appendix B of this part, each financial institution or creditor may consider incorporating into its Identity Theft Prevention Program, whether singly or in combination, Red Flags from the following illustrative examples in connection with covered accounts:

Alerts, Notifications or Warnings From a Consumer Reporting Agency

1. A fraud or active duty alert is included with a consumer report.

2. A consumer reporting agency provides a notice of credit freeze in response to a request for a consumer report.

3. A consumer reporting agency provides a notice of address discrepancy, as defined in Sec. 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

4. A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, such as:

a. A recent and significant increase in the volume of inquiries;

b. An unusual number of recently established credit relationships;

c. A material change in the use of credit, especially with respect to recently established credit relationships; or

d. An account that was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

Suspicious Documents

5. Documents provided for identification appear to have been altered or forged.

6. The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.

7. Other information on the identification is not consistent with information provided by the person opening a new covered account or customer presenting the identification.

8. Other information on the identification is not consistent with readily accessible information that is on file with the financial institution or creditor, such as a signature card or a recent check.

9. An application appears to have been altered or forged, or gives the appearance of having been destroyed and reassembled.

Suspicious Personal Identifying Information

10. Personal identifying information provided is inconsistent when compared against external information sources used by the financial institution or creditor. For example:

a. The address does not match any address in the consumer report; or

b. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.

11. Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer. For example, there is a lack of correlation between the SSN range and date of birth.

12. Personal identifying information provided is associated with known fraudulent activity as indicated by internal or third-party sources used by the financial institution or creditor. For example:

a. The address on an application is the same as the address provided on a fraudulent application; or

b. The phone number on an application is the same as the number provided on a fraudulent application.

13. Personal identifying information provided is of a type commonly associated with fraudulent activity as indicated by internal or third-party sources used by the financial institution or creditor. For example:

a. The address on an application is fictitious, a mail drop, or a prison; or

b. The phone number is invalid, or is associated with a pager or answering service.

14. The SSN provided is the same as that submitted by other persons opening an account or other customers.

15. The address or telephone number provided is the same as or similar to the address or telephone number submitted by an unusually large number of other persons opening accounts or by other customers.

16. The person opening the covered account or the customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.

17. Personal identifying information provided is not consistent with personal identifying information that is on file with the financial institution or creditor.

18. For financial institutions or creditors that use challenge questions, the person opening the covered account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

Unusual Use of, or Suspicious Activity Related to, the Covered Account

19. Shortly following the notice of a change of address for a covered account, the institution or creditor receives a request for a new, additional, or replacement means of accessing the account or for the addition of an authorized user on the account.

20. A new revolving credit account is used in a manner commonly associated with known patterns of fraud. For example:

a. The majority of available credit is used for cash advances or merchandise that is easily convertible to cash (*e.g.,* electronics equipment or jewelry); or

b. The customer fails to make the first payment or makes an initial payment but no subsequent payments.

21. A covered account is used in a manner that is not consistent with established patterns of activity on the account. There is, for example:

a. Nonpayment when there is no history of late or missed payments;

b. A material increase in the use of available credit;

c. A material change in purchasing or spending patterns;

d. A material change in electronic fund transfer patterns in connection with a deposit account; or

e. A material change in telephone call patterns in connection with a cellular phone account.

22. A covered account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

23. Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer's covered account.

24. The financial institution or creditor is notified that the customer is not receiving paper account statements.

25. The financial institution or creditor is notified of unauthorized charges or transactions in connection with a customer's covered account.

Notice From Customers, Victims of Identity Theft, Law Enforcement Authorities, or Other Persons Regarding Possible Identity Theft in Connection With Covered Accounts Held by the Financial Institution or Creditor

26. The financial institution or creditor is notified by a customer, a victim of identity theft, a law enforcement authority, or any other person that it has opened a fraudulent account for a person engaged in identity theft.

Securities and Exchange Commission

For the reasons stated in the preamble, the Securities and Exchange Commission is amending 17 CFR part 248 as follows:

PART 248—REGULATIONS S–P, S–AM, AND S–ID

■ 4. The authority citation for part 248 is revised to read as follows:

Authority: 15 U.S.C. 78q, 78q-1, 78*o*-4, 78*o*-5, 78w, 78mm, 80a-30, 80a-37, 80b-4, 80b-11, 1681m(e), 1681s(b), 1681s-3 and note, 1681w(a)(1), 6801–6809, and 6825; Pub. L. 111–203, secs. 1088(a)(8), (a)(10), and sec. 1088(b), 124 Stat. 1376 (2010).

