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

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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2013–BT–STD–0020]

RIN 1904–AC98

Energy Conservation Program: Energy Conservation Standards for Residential Clothes Dryers and Room Air Conditioners

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: This final rule corrects the energy conservation standards for room air conditioners. In the direct final rule establishing amended energy conservation standards for residential clothes dryers and room air conditioners, published in the **Federal Register** on April 21, 2011, and the subsequent notices of effective date and compliance dates for the direct final rule and amendment of compliance dates, published on August 24, 2011, DOE erroneously specified the maximum cooling capacity for product class 5a for room air conditioners without reverse cycle and with louvered sides as 24,999 British thermal units per hour (Btu/h), and the minimum cooling capacity for product class 5b for room air conditioners without reverse cycle and with louvered sides as 25,000 Btu/h, rather than 27,999 Btu/h and 28,000 Btu/h, respectively. Additionally, DOE is fixing a printing error in the codification of the standards table for product classes 5a and 5b and 8a and 8b.

DATES: The effective date of this rule is August 15, 2013. Compliance with the standards established for room air conditioners in today's final rule is June 1, 2014.

ADDRESSES: The docket for this rulemaking is available for review at *www.regulations.gov/#!docketDetail;D=EERE–2013–BT–STD–0020.* The docket for the direct final rule establishing the standards for room air conditioners is also available for review at regulations.gov, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7463. Email: *Stephen.Witkowski@ee.doe.gov.*

James Silvestro, Esq., U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–4224. Email: *James.Silvestro@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE published a direct final rule to establish amended energy conservation standards for residential clothes dryers and room air conditioners on April 21, 2011. 76 FR 22454.

EPCA (42 U.S.C. 6291 *et seq.*), as amended, grants DOE authority to issue a final rule (hereinafter referred to as a ''direct final rule'') establishing an energy conservation standard on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary, which contains recommendations with respect to an energy conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o). 42 U.S.C. 6295(p)(4). EPCA requires a notice of proposed rulemaking (NOPR) that proposes an identical energy conservation standard to be published simultaneously with the direct final rule. *Id.* A public comment period of at least 110 days must be provided. *Id.* Not later than 120 days after issuance of the direct final rule, if one or more adverse comments or an alternative joint recommendation are received relating to the direct final rule, the Secretary must determine whether the comments or alternative recommendation may provide a reasonable basis for withdrawal under 42 U.S.C. 6295(o) or other applicable law. *Id.* If the Secretary makes such a determination, DOE must withdraw the direct final rule and proceed with the simultaneously published notice of proposed rulemaking. *Id.* DOE must publish in the **Federal Register** the reason why the direct final rule was withdrawn. Id.

During the rulemaking proceeding to develop amended standards for residential clothes dryers and room air conditioners, DOE received the ''Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances'' (the ''Joint Petition''), a comment submitted by groups representing manufacturers (the Association of Home Appliance Manufacturers (AHAM), Whirlpool Corporation (Whirlpool), General Electric Company (GE), Electrolux, LG Electronics, Inc. (LG), BSH Home Appliances (BSH), Alliance Laundry Systems (ALS), Viking Range, Sub-Zero Wolf, Friedrich A/C, U-Line, Samsung, Sharp Electronics, Miele, Heat Controller, AGA Marvel, Brown Stove, Haier, Fagor America, Airwell Group, Arcelik, Fisher & Paykel, Scotsman Ice, Indesit, Kuppersbusch, Kelon, and DeLonghi); energy and environmental advocates (American Council for an Energy Efficient Economy (ACEEE), Appliance Standards Awareness Project (ASAP), Natural Resources Defense Council (NRDC), Alliance to Save Energy (ASE), Alliance for Water Efficiency (AWE), Northwest Power and Conservation Council (NPCC), and Northeast Energy Efficiency Partnerships (NEEP)); and consumer groups (Consumer Federation of America (CFA) and the National Consumer Law Center (NCLC))

(collectively, the ''Joint Petitioners''). This collective set of comments, which DOE refers to in this notice as the ''Joint Petition'' [1] or ''Consensus Agreement'' recommended specific energy conservation standards for residential clothes dryers and room air conditioners that, in the Joint Petitioners' view, satisfied the EPCA requirements in 42 U.S.C. 6295(o). The Joint Petition also set forth compliance dates for these recommended standards of June 1, 2014 (room air conditioners) and January 1, 2015 (clothes dryers).

As discussed in the direct final rule, DOE determined that the relevant criteria under 42 U.S.C. 6295(o) were satisfied and adopted the amended energy conservation standards for clothes dryers and room air conditioners through the direct final rule, as authorized by 42 U.S.C. (p)(4). 76 FR 22454 (April 21, 2011). After considering comments received, DOE subsequently published a document in the **Federal Register** confirming adoption of the standards set forth in the direct final rule and announcing the effective date of the direct final rule. 76 FR 52856 (Aug. 24, 2011).

In a NOPR published in the **Federal Register** on April 8, 2013, DOE proposed to correct certain room air conditioner product class definitions that were inadvertently different than those that were provided in the Joint Petition and which were the basis of DOE's analysis for the previous final rules. 78 FR 20842. Specifically, DOE proposed to correct the product class definitions for room air conditioners without reverse cycle and with louvered sides as follows:

Product class	Definition
5a	Without reverse cycle, with louvered sides, and 20,000 to 27,999 Btu/h.
5b	Without reverse cycle, with louvered sides, and 28,000 Btu/h or more.

DOE received two comments in response to the April 8, 2013 NOPR. Both the comment submitted by AHAM and the comment submitted jointly by ASAP, ASE, ACEEE, and NRDC (collectively, the ''Joint Commenters'') were supportive of the proposed revisions to correct the product class definitions, such that the revised definitions are the same as those put forth in the Joint Petition. (AHAM, No. 2 at pp. 1–2; [2] Joint Commenters, No. 3 at p. 1) DOE adopts this correction to the product class definitions in today's final rule.

Additionally, DOE is fixing a printing error in the codification of the standards table for product classes 5a and 5b and 8a and 8b. The direct final rule that was published in the **Federal Register** on April 21, 2011, showed, consistent with the Joint Petition, separate, but identical energy conservation standard levels for both product classes 5a and 5b and 8a and 8b. 76 FR 22454. However, in codification of the table, the energy efficiency ratio, effective from Oct. 1, 2000 to May 31, 2014, for product class 5a was combined with the ratio for product class 5b and the energy efficiency ratio, effective from Oct. 1, 2000 to May 31, 2014, for product class 8a was combined with the energy efficiency ratio for product class 8b, which resulted in a formatting error when published in the **Federal Register**. Today's rule corrects that error by showing the standards for product classes 5a and 5b and 8a and 8b as separate cells in the table.

Procedural Issues and Regulatory Review

The regulatory reviews conducted for this rulemaking are identical to those set forth in the DOE's direct final rule published on April 21, 2011 establishing amended energy conservation standards. 76 FR 22454. The amendments in the direct final rule become effective June 1, 2014.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on July 10, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends part 430 of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.32 is amended by revising paragraph (b) to read as follows:

§ 430.32 Energy and water conservation standards and their effective dates.

* * * * *

(b) *Room air conditioners.*

Product class	Energy efficiency ratio, effective from Oct. 1, 2000 to May 31, 2014	Combined energy efficiency ratio, effective as of June 1, 2014
1. Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	9.7	11.0
2. Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	9.7	11.0
3. Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	9.8	10.9
4. Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	9.7	10.7
5a. Without reverse cycle, with louvered sides, and 20,000 to 27,999 Btu/h	8.5	9.4
5b. Without reverse cycle, with louvered sides, and 28,000 Btu/h or more	8.5	9.0
6. Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	9.0	10.0
7. Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	9.0	10.0
8a. Without reverse cycle, without louvered sides, and 8,000 to 10,999 Btu/h	8.5	9.6
8b. Without reverse cycle, without louvered sides, and 11,000 to 13,999 Btu/h	8.5	9.5
9. Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	8.5	9.3
10. Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	8.5	9.4

[1] DOE Docket No. EERE–2007–BT–STD–0010, Comment 35.

[2] A notation in the form ''AHAM, No. 2 at pp. 1–2'' identifies a written comment: (1) Made by the Association of Home Appliance Manufacturers; (2) recorded in document number 2 that is filed in the docket of the residential clothes dryer and room air conditioner energy conservation standards rulemaking (Docket No. EERE–2013–BT–STD–0020) and available for review at *www.regulations.gov;* and (3) that appears on pages 1–2.

Product class	Energy efficiency ratio, effective from Oct. 1, 2000 to May 31, 2014	Combined energy efficiency ratio, effective as of June 1, 2014
11. With reverse cycle, with louvered sides, and less than 20,000 Btu/h	9.0	9.8
12. With reverse cycle, without louvered sides, and less than 14,000 Btu/h	8.5	9.3
13. With reverse cycle, with louvered sides, and 20,000 Btu/h or more	8.5	9.3
14. With reverse cycle, without louvered sides, and 14,000 Btu/h or more	8.0	8.7
15. Casement-Only	8.7	9.5
16. Casement-Slider	9.5	10.4

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[FR Doc. 2013–17005 Filed 7–15–13; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 125

RIN 3245–AG22

Small Business Subcontracting

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending its regulations governing small business subcontracting to implement provisions of the Small Business Jobs Act of 2010. In particular, this rule adds a provision providing that for a ''covered contract'' (a contract for which a small business subcontracting plan is required), a prime contractor must notify the contracting officer in writing whenever the prime contractor does not utilize a small business subcontractor used in preparing its bid or proposal during contract performance. This rule also adds a provision requiring a prime contractor to notify a contracting officer in writing whenever the prime contractor reduces payments to a small business subcontractor or when payments to a small business subcontractor are 90 days or more past due. In addition, this rule clarifies that the contracting officer is responsible for monitoring and evaluating small business subcontracting plan performance. The rule also clarifies which subcontracts must be included in subcontracting data reporting, which subcontracts should be excluded, and the way subcontracting data is reported. The rule also makes changes to update its subcontracting regulations, including changing subcontracting plan thresholds and referencing the electronic subcontracting reporting system (eSRS). Further, the rule adds a provision to the regulations which addresses subcontracting plan requirements and credit towards subcontracting goals in connection with multiple award multi-agency, Federal Supply Schedule, Multiple Award Schedule and government-wide acquisition indefinite delivery, indefinite quantity contracts.

DATES: *Effective Date:* This rule will be effective August 15, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street SW., 8th Floor, Washington, DC 20416, (202) 205–7322, *dean.koppel@sba.gov.*

SUPPLEMENTARY INFORMATION: On October 5, 2011, SBA published in the **Federal Register** a proposed rule to implement provisions of the Jobs Act which pertain to small business subcontracting. 76 FR 61626. Section 1321 of the Jobs Act requires the SBA Administrator, in consultation with the Administrator of the Office of Federal Procurement Policy, to publish regulations establishing policies for subcontracting compliance, including assignment of compliance responsibilities between contracting offices, small business offices, and program offices.

The proposed rule called for a 60-day comment period, with comments to be received by SBA by December 5, 2011. SBA published a notice in the **Federal Register** on December 1, 2011, reopening the comment period for an additional 30 days, until to January 6, 2012. 76 FR 74749.

The proposed rule contained changes to SBA's size regulations (Part 121) and the regulations governing SBA's government contracting programs (Part 125). SBA received 105 written comments during the comment period. Many of these comments were lengthy and discussed numerous proposed amendments. SBA has made changes in this final rule in response to comments received to its notice of proposed rulemaking. With the exception of comments which are beyond the scope of this rule, or which did not set forth any rationale or make suggestions, SBA discusses and responds fully to all of the comments below.

Summary of Comments and SBA's Responses

Part 121

SBA received one comment on proposed § 121.404(g)(3)(ii), which added a provision permitting a contracting officer to require a subcontracting plan if a prime contractor's size status changes from small to other than small as a result of a size recertification. The commenter recommended adding that size status at time of contract award controls subcontracting plan requirements or clarifying how a subcontracting plan must change if a former small business subcontractor reclassifies. Section 121.404(g)(3)(ii) provides that recertification does not change the terms and conditions of a contract, including the requirement for a subcontracting plan, and otherwise size is determined at time of offer and will not change during performance. However, under the final rule a contracting officer has the discretion to require a subcontracting plan if size status changes as a result of recertification.

Part 125

The proposed rule revised § 125.3(a) to update the subcontracting plan thresholds, which were increased pursuant to the government-wide procurement program inflationary adjustments required by Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Public Law 108–375; *see also* 75 FR 53129 (Aug. 30, 2010). One commenter recommended removing the reference to ''a public facility'' in § 125.3(a) because the term is not defined in the Code of Federal Regulations. SBA does not adopt this comment. It is up to the contracting officer to determine whether the term applies to a particular acquisition. Further, this term comes from Section 8(d) of the Small Business Act, so removing it would require legislative action.

The proposed rule added § 125.3(a)(1) to define subcontract in order to clarify which subcontracts must be included when reporting on small business subcontracting performance. SBA

received a number of comments on proposed § 125.3(a)(1). Many commenters supported SBA's definition of a subcontract.

One commenter requested confirmation that the new definition of subcontract will be coordinated with existing definitions at Federal Acquisition Regulation (FAR) 19.701 and FAR 52.219–9. SBA agrees that it is important for SBA's rules and the FAR to be consistent and notes that its rules will also be incorporated in the FAR after SBA's regulations are finalized.

One commenter requested that SBA clarify how subcontracts to and by affiliates will be treated. SBA's long-standing policy has been to count subcontracts by first-tier affiliates as subcontracts of the prime contractor. SBA has amended § 125.3(a)(1) to make this clear. SBA notes that the Subcontracting Report for Individual Contracts (ISR) (SF–294) and the Summary Subcontract Report (formerly the SF–295, now discontinued) and their electronic equivalents in eSRS specifically state that subcontracts to affiliates are not included in the individual and summary reports.

One commenter recommended excluding bonds and all insurance from the definition of subcontract. The commenter noted that in the construction industry, prime contractors generally have established and ongoing relationships with sureties and insurance providers, and bond and insurance requirements are generally met through these relationships, so no real opportunity for small business exists in those areas. The commenter also noted that the government's requirements for bonds and insurance—specifically for construction contracts—normally preclude the use of small business concerns. Although SBA is sympathetic to this comment, SBA would need more information on the participation of small business concerns in these industries before excluding bonds and all insurance from the subcontracting base government-wide.

One commenter opposed excluding philanthropic contributions from the definition of subcontract. The commenter noted that on Department of Defense contracts, services provided to the prime contractor by Historically Black Colleges and Universities (HBCUs) are generally funded by a donation or grant rather than charged, and excluding such donations/grants undermines a prime contractor's ability to support such HBCUs. SBA disagrees. It is unclear how a philanthropic contribution could be counted as a subcontract and charged to the government.

One commenter recommended requiring transparency in calculating the subcontracting base, arguing that the prime contractor has too much discretion and there are no checks in place. SBA does not concur. By statute, the contracting officer is responsible for negotiating a subcontracting plan that maximizes small business participation and for monitoring performance. SBA and contracting agencies also monitor subcontracting plan compliance through compliance reviews.

One commenter recommended requiring discrete subcontracting reports, rather than comprehensive reports, for all prime contracts of $1 million or more. SBA notes that comprehensive plans are authorized by statute and that commercial plans are authorized by the FAR. In addition, the thresholds for subcontracting plan reports are set by statute.

Several commenters opposed the exclusion of utilities from the subcontracting base. One commenter argued that electricity and other utilities should be included in the subcontracting base because small business concerns may be licensed or otherwise equipped to provide these services. Another commenter suggested that the exclusion should be more specifically defined to exclude services that are not required municipal services such as those required under local franchise agreements. SBA has amended the rule to exclude utilities where no competition exists and thus no small business concern could have an opportunity to receive a subcontract. Specifically, SBA has amended the definition to exclude ''utilities such as electricity, water, sewer and other services purchased from a municipality or solely authorized by the municipality to provide those services in a particular geographical region.'' Another commenter argued that not including utilities in the subcontracting base causes an overstatement of the percentage of contracts given to small business. Subcontracting plans are required to the extent subcontracting possibilities exist. As stated above, SBA has amended the rule to clarify that utilities are only excluded to the extent there is no choice of provider.

One commenter recommended clarifying that the supplies or services provided under the agreement must be specific to the particular prime contract requirements in order for the agreement to be considered a subcontract. Specifically, the commenter believed it would be useful to clarify that an agreement to obtain supplies or services that are in the nature of commercial items and are used to support both commercial and government contracts would not be considered a ''subcontract.'' The commenter is further requesting clarification concerning whether subcontracting flowdown requirements apply to certain types of contracts. As the commenter notes, certain vendor agreements must be included in the subcontracting base for commercial plans because those plans are required to consider indirect costs. Further, FAR 52.219–9(j) addresses flowdown requirements in the context of commercial items. Consequently, we have declined to address this matter in the final rule.

One commenter recommended clarifying if the list of exclusions is exhaustive or illustrative. SBA agrees and has amended the rule to state that the list ''includes but is not limited to.''

One commenter recommended clarifying whether vendors of commercial items are subcontractors for flow-down clauses. SBA has clarified that flow-down clauses apply to commercial item vendors, except when the subcontract is for a commercial item and the prime contract contains FAR clause 52.212–5 or 52.244–6. Under this scenario, the prime contractor is required to flow down FAR clause 52.219–8 but not the clause at 52.219–9; accordingly, no subcontracting plan is required from other than small subcontractors at any tier (*see* Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, and FAR 52.219–9(j), 52.212–5(e), and 52.244–6(c)).

One commenter requested clarification of whether contracts in connection with foreign military sales are subject to the subcontracting plan requirements of the Small Business Act and the FAR. Based on the proposed definition, which SBA is adopting, contracts in connection with foreign military sales are subject to the subcontracting plan requirements, unless this requirement is waived in accordance with the procuring agency's regulations. Specific questions concerning specific contracts should be directed to the contracting officer.

The proposed rule added § 125.3(a)(2) to explicitly authorize contracting officers to establish additional subcontracting goals in terms of total contract dollars. As explained in the proposed rule, contracting officers are already doing this, and when a prime contractor enters its subcontracting achievements (i.e., dollars) into eSRS, the system automatically calculates the percentage by both methods—that is, as a percentage of total subcontracting and as a percentage of total contract dollars. Thus, the contracting officer has the ability to compare achievements against

the total contract dollars if desired. Several commenters supported SBA's proposal to allow contracting officers to set additional subcontracting goals in terms of total dollars.

One commenter opposed proposed § 125.3(a)(2), arguing that the change would result in the illusion that there are more subcontracting opportunities for small businesses than in fact exist. The commenter argued under some contracts more than 70% of total contract dollars are spent on personnel expenses related to salary and benefits, which are costs for which there are no subcontracting opportunities. However, the commenter noted that the contracting officer has the ability to compare achievements either way (percent of subcontracting dollars or percent of total contract dollars) because eSRS automatically calculates percentage by both methods when prime contractors report achievements in whole dollars. Thus, SBA believes that contracting officers should have the discretion to set goals in terms of total contract dollars. Some contracting officers already set current goals in terms of total contract dollars, and as the commenter notes, the calculation is already available in eSRS. Contracting officers need to set realistic goals, taking into account the opportunity for subcontracting and the percentage of dollar value that accrues to personnel expenses. However, subcontracts for labor are counted towards the total dollar contract value. SBA does not want to limit contracting officer flexibility that benefits small businesses.

One commenter questioned whether under the amended rule, small business goals set in terms of percentage of subcontracting dollars would be evaluated in terms of percentage of total contract dollars. SBA notes that the goals still must be set in terms of percentage of subcontracting dollars, but can be set in terms of total contract dollars as well.

The proposed rule added § 125.3(a)(3) to define a history of unjustified untimely or reduced payments as three incidents within a 12 month period. SBA invited comments on the proposed definition, alternatives with supporting rationales, and/or comments on whether such judgments should be left to the discretion of the contracting officer. SBA received several comments on the proposed definition of a history of unjustified late payment. Some commenters recommended that the definition should look for patterns, as opposed to specific numbers. Others recommended defining it based on percentages, and others recommend establishing a dollar value threshold. Others asked SBA to define when a payment that is late is unjustified. Some commenters argued that it should be left in the discretion of the contracting officer.

SBA has decided to retain the proposed definition of three payments in a twelve month period that are more than 90 days past due, after performance has occurred and the government has paid the prime contractor, where the late payment is unjustified. If a payment is late but it is justified in the opinion of the prime contractor, e.g., unacceptable or incomplete performance, then the late payment would be justified, and there would be no requirement to notify the contracting officer. On the other hand, if satisfactory performance by the subcontractor has occurred, the prime contractor has been paid by the government, and payment to the subcontractor is more than 90 days past due, the prime contractor owes the contracting officer an explanation, regardless of the dollar value of the contract. The statute stipulates that payment to a subcontractor after 90 days is unacceptable unless justified. Further, looking for patterns or percentages would overly complicate a fairly simple principle: if satisfactory performance has occurred and the prime has been paid, subcontractors must be paid within 90 days.

Additional Responsibilities of Large Prime Contractors

The proposed rule amended the introductory text of § 125.3(c)(1) to reflect the updated subcontracting plan thresholds, as discussed above. One commenter opposed changing the thresholds, arguing that the higher the thresholds, the less small business participation will occur because small businesses are not required to submit subcontracting plans. However, the thresholds are set by statute, and subcontracting plans require percentages that are realistic based on subcontracting opportunity.

One commenter recommended amending § 125.3(c)(1)(i) to require prime contractors to give at least 30% of contracts to small business subcontractors. SBA disagrees. Subcontracting plans are established based on small business subcontracting opportunity. It would be inefficient and unfair to establish thresholds that would apply to all contracts government-wide.

SBA proposed to amend § 125.3(c)(1)(iii) to provide that a prime contractor may not prohibit a subcontractor from discussing with the contracting officer any material matter pertaining to payment or utilization. Some commenters argued that the proposed change conflicts with the principle of privity of contract. SBA disagrees. The contracting officer will not take any action with respect to the subcontractor. Rather, the contracting officer can take action with respect to the prime contractor's performance, which is the purpose of the statutory provisions. Other commenters argued that the contracting officer will become the entry point for contract disputes between primes and subcontractors. SBA notes that the contracting officer cannot be a party to disputes between subcontractors and prime contractors but must be involved in evaluating prime contractors' performance.

SBA received several comments on proposed § 125.3(c)(1)(iv), which provided that when preparing its individual subcontracting plan, a prime contractor must decide whether or not to include indirect costs in the subcontracting base, for both goaling and reporting purposes. Some commenters argued that this change would be an administrative burden on contractors and would not further the goals of the program. In proposing this rule, SBA's intent was to memorialize current practice. As explained in the proposed rule, indirect costs must be included in a commercial plan to ensure comparability between goals and achievements because companies with commercial plans file only a summary report, not an individual report. All contractors must include indirect costs in their summary subcontracting reports.

As discussed in the proposed rule, § 125.3(c)(1)(iv) is being amended to reflect current practice.

One commenter recommended providing a specific definition for ''indirect cost'' as it pertains to small business subcontracting plans and eSRS reporting. The commenter noted that the definition in FAR Part 2 is vague and does not work well in this context. SBA disagrees. For consistency, SBA uses the FAR definition. SBA notes that requests to change the FAR should be directed to the FAR Council.

SBA proposed to add § 125.3(c)(1)(v), providing that large prime contractors are responsible for assigning NAICS codes and corresponding size standards to subcontracts. In response to comments, SBA has amended proposed § 125.3(c)(1)(v) to clarify that in assigning NAICS codes to subcontracts, prime contractors should use the guidance in SBA's regulations governing contracting officers' assignment of NAICS codes to prime contractors, 13 CFR 121.410. In addition, SBA has amended the regulation to clarify that prime contractors may rely on

subcontractors' electronic representations and certifications made in the System for Award Management (SAM) (or any successor system), provided the subcontract contains a clause similar to current FAR clause 52.204–8(d) which clearly provides that the subcontractor is representing its size or socioeconomic at the time of offer for the subcontract. However, SBA notes that SAM was created for firms that want to do business with the government as prime contractors, and some subcontractors may not want to enter data into SAM. As such, SBA has also clarified that a prime contractor (or subcontractor) may not require the use of SAM (or a successor system) for size or socioeconomic representation for subcontracts.

One commenter recommended clarifying whether § 125.3(c)(1)(v) applies to all subcontractors or only to certified small business subcontractors. The commenter also inquired as to whether a list of applicable NAICS codes would be provided at the time of proposal request. The assignment of a NAICS code and size standard is required for subcontracts, since that forms the basis for the prime contractor's claim that it awarded a subcontract to a small business or an other than small business. The prime contractor must assign a NAICS code to the solicitation, so that the subcontractor can make a size or socioeconomic representation in connection with that offer for that subcontract. Size or socioeconomic status is determined as of the date of offer for the subcontract.

The proposed rule amended redesignated § 125.3(c)(1)(vi) (former § 125.3(c)(1)(iii)) to provide that all contractors whose reports are rejected, including those with individual contract plans and commercial plans as defined in FAR 19.701, will be required to make the necessary corrections and resubmit their reports within 30 days of receiving the notice of rejection.

One commenter recommended that the rule refer to eSRS ''or the successor system,'' arguing that eSRS is being replaced by SAM. In response to the comment, SBA has added clarifying language to the regulation.

One commenter recommended allowing 60 days to correct a report. SBA disagrees. Thirty days should be sufficient. One of the reasons for the Jobs Act was the belief that contracting officers and prime contractors are not reporting or reviewing subcontracting accomplishments in a timely manner.

One commenter recommended adding specific consequences for a prime contractor's failure to submit timely or accurate required reports. SBA does not concur. It is difficult to establish concrete, universally applicable consequences for contracting officers and prime contractors. SBA believes that compliance by the contracting officer or prime contractor could be considered as part of the performance evaluation of either party, at the discretion of the evaluator.

One commenter recommended adding a provision addressing the frequency and nature of the subcontracting reports that must be submitted to the contracting officer. SBA notes that these issues are addressed in the FAR.

One commenter recommended fixing data input and error issues in the eSRS system so the necessary data for enforcement can be available. In response to this comment, SBA recommends that contracting agencies include data quality as part of the performance evaluation of employees.

One commenter recommended reviewing eSRS and the Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS) databases and eliminating duplicate reporting requirements. SBA notes that FSRS is the reporting tool required by FFATA, and eSRS serves a separate purpose—i.e., it is an electronic system for reporting subcontracting plan compliance required by the Small Business Act.

SBA received several comments on redesignated § 125.3(c)(1)(viii) (former § 125.3(c)(1)(v)), which requires pre-award written notification to unsuccessful subcontractor offerors. SBA notes that this is not a new requirement (*see also* § 121.411(b)). SBA is only moving this provision as a result of amending this section to increase the subcontracting plan thresholds. One commenter argued that this rule creates an unnecessary administrative burden. The commenter noted that there is no specified tracking of compliance or listed consequence for failure to meet this requirement. SBA again notes that this notification is required by the current regulations. Further, this requirement is the only means to trigger any self-policing in the small business subcontracting community. The government may review compliance with this requirement as part of a compliance review.

Some commenters recommended clarifying the language: ''for which a small business concern received a preference.'' One commenter noted that the FAR neither allows nor requires prime contractors to give small business preference on solicitations. Another commenter asked whether this language referred only to when a small business receives the award, or to all subcontracts set-aside for small businesses. This language is in the existing regulations and refers to subcontract competitions where consideration for award was limited based on size or socioeconomic status.

Use of Subcontractor in Performance

The proposed rule added new § 125.3(c)(3), providing that a prime contractor must represent that it will make a good faith effort to utilize the small business subcontractors used in preparing its bid or proposal during contract performance. SBA proposed that a prime contractor is deemed to have ''used'' a small business subcontractor in preparing its bid or proposal when: (i) The offeror specifically references a small business concern in a bid or proposal, (ii) the offeror has entered into a written agreement with the small business concern for purposes of performing the specific contract as a subcontractor, or (iii) the small business concern drafted portions of the proposal or submitted pricing or technical information that appears in the bid or proposal, with the intent or understanding that the small business concern will perform that related work if the offeror is awarded a contract. Some commenters opposed the provision in general terms, but as discussed previously, this provision is statutory and must be implemented. Some commenters requested clarifying whether this definition will be implemented in the FAR. SBA notes that this provision will be implemented in the FAR.

One commenter argued that ''in the same amount and quality used in preparing and submitting the bid or proposal'' is not feasible because quantities often change. SBA disagrees. This language is directly in the statute and is meant to address a specific problem. If the subcontractor was ''used'' in preparing the offer as defined in the regulation, then the prime contractor must provide the contracting officer with a written explanation as to why the subcontractor was not actually used in performance to the extent set forth in the offer. That explanation would certainly include any information relating to required quantities changing, so that the small business could not be used in performance to the same extent as that set forth in the offer.

One commenter noted that the proposed language would not address cases where a prime contractor issues a nominal subcontract but with significant down-scoping of the original

proposed work share, which according to the commenter is common practice. In response to this comment, SBA has amended § 125.3(c)(3) by adding the term ''scope.''

One commenter argued that commitments to suppliers are never made at time of proposal because an order may never be awarded, the supplier may go out of business, the supplier may be removed due to quality or delivery or other issues, or the supplier's quote may have expired before an award is received. The commenter argued that due to FAR competition requirements, many proposals are received and responded to which do not become actual orders. The commenter recommended that the government allow large businesses to place orders with small business concerns and reimburse them. As SBA stated in the proposed rule, responding to a request for a quote does not constitute use in preparing the bid or offer. SBA has added this language to § 125.3(c)(3). Further, the statute and regulation require the prime contractor to notify the contracting officer with an explanation, which could include all of those reasons (e.g., subcontractor out of business, quality or delivery issues, etc.).

Some commenters recommended requiring a more formal bid listing process requiring prime contractors to list in their bid the subcontractors they would use, allowing for later substitution if necessary. SBA considered requiring prime contractors to name subcontractors, but SBA has heard from the public and industry that selection of subcontractors in some industries does not occur until after contract award and requiring the prime to name subcontractors could result in a reduction of subcontracting opportunities.

Some commenters recommended requiring prime contractors to submit formal requests to amend subcontracting plans, arguing that this would assist in ensuring that prime contractors used the subcontractors named in their proposals. SBA disagrees. Subcontracting plans generally do not name specific small business concerns. Subcontracting plans simply establish goals for each socioeconomic category.

Some commenters recommended requiring prime contractors to include with their proposals fully executed subcontracts that are conditioned on the prime contractor's receipt of contract award and that are effective throughout the entire life of the contract. Other commenters recommended requiring a contract as evidence that a contractor failed to comply with proposed § 125.3(c)(3). SBA disagrees. In some industries, specific subcontracts are not solicited or awarded until well after contract award. Thus, it is not possible to impose a requirement that prime contractors include subcontracts in their proposals government-wide. At the same time, limiting the rule's applicability to situations where a formal subcontract has been executed would severely hamper the scope and breadth of the statutory provision. Further, it could have the effect of reducing prime contractors' willingness to enter into subcontracts prior to offer, which is clearly contrary to congressional intent.

One commenter argued that proposed § 125.3(c)(3) should not be triggered if a prime contractor awards the work to another small business and is otherwise not in violation of any contract by doing so. The commenter argued that the goal of the Jobs Act is to protect small business in general, not specific small businesses. SBA disagrees, and believes that the Jobs Act specifically intended to apply to and protect individual small businesses. This statutory provision does not reference whether or not the prime contractor is meeting its goals. The statute was intended to address the complaints of small businesses that expended significant time and resources to assist large businesses prepare bids, quotes and proposals that assisted those large businesses in being awarded a contract and then were not used in the performance of that contract.

One commenter suggested that the rule not apply if a quote from a small business is included in the bid or proposal as supporting documentation for a budget item. SBA disagrees. This is the type of behavior that the statute is intended to address. A prime contractor's inclusion of a quote in a bid raises the expectation of the subcontractor that its quote was used to win the award.

SBA received a number of comments recommending revisions to the language of proposed § 125.3(c)(3)(i)–(iii), which defined when an offeror used a small business in preparing a bid or proposal.

One commenter recommended revising § 125.3(c)(3)(i) to provide that an offeror used a small business concern in preparing the bid or proposal if ''the offeror indicates it has awarded or selected the small business concern as a subcontractor to perform a portion of the specific contract.'' SBA disagrees. If the prime refers to the subcontractor in its proposal or bid in order to influence the award, that is precisely the conduct this statutory provision was intended to address, without limiting it to a further representation that a subcontract has been awarded. If the prime feels it is necessary to mention the subcontractor by name, the prime contractor must explain why that firm is not used in performance.

One commenter requested clarification of whether ''bid or proposal'' in § 125.3(c)(3)(i) includes small businesses listed in a subcontracting plan submitted with the bid or proposal. SBA has added language stating that ''referenced in the bid or proposal'' includes associated small business subcontracting plans, if applicable. SBA notes that subcontracting plans are not necessarily required at the time of bid or proposal and are often not required until the apparent successful offeror has been identified.

One commenter argued that proposed § 125.3(c)(3)(i) and (c)(3)(iii) are unduly broad, suggesting that it is the subcontractor's perception of future work, rather than a reasonable expectation on behalf of both parties, that triggers the rule's requirements. SBA disagrees and believes that the language of the proposed rule adequately captures the intent of the statute.

One commenter recommended defining the terms ''agreement in principle'' and ''intent or understanding'' in proposed § 125.3(c)(3)(ii). These terms will have to be interpreted by contracting officers and prime contractors on a case-by-case basis, as the provision is applied to specific factual circumstances.

One commenter recommended revising proposed § 125.3(c)(3)(ii) to read: ''has a written agreement as to all material terms (including price, work scope, schedule, etc.) with the small business to perform as a subcontractor.'' As discussed in the proposed rule, the statute applies where the subcontractor was ''used'' in preparing the bid or proposal. Requiring the level of detail recommended by the commenter is not consistent with statutory intent.

One commenter recommended revising proposed § 125.3(c)(3)(ii) by replacing ''agreement in principle'' with ''has made a written commitment to.'' SBA believes that ''agreement in principle'' is more consistent with statutory intent. Requiring written commitments might actually have the unintended effect of driving prime contractors to not enter into written agreements with subcontractors. Whether an agreement in principle existed will be a fact-specific exercise for the contracting officer to decide when evaluating prime contractor performance.

Some commenters recommended revising proposed § 125.3(c)(3)(iii) by replacing ''intent or understanding'' with a written communication standard. Commenters suggested that correspondence would be sufficient, and a signed contract would not be necessary. SBA concurs with this comment and has amended the regulation to clarify that evidence should be in writing.

The proposed rule added § 125.3(c)(4), which implemented Section 1322 of the Jobs Act. This provision established a requirement that a prime contractor on a covered contract must notify the contracting officer in writing if the prime contractor fails to utilize a small business concern used in preparing and submitting the prime contractor's bid or proposal.

SBA received eleven comments expressing concern that proposed § 125.3(c)(4) does not go far enough. Some commenters argued that prime contractors will not freely come forth and self-report. First, SBA notes that this notice requirement is statutory. In addition, SBA notes that the rule states that subcontractors can inform contracting officers of violations of this requirement.

Based on a comment, SBA has amended proposed § 125.3(c)(4) to state that the ''prime contractor'' rather than the ''offeror'' must provide the contracting officer with a written explanation as to why the prime did not acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same scope, amount, and quality used in preparing and submitting the bid or proposal.

In addition, SBA has amended proposed § 125.3(c)(4) to clarify that the prime contractor must submit the written notification to the contracting officer prior to submitting to the Government the invoice for final payment and contract close-out.

One commenter suggested requiring prime contractors to inform subcontractors that subcontractors have the right to appeal to the contracting officer when the proposed small business is not used. SBA notes that the terms of the contract will determine the extent to which the contracting officer has control over who the prime contractor uses as a subcontractor. This statutory provision is intended only to include the prime contractor's utilization of subcontractors used in preparing the bid as part of the performance evaluation of the prime contractor.

One commenter recommended mirroring the requirement of DFAR 252.219–7003(g), arguing that lack of consistency between the rules will cause confusion. DFAR 252.219–7003(g) reads as follows: ''In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.'' DFAR 252.219–7003(g) applies only when the prime contractor identifies specific small business concerns in the subcontracting plan, and no DFAR provision requires prime contractors to identify specific subcontractors in subcontracting plans. SBA believes that the language of the proposed rule more truly captures the statutory intent of this requirement. In any event, SBA's final rule will be implemented in the FAR and DFAR, and changes to those regulations will be made as necessary to ensure consistency.

One commenter asked whether the rule will apply retroactively. The general rule is that regulations apply to solicitations issued on or after the effective date of the regulation. However, this rule will have to be implemented in the FAR, and consideration will be given as to whether any of these provisions need to apply to existing contracts.

One commenter recommended requiring the prime contractor to report its intention not to use a designated subcontractor before the fact, rather than after the fact. Reporting is required if a subcontractor is not used in performance, and when that is triggered will depend on the specific facts and circumstances. The purpose of the reporting is primarily for purposes of evaluating the prime contractor's overall performance, and not necessarily for the purpose of affecting actual performance under the contract.

One commenter recommended prohibiting prime contractors from terminating subcontractors and then performing the work on their own. The commenter suggested requiring that small business subcontracts may only be terminated for cause, and the prime contractor must make a good faith effort to replace the subcontractor with another small business subcontractor, all of which is subject to the contracting officer's approval. In addition, the commenter suggested that if a small business subcontractor is acquired by a large firm, the prime contractor must replace the subcontractor with a new small business subcontractor within six months. These comments go well beyond statutory intent. The statute did not intend for the contracting officer to intercede in the private contractual relationships of commercial concerns.