■ 5. Revise the heading for part 248 to read as set forth above.

■ 6. Add subpart C to part 248 to read as follows:

Subpart C—Regulation S–ID: Identity Theft Red Flags

Sec.

248.201 Duties regarding the detection, prevention, and mitigation of identity theft.

248.202 Duties of card issuers regarding changes of address.

Appendix A to Subpart C of Part 248—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

Subpart C—Regulation S–ID: Identity Theft Red Flags

§ 248.201 Duties regarding the detection, prevention, and mitigation of identity theft.

(a) *Scope.* This section applies to a *financial institution* or *creditor,* as defined in the Fair Credit Reporting Act (15 U.S.C. 1681), that is:

(1) A broker, dealer or any other person that is registered or required to be registered under the Securities Exchange Act of 1934;

(2) An investment company that is registered or required to be registered under the Investment Company Act of 1940, that has elected to be regulated as a business development company under that Act, or that operates as an employees' securities company under that Act; or

(3) An investment adviser that is registered or required to be registered under the Investment Advisers Act of 1940.

(b) *Definitions.* For purposes of this subpart, and Appendix A of this subpart, the following definitions apply:

(1) *Account* means a continuing relationship established by a person with a financial institution or creditor to obtain a product or service for personal, family, household or business purposes. Account includes a brokerage account, a *mutual fund* account (*i.e.,* an account with an open-end investment company), and an investment advisory account.

(2) The term *board of directors* includes:

(i) In the case of a branch or agency of a foreign financial institution or creditor, the managing official of that branch or agency; and

(ii) In the case of a financial institution or creditor that does not have a board of directors, a designated employee at the level of senior management.

(3) *Covered account* means:

(i) An account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a brokerage account with a broker-dealer or an account maintained by a mutual fund (or its agent) that permits wire transfers or other payments to third parties; and

(ii) Any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation, or litigation risks.

(4) *Credit* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(5) *Creditor* has the same meaning as in 15 U.S.C. 1681m(e)(4).

(6) *Customer* means a person that has a covered account with a financial institution or creditor.

(7) *Financial institution* has the same meaning as in 15 U.S.C. 1681a(t).

(8) *Identifying information* means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any—

(i) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

(ii) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(iii) Unique electronic identification number, address, or routing code; or

(iv) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

(9) *Identity theft* means a fraud committed or attempted using the identifying information of another person without authority.

(10) *Red Flag* means a pattern, practice, or specific activity that indicates the possible existence of identity theft.

(11) *Service provider* means a person that provides a service directly to the financial institution or creditor.

(12) *Other definitions.*

(i) *Broker* has the same meaning as in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)).

(ii) *Commission* means the Securities and Exchange Commission.

(iii) *Dealer* has the same meaning as in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)).

(iv) *Investment adviser* has the same meaning as in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)).

(v) *Investment company* has the same meaning as in section 3 of the

Investment Company Act of 1940 (15 U.S.C. 80a-3), and includes a separate series of the investment company.

(vi) Other terms not defined in this subpart have the same meaning as in the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(c) *Periodic identification of covered accounts.* Each financial institution or creditor must periodically determine whether it offers or maintains covered accounts. As a part of this determination, a financial institution or creditor must conduct a risk assessment to determine whether it offers or maintains covered accounts described in paragraph (b)(3)(ii) of this section, taking into consideration:

(1) The methods it provides to open its accounts;

(2) The methods it provides to access its accounts; and

(3) Its previous experiences with identity theft.

(d) *Establishment of an Identity Theft Prevention Program—*

(1) *Program requirement.* Each financial institution or creditor that offers or maintains one or more covered accounts must develop and implement a written Identity Theft Prevention Program (Program) that is designed to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. The Program must be appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities.

(2) *Elements of the Program.* The Program must include reasonable policies and procedures to:

(i) Identify relevant Red Flags for the covered accounts that the financial institution or creditor offers or maintains, and incorporate those Red Flags into its Program;

(ii) Detect Red Flags that have been incorporated into the Program of the financial institution or creditor;

(iii) Respond appropriately to any Red Flags that are detected pursuant to paragraph (d)(2)(ii) of this section to prevent and mitigate identity theft; and

(iv) Ensure the Program (including the Red Flags determined to be relevant) is updated periodically, to reflect changes in risks to customers and to the safety and soundness of the financial institution or creditor from identity theft.