One commenter recommended that the requirement should apply to all contracts. By statute, this requirement applies to all contracts requiring subcontracting plans. SBA believes that this was clear in the rule as proposed, and, as such, no further change is needed.

Some commenters opposed the requirement, arguing that suppliers are sometimes unable to fulfill requirements. SBA notes that this can be explained in the notice to the contracting officer.

Some commenters requested that SBA establish a threshold at which this reporting requirement would be triggered. Commenters also requested that SBA establish a timeframe for reporting. The statute does not create a threshold or a timeframe. SBA maintains that it will be incumbent upon the prime contractor to understand its subcontractors and proactively notify the contracting officer when the prime contractor has reason to believe that the relationship with the subcontractor met the definition. As for timeframe, it is difficult to set a timeframe because until the contract is completed, there is always theoretically a possibility that the prime contractor will use the subcontractor to the extent initially anticipated. Thus, it will be up to the prime contractor to come forward and notify the contracting officer when the prime contractor knows that the use of the subcontractor met the definition and that it will not use the subcontractor in performance in the same scope, amount, and quality as used in preparing and submitting the bid or proposal. However, SBA has added a requirement that the notice take place prior to submission of the final invoice for contract closeout.

Some commenters argued that the notification requirement will be a disincentive for prime contractors from specifically including small business concerns in their proposals, which limits small businesses' ability to participate in the development of proposals and gain valuable insight into how prime contractors approach proposals in general. SBA understands this concern, but the requirement is statutory. Obviously, small business subcontractors felt that statutory action was needed to address some prime

contractor mistreatment of some small business subcontractors.

Some commenters requested an exemption from the requirements in § 125.3(c)(4) and (c)(5) for non-profit research institutions, arguing that reporting and oversight were an onerous burden for these groups. In the alternative, one commenter recommended requiring such organizations to provide notice and justification only in annual reports. SBA does not adopt this comment. Nonprofits are not exempt under the statute and are not exempt from these reporting requirements.

Some commenters argued that contract awards attained via ''bait & switch'' should be vacated. SBA disagrees. In SBA's view, the intent was to use this information for purposes of evaluating performance. The statutory intent was not to require terminations whenever this provision was violated. Contracting officers have the discretion to consider such information for purposes of considering continued performance or exercising options, but SBA does not believe that mandating such action in all cases would be practical.

Late or Reduced Payment

The proposed rule added § 125.3(c)(5), which implemented Section 1334 of the Jobs Act. This provision established a requirement that a prime contractor notify the contracting officer in writing whenever a payment to a subcontractor is reduced or is 90 days or more past due for goods and services provided for the contract and for which the Federal agency has paid the contractor. SBA proposed that the prime contractor shall include the reason for the reduction in payment or failure to pay a subcontractor in the written notice.

SBA received over twenty comments on proposed § 125.3(c)(5). The commenters were split between those who suggested there be concrete consequences for prime contractors giving reduced or delayed payments, and those who argued that ''unjustified'' is not clearly defined, leaving prime contractors in a position to have to report in situations where the subcontractor is actually at fault.

In response to several comments, SBA has amended the language of § 125.3(c)(5) to clarify that this requirement applies only to small business subcontractors. The statutory provision pertains to contracts where a small business subcontracting plan is required, and such plans do not contain a goal for large business subcontractors.

Some commenters argued that the requirement should not apply when a prime contractor has attached only a quote for the purchase of goods or services in a bid, arguing that a quote is only a projection of cost and may change due to market conditions. In response to these comments, SBA has amended § 125.3(c)(5) to state that the reduced price applies only if the prime contractor awarded a subcontract.

One commenter suggested implementing a requirement similar to the requirement for agencies that are delinquent in reimbursing contractors. SBA notes that this information will be used for past performance evaluation purposes. A different statute governs payment to prime contractors.

One commenter recommended that the requirement should be extended to lower tier subcontractors that do not pay their subcontractors. SBA does not concur. The statute specifically refers to prime contractors and the contracting officer's ability to consider late payment in measuring prime contractor performance. There is lack of privity and authority between the government and lower tier subcontractors to extend the requirement as suggested.

Some commenters recommended that each invoice submitted by the prime contractor include a report of payments to be made to each subcontractor, listing the name of the subcontractor and the amount owed. SBA does not adopt this comment. This is not required by statute and would increase the recordkeeping and reporting requirements of prime contractors.

Some commenters opposed proposed § 125.3(c)(5) as too far-reaching. Some commenters argued that the requirement should apply only to late payments, not reduced payments. Other commenters recommended implementing the requirement on a contract-by-contract basis, based on the contracting officer's review of past performance. SBA does not concur. The statute specifically includes reduced payments and applies to all covered contracts.

Some commenters argued that federal construction contractors are already subject to more stringent requirements under the FAR, including sanctions under Title 18 of the United States Code for making false claims. SBA notes that the requirements that apply in the construction arena do not apply government-wide, while these provisions apply to all contracts. However, the more stringent construction requirements still apply.

Some commenters requested clarification of the definition of ''unjustified'' late or reduced payment. Some commenters suggested that the definition should not include situations where the prime contractor acted in good faith and pointed out that budget cuts, agency reorganization, and similar situations are common reasons for reduced payment. Some commenters argued that a prime contractor often has legitimate reasons (substandard performance, improper billing, performance of unauthorized work, etc.) for late or lower payment. One commenter recommended that SBA clarify that the reporting obligation should not apply if the late/reduced payment was the byproduct of a government change to requirements. One commenter recommended allowing prime contractors to appeal a determination that a reduction is ''unjustified.'' SBA believes that the facts of a specific case should determine whether a late or reduced payment was justified or not. A prime contractor must communicate the reasons for making a late or reduced payment to the relevant contracting officer as part of its required notification. A contracting officer will then use his or her best judgment in determining whether the late or reduced payment was justified.

One commenter recommended clarifying what constitutes a ''payment'' to the prime contractor under different contract types. SBA notes that the opportunity for defining these terms will occur when these provisions are implemented in the FAR.

Some commenters suggested that reports be protected if they contain proprietary and/or classified information. One commenter recommended adding a provision that would exclude prime contractors from having to include in a report on the reasons for reduced or delayed payment where such information: (1) Is exempt from FOIA disclosure; (2) constitutes ''contractor bid or proposal information'' under the Procurement Integrity Act; or (3) is protected under the Privacy Act or other relevant law. SBA maintains that the reasons should be provided to the contracting officer—as required by statute—and the relevant information disclosure laws would apply to the reports. It is not up to prime contractors to interpret and apply information disclosure laws.

Some commenters requested clarification of ''reduced price.'' In response to these comments, SBA has amended § 125.3(c)(5) to clarify that ''reduced price'' means the price is less than the amount initially agreed to in a written, binding contractual document.

Several commenters requested clarification of the term ''upon completion of the responsibilities.'' Specifically, one commenter asked

whether the rule applies to payment reductions on progress payments. Another commenter asked whether the obligation of a contractor to report a reduced payment to a subcontractor applies to every payment made by the prime contractor or applies only at the completion of the entire subcontract. In response to these comments, SBA has amended § 125.3(c)(5) to state that the completion of responsibilities means that the subcontractor is entitled to payment under the terms of the subcontract.

Some commenters made recommendations for uniform payment terms for subcontracts. Such recommendations go beyond statutory intent and are beyond the scope of this rule.

One commenter recommended holding a public meeting where industry representatives from both large and small business may voice concerns. SBA held meetings in several cities to receive input on the proposed rule as part of its Jobs Act tour, and received significant written comments on the proposed rule. As such, SBA believes that additional public forums are unnecessary to fully understand the public concerns regarding the implementation of this rule. In addition, the public will have another opportunity to comment when this rule is incorporated in the FAR.

One commenter requested that SBA reduce the late payment definition from 90 days to 30 days. SBA does not adopt this comment. For purposes of this statutory reporting requirement, the statute defines late as being 90 days past due. This final rule continues to adopt the statutory definition.

One commenter recommended requiring agencies to publish actual payments to small business subcontractors. SBA does not adopt this comment. This requirement would be overly burdensome, and prime contractors as well as subcontractors may not want such information to be public. There is no clear public benefit from publicizing such information.

In response to comments, SBA has added new § 125.3(c)(6) to this final rule, which provides that if at the conclusion of a contract, the prime contractor did not meet all of the small business subcontracting goals in the subcontracting plan, the prime contractor shall provide the contracting officer with a written explanation as to why it did not meet the goals of the plan so that the contracting officer can evaluate whether the prime contractor acted in good faith as set forth in § 125.3(d)(3).

One commenter opposed proposed § 125.3(d)(5), arguing that payments to subcontractors may vary month to month under normal circumstances. The commenter also argued that subcontractors have existing legal means to receive payments due. Again, SBA notes that the requirement of proposed § 125.3(d)(5) is required by statute. In some circumstances, subcontractors do not have the resources to litigate claims, or may not want to exercise rights out of fear of not receiving future work.

One commenter recommended clarification of the differing language in proposed § 125.3(c)(5) (''more than 90 days past due'') and proposed § 125.3(d)(5) (''more than 90 days late''). The commenter recommended changing both to ''more than 90 days past the contractual due date.'' SBA has changed the language in both provisions to ''90 days past due under the terms of the subcontract.''

Contracting Officer Responsibilities

The proposed rule revised § 125.3(d) to clarify that the contracting officer is responsible for monitoring and evaluating the prime contractor's small business subcontracting plan compliance and reporting.

SBA received a number of comments expressing concern that over-extended contracting officers will not actually be able to monitor a prime contractor's compliance with the subcontracting plan on an ongoing basis as described in proposed § 125.3(d). SBA disagrees. Contracting officers are already required to monitor and evaluate prime contractors' compliance with subcontracting plans. The intent of this rule is simply to more clearly define the contracting officers' responsibilities.

Some commenters recommended Office of Small and Disadvantaged Business Utilization (OSDBU) participation in subcontracting plan compliance and enforcement. SBA disagrees. A subcontracting plan is a material part of a contract, and only the contracting officer has the authority to monitor contract performance. OSDBUs are not in the acquisition chain of command and have no authority to order a contracting officer to accept or reject a subcontracting plan or take some other enforcement action. Certainly, individual contracting officers may decide that OSDBUs can assist with subcontracting plan monitoring and enforcement, but SBA cannot impose a rule government-wide that gives OSDBUs authority over contracts.

Some commenters recommended requiring that the contracting officers in the field be responsible for monitoring compliance with subcontracting plans. SBA does not adopt this comment. The rule states the contracting officer is responsible, and if there is more than one contracting officer involved in a particular contract, the contracting agency must determine which contracting officer is responsible.

One commenter recommended the use of federal audit agencies to ensure that prime contractors comply with subcontracting requirements. Agencies may use audit agencies to assist in compliance, but SBA cannot mandate such a requirement in all cases. Audit agencies face resource challenges as well. SBA and the Defense Contract Management Agency (DCMA) do conduct subcontracting compliance reviews each year.

One commenter recommended requiring subcontracting program review once every two years if a prime contractor has active contracts with subcontracting plans. SBA does not adopt this comment. The contracting officer is responsible for reviewing, monitoring and evaluating a prime contractor's subcontracting plan performance with regard to each contract. In addition, compliance reviews conducted by SBA and DCMA occur as dictated by resource availability.

The proposed rule added new § 125.3(d)(1), which requires contracting officers to ensure that contractors submit their subcontracting reports into eSRS within 30 days after the report ending date. Some commenters recommended transparent monitoring to improve accountability of prime contractors. SBA notes that the eSRS system is a reporting system that enables a prime contractor to report to the contracting officer. Public access is beyond the scope of this rule, and access to the system is not controlled by SBA.

The proposed rule added § 125.3(d)(2), which requires the contracting officer to review every prime contractor's report within 60 days of the report ending date and accept or reject the report. One commenter recommended requiring contracting officers to give a reason for rejecting a report in order to ensure clarity and quick responses. SBA concurs and has amended proposed § 125.3(d)(2) to provide that the contracting officer should give an explanation for rejecting a report, since the eSRS system is already capable of doing this.

One commenter suggested that the language regarding conducting an SSR review should include ''or designated Agency representative,'' arguing that

most agencies have an OSBP associate director review and accept SSRs. SBA recognizes that agencies usually have a person other than a contracting officer review the summary reports, since a summary report frequently contains achievements on multiple contracts with multiple contacting officers. However, the purpose of this rule is to clarify the responsibilities of the contracting officer.

One commenter recommended including language regarding the timeframe for a contracting officer to review all resubmitted reports. SBA notes that the same timeframes apply that apply to the submission of the original report.

The proposed rule amended redesignated § 125.3(d)(3) (former § 125.3(d)) to clarify that a contracting officer must evaluate whether a prime contractor made a good faith effort to comply with its small business subcontracting plan. The proposed rule maintained the current definition of when a prime contractor has made a good faith effort to comply with its small business subcontracting plan (redesignated § 125.3(d)(3)(i)–(iii), former § 125.3(d)(1)–(3)).

One commenter suggested that prime contractors that have not met subcontracting plan goals should be prohibited from receiving an option award until the prime contractor can show compliance. SBA disagrees. This could result in the government being deprived of vital goods or services and would severely hamper mission effectiveness.

Several commenters requested clarification of the actions contracting officers could take in response to a contractor's failure to meet its subcontracting goals. One commenter recommended that the government instruct contracting officers that compliance with a subcontract plan constitutes a material element of contract performance, with instruction to issue show cause notices and default terminations to prime contractors who fail to comply with subcontracting plans. SBA notes that the statute and the FAR provide that a subcontracting plan is a material part of a contract and provide for the possibility of liquidated damages, as well as the other actions noted by the commenter. However, these actions cannot be required by rule in all cases.

The proposed rule added new § 125.3(d)(4), which provides that the contracting officer must evaluate the prime contractor's written explanation concerning its failure to use a small business concern in the performance of a contract when that small business concern was used to prepare the bid or proposal.

One commenter recommended requiring the contracting officer to document a justification for awarding to a prime contractor with a history of not meeting subcontracting plan goals. SBA notes that contracting officers are required to consider subcontracting plan past performance in negotiated acquisitions. Further, SBA's regulations permit contracting officers to use other subcontracting-related evaluation factors.

SBA received significant negative comment on proposed § 125.3(d)(6), which provided that the contracting officer must consider whether to require a prime contractor to enter into a funds control agreement with a neutral third party if the prime contractor fails to pay subcontractors in a timely manner or fails to pay the agreed upon contractual price without justification. Although requested, SBA did not receive any comments explaining how this process should work or has worked in practice. Consequently, SBA has decided not to implement this provision in this final rule.

Proposed § 125.3(d)(7) required the contracting officer to record the identity of a prime contractor with a history of unjustified untimely payments to subcontractors in the Federal Awardee Performance and Integrity Information System (FAPIIS) or any successor system. This requirement is statutorily mandated. SBA received several comments supporting proposed § 125.3(d)(7) (changed to § 125.3(d)(6) in this final rule) but requesting that it go further in punishing non-compliant prime contractors. One commenter recommended a repository of names of prime contractors who have treated subcontractors poorly. SBA notes that the statutory requirement is FAPIIS.

One commenter asked whether these rules would override or interfere with already existing regulations concerning payment of subcontractors in the construction industry. These rules are in addition to, and do not supersede, other laws and regulations that apply to construction contracts, such as the requirement that the prime contractor certify in an invoice that all subcontractors have been paid or will be paid after payment. The commenter also asked whether information entered into FAPIIS concerning a prime contractor that has a history of unjustified late or reduced payment of subcontractors would be available to the public. That question is beyond the scope of this rule and SBA's knowledge. The commenter should inquire with GSA, the government agency responsible for FAPIIS.

The proposed rule added § 125.3(d)(8), providing that the contracting officer must require prime contractors to update their subcontracting plans whenever an option is exercised, as currently required by FAR 19.705–2(e). SBA received five comments expressing concerns that the additional reporting requirements at the time of option exercise would be burdensome.

One commenter argued that this requirement would be an administrative redundancy. The commenter argued that some agencies already call out for small business subcontracting plans to have subcontracting goals for individual option years. The commenter argued that there may be a lack of foreseeability when a contractor submits a proposal that a subcontracting plan may be required. The commenter argued that if a prime contractor is awarded an option continuing existing services, the prime contractor will already have subcontractors in place (mobilized and executing the work), which may not be small business concerns. The commenter argued that replacing the existing subcontractors would result in additional costs and operational inefficiency. SBA disagrees. The existing requirement in the FAR, which we are simply adding to SBA's regulations, requires the plan to be updated as necessary. All of the factors that the commenter articulates can be considered when deciding whether to change any of the percentages for an option period.

One commenter argued that if existing work is won through a recompete, then the new contract should have precedence over the old contract terms, subcontracting plan, personnel staffing, and other contract-related issues. SBA notes that new contracts should have new subcontracting plans, based on the subcontracting opportunities for the new contract.

One commenter argued that pursuant to FAR 19.704(c), a subcontracting plan is supposed to contain separate goals for the base contract and each option individually. The commenter argued that any updated subcontracting goals can be by a confirming correspondence and subsequent reporting. In the final rule, SBA has amended this provision (now contained in § 125.3(d)(7)) to state that the contracting officer has the discretion to require an updated subcontracting plan.

One commenter recommended that updates for options and modifications be considered as a new subcontracting requirement from the date of the

modification or the date the option is invoked, requiring a subcontracting plan only for the new portion of the work and only if that new work, standing alone, exceeds the applicable threshold. The commenter argued that this approach is consistent with FAR 19.702(a)(1). SBA has added a new § 125.3(d)(10) to clarify that the rule will apply to the subcontracting opportunities from that point forward and will not have retroactive effect. The ISR and SF–294 require that achievements be cumulative from the inception of the contract, and the accompanying instructions require that goals be rolled into the report as options are exercised. For example, if the base contract contained a small business goal of $10 million and each option contained a small business goal of $2 million, the small business goal for the entire contract in option year one would be $12 million. This ensures that the contracting officer is doing an ''apples-to-apples'' comparison when he compares achievements against goals.

SBA received six comments on proposed § 125.3(d)(9) (now § 125.3(d)(8)), under which the contracting officer must require a subcontracting plan if a modification causes the overall value of a contract to exceed the subcontracting plan threshold. As currently written, the FAR only requires a subcontracting plan if the value of the modification exceeds the subcontracting threshold. Commenters expressed concern about having to add a subcontracting plan if a modification to the contract raises the value above the subcontract threshold since this eventuality might occur when a substantial portion of the work has already been completed, and commitments have already been made on an ongoing basis. In response, SBA notes that plans are only required to the extent that subcontracting opportunities exist.

SBA received several comments on proposed § 125.3(d)(10) (now § 125.3(d)(9)), which allows a contracting officer to require a subcontracting plan if a prime contractor's size status changes from small to other than small as a result of a size recertification. Some commenters recommended requiring the contracting officer to require a subcontracting plan rather than making it discretionary. SBA disagrees. This is not required by statute. Further, it may be impractical to require a subcontracting plan at or near the end of performance, or after all subcontracting opportunities have passed. Thus, SBA maintains that it should be left to the discretion of the contracting officer.

Compliance Reviews

SBA received several comments addressing § 125.3(f) in general. One commenter recommended more third-party monitoring of prime contractors, with verification by affected subcontractors. SBA does not concur. Compliance with these provisions will be evaluated as part of the compliance reviews conducted by SBA, DCMA, Office of Naval Research, DLA Energy, and possibly other government agencies in the future; there are no other resources available. Another commenter recommended that contracting officers be required to respond to compliance review audits. SBA notes that a copy is sent to the contracting officer. Another commenter recommended that SBA perform more compliance reviews. SBA conducts as many as possible consistent with its resources and other priorities. One commenter argued that the compliance review requirements are potentially burdensome for prime contractors and difficult to obtain from other than small subcontractors. SBA disagrees. These requirements already exist. Without monitoring or spot checking, there is no incentive to properly administer subcontracting plans or to ensure that prime contractors are meeting their goals.

SBA received one comment on proposed § 125.3(f)(2)(i), which provided that a compliance review must include an analysis as to whether the prime contractor has assigned the correct NAICS code and corresponding size standard to the subcontract, and whether the subcontractor qualifies under the size or socioeconomic status claimed. The commenter recommended further clarification of proposed § 125.3(f)(2)(i). SBA notes that every subcontract must be assigned a NAICS code and size standard; otherwise there is no basis for a claim that a subcontract went to a small business. Thus, a compliance review must verify that that prime contractors or subcontractors are not improperly claiming to be small and using inappropriate NAICS codes and size standards.

SBA received several comments on proposed § 125.3(f)(2)(iii), which provided that a compliance review must include an analysis of whether the prime contractor is monitoring its other than small subcontractors with respect to their subcontracting plans, determining achievement of their subcontracting goals, and reviewing their ISRs or other reports.

Some commenters requested additional guidelines for monitoring. SBA notes that the prime contractor is responsible for making sure that the subcontracting plan requirements flow down to subcontractors and for monitoring subcontractor performance. Some commenters recommended clarifying the definition of the term ''monitor.'' One commenter argued that prime contractors do not have the same abilities to do so with respect to subcontractors as the government does with respect to prime contractors. Whether or not prime contractors have the same ability to monitor performance of subcontractors as the government does for primes, the government has no ability to monitor a prime contractor's subcontractors. As such, this function must be the responsibility of prime contractors. SBA notes that this includes monitoring whether the relevant clauses are being included in subcontracts and whether goals are being met.

One commenter that opposed proposed § 125.3(f)(2)(iii) argued that prime contractors never before had to monitor other than small subcontractors' subcontracting plan compliance. This is incorrect. The FAR currently requires prime contractors to ensure that subcontractors issue subcontracting plans and issue reports.

Subcontracting Consideration in Source Selection

The proposed rule added new § 125.3(g)(1), under which SBA proposed to give agencies the discretion to consider subcontracting in source selection.

One commenter recommended that the FAR be amended to include subcontracting consideration in source selection. SBA notes that the rule will be implemented in the FAR after SBA's regulations are finalized.

SBA received six comments on proposed § 125.3(g)(1) requesting the inclusion of past prime contractor performance as an evaluation factor in source selection. SBA has agreed to amend its rule to make it clear that in addition to considering subcontracting plan compliance under a past performance factor, a contracting officer can also create an evaluation factor or subfactor specifically for purposes of considering subcontracting plan past performance.

One commenter recommended clarification of the circumstances under which the evaluation factor would apply. SBA notes that it applies only in full and open competition with value above the threshold, and it will apply at the discretion of the contracting officer.

One commenter recommended that government contractor past performance databases should be required to quantify successful compliance with

subcontracting plans. The commenter argued that this will assist source selection boards in determining the credibility of a concern's proposed subcontracting plan and past performance on a per-contract basis. SBA notes that like other aspects of the solicitation, the contracting officer will establish the parameters of the evaluation factor and what information should be submitted.

One commenter argued that this particular provision in the proposed rule will largely benefit small businesses that pursue contracts as Federal prime contractors and does not benefit (and in fact may have a detrimental impact on) small businesses that pursue work as Federal subcontractors. The commenter recommended an equivalent evaluation to assure that the awarded prime contractor—large or small—is providing maximum practicable opportunity to small business concerns at all levels of subcontracting. SBA disagrees. It is unclear how this proposal will harm small businesses. This proposal establishes an evaluation factor for small business subcontracting and ensures that a small business competing for a larger contract in full and open competition is not at a disadvantage, since small businesses are not required to have small business subcontracting plans. Small businesses will benefit either way—at the prime level or at the subcontracting level, depending on who wins the competition.

In response to several comments, SBA has redesignated proposed § 125.3(g)(2) (former § 125.3(g)) as § 125.3(g)(3) in this final rule and added a new paragraph (g)(2), providing that a contracting officer may include an evaluation factor in a solicitation which evaluates an other than small business concern's commitment to pay small business subcontractors within a specific number of days after receipt of payment from the Government.

Multi-agency, Federal Supply Schedule, Multiple Award Schedule and Governmentwide Acquisition IDIQ Contracts

The proposed rule added new § 125.3(h), which addresses subcontracting plans in connection with multiple award Multi-agency, Federal Supply Schedule, Multiple Award Schedule and Governmentwide acquisition indefinite delivery, indefinite quantity (IDIQ) contracts. Under proposed § 125.3(h)(1), SBA proposed that the contractor will report small business subcontracting achievement for individual orders to the contracting officer for the ordering or funding agency on an annual basis. SBA requested comments on whether the reporting requirement should apply to all orders or only apply to orders above a certain threshold.

SBA received eleven comments on proposed § 125.3(h)(1) expressing concerns that the additional reporting requirements for individual orders would be overly burdensome. Several commenters suggested creating a threshold level that would trigger the order-by-order reporting requirement. Some commenters recommended requiring reporting at the contract level or individual order level, but not both. Some commenters argued that the requirement should apply only to individual orders that are above a certain threshold. One commenter argued that on IDIQ contracts, a contractor may not know how many or which subcontractors are needed until the government issues task orders. Some commenters expressed concern about the additional burden imposed on large businesses or additional costs that might result from the requirement to report task-order subcontracting. Some commenters argued that contracting officers are already overburdened and that they should be spending time reviewing contracts rather than reports. One commenter who opposed the added reporting requirement argued that it is not required by statute. One commenter who supported the requirement recommended that all orders be reported with no minimum threshold to ensure maximum transparency.

Based on the comments received, SBA has decided that as a matter of policy the funding agency of an order should receive credit towards its small business subcontracting goals for orders awarded under another agency's contract. This policy is consistent with SBA's long-standing policy with respect to prime contracts, where the funding agency receives the credit towards its prime contracting goals for orders awarded under another agency's contract. The policy promotes transparency and accountability for prime contractors, and is consistent with the Small Business Jobs Act provisions concerning compliance, oversight and review of subcontracting plans. The requirement to report to the ordering agency on an annual basis will not be overly burdensome, as the new provision only applies where the funding agency and the contracting agency are not the same agency, and prime contractors already must report this information to the contracting agency. The contracting agency will still be responsible for the subcontracting plan for the underlying IDIQ contract. SBA recognizes that electronic reporting systems and the FAR will have to be revised before 125.3(i) can be implemented or utilized by ordering agencies or prime contractors. To ensure data integrity, SBA does make clear in this final rule that only one procuring agency may receive credit towards it subcontracting goals for a particular contracting action.

One commenter requested clarification regarding the applicability of proposed § 125.3(h)(1) to Blanket Purchase Agreements (BPAs) and Basic Ordering Agreements (BOAs). In the final rule, SBA has clarified that the contracting officer may establish subcontracting plans for BPAs and BOAs as well as orders. However, the annual reporting requirement for subcontracting credit purposes applies to orders issued under the BPA or BOA.

Compliance With Executive Orders 12866, 13563, 12988, 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5. U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 801, et seq.

Regulatory Impact Analysis

1. *Is there a need for the regulatory action?* The regulations implement Sections 1321, 1322 and 1334 of the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504, September 27, 2010 (Jobs Act); 15 U.S.C. 637(d)(6)(G), (d)(12). Section 1321 of the Jobs Act requires the Administrator to establish a policy on subcontracting compliance within one year of enactment.

2. *What are the potential benefits and costs of this regulatory action?* The regulations will benefit small business subcontractors by encouraging large business prime contractors to pay small business subcontractors in a timely manner and the agreed upon contractual price. The regulations will benefit small business subcontractors by encouraging large business contractors to utilize small business concerns in contract performance where the prime contractor used the small business concern to prepare the bid or proposal. The regulations will benefit small business subcontractors by clarifying the responsibilities of the contracting officer in monitoring small business

subcontracting plan compliance. The regulations will benefit small business subcontractors by specifically authorizing procuring agencies to consider proposed small business subcontracting when evaluating offers.

The regulations will benefit small business subcontractors by requiring large business concerns to report subcontracting results on an order-by-order basis, thereby enabling the funding agency to more closely monitor small business subcontracting in connection with the order and enabling the funding agency to receive credit towards its small business subcontracting goals. The regulation will benefit the contracting agency because the agency will not have to establish or monitor subcontracting plans for the contract. The rule benefits small business subcontractors by providing transparency with respect to small subcontracting on an order-by-order basis, thereby allowing the funding agency to monitor performance and establish subcontracting goals for particular orders.

eSRS will have to be altered to allow large business prime contractors to report subcontracting results on an order-by-order basis. Other systems may have to be altered to allow funding agencies to receive credit towards their small business subcontracting goals.

Large businesses will have to report to the contracting officer in writing when they fail to utilize a small business concern in contract performance when the prime contractor utilized the small business concern in preparing the bid or proposal. Large businesses will have to report to the contracting officer in writing when they fail to pay a subcontractor within 90 days or when they pay a subcontractor a reduced price. The contracting officer will have to consider these written explanations when evaluating contract performance. FAPIIS will have to be modified to allow contracting officers to identify large business prime contractors with a history of unjustified untimely payments.

3. *What are the alternatives to this final rule?* Many of the regulations set forth in this final rule are required to implement statutory provisions, and the Jobs Act requires promulgation of a policy on subcontracting compliance, a requirement that prime contractors notify the contracting officer when payment to a subcontractor is late, and a requirement that prime contractors notify the contracting officer when the prime contractor uses a subcontractor to prepare an offer but does not use the subcontractor in performance. The alternative to the regulation concerning orders would be to maintain the current environment, where subcontracting results are not reported on an order-by-order basis, and agencies funding orders do not receive credit towards their small business subcontracting goals.

Executive Order 13563

As part of its ongoing efforts to engage stakeholders in the development of its regulations, SBA solicited comments and suggestions from procuring agencies on how to best implement the Jobs Act. SBA held public forums around the country to discuss implementation of the Jobs Act. Where feasible, SBA incorporated public input into the rule. The regulations concerning evaluation factors provide contracting officers with the discretion to utilize various methods to improve small business subcontracting, without requiring their use in all cases. The rule concerning orders will provide contracting agencies with transparency by providing data concerning small business subcontracting for particular orders. Overall, these regulations minimize the burden resulting from these statutory provisions. SBA amended its regulations to remove outmoded thresholds that have increased and remove references to paper based forms that have been replaced by electronic reporting through eSRS.

As part of its implementation of this executive order and consistent with its commitment to public participation in the rulemaking process, SBA held public meetings in 13 locations around the country to discuss implementation of the Jobs Act, and received public input from thousands of small business owners, contracting officials and large business representatives. Although most of these amendments are new, SBA expects that public participation will help to form the Agency's retrospective analysis of related contracting regulations that are not being amended at this time.

Executive Order 12988

For purposes of Executive Order 12988, SBA has drafted this final rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of that Order, to minimize litigation, eliminate ambiguity, and reduce burden. This rule has no preemptive or retroactive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various layers of government, as specified in the order. As such, it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

For the purpose of the Paperwork Reduction Act, SBA has determined that this rule would impose new government-wide reporting requirements on large prime contractors. The Jobs Act requires such contractors to notify in writing contracting officers at the applicable procuring agency whenever a prime contractor fails to utilize a small business subcontractor used in preparing and submitting a bid or proposal; when the prime contractor pays a subcontractor a reduced price without justification; or when payments to a subcontractor are 90 days or more past due. These requirements will also be incorporated in the FAR.

Regulatory Flexibility Act, 5 U.S.C. 601–612

SBA has determined that this final rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Therefore, SBA has prepared a Regulatory Flexibility Act (RFA) analysis addressing the regulatory provisions.

RFA

When preparing a Regulatory Flexibility Analysis, an agency shall address all of the following: a description of why the action by the agency is being considered; the objectives and legal basis of the rule; the estimated number of small entities to which the rule may apply; a description of the projected reporting, recordkeeping and other compliance requirements; identification of all Federal rules which may duplicate, overlap or conflict with the proposed rule; and a description of significant alternatives which minimize any significant economic impact on small entities. This RFA considers these points and the impact the proposed regulation concerning subcontracting may have on small entities.

(a) *Need for, Objectives, and Legal Basis of the Rule*

The majority of the regulatory amendments are required to implement Sections 1321, 1322 and 1334 of the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504, September 27, 2010 (Jobs Act); 15 U.S.C. 637(d)(6)(G), (d)(12). The regulations

that are not required by the Jobs Act are intended to help small business subcontractors by explicitly authorizing procuring agencies to consider proposed small business participation when evaluating offers from other than small business concerns. The regulations allow contracting officers to establish subcontracting plans and require other than small prime contractors to report data on small business subcontracting in connection with certain orders under existing contracts.

(b) *Estimate of the Number of Small Entities To Which the Rule May Apply*

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of entities that may be affected by the rules. The RFA defines ''small entity'' to include ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' SBA's programs generally do not apply to ''small organizations'' or ''small governmental jurisdictions'' because they are non-profit or governmental entities and do not generally qualify as ''business concerns'' within the meaning of SBA's regulations. SBA's programs generally apply only to for-profit business concerns. However, to the extent this rule will impact small organizations or small governmental jurisdictions that receive prime contracts from the Federal government with values that exceed the threshold, the numbers would be minimal, and the major provisions would only apply if the entity fails to pay or utilize small business subcontractors.

The final rule will not directly negatively affect any small business concern, because it applies to other than small concerns and contracting officers. The final rule will indirectly benefit small business concerns by requiring other than small prime contractors to report to the contracting officer when the prime contractor has failed to utilize a small business subcontractor used in preparing the bid or proposal. The final rule will also indirectly benefit small business concerns, by requiring large business prime contractors to report to the contracting officer when the prime contractor has failed to pay a small business subcontractor in a timely manner or pays a subcontractor a reduced rate without justification.

There are approximately 348,000 concerns listed as small business concerns in the Dynamic Small Business Search (DSBS) database. We do not know how many of these concerns participate in small business subcontracting. Firms do not need to register in the DSBS database to participate in subcontracting. The DSBS database is primarily used for prime contracting purposes. Thus, the number of firms participating in subcontracting may be greater than or lower than the number of firms registered in the DSBS database.

(c) *Projected Reporting, Recordkeeping and Other Compliance Requirements*

To the extent the rule imposes new information collection, recordkeeping or compliance requirements, these requirements are imposed on other than small business concerns, not on small business concerns.

(d) *Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule*

SBA is not aware of any rules which duplicate, overlap or conflict with the final rule. The final rule primarily implements statutory provisions.

(e) *Significant Alternatives to the Rule Which Could Minimize Impact on Small Entities*

Section 1321 of the Jobs Act requires SBA to promulgate regulations implementing it. Section 1321 of the Jobs Act and its implementing regulations primarily apply to contracting officers. Sections 1322 and 1334 of the Jobs Act amend portions of the Small Business Act, which SBA is responsible for administering and implementing through its regulations. The regulations implementing Sections 1322 and 1334 of the Jobs Act primarily apply to other than small concerns. As discussed above, the rule indirectly benefits small business concerns, without requiring small business concerns to report, keep records or take other compliance actions.

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 125

Government Contracting Programs; Small Business Subcontracting Program.

For the reasons set forth above, SBA amends parts 121 and 125 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 662, and 694a(9).

■ 2. Amend § 121.404(g)(3)(ii) by adding the following sentence at the end of the paragraph:

121.404 When does SBA determine the size status of a business concern?

* * * * *

(g) * * *

(3) * * *

(ii) * * * However, a contracting officer may require a subcontracting plan if a prime contractor's size status changes from small to other than small as a result of a size recertification.

* * * * *

■ 3. Amend § 121.411 as follows:

■ a. Revise paragraph (a); and

■ b. Redesignate paragraphs (b) and (c) as paragraphs (c) and (d) and add new paragraph (b).

121.411 What are the size procedures for SBA's Section 8(d) Subcontracting Program?

(a) Prime contractors may rely on the information contained in the System for Award Management (SAM) (or any successor system or equivalent database maintained or sanctioned by SBA) as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list.

(b) Even if a concern is on a small business source list, it must still qualify and self-certify as a small business at the time it submits its offer as a section 8(d) subcontractor. Prime contractors may accept a subcontractor's electronic self-certifications as to size, if the subcontract contains a clause which provides that the subcontractor verifies by submission of the offer that the size or socioeconomic representations and certifications made in SAM (or any successor system) are current, accurate and complete as of the date of the offer for the subcontract. Prime contractors or subcontractors may not require the use of SAM (or any successor system) for purposes of representing size or socioeconomic status in connection with a subcontract.

* * * * *

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 4. The authority citation for part 125 is revised to read as follows:

Authority: 15 U.S.C. 632(p), (q); 634(b)(6); 637; 644 and 657(f); Pub. L. 111–240, § 1321.

■ 5. Amend § 125.3 as follows:

■ a. Revise paragraph (a);

■ c. Revise paragraphs (b)(1) and (b)(3)(ii);

■ d. Revise paragraph (c)(1) introductory text;

■ e. Revise paragraphs (c)(1)(iii)–(vi);

■ f. Add new paragraphs (c)(1)(vii)–(ix);
■ g. Redesignate paragraph (c)(3) as (c)(7) and add new paragraphs (c)(3), (c)(4), (c)(5) and (c)(6);
■ h. Revise paragraph (d);
■ i. Revise paragraph (e)(3);
■ j. Revise paragraphs (f)(1) and (f)(2);
■ k. Revise paragraph (g); and
■ l. Add new paragraph (h).

§ 125.3 Subcontracting assistance.

(a) *General.* The purpose of the subcontracting assistance program is to provide the maximum practicable subcontracting opportunities for small business concerns, including small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, certified HUBZone small business concerns, certified small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. The subcontracting assistance program implements section 8(d) of the Small Business Act, which includes the requirement that, unless otherwise exempt, other than small business concerns awarded contracts that offer subcontracting possibilities by the Federal Government in excess of $650,000, or in excess of $1,500,000 for construction of a public facility, must submit a subcontracting plan to the appropriate contracting agency. The Federal Acquisition Regulation sets forth the requirements for subcontracting plans in 48 CFR 19.7, and the clause at 48 CFR 52.219–9.

(1) Subcontract under this section means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for performance of the contract or subcontract (including modifications).

(i) Subcontract award data reported by prime contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made beyond the immediate next-tier, except as follows:

(A) The contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian Tribe; or

(B) Purchases from a corporation, company, or subdivision that is an affiliate of the prime contractor or subcontractor are not included in the subcontracting base. Subcontracts by first-tier affiliates shall be treated as subcontracts of the prime.

(ii) Only subcontracts involving performance in the United States or its outlying areas should be included, with the exception of subcontracts under a contract awarded by the U.S. Department of State or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas and subcontracts for foreign military sales unless waived in accordance with agency regulations.

(iii) The following should not be included in the subcontracting base: internally generated costs such as salaries and wages; employee insurance; other employee benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; Original Equipment Manufacturer relationships during warranty periods (negotiated up front with product); utilities such as electricity, water, sewer, and other services purchased from a municipality or solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions. Utility companies may be eligible for additional exclusions unique to their industry, which may be approved by the contracting officer on a case-by-case basis. Exclusions from the subcontracting base include but are not limited to those listed above.

(2) Subcontracting goals required under paragraph (c) of this section must be established in terms of the total dollars subcontracted and as a percentage of total subcontract dollars. However, a contracting officer may establish additional goals as a percentage of total contract dollars.

(3) A prime contractor has a history of unjustified untimely or reduced payments to subcontractors if the prime contractor has reported itself to a contracting officer in accordance with paragraph (c)(5) of this section on three occasions within a 12 month period.

(b) *Responsibilities of prime contractors.* (1) Prime contractors (including small business prime contractors) selected to receive a Federal contract that exceeds the simplified acquisition threshold, that will not be performed entirely outside of any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and that is not for services which are personal in nature, are responsible for ensuring that small business concerns have the maximum practicable opportunity to participate in the performance of the contract, including subcontracts for subsystems, assemblies, components, and related services for major systems, consistent with the efficient performance of the contract.

* * * * *

(3) * * *

(ii) Conducting market research to identify small business subcontractors and suppliers through all reasonable means, such as performing online searches via the System for Award Management (SAM) (or any successor system), posting Notices of Sources Sought and/or Requests for Proposal on SBA's SUB-Net, participating in Business Matchmaking events, and attending pre-bid conferences;

* * * * *

(c) *Additional responsibilities of large prime contractors.* (1) In addition to the responsibilities provided in paragraph (b) of this section, a prime contractor selected for award of a contract or contract modification that exceeds $650,000, or $1,500,000 in the case of construction of a public facility, is responsible for the following:

* * * * *

(iii) The contractor may not prohibit a subcontractor from discussing any material matter pertaining to payment or utilization with the contracting officer;

(iv) When developing an individual subcontracting plan (also called individual contract plan), the contractor must decide whether to include indirect costs in its subcontracting goals. If indirect costs are included in the goals, these costs must be included in the Individual Subcontract Report (ISR) in www.esrs.gov (eSRS) or Subcontract Reports for Individual Contracts (the paper SF–294, if authorized). If indirect costs are excluded from the goals, these costs must be excluded from the ISRs (or SF–294 if authorized); however, these costs must be included on a prorated basis in the Summary Subcontracting Report (SSR) in the eSRS system. A contractor authorized to use a commercial subcontracting plan must include all indirect costs in its SSR;

(v) The contractor must assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract (*see* § 121.410). The prime contractor may rely on subcontractor self-certifications made in SAM (or any successor system), if the subcontract contains a clause which provides that the subcontractor verifies by submission of the offer that the size or socioeconomic representations and certifications in SAM (or any successor system) are current, accurate and

complete as of the date of the offer for the subcontract. A prime contractor or subcontractor may not require the use of SAM (or any successor system) for purposes of representing size or socioeconomic status in connection with a subcontract;

(vi) The contractor must submit timely and accurate ISRs and SSRs in eSRS (or any successor system), or if information for a particular procurement cannot be entered into eSRS (or any successor system), submit a timely SF–294, Subcontracting Report for Individual Contract. When a report is rejected by the contracting officer, the contractor must make the necessary corrections and resubmit the report within 30 days of receiving the notice of rejection;

(vii) The contractor must cooperate in the reviews of subcontracting plan compliance, including providing requested information and supporting documentation reflecting actual achievements and good-faith efforts to meet the goals and other elements in the subcontracting plan;

(viii) The contractor must provide pre-award written notification to unsuccessful small business offerors on all subcontracts over $150,000 for which a small business concern received a preference. The written notification must include the name and location of the apparent successful offeror and if the successful offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business; and

(ix) As a best practice, the contractor may provide the pre-award written notification cited in paragraph (c)(1)(viii) of this section to unsuccessful and small business offerors on subcontracts at or below $150,000 and should do so whenever practical.

* * * * *

(3) An offeror must represent to the contracting officer that it will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same scope, amount, and quality used in preparing and submitting the bid or proposal. Merely responding to a request for a quote does not constitute use in preparing a bid or offer. An offeror used a small business concern in preparing the bid or proposal if:

(i) The offeror references the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan;

(ii) The offeror has a subcontract or agreement in principle to subcontract with the small business concern to perform a portion of the specific contract; or

(iii) The small business concern drafted any portion of the bid or proposal or the offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence (including email) of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the offeror is awarded the contract.

(4) If a prime contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (c)(3), the prime contractor must provide the contracting officer with a written explanation. This written explanation must be submitted to the contracting officer prior to the submission of the invoice for final payment and contract close-out.

(5) A prime contractor shall notify the contracting officer in writing if upon completion of the responsibilities of the small business subcontractor (i.e., the subcontractor is entitled to payment under the terms of the subcontract), the prime contractor pays a reduced price to a small business subcontractor for goods and services provided for the contract or the payment to a small business subcontractor is more than 90 days past due under the terms of the subcontract for goods and services provided for the contract and for which the Federal agency has paid the prime contractor. ''Reduced price'' means a price that is less than the price agreed upon in a written, binding contractual document. The prime contractor shall include the reason for the reduction in payment to or failure to pay a small business subcontractor in any written notice.

(6) If at the conclusion of a contract the prime contractor did not meet all of the small business subcontracting goals in the subcontracting plan, the prime contractor shall provide the contracting officer with a written explanation as to why it did not meet the goals of the plan so that the contracting officer can evaluate whether the prime contractor acted in good faith as set forth in paragraph (d)(3) of this section.

(d) *Contracting officer responsibilities.* The contracting officer (or administrative contracting officer if specifically delegated in writing to accomplish this task) is responsible for evaluating the prime contractor's compliance with its subcontracting plan, including:

(1) Ensuring that all contractors submit their subcontracting reports into the eSRS (or any successor system) or, if applicable, the SF–294, Subcontracting Report for Individual Contracts, within 30 days after the report ending date (e.g., by October 30th for the fiscal year ended September 30th).

(2) Reviewing all ISRs, and where applicable, SSRs, in eSRS (or any successor system) within 60 days of the report ending date (e.g., by November 30th for a report submitted for the fiscal year ended September 30th) and either accepting or rejecting the reports in accordance with the Federal Acquisition Regulation (FAR) provisions set forth in 48 CFR subpart 19.7, 52.219–9, and the eSRS instructions (www.esrs.gov). The authority to acknowledge or reject SSRs for commercial plans resides with the contracting officer who approved the commercial plan. If a report is rejected, the contracting officer must provide an explanation for the rejection to allow prime contractors the opportunity to respond specifically to perceived deficiencies.

(3) Evaluating whether the prime contractor made a good faith effort to comply with its small business subcontracting plan. Evidence that a large business prime contractor has made a good faith effort to comply with its subcontracting plan or other subcontracting responsibilities includes supporting documentation that:

(i) The contractor performed one or more of the actions described in paragraph (b) of this section, as appropriate for the procurement;

(ii) Although the contractor may have failed to achieve its goal in one socioeconomic category, it over-achieved its goal by an equal or greater amount in one or more of the other categories; or

(iii) The contractor fulfilled all of the requirements of its subcontracting plan.

(4) Evaluating the prime contractor's written explanation concerning the prime contractor's failure to use a small business concern in performance in the same scope, amount, and quality used in preparing and submitting the bid or proposal, and considering that information when rating the contractor for past performance purposes.

(5) Evaluating the prime contractor's written explanation concerning its payment of a reduced price to a small business subcontractor for goods and services upon completion of the responsibilities of the subcontractor or its payment to a subcontractor more than 90 days past due under the terms

of the subcontract for goods and services provided for the contract and for which the Federal agency has paid the prime contractor, and considering that information when rating the contractor for past performance purposes.

(6) Evaluating whether the prime contractor has a history of unjustified untimely or reduced payments to subcontractors, and if so, recording the identity of the prime contractor in the Federal Awardee Performance and Integrity Information System (FAPIIS), or any successor database.

(7) In his or her discretion, requiring the prime contractor (other than a prime contractor with a commercial plan) to update its subcontracting plan when an option is exercised.

(8) Requiring the prime contractor (other than a contractor with a commercial plan) to submit a subcontracting plan if the value of a modification causes the value of the contract to exceed the subcontracting plan threshold and to the extent that subcontracting opportunities exist.

(9) In his or her discretion, requiring a subcontracting plan if a prime contractor's size status changes from small to other than small as a result of a size recertification.

(10) Where a subcontracting plan is amended in connection with an option, or added as a result of a recertification or modification, the changes to any existing plan are for prospective subcontracting opportunities and do not apply retroactively. However, since achievements must be reported on the ISR (or the SF–294, if applicable) on a cumulative basis from the inception of the contract, the contractor's achievements prior to the modification or option will be factored into its overall achievement on the contract from inception.

(e) * * *

(3) Instructing large prime contractors on identifying small business concerns by means of SAM (or any successor system), SUB-Net, Business Matchmaking events, and other resources and tools;

* * * * *

(f) *Compliance reviews.* (1) A prime contractor's performance under its subcontracting plan is evaluated by means of on-site compliance reviews and follow-up reviews. A compliance review is a surveillance review that determines a contractor's achievements in meeting the goals and other elements in its subcontracting plan for both open contracts and contracts completed during the previous twelve months. A follow-up review is done after a compliance review, generally within six to eight months, to determine if the contractor has implemented SBA's recommendations.

(2) All compliance reviews begin with a validation of the prime contractor's most recent ISR (or SF–294, if applicable) or SSR. A compliance review includes:

(i) An evaluation of whether the prime contractor assigned the proper NAICS code and corresponding size standard to a subcontract, and a review of whether small business subcontractors qualify for the size or socioeconomic status claimed;

(ii) Validation of the prime contractor's methodology for completing its subcontracting reports; and

(iii) Consideration of whether the prime contractor is monitoring its other than small subcontractors with regard to their subcontracting plans, determining achievement of their proposed subcontracting goals, and reviewing their subcontractors' ISRs (or SF–294s, if applicable).

* * * * *

(g) *Subcontracting consideration in source selection.* (1) A contracting officer may include an evaluation factor in a solicitation which evaluates:

(i) An offeror's proposed approach to small business subcontracting participation in the subject procurement;

(ii) The extent to which the offeror has met its small business subcontracting plan goals on previous covered contracts; and/or

(iii) The extent to which the offeror timely paid its small business subcontractors under covered contracts.

(2) A contracting officer may include an evaluation factor in a solicitation which evaluates an offeror's commitment to pay small business subcontractors within a specific number of days after receipt of payment from the Government for goods and services previously rendered by the small business subcontractor.

(i) The contracting officer will comparatively evaluate the proposed timelines.

(ii) Such a commitment shall become a material part of the contract.

(iii) The contracting officer must consider the contractor's compliance with the commitment in evaluating performance, including for purposes of contract continuation (such as exercising options).

(3) A small business concern submitting an offer shall receive the maximum score, credit or rating under an evaluation factor described in paragraph (g) of this section without having to submit any information in connection with this factor.

(4) A contracting officer shall include a significant evaluation factor for the criteria described in paragraphs (g)(2)(i) and (g)(2)(ii) of this section in a bundled contract or order as defined in § 125.2.

(5) Paragraph (g) of this section may apply to solicitations for orders against multiple award contracts, (including a Federal Supply Schedule or Multiple Award Schedule contract, a Government-wide acquisition contract (GWAC), or a multi-agency contract (MAC)), blanket purchase agreements or basic ordering agreements.

(h) *Multiple award contracts.* (1) Except where a prime contractor has a commercial plan, the contracting officer shall require a subcontracting plan for each multiple award indefinite delivery, indefinite quantity contract (including Multiple Award Schedule), where the estimated value of the contract exceeds the subcontracting plan thresholds in paragraph (a) of this section and the contract has subcontracting opportunities.

(2) Contractors shall submit small business subcontracting reports for individual orders to the contracting agency on an annual basis.

(3) The agency funding the order shall receive credit towards its small business subcontracting goals. More than one agency may not receive credit towards its subcontracting goals for a particular subcontract.

(4) The agency funding the order may in its discretion establish small business subcontracting goals for individual orders, blanket purchase agreements or basic ordering agreements.

Dated: June 25, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–16967 Filed 7–15–13; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0522; Directorate Identifier 2013–SW–018–AD; Amendment 39–17487; AD 2013–10–51]

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 publishing a new airworthiness directive (AD) for Eurocopter France Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. This AD requires, before further flight, determining whether a single hydraulic main or tail rotor servo-control is installed on your helicopter. If a certain servo-control is installed, before the further flight, this AD requires replacing that servo-control. This AD was prompted by the discovery of excessive axial play detected on bearings installed on certain single hydraulic main and tail rotor servo-controls (servo-control). The excessive play could cause the distributor slide valve to jam in its sleeve. This condition could result in jamming the hydraulic flight controls, necessitating that the pilot cut off hydraulic power. This action would increase the pilot's workload, resulting in possible loss of helicopter control.

DATES: This AD becomes effective to all persons July 31, 2013, except those persons to whom it was made immediately effective by Emergency AD No. 2013–10–51, issued on May 9, 2013, which contains the requirements of this AD.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of July 31, 2013.

We must receive comments on this AD by September 16, 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 European Aviation Safety Agency (EASA) 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, TX 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: Michael Hemann, Transportaton Safety Analyst, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *michael.hemann@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 May 9, 2013, we issued Emergency AD 2013–10–51 (Emergency AD), which requires, before further flight, determining whether a certain servo-control is installed on your helicopter. If a certain servo-control is installed, before the further flight, the Emergency AD requires replacing that servo-control with an airworthy servo-control. The Emergency AD was prompted by AD No. 2013–0095–E, dated April 16, 2013, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for the helicopters listed in the first paragraph of this section. EASA advises that for helicopters with single hydraulic main and tail servo-controls, this condition, if not detected and corrected, could lead to a friction point in the flight controls and increase the pilot workload. The pilot would consequently need to cut off the hydraulic power and follow the procedures specified in the applicable Section 3 of the Rotorcraft Flight Manual.

Many of the non-compliant servo-controls were installed by the manufacturer under certain part and serial numbers. Others were repaired or overhauled from September 27, 2012, through January 30, 2013, by UTC Aerospace Systems in Monroe, North Carolina. Since we issued the Emergency AD, we have discovered that the servo-control's component history card or equivalent record may list ''Goodrich Corporation'' as the repair and overhaul facility, instead of ''UTC Aerospace Systems,'' as United Technologies Corporation formed UTC Aerospace Systems in 2012 after acquiring Goodrich Corporation. We have added this information to the Required Actions section of this AD. Also, the language in the Alternative Methods of Compliance section of the Emergency AD did not include the proper introductory sentence, so we have added that sentence in this AD. These changes do not change the scope or increase the burden from those in the Emergency AD.

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 one Emergency Alert Service Bulletin (EASB) with four numbers, all dated April 15, 2013. EASB No. 67.00.60 is for Eurocopter Models AS350B, AS350BA, AS350BB, AS350B1, AS350B2, AS350B3, AS350D, and military helicopter Model AS350L1; EASB 67.00.36 is for military helicopter

Models AS550A2, AS550C2, AS550C3, and AS550U2; EASB 67.00.41 is for Models AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP; and EASB 67.00.27 is for military helicopter Models AS555AF, AS555AN, AS555SN, AS555UF, and AS555UN. Models AS350C and AS350D1 are also type certificated in the United States but were not listed in the EASB. Model AS350BB is not type certificated in the United States. The EASB states that during acceptance tests of a servo-control, the supplier noticed that the servo-control input lever bearing's play value exceeded the specified value. This condition leads to excessive misalignment between the lever and the distributor slide, the EASB reports. This condition could create a ''friction point'' on the flight controls. To eliminate the risk of this friction point appearing on the flight controls, Eurocopter specifies that all servo-controls with a non-compliant input lever bearing be replaced and returned to the manufacturer.

AD Requirements

This AD requires, before further flight, inspecting the servo-control's component history card or equivalent record to determine if it has a certain part number (P/N) and serial number (S/N) or if the servo-control was repaired or overhauled from September 27, 2012, through January 30, 2013, by UTC Aerospace Systems or Goodrich Corporation in Monroe, North Carolina.

If either condition exists, this AD requires inspecting the servo-control's identification plate to determine if it has the letter ''B.'' If it has the letter ''B,'' no further action is required.

If the identification plate has no letter ''B,'' this AD requires inspecting all sides of the external race of the servo-control's bearing to determine if it has any visible marking. If there is a marking, before further flight, this AD requires replacing the servo-control with an airworthy servo-control.

If there is no marking, this AD requires inspecting the bearing's sealing flange to determine if it is marked with ''RWG Germany 60–5593.'' If it is marked with ''RWG Germany 60–5593,'' no further action is required.

If the sealing flange has not been marked with ''RWG Germany 60–5593,'' before further flight, this AD requires replacing the servo-control with an airworthy servo-control.

Differences Between This AD and the EASA AD

We require, before further flight, inspecting the servo-control's component history card or equivalent record to determine if it has a certain P/N and S/N; or if it was repaired or overhauled from September 27, 2012, through January 30, 2013, by UTC Aerospace Systems or Goodrich Corporation in Monroe, North Carolina. EASA requires within 10 flight hours or 10 days, whichever occurs first, verifying whether a certain bearing is fitted in the servo-control.

We require, before further flight, replacing a non-airworthy servo-control with an airworthy servo-control. EASA requires replacing a non-airworthy servo-control with an airworthy servo-control within 50 flight hours or 120 days, whichever comes first, after checking the servo-control for ''free-travel.'' If a ''friction point'' is detected, EASA requires replacing the servo-control with an airworthy servo-control before further flight.

Costs of Compliance

We estimate that this AD affects 937 helicopters of U.S. Registry and that labor costs average $85 a work-hour. Based on these estimates, we expect the following costs:

Inspecting the single hydraulic main and tail servo-control's component history card or equivalent record requires minimal labor costs and no parts. The per-helicopter and fleet costs are minimal.

Determining whether the identification plate is marked with a ''B'' requires 1 work-hour and no parts. Labor costs total $85 per helicopter.

Inspecting the servo-control's bearing to determine if it is non-conforming requires 3 work-hours and no parts. Labor costs total $255 per helicopter.

Replacing the servo-control with an airworthy servo-control requires 3 or 5 work hours, depending on what servo-control is being replaced. Parts cost $10,461 or $10,561, also depending on the servo-control being replaced. Labor costs are $255 or $425 for total per-helicopter cost of $10,716 or $10,986.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the previously described unsafe condition can adversely affect the controllability of the helicopter and the required corrective actions must be accomplished before further flight.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment before issuing this AD were impracticable and contrary to the public interest and good cause existed for making Emergency AD 2013–10–51 effective immediately on May 9, 2013 to all known U.S. owners and operators of the specified Eurocopter France model helicopters. These conditions still exist and the Emergency AD is hereby published, with minor changes, in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–10–51 Eurocopter France: Amendment 39–17487; Docket No. FAA–2013–0522; Directorate Identifier 2013–SW–018–AD.

(a) Applicability

This AD applies to Eurocopter France (Eurocopter) Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as excessive play that could cause the distributor slide valve to jam in its sleeve. This condition could result in jamming of the hydraulic flight controls, necessitating that the pilot cut off hydraulic power. This action would increase the pilot's workload, resulting in possible loss of helicopter control.

(c) Effective Date

This AD becomes effective July 31, 2013 to all persons except those persons to whom it was made immediately effective by Emergency AD No. 2013–10–51, issued on May 9, 2013, which contains the requirements of this AD.

(d) Compliance

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

(e) Required Actions

(1) Before further flight, inspect the single hydraulic main and tail servo-control's (servo-control) component history card or equivalent record to determine if it has a part number (P/N) and serial number (S/N) listed in the Appendix, paragraph 4.A, of Eurocopter Emergency Alert Service Bulletin No. 67.00.60 (EASB No. 67.00.60) or No. 67.00.41 (EASB No. 67.00.41), both dated April 15, 2013, as appropriate for your model helicopter; or was repaired or overhauled from September 27, 2012, through January 30, 2013, by UTC Aerospace Systems or Goodrich Corporation in Monroe, North Carolina.

(2) If the servo-control does have a P/N and S/N listed in paragraph 4.A of EASB No. 67.00.60 or EASB No. 67.00.41, as appropriate for your model helicopter, or if the servo-control was repaired or installed from September 27, 2012, through January 30, 2013, by UTC Aerospace Systems or Goodrich Corporation in Monroe, North Carolina, inspect the servo-control to determine whether the identification plate is marked with a ''B'' as shown in the Appendix, paragraph 4.B, of EASB No. 67.00.60 or EASB No. 67.00.41, as appropriate for your model helicopter. If it is marked with a ''B,'' no further action is required.

(3) If the identification plate is not marked with a ''B,'' inspect all sides of the external race of the servo-control's bearing to determine if it has any marking shown as (b) in Detail A of Figure 1 of EASB No. 67.00.60 or EASB No. 67.00.41, as appropriate for your model helicopter. If there is any marking, before further flight, replace the servo-control with an airworthy servo-control.

(4) If there is no marking on the sides of the external race, inspect each bearing sealing flange to determine if it is marked with ''RWG Germany 60–5593'' as shown as (d) in Detail C of Figure 2 of EASB No. 67.00.60 or EASB No. 67.00.41, as appropriate for your model helicopter. If there is ''RWG Germany 60–5593'' marking at least partially visible on a flange of the bearing, no further action is required.

(5) If there is no ''RWG Germany 60–5593'' marking at least partially visible on a flange of the bearing, before further flight, replace the servo-control with an airworthy servo-control.

(f) Special Flight Permits

Special flight permits may be permitted only for taking a helicopter to a repair station to meet the requirements of this AD.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Hemann, Transportation Safety Analyst, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *michael.hemann@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

The subject of this AD is addressed in the European Aviation Safety Agency (EASA) AD No. 2013–0095–E, dated April 16, 2013. You may view the EASA AD at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0522.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6730, Rotorcraft Servo System.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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 EASB No. 67.00.60, dated April 15, 2013.

(ii) Eurocopter EASB No. 67.00.41, dated April 15, 2013.

Note 1 to paragraph (j)(2): Eurocopter EASB No. 67.00.60, dated April 15, 2013, and Eurocopter EASB No. 67.00.41, dated April 15, 2013, are co-published as one document along with Eurocopter EASB No. 67.00.36, dated April 15, 2013, and Eurocopter EASB No. 67.00.27, dated April 15, 2013, which are not incorporated by reference in this AD.

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

(4) You may 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 June 13, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–16682 Filed 7–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0018; Directorate Identifier 2010–SW–060–AD; Amendment 39–17483; AD 2013–12–05]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter Deutschland GmbH (Eurocopter) Model MBB–BK 117 C–2 helicopters. This AD requires determining if a certain serial-numbered bevel gear is installed in the tailrotor intermediate gear box (IGB). If such a bevel gear is installed in the IGB, this AD requires recording the bevel gear's reduced life limit in the Airworthiness Limitations section of the maintenance manual and on the component history card or equivalent IGB record. If the bevel gear's life limit has been reached or exceeded, this AD requires, before further flight, replacing the bevel gear with an airworthy bevel gear. This AD is prompted by the discovery that the tooth foot fillets in certain bevel gears fall below the minimum dimensions required in the design documents to ensure safe functioning of the bevel gear until it reaches its approved life limit. This AD's actions are intended to prevent failure of a bevel gear before it reaches its currently approved life limit, failure of the IGB, and subsequent loss of helicopter control.

DATES: This AD is effective August 20, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of August 20, 2013.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, issued EASA AD No. 2010–0096 on May 25, 2010, to correct an unsafe condition for Eurocopter Model MBB–BK 117 C–2 helicopters. EASA advised that during a recent review of the production documents for the bevel gears of the IGB, it was discovered that certain production batch numbers have tooth foot fillets below the required minimum values that would ensure the approved life limits for this part.

On January 18, 2013, at 78 FR 4090, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Eurocopter Model MBB–BK 117 C–2 helicopters. The NPRM proposed to require determining if a certain serial-numbered bevel gear was installed in the IGB. If such a bevel gear was installed in the IGB, the NPRM proposed to require recording the bevel gear's reduced life limit in the Airworthiness Limitations section of the maintenance manual and on the component history card or equivalent IGB record. If the bevel gear's life limit was reached or exceeded, the NPRM proposed to require, before further flight, replacing the bevel gear with an airworthy bevel gear. The proposed requirements were intended to prevent failure of a bevel gear before it reached its currently approved life limit, failure of the IGB, and subsequent loss of helicopter control.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (78 FR 4090, January 18, 2013).

FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, 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 and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the EASA AD

This AD does not require sending a copy of the form in Eurocopter's Alert Service Bulletin No. MBB BK117 C–2–04A–005, Revision 2, dated April 28, 2010 (ASB), to the manufacturer. This AD does not require sending the IGB to an overhaul facility. Also, this AD does not specify a single ferry flight not to exceed 20 hours time-in-service to a maintenance facility if the bevel gear has exceeded the reduced life limit.

Related Service Information

Eurocopter's ASB specifies determining whether certain serial-numbered bevel gears are installed in the IGB. The ASB specifies recording the reduced life limit for each affected bevel gear on the log card of the IGB and on the list of life-limited parts. If a bevel gear has one of the serial numbers listed in Table 1 of the ASB, the ASB specifies filling out a reply form and copying and sending it to Eurocopter. The ASB also specifies sending the IGB to a certified overhaul facility for replacing the bevel gear if it has reached or exceeded its life limit. EASA classified this ASB as mandatory and issued AD No. 2010–0096, dated May 25, 2010, to ensure the continued airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD affects 107 helicopters of U.S. registry and that the labor rate averages $85 per work-hour. We also estimate that it takes about a half hour to determine whether the IGB is affected and to enter the reduced life limit on the component history card or the equivalent record and to revise the Airworthiness Limitations section of the maintenance manual. Based on these figures, we estimate that the cost per helicopter totals about $43, about $4,601 for the U.S. fleet.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on helicopters identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–12–05 Eurocopter Deutschland GmbH Helicopters: Amendment 39–17483; Docket No. FAA–2013–0018; Directorate Identifier 2010–SW–060–AD.

(a) Applicability

This AD applies to Model MBB–BK 117 C–2 helicopters with a bevel gear, part number (P/N) 4639 310 065, installed in the tail rotor intermediate gear box (IGB), P/N 4639 002 007, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of a bevel gear, failure of the tail rotor IGB, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective August 20, 2013.

(d) Compliance

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

(e) Required Actions

Within 30 days, do the following:

(1) Determine if a bevel gear with a serial number (S/N) listed in Table 1 of Eurocopter Alert Service Bulletin MBB BK117 C–2–04A–005, Revision 2, dated April 28, 2010 (ASB), is installed in the IGB.

(i) If a bevel gear listed in Table 1 of the ASB is installed in the IGB, record the reduced life limit of the bevel gear onto the component history card or equivalent record of the IGB.

(ii) If the bevel gear life limit has been reached or is exceeded, before further flight, replace the bevel gear with an airworthy bevel gear.

(2) Revise the Airworthiness Limitations section of the maintenance manual by reducing the retirement life for each IGB bevel gear, P/N 4639 310 065, that has a S/N listed in Table 1 of the ASB to the life limit corresponding to that S/N.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2010–0096, dated May 25, 2010. You may view the EASA AD at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0018.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6520, Tail Rotor Gearbox.

(i) Material Incorporated by Reference

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

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

(i) Eurocopter Alert Service Bulletin MBB BK117 C–2–04A–005, Revision 2, dated April 28, 2010.

(ii) Reserved.

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

(4) You may 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 June 13, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–14848 Filed 7–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0864; Directorate Identifier 2011–NM–023–AD; Amendment 39–17496; AD 2013–13–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain The Boeing Company Model 767 airplanes. That AD currently requires sealing certain fasteners and stiffeners in the fuel tank, changing certain wire bundle clamp configurations on the fuel tank walls, inspecting certain fasteners in the fuel tanks and determining the method of attachment of the vortex generators; and performing corrective actions if necessary. This new AD adds a general visual inspection for the presence of a polytetrafluoroethylene

(TFE) sleeve at the clamp location on the rear spar, and installation of a TFE sleeve if necessary. This new AD also adds airplanes to the applicability. This AD was prompted by fuel system reviews conducted by the manufacturer, and the identification of another possible ignition source location. We are issuing this AD to prevent possible ignition sources in the auxiliary (center) fuel tank, main fuel tanks, and surge tanks caused by a wiring short or lightning strike, which could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective August 20, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 20, 2013.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of October 1, 2009 (76 FR 43621, August 27, 2009).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; 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: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009). AD 2009–18–02 applied to the specified products. The NPRM published in the **Federal Register** on September 6, 2012 (77 FR 54850). The NPRM proposed to continue to require sealing certain fasteners and stiffeners in the fuel tank, changing certain wire bundle clamp configurations on the fuel tank walls, inspecting certain fasteners in the fuel tanks and determining the method of attachment of the vortex generators; and performing corrective action if necessary. The NPRM also proposed to require a general visual inspection for the presence of a polytetrafluoroethylene (TFE) sleeve at the clamp location on the rear spar, and installation of a TFE sleeve if necessary. The NPRM also proposed to add airplanes to 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 54850, September 6, 2012) and the FAA's response to each comment.

United Airlines stated that it has no comment for the NPRM (77 FR 54850, September 6, 2012).

Request to Change Acronym

Boeing requested that we change the NPRM (77 FR 54850, September 6, 2012) to correct an acronym from ''TFE'' to ''PTFE.'' Boeing stated that the proper acronym for polytetrafluoroethylene is ''PTFE.''

We disagree with changing the acronym in this AD. The service information required by this AD refers to polytetrafluoroethylene as ''TFE'' throughout; therefore, to reduce the potential for confusion, we have not changed the acronym ''TFE'' in this AD.

Request for Credit

Air New Zealand requested that we allow credit for prior incorporation of Boeing Service Bulletin 767–57A0102, Revision 3, dated December 2, 2010, for the requirements of paragraph (j) of the NPRM (77 FR 54850, September 6, 2012).

We agree with the request, but provide the following clarification. Paragraph (j) of this AD specifies the compliance time for certain airplanes to accomplish the actions of paragraph (h) of this AD. We have changed the heading for paragraph (j) of this AD to focus on the compliance time. Paragraph (h) of this AD specifies to do the actions in accordance with Boeing Service Bulletins 767–57A0102, Revision 01, dated November 27, 2007; or Revision 4, dated September 20, 2011. Since paragraph (l)(2) of this AD gives credit for Boeing Service Bulletin 767–57A0102, Revision 3, dated December 2, 2010, for accomplishing the actions in paragraph (h) of this AD, we have not changed the AD in this regard.

STC Winglet Comment

Aviation Partners Boeing and Air New Zealand stated that the installation of winglets per STC ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027F43B9A7486E86257B1D006591EE?OpenDocument&Highlight=st01920se*) does not affect the accomplishment of the manufacturer's service instructions.

We have added paragraph (c)(2) to this AD to state that installation of STC ST01920SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17. For all other AMOC requests, the operator must request approval for an AMOC in accordance with the procedures specified in paragraph (m) of this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the change 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 54850, September 6, 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 54850, September 6, 2012).

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

Costs of Compliance

We estimate that this AD affects 414 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	Number of U.S.-registered airplanes	Cost on U.S. operators
Group 1—Seal ends of fasteners—Boeing Service Bulletin 767-57A0100 (retained actions from AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)).	6 work-hours × $85 per hour = $510	$0	$510	367	$187,170
Group 2—Seal ends of fasteners—Boeing Service Bulletin 767-57A0100 (retained actions from AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)).	114 work-hours × $85 per hour = $9,690.	0	9,690	37	358,530
Group 3—Inspection—Boeing Service Bulletin 767–57A0100 (retained actions from AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)).	1 work-hour × $85 per hour = $85 ...	0	85	9	765
Group 1—Change wire bundle clamp configurations, Boeing Service Bulletin 767-57A0102 (retained actions from AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)).	250 work-hours × $85 per hour = $21,250.	1,632	22,882	376	8,603,632
Group 2—Change wire bundle clamp configurations, Boeing Service Bulletin 767-57A0102 (retained actions from AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)).	874 work-hours × $85 per hour = $74,290.	1,304	75,594	37	2,796,978
Group 3—Change wire bundle clamp configuration and seal fasteners, Boeing Service Bulletin 767-57A0102 (retained actions from AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)).	26 work-hours × $85 per hour = $2,210.	338	2,548	1	2,548
All airplanes—Inspection (new action).	1 work-hour × $85 per hour = $85 ...	0	85	414	35,190

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Seal ends of fasteners—Boeing Service Bulletin 767–57A0100 (retained actions from AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)).	6 work-hours × $85 per hour = $510.	$0	Up to $510.
Installation of TFE sleeve—Boeing Service Bulletin 767-57A0102	1 work-hour × $85 per hour = $85	$0	$85.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009), and adding the following new AD:

2013–13–08 The Boeing Company: Amendment 39–17496; Docket No. FAA–2012–0864; Directorate Identifier 2011–NM–023–AD.

(a) Effective Date

This airworthiness directive (AD) is effective August 20, 2013.

(b) Affected ADs

This AD supersedes AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009).

(c) Applicability

(1) This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes; certificated in any category; as identified in Boeing Service Bulletin 767–57A0100, Revision 3, dated July 28, 2011; and Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011.

(2) Installation of Supplemental Type Certificate (STC) ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027F43B9A7486E86257B1D006591EE?OpenDocument&Highlight=st01920se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent possible ignition sources in the auxiliary (center) fuel tank, main fuel tanks, and surge tanks caused by a wiring short or lightning strike, which could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Retained Fastener Sealant Application

This paragraph restates the requirements of paragraph (f) of AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009), with revised service information. For airplanes identified in Boeing Service Bulletin 767–57A0100, Revision 01, dated June 19, 2008: Within 60 months after October 1, 2009 (the effective date of AD 2009–18–02), do the actions in paragraph (g)(1) or (g)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0100, Revision 01, dated June 19, 2008; or Boeing Service Bulletin 767–57A0100, Revision 3, dated July 28, 2011. As of the effective date of this AD, only Boeing Service Bulletin 767–57A0100, Revision 3, dated July 28, 2011, may be used to accomplish the requirements of this paragraph.

(1) For Groups 1 and 2 airplanes: Seal the ends of the fasteners on the brackets that hold the vortex generators, and seal the ends of the fasteners on certain stiffeners on the rear spar, as applicable.

(2) For Group 3 airplanes: Do a detailed inspection to determine the method of attachment of the vortex generators and, before further flight, do all applicable specified corrective actions.

(h) Retained Wire Bundle Sleeve and Clamp Installation and Fastener Sealant Application

This paragraph restates the requirements of paragraph (g) of AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009), with revised service information. For airplanes identified in Boeing Service Bulletin 767–57A0102, Revision 01, dated November 27, 2007: Within 60 months after October 1, 2009 (the effective date of AD 2009–18–02), do the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0102, Revision 01, dated November 27, 2007; or Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011. As of the effective date of this AD, only Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011, may be used to accomplish the actions required by this paragraph.

(1) Change the wire bundle clamp configurations at specified locations on the fuel tank walls.

(2) Seal the fasteners and certain stiffeners at specified locations in the fuel tank.

(3) Do a detailed inspection of the sealant of the fasteners in the auxiliary tank center bay and rib 28 of the left and right main fuel tanks. Seal any unsealed fasteners before further flight.

(i) Definition

This paragraph restates the information specified in Note 1 of AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009). For the purposes of this AD, a detailed inspection is: An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.

(j) Compliance Time for New Wire Bundle Sleeve and Clamp Installation and Fastener Sealant Application for Newly Added Airplanes

For airplanes identified in Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011, but not identified in paragraph (h) of this AD: Do the actions required by paragraph (h) of this AD within 60 months after the effective date of this AD.

(k) New Inspection and Sleeve Installation

For airplanes identified as Groups 1 and 2 in Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011: Within 60 months after the effective date of this AD, do a general visual inspection of the clamp location on the rear spar to determine whether a polytetrafluoroethylene (TFE) sleeve is installed between the clamp and the plastic convoluted tube, in accordance with Work Package 13 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011.

(1) If a TFE sleeve is not installed between the clamp and the plastic convoluted tubing, before further flight, install a TFE sleeve, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011.

(2) If a TFE sleeve is installed between the clamp and the plastic convoluted tubing, no more work is required by this paragraph.

(l) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 767–57A0100, dated August 21, 2006, which is not incorporated by reference in this AD; Revision 1, dated June 19, 2008; or Revision 2, dated May 20, 2010, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 767–57A0102, Revision 1, dated November 27, 2007; Revision 2, dated January 7, 2010, which is not incorporated by

reference in this AD; or Revision 3, dated December 2, 2010, which is not incorporated by reference in this AD.