(e) *Administration of the Program.* Each financial institution or creditor that is required to implement a Program must provide for the continued administration of the Program and must:

(1) Obtain approval of the initial written Program from either its board of directors or an appropriate committee of the board of directors;

(2) Involve the board of directors, an appropriate committee thereof, or a designated employee at the level of senior management in the oversight, development, implementation and administration of the Program;

(3) Train staff, as necessary, to effectively implement the Program; and

(4) Exercise appropriate and effective oversight of service provider arrangements.

(f) *Guidelines.* Each financial institution or creditor that is required to implement a Program must consider the guidelines in Appendix A to this subpart and include in its Program those guidelines that are appropriate.

§ 248.202 Duties of card issuers regarding changes of address.

(a) *Scope.* This section applies to a person described in § 248.201(a) that issues a credit or debit card (card issuer).

(b) *Definitions.* For purposes of this section:

(1) *Cardholder* means a consumer who has been issued a *credit card* or *debit card* as defined in 15 U.S.C. 1681a(r).

(2) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(3) Other terms not defined in this subpart have the same meaning as in the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(c) *Address validation requirements.* A card issuer must establish and implement reasonable written policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a consumer's debit or credit card account and, within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account. Under these circumstances, the card issuer may not issue an additional or replacement card, until, in accordance with its reasonable policies and procedures and for the purpose of assessing the validity of the change of address, the card issuer:

(1)(i) Notifies the cardholder of the request:

(A) At the cardholder's former address; or

(B) By any other means of communication that the card issuer and the cardholder have previously agreed to use; and

(ii) Provides to the cardholder a reasonable means of promptly reporting incorrect address changes; or

(2) Otherwise assesses the validity of the change of address in accordance with the policies and procedures the card issuer has established pursuant to § 248.201.

(d) *Alternative timing of address validation.* A card issuer may satisfy the requirements of paragraph (c) of this section if it validates an address pursuant to the methods in paragraph (c)(1) or (c)(2) of this section when it receives an address change notification, before it receives a request for an additional or replacement card.

(e) *Form of notice.* Any written or electronic notice that the card issuer provides under this paragraph must be clear and conspicuous and be provided separately from its regular correspondence with the cardholder.

Appendix A to Subpart C of Part 248—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

Section 248.201 requires each financial institution and creditor that offers or maintains one or more covered accounts, as defined in § 248.201(b)(3), to develop and provide for the continued administration of a written Program to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. These guidelines are intended to assist financial institutions and creditors in the formulation and maintenance of a Program that satisfies the requirements of § 248.201.

I. The Program

In designing its Program, a financial institution or creditor may incorporate, as appropriate, its existing policies, procedures, and other arrangements that control reasonably foreseeable risks to customers or to the safety and soundness of the financial institution or creditor from identity theft.

II. Identifying Relevant Red Flags

(a) *Risk Factors.* A financial institution or creditor should consider the following factors in identifying relevant Red Flags for covered accounts, as appropriate:

(1) The types of covered accounts it offers or maintains;

(2) The methods it provides to open its covered accounts;

(3) The methods it provides to access its covered accounts; and

(4) Its previous experiences with identity theft.

(b) *Sources of Red Flags.* Financial institutions and creditors should incorporate relevant Red Flags from sources such as:

(1) Incidents of identity theft that the financial institution or creditor has experienced;

(2) Methods of identity theft that the financial institution or creditor has identified that reflect changes in identity theft risks; and

(3) Applicable regulatory guidance.

(c) *Categories of Red Flags.* The Program should include relevant Red Flags from the following categories, as appropriate. Examples of Red Flags from each of these categories are appended as Supplement A to this Appendix A.

(1) Alerts, notifications, or other warnings received from consumer reporting agencies or service providers, such as fraud detection services;

(2) The presentation of suspicious documents;

(3) The presentation of suspicious personal identifying information, such as a suspicious address change;

(4) The unusual use of, or other suspicious activity related to, a covered account; and

(5) Notice from customers, victims of identity theft, law enforcement authorities, or other persons regarding possible identity theft in connection with covered accounts held by the financial institution or creditor.

III. Detecting Red Flags

The Program's policies and procedures should address the detection of Red Flags in connection with the opening of covered accounts and existing covered accounts, such as by:

(a) Obtaining identifying information about, and verifying the identity of, a person opening a covered account, for example, using the policies and procedures regarding identification and verification set forth in the Customer Identification Program rules implementing 31 U.S.C. 5318(*l*) (31 CFR 1023.220 (broker-dealers) and 1024.220 (mutual funds)); and

(b) Authenticating customers, monitoring transactions, and verifying the validity of change of address requests, in the case of existing covered accounts.