(m) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously in accordance with AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009), are approved as AMOCs for the corresponding provisions of this AD.

(n) Related Information

(1) For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference may be obtained at the address specified in paragraph (o)(5) of this AD. 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.

(o) 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 August 20, 2013.

(i) Boeing Service Bulletin 767–57A0100, Revision 3, dated July 28, 2011.

(ii) Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011.

(4) The following service information was approved for IBR on October 1, 2009, (74 FR 43621, August 27, 2009).

(i) Boeing Service Bulletin 767–57A0100, Revision 01, dated June 19, 2008.

(ii) Boeing Service Bulletin 767–57A0102, Revision 01, dated November 27, 2007.

(5) 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.*

(6) You may view this service information at FAA, 1601 Lind Avenue SW., Renton, WA. 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 June 13, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–15526 Filed 7–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0302; Directorate Identifier 2013–NM–019–AD; Amendment 39–17503; AD 2013–13–15]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 87–02–07, which applied to all The Boeing Company Model 737–100 and –200 series airplanes. AD 87–02–07 required replacement of certain underwing fuel tank access covers with stronger, fire-resistant covers. This new AD also requires inspecting fuel tank access doors to determine that impact-resistant access doors are installed in the correct locations, inspecting application of stencils and index markers of impact-resistant access doors, doing corrective actions if necessary, revising the maintenance program, and adding airplanes to the applicability. This AD was prompted by reports of standard access doors installed where impact-resistant access doors are required, and reports of impact-resistant doors without stencils. We are issuing this AD to prevent foreign object penetration of the wing tank, which could lead to a fuel leak near ignition sources (engine, hot brakes), consequently leading to a fuel-fed fire.

DATES: This AD is effective August 20, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 20, 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 Directate, 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: Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 87–02–07, Amendment 39–5506 (Docket No. 86–NM–175–AD; 52 FR 518, January 7, 1987), (''AD 87–02–07''). AD 87–02–07 applied to the specified products. The NPRM published in the **Federal Register** on April 10, 2013 (78 FR 21279). The NPRM proposed to continue to require replacement of certain underwing fuel tank access covers with stronger, fire-resistant covers. The NPRM also proposed to require inspecting fuel tank access doors to determine that impact-resistant access doors are installed in the correct

locations, inspecting application of stencils and index markers of impact-resistant access doors, doing corrective actions if necessary, revising the maintenance program, and adding airplanes to the applicability.

Comments

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

Concurrence With NPRM (78 FR 21279, April 10, 2013)

Boeing stated that it concurs with the content of the NPRM (78 FR 21279, April 10, 2013).

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD as proposed—except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 21279, April 10, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 21279, April 10, 2013).

Costs of Compliance

We estimate that this AD affects 128 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
Inspect, replace, and apply stencil and index marker.	8 work-hours × $85 per hour = $680	$0	$680	$87,040
Revise maintenance program	1 work-hour × $85 per hour = $85	0	85	10,880

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) 87–02–07, Amendment 39–5506 (Docket No. 86–NM–175–AD; 52 FR 518, January 7, 1987), and adding the following new AD:

2013–13–15 The Boeing Company: Amendment 39–17503; Docket No. FAA–2013–0302; Directorate Identifier 2013–NM–019–AD.

(a) Effective Date

This AD is effective August 20, 2013.

(b) Affected ADs

This AD supersedes AD 87–02–07, Amendment 39–5506 (Docket No. 86–NM–175–AD; 52 FR 518, January 7, 1987).

(c) Applicability

This AD applies to The Boeing Company Model 737–100, –200, –200C, and –300 series airplanes, certified in any category, as identified in Boeing Service Bulletin 737–28–1286, dated January 10, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by reports of standard access doors installed where impact-resistant access doors are required, and reports of impact-resistant doors without stencils. We are issuing this AD to prevent foreign object penetration of the wing tank, which could lead to a fuel leak near ignition sources (engine, hot brakes), consequently leading to a fuel-fed fire.

(f) Compliance

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

(g) Inspection and Corrective Actions

Within 72 months after the effective date of this AD: Do a general visual inspection of the left-wing and right-wing fuel tank access doors to determine that impact-resistant access doors are installed in the correct locations, and an inspection for proper application of stencils and index markers of impact-resistant access doors; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–28–1286, dated January 10, 2012. Do all applicable corrective actions before further flight.

(h) Maintenance Program Revision

Within 60 days after the effective date of this AD, revise the maintenance program to incorporate Airworthiness Limitation (AWL) 57–AWL–01, Impact-Resistant Fuel Access Doors, as specified in Section C.,

Airworthiness Limitations (AWLs)—Fuel Systems, of the Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–38278–CMR, Revision August 2012.

(i) No Alternative Critical Design Configuration Control Limitations (CDCCLs)

After accomplishing the revision required by paragraph (h) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

(j) 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.

(k) Related Information

For more information about this AD, contact Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

(l) 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 737–28–1286, dated January 10, 2012.

(ii) Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–38278–CMR, Revision August 2012.

(3) 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.*

(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 June 21, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–15963 Filed 7–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0598; Directorate Identifier 2013–CE–015–AD; Amendment 39–17506; AD 2013–14–01]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. Model PC–6/B2–H4 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as faulty rivets installed in the airframes during production could reduce the structural integrity of the airplane. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective August 5, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 5, 2013.

We must receive comments on this AD by August 30, 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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, P.O. Box 992, CH–6371 STANS, Switzerland; telephone: +41 (0)41 619 65 80; fax: +41 (0)41 619 65 76; Internet: *http://www.pilatus-aircraft.com* or email: *fodermatt@pilatus-aircraft.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2013–0115–E, dated May 28, 2013 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Reports have been received that rivets with insufficient shear (about 50% shear allowable) were delivered from the supplier

to Pilatus. Investigations revealed that the faulty rivets were already installed in various airframes and spare parts during the production process.

This condition, if not corrected, could result in a reduced strength of the aeroplane structure.

For the reasons described above, this AD prohibits all flight operations for the affected aeroplanes, except for a ferry flight under limited flight conditions to a repair station. In order to resume flights, this AD requires accomplishment of an inspection and, depending on findings, a repair of all affected areas of the aeroplane.

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

Relevant Service Information

Pilatus Aircraft Ltd. has issued Technical Memo TM–06–000004, Issue 01, dated May 16, 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 the AD

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

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 there are no airplanes currently on the U.S. registry and thus, does not have any impact upon the public. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and 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–2013–0598; Directorate Identifier 2013–CE–015–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 0 products of U.S. registry at this time. We also estimate that it will take about 5 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 $1,000 per product.

Based on these figures, we estimate there to be no cost for U.S. operators for this AD. However, if an airplane affected by this AD is at any time placed on the U.S. registry, it will cost approximately $1,425 per product to comply with this AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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.

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:

2013–14–01 Pilatus Aircraft Ltd.: Amendment 39–17506; Docket No. FAA–2013–0598; Directorate Identifier 2013–CE–015–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective August 5, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. Model PC–6/B2–H4 airplanes, serial numbers 735, 863, 909, 923, 948, 956, 958, 977, 978, 979, 980, 981, 982, 985, and 986, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 53: Fuselage.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as faulty rivets installed in the airframes during production could reduce the structural integrity of the airplane. We are issuing this AD to ensure the structural integrity of the airplane.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) and (f)(2) of this AD.

(1) Before further flight after August 5, 2013 (the effective date of this AD), contact Pilatus Aircraft Ltd. at the address specified in paragraph (j)(3) of this AD to obtain FAA-approved inspection procedures approved specifically for compliance with this AD for inspecting the airplane for loose rivets and for places where rivets are missing, and do the inspection.

(2) If any rivet deficiencies are found during the inspection required in paragraph (f)(1) of this AD, before further fight, contact PILATUS Aircraft Ltd. at the address specified in paragraph (j)(3) of this AD to obtain an FAA-approved repair scheme approved specifically for compliance with this AD and incorporate the repair.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(h) Special Flight Permit

Special flight permits are permitted with the following limitation: A pre-flight inspection must be done following the procedures specified in paragraph 2.2 of Pilatus Technical Memo TM–06–000004, Issue 01, dated May 16, 2013.

(i) Related Information

European Aviation Safety Agency (EASA) AD No. 2013–0115–E, dated May 28, 2013, for related information, which can be found in the AD docket on the Internet at *http://www.regulations.gov.*

(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) Pilatus Technical Memo TM–06–000004, Issue 01, dated May 16, 2013.

(ii) Reserved.

(3) For Pilatus Aircraft Ltd service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, P.O. Box 992, CH–6371 STANS, Switzerland; telephone: +41 (0)41 619 65 80; fax: +41 (0)41 619 65 76; Internet: *http://www.pilatus-aircraft.com* or email: *fodermatt@pilatus-aircraft.com.*

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

(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 Kansas City, Missouri on June 28, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–16332 Filed 7–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. FAA–2012–0754]

Airport Improvement Program (AIP): Policy Regarding Access to Airports From Residential Property

AGENCY: Federal Aviation Administration (FAA).

ACTION: Final Policy Statement.

SUMMARY: This action adopts a Policy Statement, based on Federal law, concerning through-the-fence access to a federally-obligated airport from an adjacent or nearby property, when that property is used as a residence. This Policy Statement replaces FAA's previously published Interim Policy (76 FR 15028; March 18, 2011) with regard to commercial service airports, and establishes how FAA will implement section 136 of Public Law 112–95.

DATES: The effective date of this Final Policy is July 16, 2013.

FOR FURTHER INFORMATION CONTACT: Randall S. Fiertz, Director, Office of Airport Compliance and Management Analysis, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3085; facsimile: (202) 267–5257.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy of this Policy and all other documents in this docket using the Internet by:

(1) Searching the Federal eRulemaking portal (*http://www.regulations.gov/search*);

(2) Visiting FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies;* or

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

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Airport Compliance and Management Analysis, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3085. Make sure to identify the docket number, notice number, or amendment number of this proceeding.

Authority for the Policy

This notice is published under the authority described in Subtitle VII, part B, chapter 471, section 47122 of title 49 United States Code.

Background

Detailed background regarding FAA's development of Policy documents specific to through-the-fence access to federally obligated airports from adjacent or nearby property, when that property is used as a residence, is available at:

- 75 FR 54946; September 9, 2010;
- 76 FR 15028; March 18, 2011; and
- 77 FR 44515; July 30, 2012.

On February 14, 2012, FAA Modernization and Reform Act of 2012 (FMRA) was signed into law (Pub. L. 112–95). Section 136 of this law permits general aviation airports, as defined by the statute, to enter into residential through-the-fence agreements with property owners or associations representing property owners. This must be a written agreement that requires the property owner to:

- Pay access charges that the sponsor determines to be comparable to those fees charged to tenants and operators on-airport making similar use of the airport;
- Bear the cost of building and maintaining the infrastructure the sponsor determines is necessary to

provide access to the airfield from property located adjacent to or near the airport;

• Maintain the property for residential, noncommercial use for the duration of the agreement;

• Prohibit access to the airport from other properties through the property of the property owner; and

• Prohibit any aircraft refueling from occurring on the property.

In order to implement this law, FAA amended the grant assurances (77 FR 22376; April 13, 2012). Among the modifications, paragraph g of Grant Assurance 5, *Preserving Rights and Powers,* was amended to clarify that sponsors of commercial service airports are not permitted to enter into residential through-the-fence arrangements. However, sponsors of general aviation airports may enter into such an arrangement if the airport sponsor complies with the requirements of section 136 of P.L. 112–95 and the grant assurances. In addition, Grant Assurance 29, *Airport Layout Plan,* was amended to require all proposed and existing access points used to taxi aircraft across the airport property boundary be depicted on the airport layout plan (ALP).

A complete list of the current grant assurances can be viewed at: *http://www.faa.gov/airports/aip/grant_assurances/.*

On July 30, 2012, FAA published its interpretation of section 136 of Public Law 112–95 and its Proposed Policy on Existing Through-the-Fence Access to Commercial Service Airports From A Residential Property (77 FR 44515; July 30, 2012). The FAA invited public comment on both the Proposed Policy and its interpretation of the law for 30 days. At the request of an aviation membership association, FAA extended this comment period for an additional two weeks.

Comments Received on the Notice and Proposed Policy

The FAA received 84 comments from individuals, including private homeowners with current through-the-fence access to an airport, industry associations, companies, a state aviation department, a county airport manager, and a state legislator. Half of the comments submitted expressed generally negative views about FAA's proposed interpretation of the law, but were not specific and did not recommend any changes for FAA to consider. Instead, these comments discussed what the submitters described as benefits of having aircraft owners live near airports. Approximately 21 commenters raised objections to what they perceived as a 20-year limit on the duration of residential through-the-fence access agreements at general aviation airports, and FAA's requirement that airport sponsors demonstrate evidence of compliance prior to entering into new agreements. Two commenters shared their positive experiences as residential through-the-fence users. Two commenters expressed support for the interpretations made by FAA, especially with regard to self-fueling. The FAA will respond to specific comments submitted by organizations and individuals in the discussion below.

Aircraft Owners and Pilots Association

The Aircraft Owners and Pilots Association (AOPA) appreciated FAA's narrow interpretation related to self-fueling and commercial aeronautical activities. AOPA recommended maintaining consistency with regard to the dates presented in the Compliance Guidance Letter noting that FAA alternatives between September 30, 2012 and the phrase ''beginning in Fiscal Year 2014''. AOPA also recommended sunsetting FAA headquarters' review of residential through-the-fence access agreements as described in section V of the Compliance Guidance Letter. The Experimental Aircraft Association (EAA) expressed similar comments.

The FAA agrees that it should be consistent with regard to the date upon which evidence of compliance will be required and has amended the Compliance Guidance Letter to specify ''October 1, 2014'' in all places it is referenced.

AOPA, as well as other commenters, misinterpret the process for reviewing existing and new residential through-the-fence access agreements as discussed in the Compliance Guidance Letter. Section IV.A.3.a states, ''Regional Offices will determine if access agreements submitted by sponsors of general aviation airports and privately-owned reliever airports effectively address the terms and conditions contained in P.L. 112–95.'' The Office of Airport Compliance in Washington headquarters will only review a residential through-the-fence access agreement for a general aviation airport with existing access when the Regional Office expresses concern that the agreement does not meet the statutory requirements contained in the law. Under section V.C, sponsors of general aviation airports proposing to establish new residential through-the-fence access agreements may request the Office of Airport Compliance to review their proposed agreement only in the event that the Regional Office rejects it. The FAA recognizes that several readers found this process to be unclear and has clarified this language in the Compliance Guidance Letter. In most cases of establishing residential through-the-fence access at general aviation airports, the role of the Office of Airport Compliance will be to monitor this activity.

Experimental Aircraft Association

Overall, EAA found that the new Policy meets the needs of the general aviation community. EAA expressed support for FAA's interpretations regarding self-fueling and aeronautical commercial activities, but offered a series of recommendations which include:

• Maintaining consistency with regard to the dates presented in the Compliance Guidance Letter;

• Clarifying that FAA has not imposed any limitation on the duration of access agreements at general aviation airports;

• Allowing AIP funding for specific costs associated with relocating a residential through-the-fence access point to facilitate safety, security, or long-term planning needs;

• Permitting new residential through-the-fence access agreements at commercial service airports and privately-owned reliever airports, but requiring more rigid FAA, Transportation Security Administration (TSA), and airport sponsor security and safety standards;

• Establishing a three-year sunset provision to streamline the approval of residential through-the-fence access agreements for general aviation airports at the Airports District Office (ADO) level, but require Regional Office concurrence for agreements at reliever (publically-owned and privately-owned) and commercial service airports;

• Clarifying the terms ''adjacent to'' and ''near the airport'';

• Clarifying the ADO, Regional Office, and Office of Airport Compliance access plan review timeframes; and

• Recognizing the uniqueness of aviation in Alaska.

EAA's positions were supported by an individual commenter.

The FAA agrees that it can be more transparent regarding the fact that its Policy Statement does not limit the duration of new residential through-the-fence access agreements. An additional paragraph has been added under sections III and IV of the Compliance Guidance Letter to clarify this issue.

EAA incorrectly assumes FAA's Policy for commercial service airports,

which permits airport sponsors to relocate existing access points without submitting a proposal to extend its existing access, is linked to an AIP funding decision. The language in section II of the Final Policy On Existing Through-the-Fence Access From A Residential Property was a comment received prior to the publication of FAA's Interim Policy. (See 76 FR 15028; 15032 (March 18, 2011)) The commenter proposed that an airport sponsor should not be required to update its access plan or meet supplemental standards if it negotiated with its residential through-the-fence users to relocate an already existing access point to another location on the airport's boundary in order to address a specific need at the airport. The FAA agreed this was a reasonable solution and amended the Interim Policy accordingly.

In addition, FAA notes that any decision to relocate an access point would be initiated by the airport sponsor, not FAA. As such, it would be up to the airport sponsor to identify an appropriate source of funding for the costs associated with the relocation. Costs associated with on-airport infrastructure and facilities used exclusively or primarily for the accommodation of residential through-the-fence users are considered private-use and remain ineligible for AIP funding.

The FAA disagrees with EAA's recommendation to permit new residential through-the-fence access agreements at privately-owned reliever airports and commercial service airports. Similar comments were submitted by numerous individuals who stated that prohibiting privately-owned reliever airports from entering into new residential through-the-fence access agreements violates the spirit and intent of the law. Some commenters stated that FAA had not identified any privately-owned relievers with existing residential through-the-fence access agreements at the time the law was written.

The FAA will respond to all of these comments here. House Report 112–381 does not provide any explanation regarding Congress' intent of this provision. Therefore, FAA must rely on a plain reading of the language. The provision is narrowly drafted to apply to ''general aviation airports'' only. Prior to the passage of Public Law 112–95, no statutory definition for ''general aviation airports'' existed. The definition included in this law and now codified at title 49, U.S.C. 47102(8) excludes privately-owned reliever airports. The FAA raised concerns regarding the definition of ''general aviation airports'' with the Congressional Committee prior to passage of the law because FAA was aware of both privately-owned reliever airports and commercial service airports with existing residential through-the-fence access. While FAA will grandfather seven privately-owned reliever airports with existing residential through-the-fence access agreements under the Policy Statement for general aviation airports, FAA will apply the law as it is written with regard to new agreements. The FAA has proposed a separate Policy for the four commercial service airports with existing residential through-the-fence access which is adopted without substantive change in this notice.

The FAA declines to clarify the terms ''adjacent to'' or ''near the airport.'' Section 136 of Public Law 112–95 does not define these terms and implies it is within the airport sponsor's discretion to determine what constitutes a real property ''adjacent to'' or ''near the airport'' and requiring access to the airfield.

EAA notes that the Compliance Guidance Letter encourages ADOs and Regional Offices to complete their review of existing residential through-the-fence access agreements at general aviation airports within 60 days, but provides additional time for general aviation airports proposing new residential through-the-fence access agreements. The FAA believes this is appropriate. The FAA's acceptance of a new residential through-the-fence access agreement requires FAA to review an updated ALP. It is FAA's experience that approval of an updated ALP is based on the scope, detail, and quality of each submission. As such, FAA is not inclined to shorten the target review periods as proposed.

The FAA acknowledges EAA's comments regarding the uniqueness of aviation in Alaska. The FAA reiterates its desire to take a more flexible approach with existing residential through-the-fence access agreements. However, section 136 of Public Law 112–95 does not specify a more lenient posture toward Alaskan airports with regard to the terms and conditions it requires residential through-the-fence access agreements to meet.

Independence Airpark Homeowners Associations

The Independence Airpark Homeowners Associations submitted separate comments and indicated their support for the comments and conclusions provided by EAA. The following comments were presented by the Independence Airpark Homeowners Associations:

- The intent of Congress was fairly simple, but FAA has added significant complexity along with associated opportunities for a lot of subjective determination by requiring things in addition to what is contained in the law;
- The requirement that new residential through-the-fence access agreements be pre-certified is not in the law and is unnecessarily wasteful for both Federal and local resources;
- It's unrealistic to exclude future airport improvements and changes required by regulations to be excluded from AIP funding; and
- The FAA is not taking a pro-active approach in local land use planning and zoning activities as a means to protect the national airport system and help local economic development offices attract new aviation related businesses which may want to be located adjacent to existing airports where land was available and appropriately zoned for their use.

The FAA is proposing to interpret section 136 in a manner that improves transparency and reduces the potential for severe infringements on rights to use private property for self-fueling and nonaeronautical commercial services. The tool that airport sponsors and FAA employees will use to verify that existing residential through-the-fence access agreements comply with the law, the Access Agreement Review Sheet which is included in FAA's Compliance Guidance Letter as Appendix C, is limited to the terms and conditions contained in the law.

Numerous commenters, in addition to the Independence Airpark Homeowners Associations, objected to the language in the Policy Statement requiring general aviation airport sponsors proposing to establish new residential through-the-fence access agreements to provide evidence of compliance prior to executing an agreement with a residential user and/or homeowners association.

While the law does not require airport sponsors to demonstrate their compliance with the terms and conditions contained in section 136 prior to entering into the agreement, FAA believes this is an important safeguard for both the airport sponsor and the residential through-the-fence user. If an airport sponsor enters into a residential through-the-fence access agreement which does not comply with the terms and conditions included in the law, and cannot be re-negotiated to comply, FAA may be placed in a position where it needs to initiate a compliance action against the sponsor. A finding of noncompliance could result in the withholding of Federal AIP

funds from the airport sponsor. This has the potential to disproportionately impact residential through-the-fence users who could be asked to bear a higher burden of the airport's costs or find the value of their residential property linked to an airport struggling to address its infrastructure development and maintenance needs.

The FAA anticipates that most homeowners seeking to establish a residential through-the-fence access agreement will desire a lengthy or perpetual term. Airport sponsors should insist on strong and effective subordination clauses as part of the access agreement as an appropriate means to reserve the right to correct any matters of noncompliance after the agreement is executed. The FAA seeks to avoid sponsor noncompliance and believes the best use of Federal resources would be applied to ensuring airport sponsors comply with the law prior to executing an agreement. With that said, FAA is amending its interpretation of the law to state that airport sponsors of general aviation airports proposing to establish new or add new residential through-the-fence agreements must provide evidence of compliance prior to establishing the access point. This will not preclude a general aviation airport sponsor from executing a new residential through-the-fence agreement with a residential user and/or association representing residential users prior to FAA reviewing the proposed agreement and approving amendment of the ALP. However, the airport sponsor would do so at its own risk and would not be permitted to establish the access point until the updated ALP is approved. FAA employees would be precluded from approving the ALP until they have verified the agreement will comply with the law. The FAA has made corresponding revisions to the Compliance Guidance Letter.

FAA Order 5100.38C, *Airport Improvement Program Handbook,* contains numerous restrictions against using AIP funds for on-airport infrastructure that will be used for the exclusive or near exclusive use of an air carrier, fixed base operator, or tenant. Limiting future airport improvements to projects related to general public demand at the airport is not inconsistent with the definition of ''airport development'' which is codified at title 49, U.S.C. 47102(3). As noted above, the Independence Airpark Homeowners Associations also expressed concern that FAA is not taking a pro-active approach in local land use planning and zoning activities as a means to protect the national airport system and help local economic development offices attract new aviation related businesses which may want to be located adjacent to existing airports where land was available and appropriately zoned for their use. The Federal Government lacks the authority to regulate local land use. Land use zoning is the responsibility of state and/or local authorities.

Section 136 of Public Law 112–95 deals solely with agreements that grant a person that owns residential real property adjacent to or near the airport access to the airfield. See 49 U.S.C. 47107(t)(2)(B)(iii). (''An agreement described in paragraph (1) between an airport sponsor and a property owner . . . shall require the property owner, at a minimum . . . to maintain the property for residential, noncommercial use, for the duration of the agreement . . . .'') The FAA lacks sufficient information to determine how its implementation could be used to facilitate local land use planning and zoning.

National Air Transportation Association

The National Air Transportation Association (NATA) offered comments which generally concurred with FAA's interpretation of section 136 of Public Law 112–95. NATA supports FAA's desire to review new residential through-the-fence access agreements before they are executed and notes, ''after-the-fact reviews of signed RTTF agreements present no pathways to compliance . . .'' However, NATA felt that FAA's interpretation on commercial activities is not specific enough because it could still permit the homeowner to allow a third party to offer a commercial aeronautical service on their property. NATA requested FAA modify this interpretation to indicate that allowing public use of the property to receive commercial aeronautical services would be a violation of the terms and conditions set forth in the law. Additionally, NATA, like AOPA and EAA, also recommended review of new residential through-the-fence access agreements be transitioned to the ADOs or Regional Offices.

The FAA agrees that it can be more specific regarding its interpretation of the limitation on commercial activities. The FAA has amended its Policy Statement on section 136 and the Compliance Guidance Letter to prohibit the property owner from allowing any third party to offer commercial aeronautical services from the residential property covered by a residential through-the-fence access agreement.

Oregon Department of Aviation

A number of commenters, including the Oregon Department of Aviation (Department), stated their view that the FAA over-reached the intent of Congress and questioned why FAA did not better address security and TSA concerns about access to restricted parts of airports. Specifically, the Department believes that restrictions imposed by FAA will have a chilling effect and states:

- No other grant assurance requires FAA headquarters level pre-approval of a signed agreement;
- The change to Grant Assurance 29, *Airport Layout Plan,* should remain permissive;
- Using safety as a triggering event for a sponsor to update its access plan is vague, but implies that the very nature of residential through-the-fence use may subjectively be the cause of any safety issue and might be used as a reasoning to prevent or find fault with a residential through-the-fence access agreement; and
- The 20-year limit on reviewing access agreements imposes an artificial limit on the access agreement.

The Department's comments conclude by discussing their positive experience with residential through-the-fence agreements and encourage FAA to regulate the activity in a pragmatic and reasonable way that reflects an understanding that one size does not fit all. Oregon State Senator Betsy Johnson submitted a letter in support of the Department's comments.

The FAA disagrees with the sentiment expressed by the Department and believes its overall approach provides the flexibility to address unique situations at individual airports. The FAA is limiting its review of residential through-the-fence access agreements at general aviation airports to the criteria specified in section 136 of Public Law 112–95. In addition, FAA has clearly defined the scope of its review of requirements related to fueling and commercial activities on residential property.

The FAA consulted with TSA during the development of the Interim Policy which now forms the basis for the Final Policy On Existing Through-the-Fence Access To Commercial Service Airports From A Residential Property. Additionally, the Final Policy permits FAA to consult with TSA prior to accepting an access plan from a commercial service airport. Section 136 of Public Law 112–95 does not include any terms or conditions related to security, so FAA will not review security related matters when verifying

that residential through-the-fence agreements comply with the law. However, this does not preclude TSA from initiating its own review.

The FAA published a **Federal Register** notice announcing revisions to the grant assurances and seeking comment on April 13, 2012 (77 FR 22376 (April 13, 2012)). No comments were received. Grant Assurance 29 was clarified to specifically include ''all proposed and existing access points used to taxi aircraft across the airport's property boundary'' as an item required to be depicted on the sponsor's Airport Layout Plan. The Compliance Guidance Letter, at section X.D, states, ''establishing a new access point not depicted on an FAA-approved ALP may result in a violation of Grant Assurance 29 . . .'' The FAA believes the Department's concerns regarding Grant Assurance 29 are addressed through the language in the Compliance Guidance Letter.

The FAA disagrees with the Department's assessment regarding the inclusion of safety as an event which triggers a commercial service airport to update its access plan. Given the limited number of airports impacted by the Final Policy, combined with knowledge of safety issues associated with the residential through-the-fence access points, FAA believes identification of a safety concern should remain a triggering event for commercial service airports with existing residential through-the-fence access agreements. The FAA notes that the terms and conditions contained in section 136 of Public Law 112–95 do not address safety concerns, and therefore FAA is not requiring any additional safety reviews when reviewing residential through-the-fence access agreements for compliance with the law.

The FAA disagrees with the Department's assessment that establishing a 20-year limit on review of residential through-the-fence access agreements at general aviation airports effectively imposes an artificial limit on the access agreement. Similar comments were submitted by the Tuolumne County Airports Manager. Neither the law, nor FAA's guidance imposes a limitation on the duration of a residential through-the-fence access agreement at a general aviation airport. The Department's recommendation that future reviews follow standard airport inspection practices is not practical due to the limited number of general aviation airports inspected by FAA annually through its land use inspection process—less than 20. The twenty-year review requirement is consistent with airport planning horizons and is not burdensome for the airport sponsor.

Washington Airport Management Association

The Washington Airport Management Association (WAMA) was generally supportive of the Policy and certain elements contained in the law. However, WAMA expressed concern that without some limitations on future through-the-fence locations or a strong policy position to discourage residential growth adjacent to airports that incompatible development will continue to erode and impact airport operations as well as degrade quality of life. WAMA encouraged provisions be put in place to require planning for future public use hangars and tie-down locations on-airport to avoid unfettered growth of through-the-fence at general aviation airports. In addition, WAMA recommended FAA subject existing and new residential through-the-fence agreements to standards similar to those required of commercial service airports by rule or adoption of best management practices, and cautioned that failure to adequately address such issues could result in higher future public costs on airport expansion.

While WAMA raises very valid points with regard to airport planning, FAA believes the law limits its review of new residential through-the-fence agreements to a narrow scope. The FAA will strongly encourage airport sponsors contemplating such agreements to engage in planning studies to identify potential on-airport needs. However, FAA cannot require these sponsors to do so. One of the goals stated in FAA's Interim Policy was its desire to use the access plans to identify best management practices and recommendations. In light of the adoption of Public Law 112–95, FAA's knowledge in this area remains limited.

Comments Submitted by Individuals

Comment: Two commenters inquired as to what will occur after the 30-day comment period is over.

Response: FAA initially established a 30-day comment period in order to apprise the public of its plans for implementing section 136 of Public Law 112–95 and its intent to alter and finalize its previously issued Interim Policy. This comment period was extended by two weeks at the request of an aviation membership association. The FAA sought to balance the opportunity for public comment with the Agency's desire to move forward with implementation. The FAA has deferred its review of any proposals to establish new residential through-the-fence access arrangements pending the completion of this Policy Statement and associated guidance. The FAA is now prepared to review these requests in a consistent manner.

Comment: The law does not limit residential through-the-fence agreements to 20 years.

Response: The FAA agrees that the law does not set any time limit on the duration of residential through-the-fence access agreements at general aviation airports, as defined by the statute. The FAA notes that it is not proposing any such limit at these airports. The FAA believes these commenters confused either FAA's Proposed Final Policy for commercial service airports with its approach to airports covered by the statute or the language in the draft Compliance Guidance Letter stating that FAA's review of an access agreement is valid for a period not to exceed 20 years or until a triggering event occurs. The FAA has added a paragraph to section III and a footnote to section IV of the Compliance Guidance Letter to clarify this issue.

Comment: Including the statement, ''going forward, the FAA expects sponsors of general aviation airports proposing to establish new or add new residential through-the-fence agreements to comply with the terms and conditions of the law'' infers that current agreements have been illegal. Other commenters referred to this language as ambiguous and confusing.

Response: The FAA did not intend to infer that existing agreements have been illegal, nor did it intend to be ambiguous or confuse readers. With that said, FAA is aware of existing residential through-the-fence access agreements which may not presently fulfill the terms and conditions included in section 136 of the law. In fact, some commenters, such as the Tuolumne County Airports Manager, raised these issues in their submissions to the docket. The FAA reiterates its desire to address such situations on a case-by-case basis and report these issues to interested Congressional Committees.

Comment: The FAA is adding additional requirements to regulate.

Response: When reviewing residential through-the-fence access agreements for general aviation airports, FAA is only reviewing the agreement to ensure it complies with the terms and conditions of the law. The Final Policy for commercial service airports includes other factors not included in the law, such as safety of airport operations. The law is silent with regard to airports not meeting the definition of general

aviation airport, and FAA is finalizing its previously published Interim Policy to address commercial service airports.

Comment: The language requiring residential through-the-fence users to bear the cost of building and maintaining the infrastructure the sponsor determines necessary to provide access to the airfield from the property located adjacent to or near the airport is too open-ended. An airport sponsor could dictate that access be via gold lined taxiways.

Response: This language is taken directly from the law. The FAA believes airport sponsors and potential residential through-the-fence access users will negotiate this matter reasonably.

Comment: Language in the Proposed Final Policy On Existing Through-the-Fence Access To Commercial Service Airports From A Residential Property related to supplemental standards for commercial service airport sponsors proposing to extend their existing agreements is too open-ended. The commenter refers to requiring through-the-fence users to acknowledge that their property will be affected by aircraft noise and emissions which may change over time and waiving any right to bring an action against the sponsor for existing and future operations and activities at the airport associated with aircraft noise and emissions. The commenter states that such an agreement would allow the use of the airport for a nighttime war exercise or permitting all regional flight schools to use one airport to conduct intrusive operations. Another commenter refers to this language and states that the law does not favor a priori waiver of the legal right to sue. Other comments on the supplemental standards included objections to enforcing safety and operating rules on through-the-fence users identical to on-airport users and the sponsor's ability to limit future use and ownership of through-the-fence property to aviation-related uses.

Response: The FAA believes these are prudent commitments to memorialize in an agreement proposing to extend residential through-the-fence access at commercial service airports now covered by this Final Policy. The use of broad waivers was recommended to FAA by individuals and communities advocating in support of residential through-the-fence access agreements during discussions with FAA in 2010. By statute, commercial service airports with more than 10,000 annual passenger boardings are apportioned a minimum of $1 million annually in AIP funding. The FAA seeks to ensure that extending a residential through-the-fence agreement will not limit investments made at the airport. It's also important to note that nothing in section 136 alleviates a federally-obligated airport sponsor's obligation to make the airport available for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities.

Comment: It makes no sense to ''save'' unused, available adjoining land for imagined airport growth when a through-the-fence development is an actual and existing demand for airport use.

Response: The FAA does not require airport sponsors to ''save'' adjoining land; FAA supports planning through the use of master planning and forecast demand studies. The FAA encourages airport sponsors to address existing demand for airport use on the airport when possible. In addition, FAA encourages airport sponsors to ensure that adequate areas to accommodate forecasted aeronautical growth be identified. An airport sponsor may be limited in its ability to acquire additional land needed for commercial aeronautical services if adjacent properties are used primarily for residential purposes. Adjacent properties used primarily for residential through-the-fence purposes are not aeronautical development; FAA's focus is on-airport aeronautical development, and the Agency is concerned when off-airport development degrades the aeronautical utility of an airport.

Comment: Requiring residential owners to pay a comparable fee to access and maintain the airport is inequitable. The commenter explains that his airport currently has no ''airport'' tenants except gliders who are not paying a fair lease rate, and that through-the-fence commercial owners pay fees. Another commenter objected to the ''parity'' of costs and claims it would be a taking.

Response: The law requires residential through-the-fence users to pay access charges that the sponsor determines comparable to those fees charged to tenants and operators on-airport making similar use of the airport. The FAA recognizes that it may need to assist some airport sponsors in achieving compliance with the law. The FAA will work directly with these airport sponsors as these issues are identified.

Comment: Three commenters raised concerns related to commercial through-the-fence operations. The Aviation Professionals Group requested FAA include language stating that past, present, and future commercial through-the-fence decisions and rulings will be no more adverse to this policy for a commercial property than had it been a residential property in compliance with the law. Another commenter described the non-residential off-airport hangar he uses and asked FAA to modify its Policy to address this use. A third commenter asked FAA to consider changing its rules to allow industrial or service/distribution companies to have similar access.

Response: The FAA appreciates the opportunity to clarify its views on commercial through-the-fence activities which is discussed in FAA Order 5190.6B, *Airport Compliance Manual,* in chapter 12. The grant assurances do not prevent an airport sponsor from entering into commercial through-the-fence access agreements, and FAA does not prohibit such agreements outright. However, FAA strongly cautions airport sponsors to research such agreements to ensure they will not inadvertently result in a violation of the airport sponsor's Federal obligations. In addition, FAA discourages airport sponsors from entering into through-the-fence agreements with commercial service providers (including aircraft storage) that intend to compete with an on-airport service provider.

The FAA is not proposing to alter or change this guidance with the exception of arrangements which currently co-mingle commercial and residential activities. Going forward, airport sponsors will need to determine if the potential through-the-fence user is proposing a commercial activity (including aircraft storage) or a residential use. Section 136 of P.L. 112–95 requires residential through-the-fence access users to maintain their property for residential, noncommercial use for the duration of the agreement, and FAA is interpreting this as a limitation on commercial aeronautical activities only.

Comment: One comment states that ''residential property'' is not defined and questions if an empty lot is a residential property.

Response: The draft Compliance Guidance Letter on FAA Review of Existing and Proposed Residential Through-the-Fence Access Agreements includes a definition of ''residential property.'' It defines residential property as a piece of real property used for single- or multi-family dwellings; duplexes; apartments; primary or secondary residences even when co-located with a hangar; hangars that incorporate living quarters for permanent or long-term use; and time-share hangars with living quarters for variable occupancy of any term. An empty lot would likely not qualify as

residential property unless the airport sponsor certified it as existing access in response to the definition included in FAA's Interim Policy On Existing Through-the-Fence Access From A Residential Property. Such a distinction would no longer be relevant to a general aviation airport as sponsors of these airports may now enter into new residential through-the-fence agreements.

Comment: The FAA's proposal to use ''appropriate mitigations'' to assist some sponsors in complying with the terms and conditions of the law needs limitations and definitions consistent with the law.

Response: Flexibility has been a basic premise reflected in FAA's previous Policy documents on residential through-the-fence access. The codification of specific terms and conditions on these agreements has limited FAA's ability to be more flexible with sponsors whose agreements have ceded important rights and powers. The FAA reiterates its intent to address these situations on a case-by-case basis and report these issues to interested Congressional Committees.