IV. Preventing and Mitigating Identity Theft

The Program's policies and procedures should provide for appropriate responses to the Red Flags the financial institution or creditor has detected that are commensurate with the degree of risk posed. In determining an appropriate response, a financial institution or creditor should consider aggravating factors that may heighten the risk of identity theft, such as a data security incident that results in unauthorized access to a customer's account records held by the financial institution, creditor, or third party, or notice that a customer has provided information related to a covered account held by the financial institution or creditor to someone fraudulently claiming to represent the financial institution or creditor or to a fraudulent Web site. Appropriate responses may include the following:

(a) Monitoring a covered account for evidence of identity theft;

(b) Contacting the customer;

(c) Changing any passwords, security codes, or other security devices that permit access to a covered account;

(d) Reopening a covered account with a new account number;

(e) Not opening a new covered account;

(f) Closing an existing covered account;

(g) Not attempting to collect on a covered account or not selling a covered account to a debt collector;

(h) Notifying law enforcement; or

(i) Determining that no response is warranted under the particular circumstances.

V. Updating the Program

Financial institutions and creditors should update the Program (including the Red Flags determined to be relevant) periodically, to reflect changes in risks to customers or to the safety and soundness of the financial institution or creditor from identity theft, based on factors such as:

(a) The experiences of the financial institution or creditor with identity theft;

(b) Changes in methods of identity theft;

(c) Changes in methods to detect, prevent, and mitigate identity theft;

(d) Changes in the types of accounts that the financial institution or creditor offers or maintains; and

(e) Changes in the business arrangements of the financial institution or creditor, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

VI. Methods for Administering the Program

(a) *Oversight of Program.* Oversight by the board of directors, an appropriate committee of the board, or a designated employee at the level of senior management should include:

(1) Assigning specific responsibility for the Program's implementation;

(2) Reviewing reports prepared by staff regarding compliance by the financial institution or creditor with § 248.201; and

(3) Approving material changes to the Program as necessary to address changing identity theft risks.

(b) *Reports.*

(1) *In general.* Staff of the financial institution or creditor responsible for development, implementation, and administration of its Program should report to the board of directors, an appropriate committee of the board, or a designated employee at the level of senior management, at least annually, on compliance by the financial institution or creditor with § 248.201.

(2) *Contents of report.* The report should address material matters related to the Program and evaluate issues such as: The effectiveness of the policies and procedures of the financial institution or creditor in addressing the risk of identity theft in connection with the opening of covered accounts and with respect to existing covered accounts; service provider arrangements; significant incidents involving identity theft and management's response; and recommendations for material changes to the Program.

(c) *Oversight of service provider arrangements.* Whenever a financial institution or creditor engages a service provider to perform an activity in connection with one or more covered accounts the financial institution or creditor should take steps to ensure that the activity of the service provider is conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft. For example, a financial institution or creditor could require the service provider by contract to have policies and procedures to detect relevant Red Flags that may arise in the performance of the service provider's activities, and either report the Red Flags to the financial institution or creditor, or to take appropriate steps to prevent or mitigate identity theft.

VII. Other Applicable Legal Requirements

Financial institutions and creditors should be mindful of other related legal requirements that may be applicable, such as:

(a) For financial institutions and creditors that are subject to 31 U.S.C. 5318(g), filing a Suspicious Activity Report in accordance with applicable law and regulation;

(b) Implementing any requirements under 15 U.S.C. 1681c-1(h) regarding the circumstances under which credit may be extended when the financial institution or creditor detects a fraud or active duty alert;

(c) Implementing any requirements for furnishers of information to consumer reporting agencies under 15 U.S.C. 1681s-2, for example, to correct or update inaccurate or incomplete information, and to not report information that the furnisher has reasonable cause to believe is inaccurate; and

(d) Complying with the prohibitions in 15 U.S.C. 1681m on the sale, transfer, and placement for collection of certain debts resulting from identity theft.