Comment: The Tuolumne County Airports Manager expressed concerns related to the possibility of reducing funding for airports which cannot comply with the law, noting that the term ''reduced level of funding'' could be open to interpretation by FAA staff in ADOs or Regional Offices.

Response: The FAA Compliance Guidance Letter notes that any decisions that might impact future AIP investments will be analyzed on a case-by-case basis by the Office of Airport Compliance, the Planning and Environmental Division, and the Airports Financial Assistance Division who will provide more specific guidance to the local staff.

Comment: The Tuolumne County Airports Manager also raised concerns with the direction contained in Appendix D of the Draft Compliance Guidance Letter which states that an ADO should not forward an access agreement to the Regional Office if the airport sponsor fails to address any statutorily required terms and conditions. This commenter also offered other suggestions regarding the wording of paragraphs VII.B and VIII.A.

Response: The FAA expects airport sponsors to address all of the terms and conditions contained in the law. If an existing access agreement precludes a sponsor from meeting a specific term or condition contained in the law, the sponsor should identify the language in the agreement which creates the conflict. Such a notation will assist FAA staff in determining the appropriate level of review for that specific access agreement.

The FAA declines to replace ''and/'' in paragraph VII.B. with ''or'' because commercial service airports would be required to submit both an agreement and access plan. Although FAA declines to delete ''as part of a master plan'' in paragraph VIII.A, FAA has added the phrase ''or upon completion of an AIP-funded project'' to include these scenarios as well.

Comment: One commenter questioned the restriction on self-fueling contained in the law stating it's not fair and doubts it's legal.

Response: The FAA addresses this concern by interpreting the prohibition on fueling to apply only to the sale of fuel. As stated in the **Federal Register** on July 30, 2012, ''the FAA will not concern itself with self-fueling activities which may be permitted by local regulation.'' (77 FR 44515; 44518 (July 30, 2012))

Comment: One commenter encouraged FAA to extend this provision to inside the fence.

Response: The FAA is implementing section 136 of Public Law 112–95 which is specific to through-the-fence access only. FAA Order 5190.6B, *Airport Compliance Manual,* addresses the issue of on-airport residences and crew quarters in chapter 20. Certain aeronautical uses such as commercial air taxi, charter, and medical evacuation services may have a need for limited and short-term flight crew quarters for temporary use, including overnight and on-duty times. Some airport sponsors may assign living quarters to the airport manager in order to facilitate specific management-related duties. However, FAA does not consider permanent or long-term living quarters to be an appropriate use of federally-obligated airport property.

Comment: One commenter encouraged FAA to consider the emerging field of carplanes and their access needs.

Response: This Policy Statement is not intended to apply to carplanes or any type of aircraft brought to the airport on a trailer. Federally-obligated airport sponsors are prohibited from unjustly discriminating against or denying access to these types of aircraft. This Policy Statement applies to the agreements governing aircraft taxied from private, residential properties across the airport's property boundary in order to access aviation infrastructure.

Comment: Two commenters encouraged FAA to extend the protections of the grant assurances to off-airport users.

Response: While the grant assurances have been interpreted to convey certain rights to aeronautical users, this is not their primary purpose. These assurances are designed to ensure the public's investment in the airport will be fully utilized and benefit civil aviation. Through-the-fence users base their operations on private property, and there is no Federal interest to be protected. With that said, FAA recognizes that through-the-fence users negotiate terms of access directly with an airport sponsor, and at times may request terms which seek to protect their private interest. The FAA expects airport sponsors to weigh such requests against their Federal obligations in order to benefit the civil aviation system.

Comment: One commenter encouraged FAA to disallow any new residential through-the-fence agreements and dissolve any past agreements in the interest of safety.

Response: Section 136 of Public Law 112–95 specifically permits residential through-the-fence agreements at general aviation airports, as defined by the statute. This law specifically includes existing and new agreements. Although FAA cannot consider this comment in whole, FAA notes that Grant Assurance 5 now prohibits commercial service airports from entering into new residential through-the-fence agreements, and the Final Policy requires commercial service airports with existing agreements to address safety concerns in their access plan.

Changes to the FAA's Interpretation of the FMRA's Section 136

Enforcement

The FAA is amending its interpretation of the law to state that airport sponsors of general aviation airports proposing to establish new or add new residential through-the-fence agreements must provide evidence of compliance prior to establishing an access point. This will not preclude a general aviation airport sponsor from executing a new residential through-the-fence agreement with a residential user and/or association representing residential users prior to FAA reviewing the proposed agreement and signing the ALP. However, this action would be taken at the airport sponsor's own risk. Establishing a new access point not depicted on a FAA-approved ALP may result in a violation of Grant Assurance 29, *Airport Layout Plan.*

Changes: The third paragraph under Enforcement now states, ''Airport sponsors of general aviation airports

proposing to establish new or add new residential through-the-fence agreements must provide evidence of compliance prior to establishing the access point. The establishment of a new residential through-the-fence agreement which does not comply with the law or results in a violation of the sponsor's commitments with the Federal Government may result in enforcement proceedings under 14 Code of Federal Regulations (CFR), part 16. Establishing a new access point not depicted on a FAA-approved ALP may result in a violation of Grant Assurance 29, *Airport Layout Plan.''*

Terms and Conditions—Commercial Activities

The FAA has inserted references to ''any third party'' in its description of this prohibition. This is necessary to ensure that the residential through-the-fence user does not permit the residential property to be used as a location for a third party to offer commercial aeronautical services.

Changes: The two sentences in the first paragraph of this section now contain references to ''any third party.'' The first paragraph now reads, ''Section 136 states that residential property owners must maintain their property for residential, noncommercial use for the duration of the agreement. The FAA interprets this as a prohibition on commercial aeronautical services offered by residential through-the-fence users or any third party that might compete with on-airport aeronautical service providers, whether existing or not, or chill the airport sponsor's ability to attract new commercial service providers on the airport. Therefore, in its review of agreements proposing to establish new residential through-the-fence access, FAA will interpret this condition as a prohibition on commercial *aeronautical* activities only. Agreements which limit the scope of this prohibition to only commercial aeronautical activities offered by the residential through-the-fence user or any third party will be acceptable. However, FAA will not concern itself with unrelated commercial activities which may be permitted by local regulation.''

FAA's Interpretation of the FMRA's Section 136

Section 136 permits sponsors of general aviation airports, as defined by the statute at title 49, U.S.C., 47102(8), to enter into agreements granting through-the-fence access to residential users, but includes specific terms and conditions. The FAA interprets the inclusion of specific terms and conditions as Congress' intent for FAA to enforce the provision accordingly. Therefore, FAA will request sponsors with existing residential through-the-fence agreements to demonstrate their compliance with the law. Additionally, FAA will also request sponsors of general aviation airports proposing to establish new residential through-the-fence agreements to demonstrate that their agreements will comply with the law. Airport sponsors are encouraged to review FAA's Compliance Guidance Letter on FAA Review of Existing and Proposed Residential Through-Fence-Access Agreements, which will be issued concurrently with this notice.

Although the law became effective on February 14, 2012, FAA will afford airport sponsors a grace period for compliance. Airport sponsors with existing residential through-the-fence agreements must provide evidence of compliance not later than October 1, 2014. In most cases, FAA will define evidence of compliance as the airport sponsor's submission of required documentation. This may include copies of access agreements, deeds, covenants, conditions, and restrictions, etc.

Airport sponsors of general aviation airports proposing to establish new or add new residential through-the-fence agreements must provide evidence of compliance prior to establishing the access point. The establishment of a new residential through-the-fence agreement which does not comply with the law or results in a violation of the sponsor's commitments with the Federal Government may result in enforcement proceedings under 14 CFR, part 16. Establishing a new access point not depicted on a FAA-approved ALP may result in a violation of Grant Assurance 29, *Airport Layout Plan.*

The FAA acknowledges that its approach to sponsors with existing residential through-the-fence access agreements will be different than the posture to be taken with sponsors of general aviation airports proposing to establish new or add new residential through-the-fence agreements. This is because airport sponsors with existing agreements may have ceded important rights and powers through the execution of these existing agreements, and their ability to comply with the terms and conditions of the law may be severely hampered. The FAA intends to address such situations on a case-by-case basis, assist these airport sponsors in the development of appropriate mitigations when possible, and report these issues to interested Congressional Committees. Going forward, FAA expects sponsors of general aviation airports proposing to establish new or add new residential through-the-fence agreements to comply with the terms and conditions of the law. The FAA will not waive these terms and conditions for new agreements.

Applicability

Section 136 applies to sponsors of general aviation airports. The FMRA adopted a definition of ''general aviation airport'' which is now codified at 49 U.S.C., 47102(8). A general aviation airport is defined as ''a public airport that is located in a State that, as determined by the Secretary- does not have commercial service; or has scheduled service with less than 2,500 passenger boardings each year.'' This definition excludes privately-owned reliever airports. In implementing section 136, FAA will grandfather the seven privately-owned reliever airports with existing residential through-the-fence access. The owners of these airports will be asked to comply with the law and be treated in a manner similar to general aviation airports as defined in the statute. However going forward, FAA will apply the statutory prohibition on privately-owned reliever airports and disallow these airports from entering into such agreements. Publically-owned reliever airports are included in the statutory definition of a general aviation airport; sponsors of publically-owned reliever airports will be permitted to enter into residential through-the-fence agreements that comply with the terms and provisions contained in section 136.

The FAA proposes the Final Policy included in this notice to address commercial service airports with existing residential through-the-fence agreements. Commercial service airports which do not currently have residential through-the-fence agreements continue to be prohibited from entering into such agreements by statute.

Terms and Conditions—Commercial Activities

Section 136 states that residential property owners must maintain their property for residential, noncommercial use for the duration of the agreement. The FAA interprets this as a prohibition on commercial aeronautical services offered by residential through-the-fence users or any third party that might compete with on-airport aeronautical service providers, whether existing or not, or chill the airport sponsor's ability to attract new commercial service providers on the airport. Therefore, in its review of agreements proposing to establish new residential through-the-fence access, FAA will interpret this

condition as a prohibition on commercial *aeronautical* activities only. Agreements which limit the scope of this prohibition to only commercial aeronautical activities offered by the residential through-the-fence user or any third party will be acceptable. However, FAA will not concern itself with unrelated commercial activities which may be permitted by local regulation.

The FAA recognizes that some existing residential through-the-fence agreements permit the co-location of homes and aeronautical businesses. In these cases, FAA will require airport sponsors to execute two separate agreements with the homeowner. One agreement must address the duration, rights, and limitations of the homeowner's residential through-the-fence access, and the second agreement must address the conduct of the commercial aeronautical activity. The second agreement must be consistent with FAA's current policies on commercial through-the-fence activities and ensure the off-airport business does not result in unjust economic discrimination for on-airport aeronautical service providers. The FAA encourages airport sponsors with these types of mixed-use arrangements to adopt long-term plans to relocate the off-airport commercial aeronautical activity onto the airport when feasible and practicable to do so. Going forward, airport sponsors proposing to establish a residential through-the-fence agreement must meet the statutory terms and conditions, including the prohibition on using the residential property for commercial aeronautical use. Therefore, agreements which propose the co-location or mixed-use of residential and commercial aeronautical activities will be not be consistent with the law.

Terms and Conditions—Authorized Access

Section 136 states that residential property owners must prohibit access to the airport from other properties through the property of the property owner with access. The FAA interprets this as a prohibition on unauthorized access to the airport; this condition does not necessarily prescribe a scenario in which all residential through-the-fence users must have their own dedicated access point to enter the airport. The FAA encourages sponsors of general aviation airports proposing to establish new residential through-the-fence agreements to limit the number of access points in a manner that is consistent with airport planning practices. Compliance with this condition will require access agreements stipulate that residential through-the-fence access agreement holders are prohibited from permitting unauthorized users (any individual not party to an access agreement with the airport sponsor) to pass through or ''piggy back'' on their access in order to enter the airport. The FAA expects airport sponsors to establish their own policies, restrictions, and/or requirements to be imposed on fly-in guests who taxi from the airport property to visit off-airport residents.

Terms and Conditions—Fueling

Section 136 states that residential property owners must prohibit any aircraft refueling from occurring on the property with access. The FAA interprets this as a prohibition on the sale of fuel from residential property. The FAA will not concern itself with self-fueling activities which may be permitted by local regulation.

Final Policy on Existing Through-the-Fence Access to Commercial Service Airports From a Residential Property

Applicability

This Final Policy applies to commercial service airports with existing residential through-the-fence access.

For the purposes of this Final Policy:

''Access'' means:

1. An access point for taxiing aircraft across the airport boundary; *or*

2. The right of the owner of a particular off-airport residential property to use an airport access point to taxi an aircraft between the airport and that property.

''Existing access'' through the fence is defined as any through-the-fence access that meets one or more of the following conditions:

1. There was a legal right of access from the property to the airport (e.g., by easement or contract) in existence as of September 9, 2010; *or*

2. There was development of the property prior to September 9, 2010, in reliance on the airport sponsor's permission for through-the-fence aircraft access to the airport; *or*

3. The through-the-fence access is shown on an FAA-approved airport layout plan (ALP) or has otherwise been approved by FAA in writing, and the owner of the property has used that access prior to September 9, 2010.

''Extend an access'' is defined as an airport sponsor's consent to renew or extend an existing right to access the airport from residential property or property zoned for residential use, for a specific duration of time, not to exceed 20 years.

''Development'' is defined as excavation or grading of land needed to construct a residential property; or construction of a residence.

''Residential property'' is defined as a piece of real property used for single- or multi-family dwellings; duplexes; apartments; primary or secondary residences even when co-located with a hangar, aeronautical facility, or business; hangars that incorporate living quarters for permanent or long-term use; and time-share hangars with living quarters for variable occupancy of any term.

''Transfer of access'' through the fence is defined as one of the following transactions:

1. Sale or transfer of a residential property or property zoned for residential use with existing through-the-fence access; *or*

2. Subdivision, development, or sale as individual lots of a residential property or property zoned for residential use with existing through-the-fence access.

I. Existing Through-the-Fence Access From Residential Property at Federally-Obligated Commercial Service Airports

The Agency understands that it may not be practical or even possible to terminate through-the-fence access at many of those commercial service airports where that access already exists. Where access could be terminated, property owners have claimed that termination could have substantial adverse effects on their property value and investment, and sponsors seeking to terminate this access could be exposed to costly lawsuits. Accordingly, FAA will not consider the existence of existing residential through-the-fence access by itself to place a sponsor in noncompliance with its grant assurances at these commercial service airports.

In some cases, FAA has found that through-the-fence access rights can interfere with the sponsor's ability to meet its obligations as sponsor of a federally assisted public use airport. This is discussed in detail at 75 FR 54946, 54948 (Sept. 9, 2010). As a result, FAA believes that sponsors of commercial service airports with existing through-the-fence access agreements must adopt measures to substantially mitigate the potential problems with residential through-the-fence access where it exists to avoid future grant compliance issues. Therefore, FAA, as a condition of continuing grants to commercial service airports with residential through-the-fence access, will require these sponsors

to adopt measures to substantially mitigate the potential problems with residential through-the-fence access to avoid future grant compliance issues.

Accordingly, the sponsor of a commercial service airport where residential through-the-fence access or access rights already exist will be considered in compliance with its grant assurances if the airport depicts the access on its ALP, satisfies the terms and conditions contained in section 136 of Public Law 112–95, and meets certain standards for safety, efficiency, parity of fees, and mitigation of potential noncompatible land uses. Those standards are listed in section II, *Standards for compliance at commercial service airports with existing through-the-fence access.* The FAA's review of those standards will be detailed in a Compliance Guidance Letter which will be issued concurrently and published on FAA's Web site at *www.faa.gov/airports.* An airport sponsor covered by this Final Policy will be required to seek FAA approval before entering into any agreement that would extend (including renewal of access) through-the-fence access. Sponsors are reminded that nearby homeowners possess no right to taxi aircraft across the airport's property boundary, and no off-airport property owner will have standing to file a formal complaint under 14 CFR, part 16 with FAA to challenge the sponsor's decision not to permit such access.

II. Standards for Compliance at Commercial Service Airports With Existing Through-the-Fence Access

The FAA understands that municipally-owned airports have varying degrees of zoning authority. For example, one sponsor may have substantial zoning powers, while another may have none. Also, the nature of existing through-the-fence rights can greatly affect the sponsor's ability to implement measures to control access. Accordingly, FAA does not expect every sponsor of an airport with existing residential through-the-fence access to adopt a uniform set of rules and measures to mitigate that access. However, FAA does expect each such sponsor to adopt reasonable rules and implement measures that accomplish the following standards for compliance and satisfy the law, to the fullest extent feasible for that sponsor. In general, the greater the number of residential through-the-fence access points and users of the airport and the higher the number of aircraft operations, the more important it is to have formal measures in effect to ensure the sponsor retains its proprietary powers and mitigates adverse effects on the airport.

In order to satisfy the law, the sponsor and the property owner or an association representing property owners must have a written agreement that requires the property owner to:

- Pay access charges that the sponsor determines to be comparable to those fees charged to tenants and operators on-airport making similar use of the airport;
- Bear the cost of building and maintaining the infrastructure the sponsor determines is necessary to provide access to the airfield from property located adjacent to or near the airport;
- Maintain the property for residential, noncommercial use (FAA interprets this limitation as a prohibition on commercial aeronautical services only) for the duration of the agreement;
- Prohibit access to the airport from other properties through the property of the property owner (FAA interprets this limitation as a prohibition on access to the airport not authorized by the airport sponsor); and
- Prohibit any aircraft refueling from occurring on the property (FAA interprets this as a prohibition on the sale of fuel from residential property).

The FAA's standards for compliance for any sponsor of a commercial service airport with existing residential through-the-fence access are as follows:

1. *General authority for control of airport land and access.* The sponsor has sufficient control of access points and operations across airport boundaries to maintain safe operations, and to make changes in airport land use to meet future needs.

2. *Safety of airport operations.* By rule, or by agreement with the sponsor, through-the-fence users are obligated to comply with the airport's rules and standards.

3. *Parity of access fees.* The sponsor can and does collect fees from through-the-fence users comparable to those charged to airport tenants.

4. *Protection of airport airspace.* Operations at the airport will not be affected by hangars and residences on the airport boundary, at present or in the future.

5. *Compatible land uses around the airport.* The potential for noncompatible land use adjacent to or in the immediate vicinity of the airport is minimized consistent with Grant Assurance 21, Compatible Land Use.

These standards will be applied, on a case-by-case basis, in FAA's evaluation of whether each commercial service airport with existing residential through-the-fence access meets the above requirements to the fullest extent feasible for that airport. In situations when access can be legally transferred from one owner to another without the sponsor's review, FAA will treat the access as existing. Because the ability of some sponsors to control access has been compromised as a result of legal rights previously granted to through-the-fence users, existing access locations may be evaluated under the alternative criteria for some standards as indicated below, if applicable to that airport.

In some cases, a sponsor may seek to relocate an existing access point. If the sponsor can demonstrate that this action will improve the airport's overall safety or better address issues associated with the sponsor's long-term planning needs, FAA will not consider the access rights associated with the replacement access point to extend an access. In order to transfer the terms of the existing access point to a new access point without a change in compliance status, the former existing access point must be removed. Such requests should be coordinated with FAA's ADO or Regional Airports Division and upon FAA concurrence, clearly depicted on the sponsor's ALP.

III. Standards for Compliance at Commercial Service Airports Proposing To Extend Through-the-Fence Access

Once allowed, residential through-the-fence access is very difficult to change or eliminate in the future. This is because residential owners, more so than commercial interests, typically expect that their residential property will remain suitable for residential use and protected from adverse effects for a long time. Residential buyers and their mortgage lenders may ensure that the property is purchased with rights that guarantee no change in the access to the airport for decades, or indefinitely. Because each additional residential through-the-fence access location introduces the potential for problems for the airport in the future, and because this access is effectively permanent and resistant to change once permitted, FAA will review extensions of existing residential through-the-fence access at public use airports carefully.

The following supplemental standards will be applied to FAA's case-by-case review of sponsors' proposals to extend residential through-the-fence access. In situations when the transfer of access from one owner to another requires the sponsor's concurrence, FAA will treat the access as an extension. The FAA will not approve requests to extend access that are inconsistent with the sponsor's grant assurances (excluding Grant Assurance

5, Preserving Rights and Powers, paragraph ''g'' as amended). Furthermore, the sponsor will be required to demonstrate the following standards for compliance:

- The new access agreement fully complies with the terms and conditions contained in section 136 of Public Law 112–95.
- The term of the access does not exceed 20 years.
- The sponsor provides a current (developed or revised within the last 5 years) airport master plan identifying adequate areas for growth that are not affected by the existence of through-the-fence access rights, or the sponsor has a process for amending or terminating existing through-the-fence access in order to acquire land that may be necessary for expansion of the airport in the future.
- The sponsor will impose and enforce safety and operating rules on through-the-fence residents utilizing this access while on the airport identical to those imposed on airport tenants and transient users.
- Through-the-fence residents utilizing this access will grant the sponsor a perpetual avigation easement for overflight, including unobstructed flight through the airspace necessary for takeoff and landing at the airport.
- Through-the-fence residents utilizing this access, by avigation easement; deed covenants, conditions or restrictions; or other agreement, have acknowledged that the property will be affected by aircraft noise and emissions and that aircraft noise and emissions may change over time.
- Through-the-fence residents utilizing this access have waived any right to bring an action against the sponsor for existing and future operations and activities at the airport associated with aircraft noise and emissions.
- The sponsor has a mechanism for ensuring through-the-fence residents utilizing this access will file FAA Form 7460–1, Notice of Proposed Construction or Alteration, if necessary and complying with FAA's determination related to the review of Form 7460–1.
- The sponsor has a mechanism for ensuring through-the-fence residents do not create or permit conditions or engage in practices that could result in airport hazards, including wildlife attractants.
- Where available, the sponsor or other local government has in effect measures to limit future use and ownership of the through-the-fence properties to aviation-related uses (in this case, hangar homes), such as through zoning or mandatory deed restrictions. The FAA recognizes this measure may not be available to the sponsor in all states and jurisdictions.
- If the residential community has adopted restrictions on owners for the benefit of the airport (such as a commitment not to complain about aircraft noise), those restrictions are enforceable by the sponsor as a third-party beneficiary, and may not be cancelled without cause by the community association.
- The access agreement is subordinate to the sponsor's current and all future grant assurances.
- The sponsor has developed a process for educating through-the-fence residents about their rights and responsibilities.

IV. Process and Documentation

A. Existing residential through-the-fence access.

1. *General.* The sponsor of a commercial service airport with existing residential through-the-fence access will be considered in compliance with its grant assurances, and eligible for future grants, if FAA determines that the sponsor complies with the law and meets the applicable standards listed above under *Standards for compliance at commercial service airports with existing residential through-the-fence access.* The sponsor may demonstrate that it meets these standards by providing the ADO or regional division staff with a written description of the sponsor's authority and the controls in effect at the airport (''residential through-the-fence access plan'' or ''access plan''). Sponsors are encouraged to review FAA's Compliance Guidance Letter on FAA Review of Existing and Proposed Residential-Through-Fence Access Agreements, which will be issued concurrently with this notice, prior to submitting their access plan. This guidance letter may be found on FAA's Web site at *www.faa.gov/airports.* The ADO or regional division will review each access plan, on a case-by-case basis, to confirm that it addresses how the sponsor complies with the law and meets each of these standards at its airport. The ADO or regional division will forward recommendations regarding each access plan to the Manager of Airport Compliance. Only the Manager of Airport Compliance may accept a commercial service airport sponsor's residential through-the-fence access plan. In reviewing the access plan, the Manager of Airport Compliance may consult with the Transportation Security Administration (TSA). The FAA will take into account the powers of local government in each state, and other particular circumstances at each airport. In every case, however, the access plan must address the law and each of the basic requirements listed under section II of this Final Policy.

2. *Residential through-the-fence access plan.* The FAA will require evidence of compliance before issuing an AIP grant, beginning in Fiscal Year 2015. FY 2015 and later grants will include a special grant condition requiring the ongoing implementation of these access plans. Generally, FAA will not award discretionary grants to the sponsor until FAA accepts the sponsor's access plan as meeting the law and the standards to the extent feasible for that airport.

3. *Airport Layout Plan (ALP).* The FAA will require all residential through-the-fence access points to be identified on the airport's ALP. A temporary designation may be added through a sponsor's pen and ink change to immediately identify the locations on the airport property that serve as points of access for off-airport residents. A formal ALP revision that fully depicts the scope of the existing residential through-the-fence agreements should be completed the next time the sponsor initiates an airport master plan study or update.

A sponsor's failure to depict all residential through-the-fence access points is a potential violation of the sponsor's grant assurances, and the Agency may consider grant enforcement under 14 CFR part 16.

4. *FAA review.* The FAA's acceptance of the access plan represents an Agency determination that the commercial service airport has met the law and compliance standards for existing residential through-the-fence access for a period not to exceed 20 years. The following actions will trigger a commercial service airport sponsor to update its access plan prior to its 20-year expiration: Development of a new master plan or an update to an existing master plan, significant revisions to an ALP, requests for Federal financial participation in land acquisition, identification of a safety concern, or substantial changes to the access agreement. A commercial service airport sponsor's failure to implement its access plan could result in a violation of the special grant condition and potentially lead to a finding of noncompliance.

5. *Commercial service airports with existing residential through-the-fence access that do not meet the compliance standards.* The FAA recognizes that some commercial service airport sponsors may not be able to fully

comply with the law and the standards listed above, due to limits on the powers of the sponsor and/or other local governments, or on other legal limits on the sponsor's discretion to adopt certain measures. Other sponsors have the capability to adopt measures to satisfy the compliance standards but have not done so. The FAA may consider a commercial service airport sponsor's inability to comply with the law and/or the minimum compliance standards as a militating factor in its review of requests for discretionary funding.

6. *Commercial service airports that fail to submit an access plan.* The FAA expects commercial service airport sponsors with existing residential through-the-fence access to develop an access plan which addresses the law, preserves their proprietary rights and powers, and mitigates the inherent challenges posed by this practice. Beginning in Fiscal Year 2015, a sponsor's failure to comply with the Final Policy may jeopardize its ability to compete for discretionary AIP grant funding.

B. Requests to extend residential through-the-fence access at airports covered by this Final Policy

As of the date of the enactment of Public Law 112–95 (February 14, 2012), a sponsor of a commercial service airport proposing to extend an access agreement must submit a current airport master plan and a revised residential through-the-fence access plan as detailed below. The ADO or regional division will forward its recommendations regarding each request to extend access to the Manager of Airport Compliance. Only the Manager of Airport Compliance may approve a sponsor's request to extend access. In reviewing the proposal, the Manager of Airport Compliance may consult with TSA.

1. *Master Plan.* A sponsor of a commercial service airport wishing to extend an existing residential through-the-fence access agreement must submit a recent airport master plan to the ADO or regional division. The FAA considers a master plan to be recent if it was developed or updated within the past 5 years. The master plan should explain how the sponsor plans to address future growth, development, and use of the airport property over the next 20 years; sponsors should work with ADO or regional division staff to develop an appropriate scope of work for these master plans.

2. *Residential through-the-fence access plan.* The sponsor is responsible for revising its access plan, as discussed under section III of this Final Policy, to reflect how it will meet the standards for compliance for the extended access. Once FAA has accepted the revised access plan, FAA will condition future AIP grants upon its ongoing implementation.

3. *Continuing obligations.* Once the revised access plan is accepted by FAA, and if required, the revised ALP, is approved by FAA, the sponsor must continue to comply with obligations described in section IV.A of this Final Policy.

V. Eligibility for AIP Grants

A. *General.* Beginning in Fiscal Year 2015, a sponsor of a commercial service airport with existing residential through-the-fence access will be required to submit their residential through-the-fence access plan prior to notifying FAA of its intent to apply for an AIP grant. The sponsor will not lose eligibility for entitlement grants on the basis of the through-the-fence access, but FAA will consider the potential constraints on the utility of the airport to be a significant factor in future AIP funding decisions.

B. *Public infrastructure and facilities with substantial benefit to private through-the-fence users.* The FAA may be unable to justify the Federal investment in a proposed project when private residential developments with through-the-fence access will receive substantial value from that federally assisted airport infrastructure and/or facility.

C. *Exclusive or primary private benefit.* On-airport infrastructure and facilities used exclusively or primarily for accommodation of through-the-fence users are considered private-use and are ineligible for AIP grants.

Issued in Washington, DC on July 9, 2013.

Randall S. Fiertz,

Director, Airport Compliance and Management Analysis.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 772 and 774

[Docket No. 130104008–3008–01]

RIN 0694–AF81

Revisions to the Export Administration Regulations Based on the 2012 Missile Technology Control Regime Plenary Agreements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the October 2012 Plenary in Berlin, Germany, and at the MTCR Reinforced Point of Contact (RPOC) meeting in Paris, France, in December 2011. This final rule revises six Export Control Classification Numbers (ECCNs) (1C011, 1C111, 1C116, 9A101, 9B105 and 9E101) and one defined term (the definition of ''payload'') to implement the changes that were agreed to at the meetings. This final rule also revises ECCNs 7E004 and 9D004 to better align the Commerce Control List (CCL) with the MTCR Annex and past MTCR agreements.

DATES: This rule is effective: July 16, 2013.

FOR FURTHER INFORMATION CONTACT: Sharon Bragonje, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Phone: (202) 482–0434; Email: *sharon.bragonje@bis.doc.gov*

SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR) is an export control arrangement among 34 nations, including most of the world's advanced suppliers of missiles and missile-related equipment, materials, software and technology. The regime establishes a common list of controlled items (the Annex) and a common export control policy (the Guidelines) that member countries implement in accordance with their national export controls. The MTCR seeks to limit the risk of proliferation of weapons of mass destruction by controlling exports of goods and technologies that could make a contribution to delivery systems (other than manned aircraft) for such weapons.

In 1992, the MTCR's original focus on missiles for nuclear weapons delivery was extended to a focus on the proliferation of missiles for the delivery of all types of weapons of mass destruction (WMD), i.e., nuclear, chemical and biological weapons. Such proliferation has been identified as a threat to international peace and security. One way to counter this threat is to maintain vigilance over the transfer of missile equipment, material, and related technologies usable for systems capable of delivering WMD. MTCR members voluntarily pledge to adopt the regime's export Guidelines and to

restrict the export of items contained in the regime's Annex. The implementation of the regime's Guidelines is effectuated through the national export control laws and policies of the regime members.

Amendments to the Export Administration Regulations

This final rule revises the Export Administration Regulations (EAR) to reflect changes to the MTCR Annex agreed to at the October 2012 Plenary in Berlin, Germany, and the MTCR December 2011 Reinforced Point of Contact meeting (RPOC) in Paris, France. Corresponding MTCR Annex references are provided below for the MTCR Annex changes agreed to at the meetings. This rule also makes two conforming changes to correlate the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) with the current MTCR Annex. These conforming changes are made to better align the MT controls on the CCL with the MTCR Annex and past MTCR agreements. In the explanation below for the revisions made in this rule, BIS identifies these changes as follows: ''Berlin 2012 Plenary,'' ''Paris 2011 RPOC'' and ''CCL Conforming Change to MTCR Annex'' to assist the public in understanding the origin of each change included in this final rule.

In Section 740.20 (License Exception Strategic Trade Authorization (STA)), as a conforming change for the revision of the MT control on ECCN 7E004 described below, this rule amends paragraph (b)(2) (Limitations on Use of License Exception STA) by redesignating paragraph (b)(2)(vii) as paragraph (b)(2)(viii). Under new paragraph (b)(2)(vii), this rule continues the existing limitation on the use of License Exception STA. Paragraph (b)(2)(vii) will specify that License Exception STA may not be used for 7E004 ''technology,'' except for ''technology'' controlled under 7E004.a.7. Prior to publication of this final rule, this ''technology'' was not eligible for License Exception STA because the ''technology'' was MT controlled. This change is being made for consistency with the MTCR Annex. BIS decided it was still warranted to exclude the technology under 7E004 that had previously been excluded under License Exception STA. This change to License Exception STA continues the existing limitation on the use of License Exception STA for 7E004 ''technology,'' so this change preserves the status quo in terms of License Exception STA ineligibility under the EAR for 7E004.

Additionally, this rule revises the EAR in Section 772.1 (Definitions of Terms as Used in the Export Administration Regulations) by amending the definition of the term ''payload'' (MTCR Annex Change, Definitions: ''Payload,'' Berlin 2012 Plenary). The definition of ''payload'' is revised by changing the description for space launch vehicles in Technical Note b.1 from ''satellites'' to ''spacecraft, including satellites,'' and by changing the description for space launch vehicles in Technical Note b.2 from ''satellite-to-launch vehicle adapters,'' to ''spacecraft-to-launch vehicle adapters.'' The term satellite could be more limiting than intended, while the term spacecraft is broader and includes any type of spacecraft payload that could be carried on a space launch vehicle. For these reasons, the MTCR members decided to revise the definition of ''payload'' to clarify the scope of the types of payload for space launch vehicles that are included in the ''payload'' definition under Technical Notes b.1 and b.2. This clarification will have little impact on items subject to the EAR, and therefore not cause an increase in license applications received by BIS.

In addition, this rule amends the CCL to reflect changes to the MTCR Annex. This final rule also revises Export Control Classification Numbers (ECCNs) 7E004 and 9D004 to better align the CCL with the MTCR Annex and past MTCR agreements. Specifically, the following eight ECCNs are affected:

ECCN 1C011 is amended by revising the MT control(s) paragraph in the License Requirements section to indicate the MT control applies to 1C011.a and .b for materials that meet or exceed the parameters in 1C111. This change clarifies that the MT control applicable to 1C011.b only applies when the boron or boron alloys also meet the size requirement specific to the MTCR Annex (i.e., where at least 90% of the total particles by particle volume % or weight % are made up of particles of less than 60 μm). (MTCR Annex Change, Category II: Item 4.C.2.e., Berlin 2012 Plenary). Boron and boron alloys with the purities specified were previously controlled, but the interpretation of the size requirement was not clear between MTCR Partners. While the text could be read as meaning that all of the material had to be less than 60 μm to be controlled, many Partners were controlling material that had a median particle size of 60 μm. The new measurement criteria clarifies that at least 90% of the material must be less than 60 μm to be controlled, and the criteria encompass several techniques used for measuring particle size by including multiple standard reporting practices within the control text and providing examples of test methods. Because the MTCR partners decided to make the size control more specific, additional detail was needed to qualify how the size is to be ascertained and reported for purposes of determining whether such material is MT controlled. The new measurement criteria being added in this final rule will ensure the different testing methods currently in use, such as laser diffraction and sieves, will be applied in a consistent manner in determining whether such material is MT controlled under ECCN 1C011 or controlled under ECCN 1C111.

Additionally, because boron of this purity is controlled by both the MTCR, and for NS reasons, by the Wassenaar Arrangement (WA), and the WA has not adopted these changes, this final rule is implementing the MTCR-agreed change to 1C011.b by qualifying the scope of the MT control(s) paragraph. As this type of boron material typically meets the specifications of both the prior and updated text, this change is not expected to have any impact on the number of license applications received by BIS.

ECCN 1C111 is amended by revising the ''items'' paragraph (a.1) in the List of Items Controlled section by including the term ''spheroidal'' and removing the phrase ''particles of uniform diameter'' from paragraph (a.1). (MTCR Annex Change, Category II: Item 4.C.2.c., Berlin 2012 Plenary). This change will address a concern of the MTCR members that particles that are not exactly spherical might be interpreted as being outside the scope of this control. The changes are being made because aluminum powder particles are not exactly spherical. This is a clarification of the control and is consistent with how BIS has interpreted the scope of ECCN 1C111. Therefore, this clarification will have no impact on the number of license applications received by BIS. This rule is also removing under paragraph (a.1) the phrase ''other than those controlled by the U.S. Munitions List,'' because this concept (that items that are enumerated or described on the U.S. Munitions List (USML) are subject to the ITAR and therefore not ''subject to the EAR'') is already stated in other places in the EAR, in particular part 734 (Scope of the Export Administration Regulations).

ECCN 1C111 is also amended by revising the ''items'' paragraph (a.2) in the List of Items Controlled section to modify the controls for certain powders. (MTCR Annex Change, Category II: Items 4.C.2.d. and 4.C.2.e., Berlin 2012

Plenary). The same interpretation that applies to the size criteria of boron powders as described above in ECCN 1C011 applies to zirconium, beryllium, and magnesium powders. Hence, the same new measurement criteria in modified ECCN 1C011 are being applied to ECCN 1C111 to clarify that at least 90% of the material must be less than 60 μm to be controlled. The criteria also encompass several techniques used for measuring particle size by including multiple standard reporting practices within the control text and providing examples of test methods, as described in detail in the discussion of changes to ECCN 1C011 above.

In addition, this rule removes the phrase ''metal fuels and their alloys'' in paragraph (a.2) and replaces it with the more precise and accurate term ''metal powders'' to conform to the MTCR Annex and the intent of this CCL control. This final rule adds the phrase ''and alloys'' after ''metal powders'' to clarify that although the term metal fuels is being replaced with the term metal powders, the scope of paragraph (a.2) still extends to alloys of those metal powders. This rule also removes under paragraph (a.2) the phrase ''other than those controlled by the U.S. Munitions List,'' because this concept (that items that are enumerated or described on the USML are subject to the ITAR and therefore not ''subject to the EAR'') is already stated in other places in the EAR, in particular part 734. The criteria in 1C111 are also being updated in this final rule to clarify that alloys of these metals are only controlled when they are 97% or more, by weight, of zirconium, beryllium, or magnesium, which is consistent with how BIS has interpreted the scope of ECCN 1C111.

This rule also adds the control on boron powders, previously only controlled in 1C011, to a new ''items'' paragraph (a.2.b) to differentiate between the NS controlled and MT controlled material. The new measurement criteria and other criteria added in 1C111.a.2 in this final rule clarify exactly what is controlled by including multiple standard reporting practices within the control text and providing examples of test methods. Because the MTCR partners decided to make the size control more specific, additional detail was needed to qualify how the size is to be ascertained and reported for purposes of determining whether such material is MT controlled. The new measurement criteria being added in this final rule will ensure the different testing methods currently in use, such as laser diffraction and sieves, will be applied in a consistent manner in determining whether such material is MT controlled under ECCN 1C111 or controlled under 1C011. As with the boron control, the type of metal powders typically exported currently meet the specifications of both the previous and the updated control text, and this change is not expected to have any impact on the number of license applications received by BIS.

Paragraph (a.2.a.4) of ECCN 1C111 is being removed to clearly reflect the interpretation that alloys controlled would fall within the 97% weight requirement of paragraph (a.2.a). As a conforming change to the removal of paragraph (a.2.a.4), this rule revises paragraph (a.2.a.2) to add the word ''or'' and revises paragraph (a.2.a.3) to remove the word ''or'' and the semicolon, and replace that text and punctuation with a period.

Finally, in ECCN 1C111 this rule also adds a new note at the end of the ''items'' paragraph in the List of Items Controlled section to indicate that in a multimodal particle distribution (e.g., mixtures of different grain sizes) in which one or more modes are controlled, the entire powder mixture is controlled.

ECCN 1C116 is amended by revising the heading and the ''items'' paragraph in the List of Items Controlled section regarding maraging steel classified under 1C116. (MTCR Annex Change Category II: Item 6.C.8., Paris 2011 RPOC). First, the rule expands the scope of the control criteria to ensure that maraging steel that has missile applications is adequately enumerated within the scope of this ECCN. Specifically, this rule revises the heading and adds an ''items'' paragraph (a) and (b) in the List of Items controlled section to expand the scope of the control.

In addition to expanding the control criteria, this final rule revises the ''items'' paragraph to add new notes (a) and (b) to identify that maraging steels are iron alloys generally characterized by the criteria included in these notes. The MTCR members agreed to this change because maraging steel is often exported in the solution annealed stage and then further worked (i.e., processed) at the destination before being precipitation hardened. Therefore, maraging steel that has missile applications could have potentially avoided control, under ECCN 1C116, by being exported or reexported before being hardened into its final stage. This final rule addresses this missile proliferation concern by expanding the scope of 1C116 to define the ultimate tensile strength of maraging steel usable in missile applications in both the solution annealed stage and the precipitation hardened stage, and controlling both under 1C116. This expansion will result in an increase of one or two license applications per year, so the overall impact on the number of license applications received by BIS will be minimal.

ECCN 7E004 is amended by revising the MT control(s) paragraph in the License Requirements section to indicate that where ''technology'' for equipment or systems controlled for MT reasons is not controlled under ECCNs 7E001,7E002, 7E101, 7E104, and 9E101, it is controlled under ECCN 7E004 for MT reasons. (MTCR Annex Category II: Item 10.E.3)

ECCN 7E004 is also amended by revising the ''related controls'' paragraph to add ECCNs 7E001, 7E002, 7E101 and 9E101 as additional related controls under two new ''related controls'' paragraphs. Specifically, this rule revises the ''related controls'' under 7E004 to include ECCNs 7E001, 7E002, 7E101 and 7E994 as a new ''Related Controls'' paragraph (2). This rule also revises the ''related controls'' to include ECCNs 7E104 and 9E101 as a new ''Related Controls'' paragraph (3), and adds details for when 7E104 and 9E101 should also be reviewed for MT controlled technology. The remaining ''related controls'' text in 7E004 becomes new ''Related Controls'' paragraph (1). (MTCR Annex Category II: Item 9.E.1., 10.E.1., 10.E.2., and 10.E.3.; CCL Conforming Change to MTCR Annex). This conforming change will result in the revision of the MT control on 7E004 technology. However, because certain portions of the MT control are being retained in 7E004 to conform to the MTCR Annex, and the remaining technology is controlled for NS reasons, the impact on the number of license applications received per year will be minimal and likely will result in a decrease of one or two license applications per year. Also as described above under the changes being made to License Exception STA, 7E004 will continue to be ineligible for License Exception STA, except for ''technology'' controlled under 7E004.a.7. Lastly, in 7E004, BIS adds an STA paragraph to the License Exception section to make it explicit that License Exception STA may not be used for 7E004, except for 7E004.a.7. This new STA paragraph conforms to the exclusion being added to License Exception STA under paragraph (b)(2)(vii) for 7E004 ''technology,'' except for ''technology'' controlled under 7E004.a.7.

ECCN 9A101 is amended by revising the ''related definitions'' paragraph in the List of Items Controlled section to

add an ECCN-specific definition for 'maximum thrust value.' (MTCR Annex Change, Category II: Item 3.A.1.a.1., Technical Note, Berlin 2012 Plenary). There is a possible discrepancy between the actual thrust value of an engine and what it is certified to, which could lead to certain engines used on small aircraft being unintentionally caught by this control. This definition coincides with the way BIS currently interprets this control. However, this interpretation was not true of all MTCR Partners and the addition of the note makes the control more uniform. This clarification will have no impact on the number of license applications received by BIS.

ECCN 9B105 is amended by replacing the term wind tunnels in the heading with the term 'aerodynamic test facilities' (which, as noted in the new technical note described below, includes wind tunnels and shock tunnels), adding a note, and adding one technical note to the ''items'' paragraph in the List of Items Controlled section. (MTCR Annex Change, Category II: Item 15.B.2., Berlin 2012 Plenary). The new note is an exclusion note specifying that ECCN 9B105 does not control wind tunnels for speeds of Mach 3 or less with the dimension of the test cross section size equal to or less than 250 mm. This specific decontrol helps to clarify what is usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a range equal to or greater than 300 km and the subsystems of these items. This final rule also adds two new technical notes to assist the public in understanding and applying the revised ECCN 9B105. The first technical note clarifies that 'aerodynamic test facilities' includes wind tunnels and shock tunnels for the study of airflow over objects. This final rule adds the second technical note to assist the public in understanding and applying the new exclusion note for 9B105 by clarifying that 'test cross section size' means the diameter of the circle, or the side of the square, or the longest side of the rectangle, or the major axis of the ellipse at the largest test cross section location. In addition, this second new technical note clarifies that the 'test cross section' is the section perpendicular to the flow direction.

ECCN 9D004 is amended by revising the MT control(s) paragraph in the License Requirements section to indicate the MT control does not apply to this entry. This change is made to more closely align the scope of this MT control with the MTCR Annex. (No MTCR Annex reference is applicable to all of the software described in 9D004; CCL Conforming Change to MTCR Annex). This change will result in the removal of the MT control on 9D004 software, as the corresponding MTCR Annex entry related to this control is already controlled in ECCN 9D104. However, because the 9D004 software remains controlled for NS reasons, the impact on the number of license applications received per year will be minimal, resulting in a decrease of one or two per year. Lastly, to alert people regarding other related software controls, 9D004 is amended by revising the ''related controls'' paragraph in the List of Items Controlled section to add a reference to 9D104.

ECCN 9E101 is amended by revising the heading and the ''related controls'' paragraph in the List of Items Controlled section to add a reference to ECCN 9A103. (MTCR Annex Change, Category II: Item 3.E.1., Paris 2011 RPOC). This final rule makes this change because the MTCR Annex was updated to include technology for liquid propellant tanks specially designed for propellants specified by 4.C. in the Annex or used in Category I rocket systems. These commodities and the related technology are ''subject to the ITAR,'' and the commodities are referenced on the CCL under 9A103. This change will have no impact on the number of license applications received by BIS because ECCNs 9E101 and 9A103 are both ''subject to the ITAR,'' so the change is limited to updating the scope of an ECCN cross reference between two ECCNs that are ''subject to the ITAR.'' The heading has also been changed to reflect that the MT control only applies to 9A012 commodities that are themselves controlled for MT reasons. This change is made to more closely align the scope of this MT control with the MTCR Annex. (Category II: Item 19.A.2., CCL Conforming Change to MTCR Annex). This clarification will have no impact on the number of license applications received by BIS.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on July 16, 2013, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before August 15, 2013. Any such items not actually exported or reexported before midnight, on August 15, 2013, require a license in accordance with this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended 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 Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Regulatory Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This rule affects the following approved collection: Simplified Network Application Processing System (control number 0694–0088), which includes, among other things, license applications and carries a burden estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet Seehra, OMB Desk Officer, by email at *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue NW., Room 6622, Washington, DC 20230.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international obligations to the MTCR. The MTCR contributes to international security and regional stability by promoting greater responsibility in transfers of missile technology items, thus preventing destabilizing accumulations of such items. The MTCR consists of 34 member countries that act on a consensus basis and the changes set forth in this rule implement agreements reached by MTCR member countries at the October 2012 Plenary in Berlin, Germany and at the MTCR Reinforced Point of Contact (RPOC) meeting in Paris, France in December 2011. Since the United States is a significant exporter of the items in this rule, implementation of this provision is necessary for the MTCR to achieve its purpose. Moreover, it is in the public's interest to waive the notice and comment requirements, as any delay in implementing this rule will disrupt the movement of affected items globally because of disharmony between export control measures implemented by MTCR members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely manner. If this rulemaking were delayed to allow for notice and comment and a 30 day delay in effectiveness, it would prevent the United States from fulfilling its commitment to the MTCR in a timely manner, would injure the credibility of the United States in this and other multilateral regimes, and may impair the international communities' ability to effectively control the export of certain potentially national- and international-security-threatening materials.

Further, 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 to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects

15 CFR Part 740

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

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 740, 772 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 2. Section 740.20 is amended:

■ a. By redesignating paragraphs (b)(2)(vii) through (b)(2)(ix) as paragraphs (b)(2)(viii) through (b)(2)(x); and

■ b. By adding paragraph (b)(2)(vii) to read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

* * * * *

(b) * * *

(2) * * *

(vii) Commerce Control List Category 7 limitation on use of License Exception STA. License Exception STA may not be used for 7E004 ''technology,'' except for ''technology'' controlled under 7E004.a.7.

* * * * *

PART 772—[AMENDED]

■ 3. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 4. Section 772.1 is amended by revising Technical Notes b of the ''payload'' definition as set forth below:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Payload. * * *

TECHNICAL NOTES:

a. * * *

b. Space Launch Vehicles—''Payload'' includes:

1. Spacecraft (single or multiple), including satellites;

2. Spacecraft-to-launch vehicle adapters including, if applicable, apogee/perigee kick motors or similar maneuvering systems;

* * * * *

PART 774—[AMENDED]

■ 5. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C011 is amended:

■ a. By revising the heading; and

■ b. By revising the ''MT'' paragraph in the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1C011 Metals and compounds, other than those specified in 1C111, as follows (see List of Items Controlled).

License Requirements

Reason for Control: * * *

Control(s)	*Country chart*
* * *	* *
MT applies to 1C011.a and .b for items that meet or exceed the parameters in 1C111.	MT Column 1.
* * *	* *

* * * * *

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C111 is amended:

■ a. By revising ''items'' paragraphs a.1, introductory text of paragraph a.2, paragraph a.2.a.2 and paragraph a.2.a.3 in the List of Items Controlled section;

■ b. By removing ''items'' paragraph a.2.a.4 in the List of Items Controlled section;
■ c. By adding ''items'' paragraph a.2.b in the List of Items Controlled section; and
■ d. By adding a note to at the end of the ''items'' paragraph in the List of Items Controlled section after ''items'' paragraph c.5 to read as follows:

1C111 Propellants and constituent chemicals for propellants, other than those specified in 1C011, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

a.1. Spherical or spheroidal aluminum powder in particle of size of less than 200 x 10^{-6} m (200 μm) and with an aluminum content of 97% by weight or more, if at least 10% of the total weight is made up of particles of less than 63 μm, according to ISO 2591:1988 or national equivalents.

Technical Note: * * *

a.2. Metal powders and alloys where at least 90% of the total particles by particle volume or weight are made up of particles of less than 60 μm (determined by measurement techniques such as using a sieve, laser diffraction or optical scanning), whether spherical, atomized, spheroidal, flaked or ground, as follows:

* * * * *

a.2.a.2. Beryllium; or

a.2.a.3. Magnesium.

a.2.b Boron or boron alloys with a boron content of 85% or more by weight.

Technical Note: * * *

* * * * *

Note: In a multimodal particle distribution (e.g., mixtures of different grain sizes) in which one or more modes are controlled, the entire powder mixture is controlled.

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C116 is amended:
■ a. By revising the heading;
■ b. By revising the ''items'' paragraph in the List of Items Controlled section; and
■ c. By adding a new ''technical note'' to the 'items'' paragraph in the List of Items Controlled section to read as follows:

1C116 Maraging steels having both of the following (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. Having an ultimate tensile strength, measured at 20°C, equal to or greater than:

a.1. 0.9 GPa in the solution annealed stage; *or*

a.2. 1.5 GPa in the precipitation hardened stage; *and*

b. Any of the following forms:

b.1 Sheet, plate or tubing with a wall or plate thickness equal to or less than 5.0 mm; *or*

b.2 Tubular forms with a wall thickness equal to or less than 50 mm and having an inner diameter equal to or greater than 270 mm.

Technical Note:

Maraging steels are iron alloys that are generally:

a. Characterized by high nickel, very low carbon content and use substitutional elements or precipitates to produce strengthening and age-hardening of the alloy; and

b. Subjected to heat treatment cycles to facilitate the martensitic transformation process (solution annealed stage) and subsequently age hardened (precipitation hardened stage).

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7E004 is amended:
■ a. By revising the ''MT'' paragraph in the License Requirements section;
■ b. By adding a License Exception STA paragraph at the end of the License Exceptions section; and
■ c. By revising the ''related controls'' paragraph in the List of Items Controlled section, to ready as follows.

7E004 Other ''technology'' as follows (see List of Items Controlled).

License Requirements

Reason for Control: * * *

Control(s)	*Country chart*
* * *	* *
MT applies to ''technology'' for equipment or systems controlled for MT reasons.	MT Column 1.
* * *	* *

License Exceptions

* * * * *

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 7E004, except for 7E004.a.7. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for 7E004, except for 7E004.a.7.

List of Items Controlled

* * * * *

Related Controls: (1) See 0D521 No. 2 (''source code'' for the ''development'' of fly-by-wire control systems), 0E521 No. 6 (for ''technology'' for the ''development'' of ''software'' controlled by 0D521 No. 2). (2) See also 7E001, 7E002, 7E101, and 7E994. (3) In addition to the Related Controls in 7E001, 7E002, and 7E101 that include MT controls, also see the MT controls in 7E104 for design ''technology'' for the integration of the flight control, guidance, and propulsion data into a flight management system, designed or modified for rockets or missiles capable of achieving a ''range'' equal to or greater than 300 km, for optimization of rocket system trajectory; and also see 9E101 for design ''technology'' for integration of air vehicle fuselage, propulsion system and lifting control surfaces, designed or modified for unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km, to optimize aerodynamic performance throughout the flight regime of an unmanned aerial vehicle.

* * * * *

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A101 is amended:
■ a. By revising the ''related definitions'' paragraph in the List of Items Controlled section; and
■ b. By adding single quotes around the phrase 'maximum thrust value' in ''items'' paragraph a.1 in the List of Items Controlled section to read as follows:

9A101 Turbojet and turbofan engines, other than those controlled by 9A001, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Definitions: 'Maximum thrust value' in 9A101.a.1 is the manufacturer's demonstrated maximum thrust for the engine type un-installed. The civil type certified thrust value will be equal to or less than the manufacturer's demonstrated maximum thrust for the engine type.

* * * * *

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B105 is amended:
■ a. By revising the heading; and
■ b. By adding a new ''note'' and two new ''technical notes'' to the end of the 'items'' paragraph in the List of Items Controlled section to read as follows:

9B105 'Aerodynamic test facilities' for speeds of Mach 0.9 or more, usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km and their subsystems.

* * * * *

List of Items Controlled

* * * * *

Items: * * *

Note: 9B105 does not control wind tunnels for speeds of Mach 3 or less with the dimension of the 'test cross section size' equal to or less than 250 mm.

Technical Notes:

1. 'Aerodynamic test facilities' includes wind tunnels and shock tunnels for the study of airflow over objects.

2. 'Test cross section size' means the diameter of the circle, or the side of the square, or the longest side of the rectangle, or the major axis of the ellipse at the largest 'test cross section' location. 'Test cross section' is the section perpendicular to the flow direction.

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9D004 is amended:

■ a. By removing the ''MT'' paragraph in the License Requirements section; and

■ b. By revising the ''related controls'' paragraph in the List of Items Controlled section to read as follows:

9D004 Other ''software'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: See also 9D104.

* * * * *

■ 13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E101 is amended:

■ a. By revising the heading; and

■ b. By revising the ''related controls'' paragraph in the List of Items Controlled section to read as follows:

9E101 ''Technology'' according to the General Technology Note for the ''development,'' ''production,'' or ''use'' of commodities or software controlled by 9A012 (for MT controlled commodities only), 9A101, 9A103 to 9A111, 9A115 to 9A119, 9C110, 9D101, 9D103, 9D104 or 9D105.

* * * * *

List of Items Controlled

* * * * *

Related Controls: ''Technology'' controlled by 9E101 for items in 9A101.b, 9A103 to 9A111, 9A115 to 9A119, 9D103, and 9D105 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2013–16954 Filed 7–15–13; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 43

RIN 3038–AD08

Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; correction.

SUMMARY: The Commodity Futures Trading Commission is correcting a final rule that appeared in the **Federal Register** of May 31, 2013 (78 FR 32866). The final rule adopted regulations, under the Dodd-Frank Wall Street Reform and Consumer Protection Act, defining the criteria for grouping swaps into separate swap categories and establishing methodologies for setting appropriate minimum block sizes for each swap category. These corrections fix errors in certain contract descriptions, block sizes, and block units listed in Appendix F to the final rule.

DATES: *Effective date:* July 30, 2013.

FOR FURTHER INFORMATION CONTACT: John W. Dunfee, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581; 202–418–5396; *jdunfee@cftc.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2013–12133 appearing on page 32866 in the **Federal Register** of Friday, May 31, 2013, the following correction is made:

Appendix F to Part 43—Initial Appropriate Minimum Block Sizes by Asset Class for Block Trades and Large Notional Off-Facility Swaps [Corrected]

1. On page 32942, in the third column, in Appendix F to Part 43—Initial Appropriate Minimum Block Sizes by Asset Class for Block Trades and Large Notional Off-Facility Swaps, correct Appendix F by removing all of the tables published on pages 32942 through 32944 and adding the following corrected tables in their place:

Currency group	Currencies
Super-Major Currencies	United States dollar (USD), European Union Euro Area euro (EUR), United Kingdom pound sterling (GBP), and Japan yen (JPY).
Major Currencies	Australia dollar (AUD), Switzerland franc (CHF), Canada dollar (CAD), Republic of South Africa rand (ZAR), Republic of Korea won (KRW), Kingdom of Sweden krona (SEK), New Zealand dollar (NZD), Kingdom of Norway krone (NOK), and Denmark krone (DKK).
Non-Major Currencies	All other currencies.

INTEREST RATE SWAPS

Currency group	Tenor greater than	Tenor less than or equal to	50% Notional (in millions)
Super-Major		46 days	6,400
Super-Major	46 days	Three months (107 days)	2,100
Super-Major	Three months (107 days)	Six months (198 days)	1,200
Super-Major	Six months (198 days)	One year (381 days)	1,100
Super-Major	One year (381 days)	Two years (746 days)	460
Super-Major	Two years (746 days)	Five years (1,842 days)	240
Super-Major	Five years (1,842 days)	Ten years (3,668 days)	170
Super-Major	Ten years (3,668 days)	30 years (10,973 days)	120
Super-Major	30 years (10,973 days)		67
Major		46 days	2,200
Major	46 days	Three months (107 days)	580
Major	Three months (107 days)	Six months (198 days)	440
Major	Six months (198 days)	One year (381 days)	220

INTEREST RATE SWAPS—Continued

Currency group	Tenor greater than	Tenor less than or equal to	50% Notional (in millions)
Major	One year (381 days)	Two years (746 days)	130
Major	Two years (746 days)	Five years (1,842 days)	88
Major	Five years (1,842 days)	Ten years (3,668 days)	49
Major	Ten years (3,668 days)	30 years (10,973 days)	37
Major	30 years (10,973 days)		15
Non-Major		46 days	230
Non-Major	46 days	Three months (107 days)	230
Non-Major	Three months (107 days)	Six months (198 days)	150
Non-Major	Six months (198 days)	One year (381 days)	110
Non-Major	One year (381 days)	Two years (746 days)	54
Non-Major	Two years (746 days)	Five years (1,842 days)	27
Non-Major	Five years (1,842 days)	Ten years (3,668 days)	15
Non-Major	Ten years (3,668 days)	30 years (10,973 days)	16
Non-Major	30 years (10,973 days)		15

CREDIT SWAPS

Spread group (basis points)	Traded tenor greater than	Traded tenor less than or equal to	50% Notional (in millions)
Less than or equal to 175		Two years (746 days)	320
Less than or equal to 175	Two years (746 days)	Four years (1,477 days)	200
Less than or equal to 175	Four years (1,477 days)	Six years (2,207 days)	110
Less than or equal to 175	Six years (2,207 days)	Eight years and six months (3,120 days).	110
Less than or equal to 175	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	130
Less than or equal to 175	Twelve years and six months (4,581 days).		46
Greater than 175 and less than or equal to 350.		Two years (746 days)	140
Greater than 175 and less than or equal to 350.	Two years (746 days)	Four years (1,477 days)	82
Greater than 175 and less than or equal to 350.	Four years (1,477 days)	Six years (2,207 days)	32
Greater than 175 and less than or equal to 350.	Six years (2,207 days)	Eight years and six months (3,120 days).	20
Greater than 175 and less than or equal to 350.	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	26
Greater than 175 and less than or equal to 350.	Twelve years and six months (4,581 days).		63
Greater than 350		Two years (746 days)	66
Greater than 350	Two years (746 days)	Four years (1,477 days)	41
Greater than 350	Four years (1,477 days)	Six years (2,207 days)	26
Greater than 350	Six years (2,207 days)	Eight years and six months (3,120 days).	13
Greater than 350	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	13
Greater than 350	Twelve years and six months (4,581 days).		41

FOREIGN EXCHANGE SWAPS

		Super-major currencies			
		EUR (Euro)	GBP (British pound)	JPY (Japanese yen)	USD (U.S. dollar)
Super-major currencies	EUR		6,250,000	6,250,000	18,750,000
	GBP	*6,250,000		6,250,000	6,250,000
	JPY	*6,250,000	*6,250,000		1,875,000,000
	USD	*18,750,000	*6,250,000	*1,875,000,000	
Major currencies	AUD	*6,250,000	0	10,000,000	10,000,000
	CAD	*6,250,000	0	10,000,000	10,000,000
	CHF	*6,250,000	*6,250,000	12,500,000	12,500,000
	DKK	0	0	0	0
	KRW	0	0	0	6,250,000,000
	SEK	*6,250,000	0	0	100,000,000
	NOK	*6,250,000	0	0	100,000,000
	NZD	0	0	0	5,000,000

FOREIGN EXCHANGE SWAPS—Continued

		Super-major currencies			
		EUR (Euro)	GBP (British pound)	JPY (Japanese yen)	USD (U.S. dollar)
Non-major currencies	ZAR	0	0	0	25,000,000
	BRL	0	0	0	5,000,000
	CZK	200,000,000	0	0	200,000,000
	HUF	1,500,000,000	0	0	1,500,000,000
	ILS	0	0	0	50,000,000
	MXN	0	0	0	50,000,000
	PLN	25,000,000	0	0	25,000,000
	RMB	50,000,000	0	50,000,000	50,000,000
	RUB	0	0	0	125,000,000
	TRY	*6,250,000	0	0	*10,000,000

All values that do not have an asterisk are denominated in the currency of the left hand side.
All values that have an asterisk (*) are denominated in the currency indicated on the top of the table.

OTHER COMMODITY SWAPS

Related futures contract	Initial appropriate minimum block size	Units
AB NIT Basis (ICE)	62,500	MMBtu.
Brent Crude (ICE and NYMEX)	25,000	bbl.
Cheese (CME)	400,000	lbs.
Class III Milk (CME)	NO BLOCKS.	
Cocoa (ICE and NYSE LIFFE and NYMEX)	1,000	metric tons.
Coffee (ICE and NYMEX)	3,750,000	lbs.
Copper (COMEX)	625,000	lbs.
Corn (CBOT)	NO BLOCKS.	bushels.
Cotton No. 2 (ICE and NYMEX)	5,000,000	lbs.
Distillers' Dried Grain (CBOT)	1,000	short tons.
Dow Jones-UBS Commodity Index (CBOT)	30,000 times index	dollars.
Ethanol (CBOT)	290,000	gallons.
Feeder Cattle (CME)	NO BLOCKS.	
Frost Index (CME)	200,000 times index	euros.
Frozen Concentrated Orange Juice (ICE)	NO BLOCKS.	
Gold (COMEX and NYSE Liffe)	2,500	troy oz.
Goldman Sachs Commodity Index (GSCI), GSCI Excess Return Index (CME)	5,000 times index	dollars.
Gulf Coast Sour Crude Oil (NYMEX)	5,000	bbl.
Hard Red Spring Wheat (MGEX)	NO BLOCKS.	
Hard Winter Wheat (KCBT)	NO BLOCKS.	
Henry Hub Natural Gas (NYMEX)	500,000	MMBtu.
HSC Basis (ICE and NYMEX)	62,500	MMBtu.
Hurricane Index (CME)	20,000 times index	dollars.
Chicago Basis (ICE and NYMEX)	62,500	MMBtu.
Lean Hogs (CME)	NO BLOCKS.	
Light Sweet Crude Oil (NYMEX)	50,000	bbl.
Live Cattle (CME)	NO BLOCKS.	
Mid-Columbia Day-Ahead Off-Peak Fixed Price (ICE)	625	Mwh.
Mid-Columbia Day-Ahead Peak Fixed Price (ICE)	4,000	Mwh.
New York Harbor RBOB (Blendstock) Gasoline (NYMEX)	1,050,000	gallons.
New York Harbor No. 2 Heating Oil (NYMEX)	1,050,000	gallons.
NWP Rockies Basis (ICE and NYMEX)	62,500	MMBtu.
Oats (CBOT)	NO BLOCKS.	
Palladium (NYMEX)	1,000	troy oz.
PG&E Citygate Basis (ICE and NYMEX)	62,500	MMBtu.
PJM Western Hub Real Time Off-Peak Fixed Price (ICE)	3,900	Mwh.
PJM Western Hub Real Time Peak Fixed Price (ICE)	8,000	Mwh.
Platinum (NYMEX)	500	troy oz.
Rainfall Index (CME)	10,000 times index	dollars.
Rough Rice (CBOT)	NO BLOCKS.	
Silver (COMEX and NYSE Liffe)	125,000	troy oz.
Snowfall Index (CME)	10,000 times index	dollars.
Socal Border Basis (ICE and NYMEX)	62,500	MMBtu.
Soybean (CBOT)	NO BLOCKS.	
Soybean Meal (CBOT)	NO BLOCKS.	
Soybean Oil (CBOT)	NO BLOCKS.	
SP–15 Day-Ahead Peak Fixed Price (ICE)	4,000	Mwh.
SP–15 Day-Ahead Off-Peak Fixed Price (ICE)	625	Mwh.
Sugar #11 (ICE and NYMEX)	5,000	metric tons.
Sugar #16 (ICE)	NO BLOCKS.	
Temperature Index (CME)	400 times index	currency units.
U.S. Dollar Cash Settled Crude Palm Oil (CME)	250	metric tons.
Waha Basis (ICE and NYMEX)	62,500	MMBtu.
Wheat (CBOT)	NO BLOCKS.	

Dated: July 10, 2013.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

[FR Doc. 2013–16938 Filed 7–15–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–69964; File No. S7–30–11]

RIN 3235–AL19

Retail Foreign Exchange Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a rule to permit a registered broker-dealer to engage in a retail forex business, provided that the broker-dealer complies with the Securities Exchange Act of 1934, the rules and regulations thereunder, and the rules of the self-regulatory organization(s) of which the broker-dealer is a member insofar as they are applicable to retail forex transactions. The Commission is adopting Rule 15b12–1 substantially in the form previously adopted as an interim final temporary rule and is providing that the rule will expire on July 31, 2016.

DATES: This rule is effective from July 16, 2013 through July 31, 2016.

FOR FURTHER INFORMATION CONTACT: Catherine Moore, Senior Special Counsel; Shaheen Haji Zuver, Special Counsel; or Stephen J. Benham, Attorney-Adviser, at (202) 551–5550 or Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is adopting Rule 15b12–1 under the Exchange Act, to permit a registered broker or dealer (''broker-dealer'') to engage in retail forex transactions, as such transactions are defined below. Unless the Commission acts further, the rule will expire and no longer be effective on July 31, 2016.

I. Background

A. Retail Foreign Exchange

The foreign currency exchange (''forex'') market is a large and liquid market used by banks, insurance companies, large corporations, and other large financial institutions to trade in risks associated with fluctuations in foreign currency rates. In recent years, a secondary off-exchange market for forex has developed for retail customers.[1] Many customers may view forex as a possible investment opportunity or portfolio risk management strategy. However, the Commission, its staff,[2] and other regulatory authorities [3] have cautioned investors that the forex market poses risks for retail customers.

The regulatory oversight of the retail forex market has developed primarily through a series of amendments to the Commodity Exchange Act (''CEA'').[4] Transactions commonly referred to as ''retail forex transactions'' are foreign exchange transactions with persons who are retail customers (persons who are not eligible contract participants (''ECPs'') as defined in the CEA) and that settle on a T+3 or greater timeline.[5] Significantly, certain types of transactions are not ''retail forex transactions'' under the CEA, even where one of the counterparties is a person that is not an ECP. These transactions include: (i) ''spot forex transactions'' where one currency is bought for another and the two currencies are exchanged within two days; (ii) forward contracts that create an enforceable obligation to make or take delivery, provided that each counterparty has the ability to deliver and accept delivery in connection with its line of business; and (iii) options that are executed or traded on a national securities exchange registered pursuant to section 6(a) of the Exchange Act.[6] In addition, and as discussed in more detail below, conversion trades—trades in which a foreign exchange transaction facilitates the settlement of a foreign security transaction—are spot forex transactions and, therefore, are outside the scope of the CEA prohibition and this rulemaking.[7]

Only certain regulated entities may act as counterparty to foreign exchange transactions.[8] These approved entities include Futures Commission Merchants (''FCMs''), Retail Foreign Exchange Dealers (''RFEDs'') registered with the CFTC, banks, and insurance companies, as well as broker-dealers registered with the Commission.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') further amended the CEA to limit potential abuses in the retail forex market by prohibiting retail forex transactions as of July 16, 2011, in the absence of a rulemaking permitting retail forex transactions by the relevant Federal regulatory agency. The prohibition in the CEA applies to retail forex transactions with registered broker-dealers, and the Commission adopted an Interim Final Temporary Rule on July 13, 2011 (''Interim Rule''), to allow retail forex transactions with broker-dealers under terms and conditions prescribed by the Commission.[9]

B. Amendments to the Commodity Exchange Act

As amended by the Dodd-Frank Act,[10] the CEA provides that a person for which there is a Federal regulatory agency,[11] including a broker-dealer registered under section 15(b) (except pursuant to paragraph (11) thereof) or 15C of the Exchange Act,[12] shall not enter into, or offer to enter into, a transaction described in section 2(c)(2)(B)(i)(I) of the CEA with a person who is not an ECP,[13] except pursuant to

[1] *See, e.g.,* FINRA Regulatory Notice 08–66 (Retail Foreign Currency Exchange) (November 2008) available at: *http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p117362.pdf* (''FINRA Forex Notice'').

[2] *See Investor Bulletin: Foreign Currency Exchange (Forex) Trading for Individual Investors* (July 2011), available at *http://www.sec.gov/investor/alerts/forextrading.pdf* (''Forex Bulletin''). *See also Retail Foreign Exchange Transactions,* Exchange Act Release No. 64874 (July 13, 2011), 76 FR 41676 (July 15, 2011) (''2011 Interim Rule Release'') at 41677 (noting that media reports have highlighted potential abuses).

[3] *See, e.g.,* Press Release, Commodities Futures Trading Commission (''CFTC''), CFTC Releases Final Rules Regarding Retail Forex Transactions (Aug. 30, 2010) (available at *http://www.cftc.gov/PressRoom/PressReleases/pr5883-10.html?dbk*) (noting that retail forex is the largest area of retail fraud that the CFTC oversees).

[4] *See Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries,* 75 FR 3282 (Jan. 20, 2010) (''CFTC Proposing Release'') for a detailed discussion by the CFTC of the amendments to the CEA regarding retail forex.

[5] *See* 7 U.S.C. 2(c)(2)(B)(i).

[6] *See* 7 U.S.C. 2(c)(2)(B)(i)(I).

[7] *See Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security/Based Swap Agreement''; Mixed Swaps; Security/Based Swap Agreement Recordkeeping; Final Rule,* Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48207 (Aug. 13, 2012) (''Products Definitions Release'').

[8] 7 U.S.C. 2(c)(2)(B)(i).

[9] *See* 2011 Interim Rule Release. *See also Extension of Interim Final Temporary Rule on Retail Foreign Exchange Transactions,* Exchange Act Release No. 67405 (July 11, 2012), 77 FR 41671 (July 16, 2012) (''2012 Extension Release'').

[10] 7 U.S.C. 2(c)(2)(E).

[11] 7 U.S.C. 2(c)(2)(E)(i), as amended by § 742(c) of the Dodd-Frank Act, defines a ''Federal regulatory agency'' to mean the CFTC, the Securities and Exchange Commission, an appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the National Credit Union Association, and the Farm Credit Administration.

[12] 7 U.S.C. 2(c)(2)(B)(i)(II).

[13] ''Eligible contract participant'' is defined in CEA section 1a(18), as re-designated and amended by section 721 of the Dodd-Frank Act. *See* Public Law 111–203, § 721 (amending CEA section 1a). The CEA's definition of ECP generally comprises regulated persons; entities that meet a specified total asset test (*e.g.,* a corporation, partnership,

Continued

a rule or regulation of a Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe (''retail forex rule'').[14] An individual can qualify as an ECP if the individual has aggregate amounts invested on a discretionary basis of more than $10 million or more than $5 million if such individual enters into the transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred by such individual.[15] Transactions described in CEA section 2(c)(2)(B)(i)(I) include ''an agreement, contract, or transaction in foreign currency that . . . is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).'' [16] A Federal regulatory agency's retail forex rule must treat all agreements, contracts, and transactions in foreign currency described in CEA section 2(c)(2)(B)(i)(I) and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in CEA section 2(c)(2)(B)(i)(I), similarly.[17] Any retail forex rule also must prescribe appropriate requirements with respect to disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation, and may include such other standards or requirements as the Federal regulatory agency determines to be necessary.[18]

This amendment to the CEA took effect on July 16, 2011.[19] As of that date, broker-dealers, including broker-dealers also registered with the CFTC as FCMs (''BD–FCMs''),[20] for which the Commission is the Federal regulatory agency could no longer engage in retail forex transactions except pursuant to a rule adopted by the Commission.[21]

C. The Interim Rule

On July 13, 2011, the Commission adopted the Interim Rule (Rule 15b12–1T), which allows a registered broker-dealer to continue to engage in, or enter into, a retail forex business until July 16, 2012, provided that the broker-dealer complies with the Exchange Act, the rules and regulations thereunder, and the rules of the self-regulatory organization(s) (''SRO'') of which the broker-dealer is a member, insofar as they are applicable to retail forex transactions.[22] The Interim Rule was designed to provide an opportunity for the public to submit comments regarding broker-dealer practices in this area, which would inform the Commission's consideration of what additional rules may be necessary to address investor protection concerns, including abusive sales practices, volatility, and riskiness of the forex market as they affected the regulatory treatment of retail forex transactions by broker-dealers. We explained at the time that our action was also intended to preserve potentially beneficial market activity that, for example, may serve to minimize a retail customer's exposure to the risk of changes in foreign currency rates in connection with the customer's purchase or sale of a security. We also described potentially abusive practices, such as lack of disclosure about fees and forex pricing and insufficient capital or margin requirements, and requested comment on these practices and whether there are any steps we should take to seek to prevent them in the 2011 Interim Rule Release.[23] In July 2012, the Commission extended the Interim Rule to July 16, 2013.[24]

D. Interpretation Regarding ''Conversion Trades''

The Interim Rule was intended, in part, to address concerns that broker-dealers would be precluded from entering into foreign exchange transactions on behalf of retail customers in order to facilitate the customer's purchase or sale of a security listed on a foreign exchange and denominated in a foreign currency (''conversion trades'').[25] Subsequent to the initial adoption and most recent extension of the Interim Rule, in August 2012, the CFTC issued an interpretation in a joint rulemaking with the Commission that conversion trades are not a form of retail forex transaction subject to the prohibition under the CEA.[26] Under this interpretation, broker-dealers are permitted to engage in conversion trades without a rulemaking by the Commission and the level of broker-dealer foreign exchange activity subject to the prohibition in section 2(c)(2)(E)(ii)(I) of the CEA (and

proprietorship, organization, trust, or other entity with total assets exceeding $10 million subject to certain restrictions) or an alternative monetary test coupled with a non-monetary component (*e.g.,* a corporation, partnership, proprietorship, organization, trust, or other entity with a net worth in excess of $1 million and enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business); certain employee benefit plans, the investment decisions of which are made by one of four enumerated types of regulated entities; and certain governmental entities and individuals that meet defined thresholds. The Commission and the CFTC adopted rules under the CEA that further define ''eligible contract participant'' with respect to transactions with major swap participants, swap dealers, major security-based swap participants, security-based swap dealers, and commodity pools. *See* Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012).