Supplement A to Appendix A

In addition to incorporating Red Flags from the sources recommended in section II.b. of the Guidelines in Appendix A to this subpart, each financial institution or creditor may consider incorporating into its Program, whether singly or in combination, Red Flags from the following illustrative examples in connection with covered accounts:

Alerts, Notifications or Warnings From a Consumer Reporting Agency

1. A fraud or active duty alert is included with a consumer report.

2. A consumer reporting agency provides a notice of credit freeze in response to a request for a consumer report.

3. A consumer reporting agency provides a notice of address discrepancy, as referenced in Sec. 605(h) of the Fair Credit Reporting Act (15 U.S.C. 1681c(h)).

4. A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, such as:

a. A recent and significant increase in the volume of inquiries;

b. An unusual number of recently established credit relationships;

c. A material change in the use of credit, especially with respect to recently established credit relationships; or

d. An account that was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

Suspicious Documents

5. Documents provided for identification appear to have been altered or forged.

6. The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.

7. Other information on the identification is not consistent with information provided

by the person opening a new covered account or customer presenting the identification.

8. Other information on the identification is not consistent with readily accessible information that is on file with the financial institution or creditor, such as a signature card or a recent check.

9. An application appears to have been altered or forged, or gives the appearance of having been destroyed and reassembled.

Suspicious Personal Identifying Information

10. Personal identifying information provided is inconsistent when compared against external information sources used by the financial institution or creditor. For example:

a. The address does not match any address in the consumer report; or

b. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.

11. Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer. For example, there is a lack of correlation between the SSN range and date of birth.

12. Personal identifying information provided is associated with known fraudulent activity as indicated by internal or third-party sources used by the financial institution or creditor. For example:

a. The address on an application is the same as the address provided on a fraudulent application; or

b. The phone number on an application is the same as the number provided on a fraudulent application.

13. Personal identifying information provided is of a type commonly associated with fraudulent activity as indicated by internal or third-party sources used by the financial institution or creditor. For example:

a. The address on an application is fictitious, a mail drop, or a prison; or

b. The phone number is invalid, or is associated with a pager or answering service.

14. The SSN provided is the same as that submitted by other persons opening an account or other customers.

15. The address or telephone number provided is the same as or similar to the address or telephone number submitted by an unusually large number of other persons opening accounts or by other customers.

16. The person opening the covered account or the customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.

17. Personal identifying information provided is not consistent with personal identifying information that is on file with the financial institution or creditor.

18. For financial institutions and creditors that use challenge questions, the person opening the covered account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

Unusual Use of, or Suspicious Activity Related to, the Covered Account

19. Shortly following the notice of a change of address for a covered account, the institution or creditor receives a request for a new, additional, or replacement means of accessing the account or for the addition of an authorized user on the account.

20. A covered account is used in a manner that is not consistent with established patterns of activity on the account. There is, for example:

a. Nonpayment when there is no history of late or missed payments;

b. A material increase in the use of available credit;

c. A material change in purchasing or spending patterns; or

d. A material change in electronic fund transfer patterns in connection with a deposit account.

21. A covered account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

22. Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer's covered account.

23. The financial institution or creditor is notified that the customer is not receiving paper account statements.

24. The financial institution or creditor is notified of unauthorized charges or transactions in connection with a customer's covered account.

Notice From Customers, Victims of Identity Theft, Law Enforcement Authorities, or Other Persons Regarding Possible Identity Theft in Connection With Covered Accounts Held by the Financial Institution or Creditor

25. The financial institution or creditor is notified by a customer, a victim of identity theft, a law enforcement authority, or any other person that it has opened a fraudulent account for a person engaged in identity theft.

Dated: April 10, 2013.

By the Commodity Futures Trading Commission.

Melissa Jurgens,

Secretary of the Commodity Futures Trading Commission.

Dated: April 10, 2013

By the Securities and Exchange Commission.

Elizabeth M. Murphy,

Secretary of the Securities and Exchange Commission.

[FR Doc. 2013–08830 Filed 4–18–13; 8:45 am]

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FEDERAL REGISTER

Vol. 78 Friday,
No. 76 April 19, 2013

Part III

The President

Proclamation 8958—Honoring the Victims of the Tragedy in Boston, Massachusetts

Federal Register
Vol. 78, No. 76
Friday, April 19, 2013

Presidential Documents

Title 3—

The President

Proclamation 8958 of April 16, 2013

Honoring the Victims of the Tragedy in Boston, Massachusetts

By the President of the United States of America

A Proclamation

As a mark of respect for the victims of the senseless acts of violence perpetrated on April 15, 2013, in Boston, Massachusetts, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, April 20, 2013. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of April, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2013–09477
Filed 4–18–13; 11:15 am]
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