[14] 7 U.S.C. 2(c)(2)(E)(ii)(I). As used in this release, ''retail forex rule'' refers to any rule proposed or adopted by a Federal regulatory agency pursuant to section 742(c)(2) of the Dodd-Frank Act. On September 10, 2010, the CFTC adopted a retail forex rule for persons subject to its jurisdiction. *See Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries,* 75 FR 55410 (September 10, 2010) (''CFTC Final Rule''). The CFTC had proposed its rules regarding retail forex transactions prior to the enactment of the Dodd-Frank Act. *See* CFTC Proposing Release. The Federal Deposit Insurance Corporation (''FDIC''), the Office of the Comptroller of the Currency (''OCC''), and the Board of Governors of the Federal Reserve System (''Board'') have adopted similar rules. *See Retail Foreign Exchange Transactions,* 76 FR 40779 (July 12, 2011) (''FDIC Final Rule''); *Retail Foreign Exchange Transactions,* 76 FR 41375 (July 14, 2011) (''OCC Final Rule''); and *Retail Foreign Exchange Transactions,* 78 FR 21019 (April 9, 2013) (''Board Final Rule'').

[15] 7 U.S.C. 1a(18)(A)(xi).

[16] 7 U.S.C. 2(c)(2)(B)(i)(I).

[17] 7 U.S.C. 2(c)(2)(E)(iii)(II).

[18] 7 U.S.C. 2(c)(2)(E)(iii)(I).

[19] *See* Public Law 111–203, § 754.

[20] *See* 7 U.S.C. 2(c)(2)(B)(i)(II)(cc), 2(c)(2)(C)(i)(I)(aa) and 2(c)(2)(E). Congress expressly provided that the CFTC has jurisdiction over an FCM's retail foreign exchange activities only if the FCM is not also a registered broker-dealer.

[21] *See* 7 U.S.C. 2(c)(2)(B)(i)(II) and 7 U.S.C. 2(c)(2)(E)(ii)(I). This prohibition does not apply to (1) forex transactions with a customer who qualifies as an ECP, or (2) transactions that are spot forex contracts or forward forex contracts irrespective of whether the customer is an ECP. However, consistent with other Federal regulatory agencies' retail forex rules, Rule 15b12–1 applies to ''rolling spot'' transactions in foreign currency by broker-dealers. *See* section II.A. below for a description of rolling spot transactions.

[22] *See* 2011 Interim Rule Release.

[23] *See* 2011 Interim Rule Release at 41684. The Commission's Office of Investor Education and Advocacy published an Investor Bulletin providing information about retail forex investing, including information about the risks involved in that type of trading. *See* Forex Bulletin. The CFTC and the North American Securities Administrators Association also have published an alert regarding risks of fraud in foreign exchange markets. *See* Foreign Exchange Currency Fraud: CFTC/NASAA Investor Alert, available at *http://www.cftc.gov/ConsumerProtection/FraudAwarenessPrevention/ForeignCurrencyTrading/cftcnasaaforexalert.*

[24] *See* 2012 Extension Release.

[25] *See* Memorandum from P. Georgia Bullitt, Morgan Lewis, on Pershing LLC—Proposed Relief regarding transactions in Retail Foreign Exchange to James Brigagliano et al. (June 17, 2011) (available at *http://www.sec.gov/comments/other/other-initiatives/otherinitiatives-56.pdf*).

[26] *See* Products Definitions Release. For purposes of the interpretation, a conversion trade is a transaction for the purchase or sale of an amount of foreign currency equal to the price of a foreign security with respect to which (i) the security and related foreign currency transactions are executed contemporaneously in order to effect delivery by the relevant securities settlement deadline and (ii) the actual delivery of both the foreign currency and securities occurs by the deadline.

this rulemaking) is significantly reduced.

Although the CFTC interpretation excludes conversion trades from the definition of retail forex, hedging and speculative trading in foreign currency (other than bona fide spot transactions [27]) are still within the scope of the definition. Broker-dealers, including BD–FCMs, are therefore prohibited from engaging in such trades absent a Commission rule.

E. Comments

The Commission received 20 comments on the Interim Rule.[28] Sixteen comment letters were received on the Interim Rule after it was adopted in 2011. Four comment letters (from only two commenters) were received following the extension of the Interim Rule in 2012. To provide a broad overview of both investor and industry reaction to the Interim Rule, all of the comments received are addressed below.

Nine commenters asked the Commission to preserve their ability to engage in retail forex transactions.[29] Another group of commenters urged the Commission to adopt a final rule based on the approach followed in the Interim Rule.[30] These commenters maintained that it is in the best interest of retail customers to have the opportunity to conduct forex activity as part of their broader investing activity, through their broker-dealers, with the assistance of personnel with forex expertise.

One group of commenters limited their comments to conversion trades and, as discussed above, asked the CFTC and other Federal regulatory agencies (including the Commission), to take the view that conversion trades are not prohibited for purposes of section 2(c) of the CEA.[31] As noted above, the CFTC has issued an interpretation that conversion trades are not retail forex transactions subject to the prohibition under the CEA.

One commenter stated that the Commission should rescind the rule and allow the statutory ban to take effect or, in the alternative, limit the scope of the rule to a narrowly defined class of forex transactions, specifically hedging and the facilitation of settlement of foreign securities.[32] The commenter further stated that in initially adopting the Interim Rule, the Commission did not provide notice of and opportunity for comment on the rule, and did not include a concrete assessment or quantification of the need for the relief granted by the rule. As discussed throughout this release, the Commission does not believe it would be appropriate at this time to ban retail forex transactions or otherwise limit the scope of permissible transactions by broker-dealers. Such a ban or limitation may prohibit legitimate activities such as hedging or other transactions and, among other factors discussed below, the Commission has not obtained sufficient information to indicate that such restrictions are warranted. In addition, the final rule we are adopting today is being adopted after notice and comment in response to the 2011 Interim Rule Release and the 2012 Extension Release.

Three comment letters provided the Commission with data on retail forex activity. One of the commenters provided data, based on a sampling of five broker-dealers for an unknown year, showing that those members engaged in $550 million per month (principal) of over-the-counter currency forwards, currency options and rolling spot transactions with non-ECPs and $1.2 billion per month of conversion trades.[33]

The second comment letter provided data on the returns of retail forex accounts at certain FCMs and RFEDs, and offered suggestions for additional disclosure and business conduct requirements (such as suitability standards), and identified areas concerning regulation and market activities in the context of retail forex transactions that the commenter believed warrants further monitoring.[34] We agree with the commenter's suggestion that further monitoring of retail forex transactions is warranted. While the Commission has determined to adopt Rule 15b12–1 for the reasons discussed throughout this release, we believe it is appropriate to give additional consideration to the suggestions provided by the commenter. We are including in Rule 15b12–1 a provision providing that the rule will expire on July 31, 2016 to permit additional time for the Commission to assess the market for retail forex (including recent regulatory developments discussed below) and potentially develop more targeted rules for retail forex or to consider any rules that an SRO may propose regarding its members' retail forex activities. The commenter also suggested that currency exchange-traded funds (''currency ETFs'') would provide an alternative

[27] *See* Products Definitions Release at 48257. The Commission and the CFTC consider a foreign exchange transaction that is entered into solely to effect the purchase or sale of a foreign security to be a bona fide spot transaction where certain conditions are met.

[28] The comments are available at *http://www.sec.gov/comments/s7-30-11/s73011.shtml.*

[29] *See* email comments from Raul Gonzalez, dated July 17, 2011, James Peck, dated July 17, 2011, Bob Flowers, dated July 17, 2011, James M. Beatty, dated July 17, 2011, Angela Li, dated July 17, 2011, Mark A. McDonnell, dated July 21, 2011, Mark Smith, dated July 23, 2011, John Baur, dated July 27, 2011, and Ronald Covington, dated October 23, 2011.

[30] *See* Letter from Kenneth E. Bentsen, Jr., Executive Vice President Public Policy and Advocacy, SIFMA and Robert Pickel, Executive Vice Chairman, ISDA, to Elizabeth Murphy, Secretary, Commission, dated October 17, 2011 (''SIFMA/ISDA Letter''). *See also* Memorandum from SIFMA and ISDA to Marc Menchel, Gary Goldsholle, Matthew Vitek, Rudy Verra, Glen Garofalo, FINRA, dated February 23, 2012. These commenters requested that the Commission clarify that the Commission's rule, together with FINRA regulation, would exclusively govern the retail foreign exchange activity of all broker-dealers, including BD–FCMs. The Commission notes that the rule being adopted, Rule 15b12–1, by its terms applies in the context of retail forex transactions but does not alter the requirement to comply with applicable Commission rules or other rules in other contexts. These commenters also requested that the Commission, in consultation with the CFTC, provide a safe-harbor to broker-dealers that would apply in the event that the status of a customer that is a natural person (including their investment vehicles and family offices) changes from that of a retail customer when a foreign exchange transaction is first entered into with the broker-dealer, including a BD–FCM, to that of an ECP, because of fluctuations in net assets, a change in market prices or other factors. However, given that interpretations regarding what constitutes a retail forex transaction are under the CEA and therefore subject to the jurisdiction of the CFTC and not the Commission, these commenters may wish to consider addressing this request to the CFTC.

[31] *See* Letter from Phoebe A. Papageorgiou, Senior Counsel, American Bankers Association and James Kemp, Managing Director, Global Foreign Exchange Division, to Thomas J. Curry, Comptroller, OCC, Robert E. Feldman, Executive Secretary, FDIC, Jennifer J. Johnson, Secretary, the Board, David Stanwick, Secretary, CFTC, and Elizabeth Murphy, Secretary, Commission, dated April 18, 2012 (''ABA/GFMA Letter''). *See also* SIFMA/ISDA Letter. SIFMA and ISDA requested that the Commission amend the definition of ''retail forex business'' in section (a) of Rule 15b12–1T in order to make clear that conversion trade transactions would be permitted under the Interim Rule, which is no longer necessary as a result of the CFTC's interpretation.

[32] *See* Letter from Dennis M. Kelleher, President and CEO, and Stephen W. Hall, Securities Specialist, Better Markets, Inc. to Elizabeth Murphy, Secretary, Commission, dated September 12, 2011 (''Better Markets Letter''). We understand the commenter's reference to transactions entered into to facilitate the settlement of foreign securities to mean the conversion trades discussed above that are no longer subject to the statutory prohibition.

[33] *See* Letter from Kenneth E. Bentsen, Jr., Executive Vice President Public Policy and Advocacy, SIFMA, dated July 10, 2012 (''SIFMA Letter'').

[34] *See* Letter from Justin Hughes, CFA and Managing Member, Philadelphia Financial Management of San Francisco to Elizabeth Murphy, Secretary, Commission, dated August 2, 2011 (''Philadelphia Financial Letter''). The commenter's suggestions for additional regulation included limiting the product to only accredited investors, establishing order handling rules as well as limiting leverage and account churning.

means for effectively hedging against currency risk.[35]

A third comment letter from a representative of another commenter provided 2010 data from a small sampling of large broker-dealers with an estimated notional value of foreign exchange conversion trades of $13.55 billion and an estimated notional value of foreign exchange non-conversion trades of $1.43 billion, although these values included transactions with both ECPs and non-ECPs.[36]

Following the extension of the Interim Rule in July 2012, the Commission received four additional comment letters from two commenters.[37] One commenter requested that broker-dealers be allowed to continue to engage in, or enter into, a retail forex business. This commenter argued that broker-dealers should be permitted to conduct retail forex to offer their retail clients a full suite of investment options and to facilitate hedging of transactions in foreign stocks.[38] This commenter also noted that broker-dealers have risk management and customer suitability practices in place to monitor their activities not only in stocks but also in options and stated that retail forex activities should be able to be conducted within broker-dealers and subject to regulatory oversight by the Commission. In a separate communication, this commenter reiterated that the Commission should allow active trading and hedging of spot forex under the same guidelines as active trading of stocks and options.[39] The commenter asserted that brokers should be able to set their own margins, taking into account the currency, the client, and the market conditions.[40]

As noted above, and as discussed in more detail below, the Commission believes it is appropriate at this time to allow broker-dealers to continue engaging in retail forex transactions subject to existing restrictions under Commission and FINRA rules while any additional requirements for retail forex are considered in order to retain existing options for retail investors to access the foreign exchange markets. This approach is consistent with the approach contained in the Interim Rule and with the recommendations of most commenters; however, the Commission is adopting Rule 15b12–1 with a provision providing that the rule will expire on July 31, 2016. This provides an additional opportunity for the Commission to assess the market for retail forex and determine whether to issue more targeted rules for retail forex, to consider any rules that an SRO may develop regarding its members' retail forex activities, to consider whether to take action to extend the rule, or have the rule expire.

To that end, Commission staff will consult with FINRA periodically to discuss and obtain additional information about the retail forex marketplace, such as information regarding new FINRA member applications identifying retail forex business and any rules that FINRA may consider regarding its members' retail forex activities. Commission staff will also periodically consult with other regulatory agencies, including the CFTC and banking regulators, to discuss the retail forex marketplace and identify potential areas and instances of abuse, as well as the ways that retail investors have benefited or been harmed. In addition, the Commission will consider any relevant information obtained during standard broker-dealer examinations.

II. Discussion

Taking into consideration all of the comments received, the Commission believes it is appropriate at this time to allow broker-dealers to continue to engage in retail forex transactions subject to existing requirements under Commission and FINRA rules while any additional requirements for retail forex are considered in order to retain existing options for retail investors to access the foreign exchange markets.

The Commission is adopting Rule 15b12–1 with the same terms and conditions as the Interim Rule in order to permit broker-dealers to continue to engage in a retail forex business under the framework of the Exchange Act for the time period specified in the rule. The final rule requires that broker-dealers comply with existing obligations under the Exchange Act, the rules and regulations thereunder, and the rules of the SRO of which the broker-dealer is a member.[41] As discussed in more detail below, the final rule meets the requirements in Section 2(c)(2)(E)(iii) of the CEA that the rule treat all agreements, contracts, and transactions in foreign currency described in CEA section 2(c)(2)(B)(i)(I) and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in CEA section 2(c)(2)(B)(i)(I), similarly, and that the rule prescribes appropriate requirements with respect to disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation by requiring that broker-dealers engaged in a retail forex business comply with the Exchange Act, the rules and regulations thereunder, and the rules of the SRO of which the broker-dealer is a member.[42]

The CFTC's interpretation regarding conversion trades that was issued following the extension of the Interim Rule has significantly narrowed the scope of retail forex transactions subject to a Commission rule. While we have only limited information on the level of retail forex activity conducted by broker-dealers, we received information from one commenter asserting that, based on a sampling of a small number of large broker-dealers, a substantial majority of foreign exchange transactions engaged in by these broker-dealers are conversion trades.[43] Given the clarification regarding the exclusion of conversion trades from the scope of retail forex transactions, we believe that the scope of transactions that are currently considered to be retail forex transactions, and thus subject to the Commission's rule, is much more limited than what the Commission anticipated in the Interim Rule.

Conversion trades were the focus of many of the comments received on the Interim Rule and the CFTC's interpretation was not issued until after the Commission had extended the interim temporary final rule. Given the recent modified scope of retail forex transactions to exclude conversion trades and the limited comments received on issues related to non-conversion trades, we believe it is appropriate to provide additional time for the Commission to focus its review on the current scope of activities that

[35] *See* Philadelphia Financial Letter. *See also* Better Markets Letter. *See also supra* section III.E. for a discussion of potential alternatives to retail forex transactions, including currency exchange traded products (''ETPs'').

[36] *See* letter from P. Georgia Bullitt, Michael A. Piracci and F. Mindy Lo, Morgan Lewis to Joseph Furey, Bonnie L. Gauch and Adam Yonce, Commission, dated July 28, 2011 (''Morgan Lewis Letter''). This commenter provided data from five large-broker dealers, but, only some of the broker-dealers provided information for every type of transaction cited in the letter.

[37] *See* email comments from Ernest J. Guevara III, dated November 16, 2012 (this comment does not appear to be related to the Interim Rule), and Brad Georges of Greeneye Management, dated December 19, 2012 (''Greeneye Comment Email'') February 28, 2013 (''Second Greeneye Comment Email''), and April 17, 2013.

[38] *See* Greeneye Comment Email.

[39] *See* Second Greeneye Comment Email.

[40] *See id.*

[41] Broker-dealers engaging in conversion trades are not subject to the rule as a result of the CFTC's interpretation to exclude conversion trades from retail forex, but they remain subject to the Commission's antifraud authority, including Section 10(b) and Rule 10b–5, under the Exchange Act when engaging in these trades.

[42] 7 U.S.C. 2(c)(2)(E)(iii).

[43] *See* Morgan Lewis letter.

are included in retail forex transactions prior to considering any tailored rules for broker-dealers engaging in a retail forex business.

The CFTC has also adopted rules that contain requirements specific to retail forex transactions including disclosure requirements, net capital requirements and haircut deductions depending on the currency pair, security deposit requirements and profitability reporting.[44] Moreover, other regulatory agencies[45] have also adopted rules that are similar to the CFTC's rule, including the Board which very recently adopted final rules related to retail forex transactions.[46] These new requirements may have an impact on the how the retail forex market functions. The rule the Commission is adopting today differs from the rules adopted by the CFTC and other regulatory agencies as it does not contain the specific requirements tailored to the retail forex transactions referenced above. While the Commission has determined to adopt Rule 15b12–1 for the reasons discussed throughout this release including the relatively limited level of retail forex activity engaged in by broker-dealers and the existing framework of legal obligations, including SRO rules applicable to broker-dealers, the Commission anticipates the three-year sunset provision will provide it with additional time to assess further the market for retail forex (including any changes based on recent regulatory actions) and consider whether to develop more targeted rules for retail forex, to consider any rules that an SRO may develop regarding its members' retail forex activities, to consider whether to take action to extend the rule, or have the rule expire.

With respect to SRO rules, the Commission notes that FINRA has previously proposed a rule to establish leverage limitations with respect to retail forex[47] and that the National Futures Association (NFA) has in place rules governing retail forex activities.[48] The Commission understands that FINRA plans to continue to consider rules related to retail forex transactions taking into account the regulatory framework developed by other regulators. The Commission expects to evaluate possible future actions during the sunset period in light of developments in the retail forex market, as well as the Commission's and SROs' experiences with retail forex activity pursuant to this rule.

The Commission has previously cautioned investors about risks in the foreign exchange market generally, and highlighted certain key risks for investors, including the lack of a central marketplace for retail forex, uncertainty about transaction costs, and the possibility for investors to lose more than their original investment.[49] Commission staff also has cautioned investors that many forex traders employ leverage as a means of amplifying their returns and higher leverage, in the form of a small margin requirement, can result in large losses if prices move in an unfavorable direction.[50] The Commission stated in the 2011 Interim Rule Release that insufficient capital or margin requirements could result in costs to the market associated with the inefficient provision of retail forex services.[51] Although no instances of abuse with respect to retail forex involving broker-dealers were raised in the comment letters,[52] the Commission remains concerned about risks in the retail forex market and the potential harm to investors if abusive practices, including misleading advertising or sales practices, are employed.[53] We are, however, mindful that retail forex transactions may be used for hedging and gaining direct exposures to the foreign currency markets, which may be appropriate for retail investors through broker-dealers with the protections available to investors under existing Commission and SRO oversight. We are also sensitive to the fact that the statutory prohibition applies to BD–FCMs in the absence of Commission rules but does not apply to FCMs that are not dually registered and are permitted to engage in retail forex transactions pursuant to the CFTC's rules. Accordingly, the failure to adopt a rule permitting BD–FCMs to continue to conduct retail forex could affect investors who have an account at a BD–FCM and would need to open a new account with a different intermediary in order to continue to conduct retail forex transactions.

The sunset provision for the expiration of the rule is designed to provide the Commission with a reasonable period of time to consider further whether additional requirements for broker-dealers engaging in a retail forex business may be appropriate while avoiding any disruption or unintended consequences to broker-dealers and their customers if the statutory prohibition were to go into effect. The Commission believes that a three-year sunset, as opposed to a shorter period, is appropriate because a shorter time frame may fail to provide adequate time to reflect on any developments in the retail forex market and then engage in any subsequent steps involved in any rulemaking process, such as the proposal and adoption of new rules before the expiration of Rule 15b12–1. Moreover, a longer time period may be unnecessary because the Commission should have sufficient time to consider and take any action prior to the expiration of the sunset provision. As an alternative, the Commission could adopt a final rule without a sunset provision or allow the temporary rule to lapse without adopting any final rule.[54] We believe, however, that in light of the CFTC's interpretation regarding conversion trades in the context of the retail forex market, as well as comments received both in support of and against final Commission rules to permit broker-dealers to engage in retail forex transactions, the arguments raised warrant further consideration. Although

[44] *See* CFTC Final Rule.

[45] *See* FDIC Final Rule, OCC Final Rule, and Board Final Rule.

[46] *See* Board Final Rule.

[47] FINRA proposed a rule in 2009 to establish a leverage limitation for retail forex. *See* Notice of Filing of Proposed Rule Change as Modified by Amendment No. 2 to Adopt FINRA Rule 2380 to Limit the Leverage Ratio Offered by Broker-Dealers for Certain Forex Transactions, Exchange Act Release No. 61090 (Dec. 1, 2009), 74 FR 64776 (Dec. 8, 2009).

[48] *See e.g.* NFA Compliance Rule 2–36. Requirements for Forex Transactions, NFA Compliance Rule 2–39. Soliciting, Introducing, or Managing Off-Exchange Retail Forex Transactions or Account, and NFA Financial Requirement Section 11. Forex Dealer Member Financial Requirements. The NFA rules that are relevant to retail forex transactions can be found at *http://www.nfa.futures.org/NFA-compliance/NFA-futures-commission-merchants/forex.HTML.*

[49] *See* 2011 Interim Rule Release at 41677, noting media reports of potentially abusive practices and concerns expressed by other regulators with respect to the retail forex practices of the entities they regulate. *See also* Forex Bulletin. Commission staff also cautioned investors that there had been allegations of fraud by the Commission and the CFTC in cases involving foreign exchange investment schemes. *Id.*

[50] *See* Forex Bulletin.

[51] *See* 2011 Interim Rule Release at 41684.

[52] The Better Markets Letter and Philadelphia Financial Letter refer generally to widespread abuses in the retail forex market, but do not cite specific instances of abuse involving intermediaries that are broker-dealers. *See* Better Markets Letter and Philadelphia Financial Letter.

[53] The Commission encourages any person who is aware of abusive practices or other misconduct in the retail forex market to report those activities to the Commission.

[54] One commenter stated that exchange listed currency ETFs, which as exchange-traded products are outside the scope of retail forex, provide an alternative to retail forex for hedging purposes and could give investors a greater return at a lower cost. *See* Philadelphia Financial Letter. *See also* the discussion of ETFs in the Economic Analysis section of this release. Other commenters, however, argue that investors should be allowed to engage in retail forex transactions with broker-dealers and that the current regulatory framework offers sufficient protections. *See* Greeneye Comment Email and SIFMA/ISDA Letter.

one commenter argued that Congress intended the ban on retail forex to go into effect,[55] we note that Congress specifically authorized the Commission and other Federal regulatory agencies to permit their regulated entities to engage in retail forex transactions by taking regulatory action the agencies determined was appropriate.[56] Furthermore, in addition to the Commission's Interim Rule, the CFTC and bank regulatory agencies have all adopted final rules to permit their regulated entities to engage in retail forex transactions.[57] The Commission will also consider any new information obtained with respect to the retail forex market, including any evidence of abusive practices or misconduct by BD–FCMs, prior to the expiration of the sunset period to determine whether additional limitations or action may be warranted. Any new requirements could be imposed either through Commission or SRO rules.

The rule we are adopting today, Rule 15b12–1, has the same terms and conditions as the Interim Rule that was adopted in 2011 and extended in 2012, except with respect to the expiration date of the rule as specified in paragraph (d) of the rule. Broker-dealers will continue to be required to comply with existing Exchange Act and SRO rules as they are applicable to retail forex transactions. We believe that the same reasons behind the adoption of the Interim Rule in 2011 and its extension in 2012 and discussed throughout this release continue to apply to the retail forex rule we are adopting today.[58]

A. Rule 15b12–1(a): Definitions

Rule 15b12–1(a) sets forth the definitions used in the rule,[59] which have not changed since the Commission adopted the Interim Rule in 2011.[60] Many of the definitions have the same meaning as in the Exchange Act.[61] These terms and definitions were selected because their meanings are readily understood in the industry. Other terms, such as ''retail forex business'' and ''retail forex transaction,'' are substantially similar to terms in the OCC, FDIC, and Board final rules.[62]

As we noted in the 2011 Interim Rule Release, the definition of retail forex transaction is based on the CEA and incorporates the terms described in CEA sections 2(c)(2)(B) and 2(c)(2)(C).[63] In addition, the definition is substantially the same as the definitions in the FDIC Final Rule, the OCC Final Rule, and the Board Final Rule.[64] Further, we noted in the 2011 Interim Rule Release that the definition of retail forex transaction has at least two important features. First, certain transactions in foreign currency are excluded from the definition, including spot transactions, contracts of sale that create an enforceable obligation to deliver between a buyer and seller that have the ability to deliver and accept delivery, respectively, in connection with their line of business, and forex transactions executed or traded on an exchange or designated contract market.[65] As we discussed previously, the exclusion for spot transactions was significantly expanded after the CFTC issued an interpretation, following the Commission's extension of the Interim Rule, that conversion trades are considered to be spot transactions and are therefore outside the scope of retail forex.[66]

The second important feature of the definition is that a ''rolling spot'' forex transaction (also known as a Zelener contract),[67] is not excluded from the definition as a spot transaction. Although a rolling spot forex transaction normally requires delivery of currency within two days, in practice these contracts are indefinitely renewed every other day and no currency is actually delivered until one party affirmatively closes out the position.[68] The Commission believes that a contract with a retail customer for a rolling spot forex transaction is economically more similar to a retail forex future, as described in CEA section 2(c)(2)(B)(i)(I), than a spot forex contract.[69] This interpretation is consistent with the approach of other Federal regulatory agencies acting pursuant to section 742 of the Dodd-Frank Act to treat all agreements, contracts, and transactions in foreign currency described in CEA section 2(c)(2)(B)(i)(I) and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in CEA section 2(c)(2)(B)(i)(I), similarly.[70]

The Commission received comments from two groups of commenters on the definitions included in section (a) suggesting that the Commission amend terms to clarify that conversion trades should not be regulated.[71] As discussed above, these comments both requested changes that are no longer necessary in light of the CFTC's interpretation regarding conversion trades.[72]

B. Rule 15b12–1(b): Broker-Dealers Engaged in a Retail Forex Business

Rule 15b12–1(b) requires that a broker-dealer comply with the Exchange Act, the rules and regulations thereunder, and the rules of the SROs of which the broker-dealer is a member, insofar as they are applicable to retail forex transactions.[73] These include rules related to the requirements of rules and regulations for retail forex in Section 2(c)(E)(iii)(I) of the CEA,[74] including but not limited to rules for disclosure, recordkeeping (or documentation), capital and margin, reporting, and business conduct.[75] The Commission initially adopted this section (b) in the same form in 2011 and the rationale for our adoption of this section has not changed.

Provided below are examples of obligations also discussed in the 2011 Interim Rule Release, including certain SRO requirements, relating to disclosure, recordkeeping (or documentation), capital and margin, reporting, and business conduct that are applicable to broker-dealers' retail forex transactions.

Disclosure Requirements

Broker-dealers that engage in a retail forex business must comply with the disclosure requirements in NASD Rule 2210.[76] NASD Rule 2210 requires all communications with the public by members of FINRA—including forex-related communications—to be based on

[55] *See* Better Markets Letter. Another commenter argued that retail forex transactions are essentially gambling and should be regulated and taxed as such. *See* Philadelphia Financial Letter.

[56] 7 U.S.C. 2(c)(2)(E)(ii)(I) and (iii)(I).

[57] *See supra* note 14. *See also supra* note 45.

[58] *See* 2011 Interim Rule Release at 41678 for a discussion of the rationale for adoption of the Interim Rule. *See also* 2012 Extension Release.

[59] Rule 15b12–1(a).

[60] *See* 2011 Interim Rule Release at 41678–79 for a discussion of these definitions.

[61] These include the definition of broker, dealer, person, registered broker or dealer, and self-regulatory organization. *See* 2011 Interim Rule Release at 41677.

[62] *See* 2011 Interim Rule Release at 41677–78 for a discussion of these definitions.

[63] 7 U.S.C. 2(c)(2)(B) and 7 U.S.C. 2(c)(2)(C).

[64] *See* FDIC Final Rule at 40781, OCC Final Rule at 41376–41377, and Board Final Rule at 21020–21021.

[65] *See* 2011 Interim Rule Release at 41678–79.

[66] *See supra* note 27.

[67] *See CFTC* v. *Zelener,* 373 F.3d 861 (7th Cir. 2004); *see also CFTC* v. *Erskine,* 512 F.3d 309 (6th Cir. 2008) (discussing Zelener contracts).

[68] *See* 2011 Interim Rule Release, note 34, at 41679. *See also* CFTC Proposing Release at 3284–3285 for a discussion of Zelener contracts and the CFTC's regulation of these contracts.

[69] *See* 2011 Interim Rule Release at 41679.

[70] *See supra* note 14.

[71] *See* SIFMA/ISDA Letter and ABA/GFMA Letter.

[72] *See supra* note 31.

[73] Rule 15b12–1(b).

[74] 7 U.S.C. 2(c)(2)(iii)(I).

[75] *See* 2011 Interim Rule Release at 41679–81 for a discussion of some of the Exchange Act and SRO rules that are applicable to broker-dealer retail forex transactions.

[76] *See* FINRA Forex Notice.

principles of fair dealing and good faith, to be fair and balanced, and to provide a sound basis for evaluating the facts regarding the market generally and a customer's specific transaction.[77] NASD Rule 2210 further prohibits broker-dealers from making ''any false, exaggerated, unwarranted, or misleading statement or claim in any communication with the public.''

Recordkeeping Requirements

Exchange Act Rules 17a–3 and 17a–4 require a broker-dealer to make, keep current, and preserve records regarding its business. For example, Exchange Act Rule 17a–3(a)(2) requires a broker-dealer to make and keep current a general ledger, which provides details relating to all assets, liabilities, income and expense and capital accounts, which could include entries related to retail forex.

Net Capital and Margin Requirements

Each broker-dealer must comply with Exchange Act Rule 15c3–1, which prescribes minimum regulatory net capital requirements for broker-dealers. The Commission notes that, under Exchange Act Rule 15c3–1(c)(2)(iv), any unsecured receivable arising from a retail forex transaction must be deducted when computing the broker-dealer's net capital.[78] The provisions of the net capital rule dealing with contractual commitment charges under Rule 15c3–1(c)(2)(viii) also apply to commitments with respect to foreign currency. Generally, broker-dealer margin requirements are set by Regulation T[79] and SRO rules.[80]

Reporting Requirements

A broker-dealer is required to file with the Commission periodic financial and operational reports (*e.g.,* annual audited financial statements and periodic FOCUS Reports), as prescribed by Exchange Act Rule 17a–5, that may include relevant information regarding a broker-dealer's retail forex business, if any.[81] In addition, FINRA has advised its member firms that a broker-dealer's expansion of its business to include retail forex transactions constitutes a material change in business operations pursuant to NASD Rule 1017(a), and a broker-dealer must first apply for and receive approval from FINRA to conduct this activity.[82] Additionally, Exchange Act Rule 17a–8 requires a broker-dealer to report to the U.S. Treasury Department's Financial Crimes Enforcement Network certain enumerated types of transactions, including suspicious transactions in foreign currencies and foreign currency futures and options.[83]

Business Conduct Requirements

In the course of complying with certain Exchange Act requirements, rules and regulations thereunder, and SRO rules relating to business conduct, broker-dealers must address their retail forex business.[84] For example, FINRA Rule 2010 (formerly NASD Rule 2110), which requires broker-dealers, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade, applies to all of a broker-dealer's business, including its retail forex business.[85] FINRA has stated that to comply with FINRA Rule 2010, a member firm must adequately disclose to its retail customers that the firm is acting as a counterparty to a transaction, the risks associated with forex trading, and the risks and terms of leveraged trading.[86] Broker-dealers also need to address retail forex transactions in connection with the customer reserve bank account requirements under Exchange Act Rule 15c3–3. In calculating what amount, if any, a broker-dealer must deposit on behalf of its customers in a reserve bank account pursuant to Exchange Act Rule 15c3–3(e), the broker-dealer must use the formula set forth in Exchange Act Rule 15c3–3a.

As we noted in the Interim Rule Release, these examples are not inclusive of all regulatory requirements administered by the Commission that must be complied with by a broker-dealer engaging in a retail forex business.[87] The Commission does not intend to suggest that other provisions, rules and regulations, including antifraud provisions and SRO rules, may not apply to broker-dealers' retail forex business.

While the Commission did not receive any comments that directly addressed Rule 15b12–1(b), it received comments that set forth recommendations for potential regulations that could apply to broker-dealers' retail forex businesses.[88] As discussed above, the Commission believes it is appropriate to give additional consideration to the recommendations provided by all of the commenters and is adopting the rule to permit additional time for the Commission to assess the market for retail forex and potentially develop more targeted rules for retail forex and to consider any rules that an SRO may propose regarding its members' retail forex activities.

C. Rule 15b12–1(c): Broker-Dealers Deemed To Be Acting Pursuant to a Commission Rule

Rule 15b12–1(c) provides that any registered broker or dealer that engages in a retail forex business in compliance with paragraph (b) of the rule on or after the effective date of the rule will be deemed, until the expiration date specified in paragraph (d) of the rule, to be acting pursuant to a rule or regulation described in CEA section 2(c)(2)(E)(ii)(I), as amended by section 742 of the Dodd-Frank Act.[89] The Commission adopted this section (c) in the same form in 2011 and did not receive any comments that addressed this section.

[77] *See id.*

[78] 17 CFR 240.15c3–1(c)(2)(iv).

[79] 12 CFR 220.

[80] *See supra* note 47.

[81] Retail forex data may factor into a broker-dealer's financial reports; however, the presentation of such data on these reports would be aggregated with other financial data associated with the broker-dealer's activities and would not be specifically identified as relating to retail forex. *See, e.g.,* Form X–17A–5, 17 CFR 249.617. In addition, FINRA Rule 4524 requires broker-dealers to file supplemental FOCUS information, including information about commissions attributable to foreign exchange products in the supplemental statement of income (''SSOI'') and information about the gross amount of all foreign exchange forward transactions in the supplemental schedule for derivatives and other off-balance sheet items (''OBS''). *See* Exchange Act Release No. 66364 (February 9, 2012), 77 FR 8938 (February 15, 2012), and Exchange Act Release No. 68832 (February 5, 2013), 78 FR 9754 (February 11, 2013) (Commission orders approving the SSOI and OBS, respectively).

[82] *See* FINRA Forex Notice.

[83] *See* Exchange Act Release No. 18321 (Dec. 10, 1981); 46 FR 61454 (Dec. 17, 1981); *see also* FINRA Rule 3310 (formerly NASD Rule 3011) (requiring FINRA member firms to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions). As FINRA noted, ''FINRA member firms engaging in retail forex activities should ensure their Anti-Money Laundering Program addresses the risks associated with the business and includes procedures for monitoring, detecting, and reporting suspicious transactions associated with their retail forex activities.'' *See* FINRA Forex Notice.

[84] The suitability requirement under FINRA Rule 2111 requires, in part, that a broker-dealer or associated person ''have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the [firm] or associated person to ascertain the customer's investment profile.'' This requirement would generally not apply in the context of a retail forex transaction unless it is part of a recommended investment strategy that also involves a security.

[85] *See* FINRA Forex Notice.

[86] *Id.*

[87] *See* 2011 Interim Rule Release at 41681.

[88] *See* Philadelphia Financial Letter and Second Greeneye Comment Email. *See also supra* note 34.

[89] Rule 15b12–1(c).

D. Rule 15b12–1(d): Expiration

Rule 15b12–1(d) contains the expiration date of the rule.[90] The Commission is revising this paragraph of the rule to extend the expiration date to July 31, 2016. As discussed above, this revision to paragraph (d) will allow the rule to continue to apply while the Commission considers whether any additional requirements are necessary with respect to broker-dealer's retail forex activities. The Commission will also consider other possible alternative actions, including whether Rule 15b12–1 should be proposed, without a sunset provision, in its current form. The Commission will also consider whether the rule should be allowed to expire without further Commission action after the effective period ends.

III. Economic Analysis

A. Introduction

Section 3(f) of the Exchange Act requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, and to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation whenever it engages in rulemaking under the Exchange Act.[91] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[92] Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate to further the purposes of the Exchange Act.[93]

Many of the benefits and costs discussed below are difficult to quantify. For example, we believe that a key benefit to the adoption of Rule 15b12–1 is the prevention of inefficient disruptions in retail customers' access to foreign exchange markets. However, in the absence of current data on investor participation in the retail forex market, the magnitude of these inefficiencies is difficult to estimate. Specifically, if the alternative to conducting retail forex through a broker is to open an account with an FCM, then an estimate of the aggregate costs associated with the necessary account transfers would likely require information about the number of customer accounts that would be affected and the notional value of retail forex activity in those accounts.

Similarly, as discussed below, we recognize that investors who choose to use exchange-traded products to hedge currency risk will face the risk that a hedging instrument does not perfectly replicate the exposure to be hedged. While we might be able to estimate the quantity of basis risk for a particular position, a measure of the economic significance of this basis risk across the investor base to which a prohibition on retail forex would apply requires information about the foreign currency exposures that retail customers might seek to hedge. Although one comment letter provided some data on the scope of the market,[94] the Commission does not have sufficient data about retail forex participation to produce precise estimates of the aggregate economic effects of adopting Rule 15b12–1 and possible alternatives to this rulemaking. As a result, much of the discussion on costs and benefits that follows is qualitative in nature. However, where possible, the Commission has attempted to quantify some economic effects.

We understand that under the current regulatory regime, retail customers typically enter into foreign exchange transactions with broker-dealers for a number of reasons. Industry participants have informed us that the most common foreign exchange transactions are conversion trades, in which a currency trade is made in connection with a foreign securities transaction. These are excluded from the scope of retail forex transactions and thus from the Commission's rule as discussed above.[95] Based on data one commenter provided from a small sampling of larger broker-dealers, in terms of notional amount, foreign exchange conversion trades would account for approximately 90% of foreign exchange transactions conducted through broker-dealers, and 99% of all broker-dealer customer accounts are involved in conversion trades, though not all trades within an account may be conversion trades.[96] Commenters have also conveyed to us that retail customers often enter into forex transactions with broker-dealers as part of a hedging strategy. For instance, retail customers may engage in forex transactions through broker-dealers in order to hedge currency risk in securities or in a portfolio held in the customer's brokerage account. They may also engage in these transactions in order to obtain exposure to foreign markets as part of their overall investment strategy.[97]

Congress prohibited the retail forex transactions described in CEA section 2(c) except pursuant to rules adopted by the relevant Federal regulatory agencies allowing the transactions. As we noted in the 2011 Interim Rule Release, some of these transactions, such as hedging transactions may be beneficial to investors as they provide a mechanism for mitigating risks.[98] At the same time, the Commission is aware of potentially abusive practices that can occur in the retail forex market. Such practices may include, for example, misleading or lack of disclosure about fees and forex pricing, or misleading advertising directed to retail investors.[99]

As discussed above, on April 18, 2012, a group of commenters asked the CFTC to take the view that forex transactions that are solely incidental to, and are initiated for the sole purpose of, permitting a client to complete a transaction in a foreign security, through conversion trades would not be subject to the retail forex prohibition under section 2 of the CEA.[100] In August 2012, the CFTC issued an interpretation in a joint rulemaking with the Commission that clarifies that conversion trades are not retail forex transactions subject to the prohibition under the CEA. This interpretation permits broker-dealers to engage in conversion trades without a rulemaking by the Commission. It also significantly reduces the level of broker-dealer foreign exchange activity that is subject to the prohibition in section 2(c) of the CEA and thus to the final rule.[101]

Although the CFTC interpretation excludes conversion trades from the

[90] Rule 15b12–1(d).

[91] *See* 15 U.S.C. 78c(f).

[92] *See* 15 U.S.C. 78w(a)(2).

[93] *See id.*

[94] *See* Morgan Lewis Letter which provides some estimate on the overall scope of the retail forex market. *See also supra* section I.E. for a discussion of this comment letter.

[95] *See* Morgan Lewis Letter. As explained above, the ABA/GFMA Letter requested from the CFTC an interpretation that excluded conversion trades from the prohibition under CEA section 2.

[96] *See* Morgan Lewis Letter, which provided data from five large-broker dealers, but, only some of the broker-dealers provided information for every type of transaction that is cited in the letter. The data included a sampling of five large broker-dealer firms for forex data during the calendar year 2010 (or in one firm's case, June 2010 through June 2011) showing that the estimated aggregate notional value of conversion trades for the firms that provided data for the year was $13.55 billion while the estimated aggregate notional value of non-conversion trades was $1.43 billion. The data also showed that the estimated annual number of accounts involved in conversion trades for the time period was 17,600 and the number of non-conversion accounts was 187. *See id.*

[97] SIFMA/ISDA Letter at 4, Annex A at 1–2.

[98] *See* 2011 Interim Rule Release at 41684.

[99] *See id.*

[100] *See* ABA/GFMA Letter.

[101] This is in contrast to the estimated level of broker-dealer foreign exchange activity that was understood to exist when the Commission initially acted to adopt the Interim Rule in 2011 and when it extended the Interim Rule in 2012.

definition of retail forex, hedging and speculative trading in foreign currency (other than bona fide spot transactions) continue to fall within the scope of the definition. Broker-dealers and BD–FCMs are therefore prohibited from engaging in such retail forex activities absent a Commission rule allowing them to do so.

Adopting Rule 15b12–1 will maintain the regulatory framework that currently exists for broker-dealers under the Interim Rule, and will not create new regulatory obligations. Furthermore, the rule will preserve the ability of broker-dealers to provide, among other services, hedging to retail customers while the Commission considers what further steps to take, if any.

The Commission previously considered and discussed its economic analysis of Rule 15b12–1T.[102] When the Commission initially adopted the Interim Rule in 2011, we solicited comment on the economic analysis and received one comment that addressed the economic analysis.[103] We adopted Rule 15b12–1T on an interim final basis to allow the existing regulatory framework for retail forex transactions to continue for a defined period, to avoid potentially unintended consequences from broker-dealers immediately discontinuing their retail forex business, and to provide the Commission time to consider the appropriate regulatory framework regarding retail forex transactions.[104] Furthermore, parties who commented on the rule asked the Commission to preserve the ability of investors to engage in retail forex transactions through their broker-dealers.[105] In July 2012, the Commission extended the effective date of the Interim Rule to July 16, 2013 and received four comments (from two commenters) on the extension, none of which addressed the economic analysis in the 2012 Extension Release.[106]

B. Economic Baseline

The baseline for our economic analysis of the rule is the state of the retail forex market in existence today after the adoption of the Interim Rule and its extension, in which broker-dealers and BD–FCMs are permitted to conduct retail forex transactions in compliance with the existing federal securities laws and the rules of an SRO of which the broker-dealer or BD–FCM is a member. As is indicated in the discussion of economic effects and potential alternatives that follows, estimates of the economic impacts of this rule crucially depend on current participation in retail forex, both aggregate notional amounts and risk exposures to different foreign currencies. Broker-dealers are not required to report the foreign currency exposure of their retail clients and commenters did not provide data on the foreign currency exposure of their retail clients. Accordingly, the Commission only has limited data on the level of participation in the retail forex market. However, we have some information regarding the current size of the retail forex market and the use of foreign exchange instruments by retail investors from comment letters and other research.[107] In attempting to evaluate and confirm the estimates of the size of the broker-dealer retail forex market, which as noted above included conversion trades that now are excluded from the definition of retail forex, the Commission also looked at information from the Bank of International Settlements (BIS). This information indicates a recent increase in retail participation in forex markets.[108] Though BIS did not separately compute statistics for the subset of activity defined as retail forex by the CEA, nevertheless this may provide an indication of a general trend spanning both retail forex and foreign exchange transactions by retail customers that falls outside the definition of retail forex.

In addition, as mentioned above, one commenter provided data on participation in forex markets taken from a small sampling of large broker-dealers. According to this commenter, in terms of notional amount, foreign exchange conversion trades account for approximately 90% of all foreign exchange transactions (including transactions with both ECPs and non-ECPs) conducted by these broker-dealers.[109] This supports the premise that a large portion of foreign exchange activity flowing through broker-dealers falls outside of the scope of retail forex. Further, 99% of all broker-dealer customer accounts in this sample were involved in conversion trades. However, not all foreign exchange transactions engaged in by retail customers were conversion trades. The same commenter estimated transactions with a notional value of $550 million per month in currency forwards, options and rolling spot with non-ECPs.[110] Accordingly, while conversion trades might comprise the bulk of foreign exchange transactions engaged in by retail investors, their participation in other forms of foreign exchange transactions that fall within the scope of retail forex may be significant.

C. Benefits

Rule 15b12–1 is designed to preserve retail customers' access to the forex markets through broker-dealers and thus promote efficiency by, for example, permitting retail customers to continue to enter into forex transactions in connection with trades in foreign securities, as part of their brokerage activities until such time as Rule 15b12–1 expires by its terms or the Commission takes further regulatory action in this area. In the absence of Rule 15b12–1, broker-dealers would be required to exit certain types of retail forex business, which could require retail customers to engage in forex transactions through an FCM that is not dually registered as a broker-dealer or other service provider which could be economically inefficient.[111] In particular, to the extent that access to the forex markets through broker-dealers provides hedging opportunities for foreign investments, economic benefits may accrue to retail customers. Furthermore, by continuing to preserve a channel for broker-dealers' retail customers to access forex transactions through broker-dealers, the adoption of the final rule will continue to prevent any loss of competition in the retail forex market that could result if broker-dealers or BD–FCMs were required to exit the business. Adopting the rule also avoids potentially unintended consequences from broker-dealers immediately discontinuing their retail forex business, including costs or

[102] For a detailed description of the costs and benefits of Rule 15b12–1T, *see* 2011 Interim Rule Release at 41684.

[103] *See* Better Markets Letter.

[104] *See* 2011 Interim Rule Release at 41683. As noted above, as of the time the Commission adopted the Interim Rule and extended it, the CFTC had not issued its interpretation that conversation trades were not retail forex transactions.

[105] Fourteen of sixteen commenters were in favor of the rule and supported the ability of broker-dealers to conduct retail forex transactions. *See, e.g.* SIFMA/ISDA Letter.

[106] *See* supra note 37.

[107] *See e.g.* Morgan Lewis Letter and Philadelphia Financial Letter.

[108] *See* King, Michael and Dagfinn Rime. ''The $4 trillion question: What explains FX growth since the 2007 survey?'' BIS Quarterly Review, December, 2010 (attributing increased foreign exchange turnover to retail investor participation, facilitated by electronic execution platforms).

[109] *See* SIFMA Letter.

[110] *See id.*

[111] Establishing an account with an FCM may not bear a monetary cost, however, a deposit of several thousand dollars is frequently required to maintain an open account. A customer could experience increased costs from maintaining separate deposit minimums for securities and commodities accounts. In addition, other costs may also apply, such as resources associated with transferring accounts.

inefficiencies that may result if retail customers have to open new accounts with FCMs that are not BD–FCMs or with other entities in order to trade in retail forex or seek to trade in products that may perform as substitutes to retail forex, such as currency ETPs.

The adoption of the rule would not necessarily promote competition between broker-dealers and the other regulated intermediaries because broker-dealers would continue to offer retail forex services under Rule 15b12–1 which imposes requirements that already apply to broker-dealers under the existing regulatory regime, while other regulated entities were required to comply with new rules applicable to them. Further, all broker-dealers engaging in a retail forex business must comply with the final rule; therefore, competition among broker-dealers would most likely not be affected by adoption of the rule.

Adopting Rule 15b12–1 will impose no new burden on competition and should maintain competition among intermediaries. Under Rule 15b12–1T, regulatory requirements for broker-dealers operating in the retail forex market would remain unchanged. As a result, retail customers would continue to be able to choose between hedging their own portfolios of foreign securities in a securities account or relying on other intermediaries or products for hedging. Similarly, since the rule preserves the existing regulatory structure, the Commission does not expect that adopting the rule will result in any impact on efficiency or impairment of the capital formation process.

D. Costs

Because Rule 15b12–1 preserves the regulatory regime that had been in place prior to the effective date of Section 742(c) of the Dodd-Frank Act, the adoption of the rule imposes no new regulatory burdens beyond those that already existed for broker-dealers. The Commission recognizes that broker-dealers will face regulatory costs and requirements associated with operating in the retail forex market, but these are not new costs or requirements imposed by the rule.[112] As discussed above, the Commission is aware of potentially abusive practices that may occur in the retail forex market.[113] To the extent that such practices occur after adoption of this rule retail customers may bear the costs associated with these abuses.[114] The Commission notes that due to the CFTC's interpretation of the definition of retail forex,[115] the scope of retail forex transactions has narrowed significantly after the Commission adopted and extended the Interim Rule. As noted above, while the Commission only has limited information about the size of the retail forex market, we believe the scope of the retail forex market is much smaller than anticipated when the Commission adopted and extended the Interim Rule and that the number of transactions currently engaged in by broker-dealers, and therefore covered by a Commission retail forex rule, is much more limited.[116] The Commission believes, on balance, that the potential market disruption that may occur if the Commission does not adopt Rule 15b12–1 justifies the cost of maintaining the current regulatory regime while the Commission considers, during the time period set in the rule, whether further regulatory action is warranted.

E. Alternatives Considered

The Commission considered certain alternatives to adopting Rule 15b12–1. One alternative would be to allow Rule 15b12–1T to expire without adopting a final rule, and therefore preclude broker-dealers from engaging in a retail forex business, although they could continue to enter into conversion trades. A benefit of this alternative could be that certain abuses Congress sought to address through the prohibition in Section 742 of the Dodd-Frank Act could be addressed through a complete prohibition. The cost of this alternative would be that an outright prohibition on retail forex activity would interfere with certain business activities conducted by broker-dealers that are potentially beneficial for their customers, including hedging activities.[117]

A retail investor seeking to hedge currency risks in a portfolio would have to choose between alternative means of doing so. Trading in currency futures is one such alternative, but under this approach, retail customers of broker-dealers would be required to open an account with a FCM that is not dually registered as a broker-dealer. Moreover, mark-to-market margin requirements associated with futures contracts would expose hedging customers to additional cash flow risk. While shifting to services provided by a different intermediary would impose additional costs, retail customers could, however, potentially benefit from the protection of rules to which those intermediaries are subject.

In comment letters responding to the solicitation of comment in the 2011 Interim Rule Release, one commenter suggested another way for retail investors to obtain currency exposure is through ETPs.[118] Another commenter suggested that the Commission had not thoroughly analyzed the extent to which other products or trading strategies represent substitutes for retail forex.[119]

In response to the commenters' concerns, we noted in the 2012 Extension Release that currency ETPs are generally designed to provide broad exposure to exchange rate movements.[120] In this regard, the Commission notes that factors such as accrued interest or sponsor fees may cause an ETP to deviate from its benchmark. We also note that a market participant who uses ETPs as a hedging tool could face risks from executing hedges on an exchange that may be markedly different from the execution risk associated with transacting through a broker-dealer.[121] As such, and consistent with statements in the 2012 Extension Release, it does not appear that currency exchange-traded funds will necessarily function as effectively in mitigating the currency risk of particular securities transactions as retail forex.[122]

In the 2012 Extension Release, the Commission solicited specific comment on currency ETFs, including on the concerns raised in the comment letters received in response to the 2011 Interim Rule Release,[123] the benefits and costs

[112] These costs include costs related to disclosure, recordkeeping and documentation, capital and margin, reporting, and business conduct. A broker-dealer that currently engages in forex transactions with retail customers, for example, incurs costs associated with establishing, maintaining, and implementing policies and procedures to comply with regulatory requirements; preparing disclosure documents; establishing and maintaining forex-related business records; and preparing filings with the Commission, which may include legal and accounting fees. *See, e.g.,* 2011 Interim Rule Release at 41684.

[113] *See* 2011 Interim Rule Release at 41684.

[114] *See* Forex Bulletin.

[115] *See supra* note 26 and note 27.

[116] *See, e.g.,* Morgan Lewis Letter and SIFMA Letter. As noted by commenters and discussed above, most forex activity engaged in by retail customers is conversion trades and would no longer be subject to a Commission rule on retail forex.

[117] *See* 2011 Interim Rule Release at 41684.

[118] *See* Philadelphia Financial Letter. *See also* Better Markets Letter. As described above, the commenters referred to using currency ETFs. In the discussion here, the term ETPs is used to encompass a broader range of potential instruments (including ETFs) that may be used to gain exposure to forex.

[119] *See* Better Markets Letter.

[120] *See* 2012 Extension Release at 41675.

[121] *See, e.g.,* Kostovetsky, Leonard. ''Index mutual funds and exchange-traded funds.'' The Journal of Portfolio Management 29.4 (2003), while comparing ETFs to index funds, the author describes the different sources of tracking error incurred by ETF investors, including management fees and transaction costs in the form of bid-ask spreads.

[122] *Id.*

[123] *See supra* note 118.

to retail customers of using currency ETFs as a substitute for retail forex, and on the use of currency ETFs to hedge currency risk.[124] The Commission did not receive any comments in response to this solicitation of comment regarding currency ETFs, and the Commission continues to believe that ETPs represent an imperfect substitute for retail forex. In evaluating further the concerns expressed, however, Commission staff supplemented the analysis regarding the additional risks that investors who use ETPs as hedging instruments may have to bear discussed in the 2012 Extension Release and above.

Specifically, staff attempted to estimate the basis risk borne by an investor using an ETP to hedge EURUSD exposure.[125] While, on an annual basis, the average difference between ETP returns and EURUSD spot returns is small, the volatility of these differences from day-to-day is high, approximately 0.50% at a daily frequency. This volatility is indicative of the additional risk associated with hedging using ETPs, particularly for short holding periods or frequent rebalancing. Under Rule 15b12–1, the same investor could consider using a forward contract for EURUSD in her brokerage account. While the average difference in daily returns is higher in this case than with an ETP, due to the interest rate differential between Europe and the United States, the volatility of these differences is much lower, less than one basis point at a daily frequency.[126]

Finally, we note that if market participants prefer to transact in ETPs in order to obtain currency exposure, they may do so regardless of whether the Commission has or has not adopted rules for retail forex. In this regard, while the Commission continues to believe that ETPs have their own attendant risks, during the time Rule 15b12–1 is in place until its expiration date, the Commission will continue to evaluate the retail forex market, including alternative means of hedging currency risk and the availability of substitutes to retail forex. As such, as discussed throughout the release, the Commission believes that it is appropriate to allow broker dealers to continue engaging in retail forex transaction subject to existing requirements during that time.

If, as an alternative to the final rule, the Commission allowed the Interim Rule to expire, investors with international portfolios who are restricted from retail forex may choose to leave currency exposures unhedged. The risk of a portfolio of foreign securities that is not hedged, with returns computed in U.S. dollar terms, comprises (i) The risk of the underlying securities in local currency; (ii) the risk of the local currency relative to the U.S. dollar; and (iii) the correlation between the underlying security returns in local currency and currency returns. Allowing investors to hedge currency exposures removes components (ii) and (iii), leaving investors to bear only the risk associated with the underlying securities.[127]

Further, inefficiencies stemming from an inability to pursue currency hedging strategies in international portfolios, or higher costs of doing so, could cause investors to reduce their allocation to international investments. In the limit, investors may respond by exiting international markets. The resulting lack of diversification could represent a reduction in portfolio efficiency.[128]

The Commission also considered adopting Rule 15b12–1 without a sunset provision. While the direct costs and benefits of this alternative would be similar to those applicable under the rule being adopted (as it would simply continue the existing regulatory requirements for broker-dealers engaging in retail forex transactions), it nevertheless could limit the Commission's ability to fully consider, prior to issuing permanent rules, potential changes to the retail forex market; in part changes resulting from actions by other regulators that have recently adopted rules relating to retail forex that impose different requirements on market intermediaries than those the Commission imposes on broker-dealers under Rule 15b12–1. The Commission anticipates that it will reconsider the rule prior to its expiration in light of developments in the retail forex market during that time, as well as the Commission's and SROs' experiences with retail forex trading pursuant to this Rule.

F. Conclusion

The adoption of Rule 15b12–1 will not change the regulatory requirements for broker-dealers operating in the retail forex market. Similarly, the rule does not alter the existing regulatory structure. To the extent that potentially abusive practices continue in the retail forex market, the market will continue to bear the costs associated with any such abuses and the resultant inefficient provision of services across the market. The rule will continue to allow retail customers access to hedging transactions and other forex transactions through broker-dealers, without the need to shift business and open new accounts at other market intermediaries. If the Commission or an SRO imposes any additional burdens on retail forex transactions the new burdens will be considered in conjunction with those new rules.

IV. Other Matters

The Administrative Procedure Act generally requires that an agency publish a substantive rule in the **Federal Register** 30 days before it becomes effective.[129] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[130] The Commission notes that Rule 15b12–1 does not impose any new regulatory requirements on broker-dealers and that the rule is identical in substance to the Interim Rule, which requires that broker-dealers comply with existing Commission and SRO rules as they are applicable to retail forex transactions. A 30-day effective date is therefore not necessary for broker-dealers to prepare to comply with the rule. Furthermore, broker-dealers are currently permitted to engage in a retail forex business under

[124] *See* 2012 Extension Release at 41674.

[125] Commission staff chose EURUSD for its analysis due to ready availability of data on ETPs, equity indices and foreign exchange rates related to the Euro area, and because an ETP tracking EURUSD was more liquid than ETPs tracking other currencies during the sample period. As a result of the additional liquidity, Commission staff expects this ETP to result in less exposure to basis risk with respect to EURUSD than other ETPs in the same family constructed to track other currency pairs.

[126] Calculated based on data from *Daily/Monthly U.S. Stock Files* © 2012 Center for Research in Security Prices (CRSP), The University of Chicago Booth School of Business, and Thomson Reuters Datastream. To compute these statistics, Commission staff used daily WM Spot closing prices, short-term interest rates and prices for the CurrencyShares Euro ETN (ARCA: FXE) from 9/4/2007–12/31/2012 obtained from Datastream (interest rates and exchange rates) and CRSP (ETN returns). With these data, staff computed daily returns to (i) a EURUSD forward contract; and (ii) to the CurrencyShares Euro ETN. To compute the additional risk faced by a EURUSD hedger using each of these instruments, staff produced time series of the differences in daily returns and computed the average and standard deviations of these series.

[127] Based on data from Thomson Reuters Datastream, Commission staff used monthly returns for the period 9/4/2007–12/31/2012 to estimate the annualized risk and return for (i) the MSCI Europe index, unhedged in USD and (ii) the MSCI Europe index, hedged to USD. Staff chose these indices to simplify the computation of portfolio returns for various hedge ratios. Based solely on point estimates, partially-hedged portfolios offered higher total return per unit of risk.

[128] *See, e.g.,* French, Kenneth R. and James M. Poterba. ''Investor Diversification and International Equity Markets,'' American Economic Review, Vol. 81, No. 2, 1991, noting that large variation in expected returns across countries is required to justify lack of diversification in a mean-variance optimization setting.

[129] *See* 5 U.S.C. 553(d).

[130] *Id.* at 553(d)(3).

the Interim Rule. A gap in the effective dates of the Interim Rule and the final rule would cause the statutory prohibition to go into effect for a short period of time and could potentially create disruption and unintended consequences to broker-dealers and their customers.[131] For these reasons,[132] the Commission finds that there is good cause for making the rule effective earlier than 30 days after publication in the **Federal Register**.

V. Paperwork Reduction Act

The Commission notes that Rule 15b12–1 does not impose any new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''),[133] nor does it create any new filing, reporting, recordkeeping, or disclosure reporting requirements for broker-dealers that are or plan to be engaged in a retail forex business. Accordingly, the Commission did not submit the rule to the Office of Management and Budget for review in accordance with the PRA.

In the 2011 Interim Rule Release and the 2012 Extension Release, the Commission requested comment on its conclusion that there are no collections of information in connection with the Interim Rule.[134] The Commission received no comments relating to the PRA analysis in the 2011 Interim Rule Release or the 2012 Extension Release.

VI. Regulatory Flexibility Act Certification

In the 2011 Interim Rule Release, the Commission certified that pursuant to 5 U.S.C. 605(b) the Interim Rule, which is substantively the same as Rule 15b12–1 (with the exception of the sunset date), will not have a significant economic impact on a substantial number of small entities. The Commission received no comments on the certification included in the 2011 Interim Rule Release. The Commission also made this certification in the 2012 Extension Release and the Commission received no comments on that certification. Like the Interim Rule, Rule 15b12–1 applies to broker-dealers that may engage in retail forex transactions. However, the rule does not impose new regulatory obligations, costs, or burdens on such broker-dealers. While the rule applies to broker-dealers that may be small businesses, any costs or regulatory burdens incurred as a result of the rule are the same as those incurred by small broker-dealers prior to the effective date of section 742 of the Dodd-Frank Act. Broker-dealers have already incurred those costs and regulatory burdens through establishing compliance with the rules adopted by the Commission under the Exchange Act applicable to broker-dealers, as well as relevant SRO rules. Further, the rule does not change the burdens on small broker-dealers relative to large broker-dealers. Accordingly, the rule will not have a significant economic impact on a substantial number of small entities.

VII. Statutory Authority and Text of Rule and Amendment

Pursuant to section 2(c)(2) of the Commodity Exchange Act, as well as the Exchange Act as amended, the Commission is adopting Exchange Act Rule 15b12–1.

List of Subjects in 17 CFR Part 240

Brokers, Consumer protection, Currency, Reporting and recordkeeping requirements.

In accordance with the foregoing, the Securities and Exchange Commission is amending Title 17, chapter II, of the Code of Federal Regulations as follows:

Text of the Rule and Amendment

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 et. seq., and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376, (2010), unless otherwise noted.

* * * * *

■ 2. Add § 240.15b12–1 to read as follows:

§ 240.15b12–1 Brokers or dealers engaged in a retail forex business.

(a) *Definitions.* In addition to the definitions in this section, the following terms have the same meaning as in the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.): ''broker,'' ''dealer,'' ''person,'' ''registered broker or dealer,'' and ''self-regulatory organization.''

(1) *Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(2) *Retail forex business* means engaging in one or more retail forex transactions with the intent to derive income from those transactions, either directly or indirectly.

(3) *Retail forex transaction* means any account, agreement, contract or transaction in foreign currency that is offered or entered into by a broker or dealer with a person that is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18)) and that is:

(i) A contract of sale of a commodity for future delivery or an option on such a contract;

(ii) An option, other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78(f)(a)); or

(iii) Offered, or entered into, on a leveraged or margined basis, or financed by a broker or dealer or any person acting in concert with the broker or dealer on a similar basis, other than:

(A) A security that is not a security futures product as defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)); or

(B) A contract of sale that:

(*1*) Results in actual delivery within two days; or

(*2*) Creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

(b) Any registered broker or dealer may engage in a retail forex business provided that such broker or dealer complies with the Act, the rules and regulations thereunder, and the rules of the self-regulatory organization(s) of which the broker or dealer is a member, including, but not limited to, the disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation requirements, insofar as they are applicable to retail forex transactions.

(c) Any registered broker or dealer that is engaged in a retail forex business in compliance with paragraph (b) of this section on or after the effective date of this section shall be deemed to be acting pursuant to a rule or regulation described in section 2(c)(2)(E)(ii)(I) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(E)(ii)(I)).

(d) This section shall expire and no longer be effective on July 31, 2016.

Dated July 11, 2013.

[131] *See, generally,* the discussion in section III.C. regarding the effect on retail customers if broker-dealers are not permitted to engage in retail forex transactions.

[132] The Commission also notes that, as discussed above, there have been some recent developments related to retail forex transactions, including the adoption in April 2013 of final rules by the Federal Reserve. *See* Board Final Rule (effective May 13, 2013).

[133] 44 U.S.C. 3501 *et seq.*

[134] *See* 2011 Interim Rule Release at 41683–84.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–17015 Filed 7–15–13; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket Nos. FDA–2011–C–0344 and FDA–2011–C–0463]

Listing of Color Additives Exempt From Certification; Reactive Blue 246 and Reactive Blue 247 Copolymers; Confirmation of Effective Date

Correction

In rule document 2013–15111, appearing on pages 37962–37963 in the issue of Tuesday, June 25, 2013, make the following correction:

On page 37962, in the section titled **SUPPLEMENTARY INFORMATION**, the first paragraph is corrected to read as set forth below:

In the **Federal Register** of April 1, 2013, we amended the color additive regulations in §§ 73.3100 and 73.3106 (21 CFR 73.3100 and 73.3106), respectively, to provide for the safe use of additional copolymers of 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-methyl-2-propenoic)ester (C.I. Reactive Blue 247) and additional copolymers of 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone (C.I. Reactive Blue 246), as color additives in contact lenses. We also corrected the nomenclature for Reactive Blue 247 by inserting ''2-methyl'' before ''2-propenoic.''

[FR Doc. C1–2013–15111 Filed 7–15–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 500

[Docket No. FDA–2013–N–0253]

Animal Feeds Contaminated With Salmonella Microorganisms

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; removal.

SUMMARY: The Food and Drug Administration (FDA or Agency) is revoking an advisory opinion on animal feeds contaminated with *Salmonella* microorganisms. This action is being taken because that advisory opinion is being superseded by the current FDA enforcement strategy articulated in a final compliance policy guide (CPG) on *Salmonella* in food for animals.

DATES: This rule is effective July 16, 2013.

FOR FURTHER INFORMATION CONTACT: Kim Young, Center for Veterinary Medicine (HFV–230), 7519 Standish Pl., MPN–4, Rm. 106, Rockville, MD 20855, 240–276–9207, *kim.young@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 15, 1967, (32 FR 4058), FDA issued an advisory opinion (the 1967 advisory opinion) codified at § 500.35 (21 CFR 500.35), which found that processed fish meal, poultry meal, meat meal, tankage, or other animal byproducts intended for use in animal feed may be contaminated with *Salmonella* bacteria, an organism pathogenic to man and animals. FDA found in the 1967 advisory opinion that contamination of these products may occur through inadequate heat treatment of the product during its processing or through recontamination of the heat-treated product during a time of improper storage or handling subsequent to processing. FDA also found in the 1967 advisory opinion that *Salmonella* contamination of such animal feeds having the potential for producing infection and disease in animals must be regarded as an adulterant within the meaning of section 402(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 342(a)).

FDA then articulated its intention to regard as adulterated within the meaning of section 402(a) of the FD&C Act shipments of the following when intended for animal feed and encountered in interstate commerce and found upon examination to be contaminated with *Salmonella* microorganisms: Bone meal, blood meal, crab meal, feather meal, fish meal, fish solubles, meat scraps, poultry meat meal, tankage, or other similar animal byproducts, or blended mixtures of these.

Elsewhere in this issue of the **Federal Register,** FDA announced a final guidance for FDA staff entitled ''Compliance Policy Guide Sec. 690.800 *Salmonella* in Food for Animals'' (the CPG), that revises the criteria FDA staff should consider in deciding whether to recommend seizure or import detention of an animal feed or feed ingredient due to adulteration resulting from contamination with *Salmonella*. Because the policy in the 1967 advisory opinion is being superseded by the CPG, the 1967 advisory opinion codified at 21 CFR 500.35 is hereby revoked.

FDA is removing § 500.35 without prior opportunity for comment in accordance with 21 CFR 10.85(g), which states ''An advisory opinion may be amended or revoked at any time after it has been issued. Notice of amendment or revocation will be given in the same manner as notice of the advisory opinion was originally given or in the **Federal Register**. . .'' As the advisory opinion at § 500.35 was published and codified on March 15, 1967, without prior opportunity for comment, this removal of § 500.35 is published in the **Federal Register** in the same manner.

List of Subjects in 21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Packaging and containers, Polychlorinated biphenyls (PCBs).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 500 is amended as follows:

PART 500—GENERAL

■ 1. The authority citation for 21 CFR part 500 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371, 379e.

§ 500.35 [Removed]

■ 2. Remove § 500.35.

Dated: July 10, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–16971 Filed 7–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0403]

RIN 1625–AA08

Special Local Regulations; Marine Events; Annual Bayview Mackinac Race

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation for the annual Bayview Mackinac Race, from 9 a.m. to 5 p.m. on July 20, 2013. This special local regulated is necessary to

safely control vessel movements in the vicinity of the race and provide for the safety of the general boating public and commercial shipping. During this period, no person or vessel may enter the regulated area without the permission of the Coast Guard Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 100.902 will be enforced from 9 a.m. until 5 p.m. on July 20, 2013.

FOR FURTHER INFORMATION CONTACT: CDR Nathan A. Podoll, Auxiliary and Boating Safety Branch, Ninth Coast Guard District, 1240 East 9th Street Cleveland, OH at (216) 902–6148.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the annual Bayview Mackinac Race from 9 a.m. until 5 p.m. on July 20, 2013. The Special Local Regulations apply to all U.S. navigable waters of the Black River, St. Clair River, and lower Lake Huron, bound by a line starting at latitude 042[deg]58′47″ N, longitude 082[deg]26′0″ W; then easterly to latitude 042[deg]58′24″ N, longitude 082[deg]24′47″ W; then northward along the International Boundary to latitude 043[deg]2′48″ N, longitude 082[deg]23′47″ W; then westerly to the shoreline at approximate location latitude 043[deg]2′48″ N, longitude 082[deg]26′48″ W; then southward along the U.S. shoreline to latitude 042[deg]58′54″ N, longitude 082[deg]26′1″ W; then back to the beginning [DATUM: NAD 83].

In order to ensure the safety of spectators and participating vessels, the special local regulation will be in effect for the duration of the event. The Coast Guard will patrol the race area under the direction of a designated Coast Guard Patrol Commander (PATCOM). Vessels desiring to transit the regulated area may do so only with prior approval of the PATCOM and when so directed by that officer. The PATCOM may be contacted on Channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.'' Vessels, permitted to transit the regulated area, will be operated at no wake speed and in a manner which will not endanger participants in the event or any other craft.

In the event this special local regulation affects shipping, commercial vessels may request permission from the PATCOM to transit the area of the event by hailing call sign ''Coast Guard Patrol Commander'' on Channel 16 (156.8 MHZ).

This notice is issued under the authority of 33 CFR 100.902 and 5 U.S.C. 552(a). If the District Commander, Captain of the Port or PATCOM determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 21, 2013.

Michael N. Parks,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2013–16956 Filed 7–15–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0570]

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 schedule governing the ''I'' Street Drawbridge across the Sacramento River, mile 59.4 at Sacramento, CA. The deviation is necessary to allow the bridge owner to make bridge repairs. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 6 a.m. on August 17, 2013 to 4 p.m. on August 18, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0570], 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 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: Union Pacific Railroad Company has requested a temporary change to the operation of the ''I'' Street Drawbridge, mile 59.4, over Sacramento River, at Sacramento, CA. The drawbridge navigation span provides 109 feet vertical clearance above Mean High Water in the full open-to-navigation position, and 30 feet vertical clearance above Mean High Water when closed. 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 6 a.m. to 4 p.m. on August 17 and 18, 2013, to allow the bridge owner in conjunction with the cities of Sacramento and West Sacramento to repair the pedestrian sidewalks of the drawbridge. The drawspan cannot be operated for emergency openings. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

No alternative route is available for mariners. Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

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: July 3, 2013.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2013–16958 Filed 7–15–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0584]

RIN 1625–AA00

Safety Zone; Kentucky Air National Guard Vessel for Parachute Rescue Jumpmaster Training, Lake Erie, Dunkirk, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone around a training vessel on Lake Erie near Dunkirk, NY. This moving safety zone is intended to restrict vessels from a portion of Lake Erie while the Kentucky Air National Guard conducts parachute rescue jumpmaster training. This temporary safety zone is necessary to protect the Kentucky Air National Guard participants as well as mariners and vessels from the navigational and safety hazards associated with the airborne deployment of U.S. military personnel and their associated equipment. These hazards include parachutes and rigging equipment for the parachute rescue personnel, deployment of rafts, potential of falling debris, and the use of distress signals of flares, smoke, and water dye during the training operations.

DATES: This rule is effective from 11:30 a.m. on July 22, 2013, and 2:30 p.m. on July 27, 2013, and will be enforced intermittently. A Coast Guard vessel will accompany the training vessel during all periods of enforcement.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0584]. 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 LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9573, email *SectorBuffaloMarineSafety@uscg.mil*. If you have questions on viewing 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
TFR Temporary Final Rule

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect mariners, recreational boaters and U.S. military personnel deploying into Lake Erie from the hazards associated with airborne deployment and insertion into Lake Erie. These hazards are discussed further below.

Under 5 U.S.C. 553(d)(3), The Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

Between 11:30 a.m. on July 22, 2013, until 2:30 p.m. on July 27, 2013 a training operation will be taking place on Lake Erie north of Dunkirk, NY. The Captain of the Port Buffalo has determined that airborne deployment of parachute rescue trainees may pose a significant risk to public safety and property. Such hazards include parachutes and rigging equipment for the parachute rescue personnel, deployment of rafts, potential of falling debris, and the use of distress signals of flares, smoke, and water dye during the training operations.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of U.S. military personnel, transient watercraft and potential spectator vessels during the 2013 Kentucky Air National Guard Parachute Rescue Jumpmaster Training. This zone will be effective between 11:30 a.m. on July 22, 2013, and 2:30 p.m. on July 27, 2013, and enforced intermittently. During periods of enforcement, a Coast Guard vessel will be present, indicating that the safety zone is being enforced. Additionally, Broadcast Notices to Mariners will be made via radio prior to all jump evolutions. This moving safety zone will encompass all waters of Lake Erie, Dunkirk, NY within a 1000 yard radius of the target vessel, starting in position 42°31'34″ N and 079°19'46″ W (NAD 83), and drifting with the elements throughout the training evolution.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within

that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Lake Erie between varying hours starting July 22 until 27 July, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this safety zone would be activated, and thus subject to enforcement, for only a few hours at a time during any 24 hour period. The majority of the training exercises will be conducted during the regular business week during normal daylight business hours or late in the evening greatly reducing the likelihood of affecting transient recreational vessels. Additionally, the starting drift point is 3 miles offshore with a zone of 1000 yards (approximately one half nautical mile) in all directions, allowing ample room for transient vessels to pass by without being negatively impacted. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port before and after the completion of each evolution. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, the Coast Guard intends to issue local Broadcast Notices to Mariners.

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** section 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 the establishment of a safety zone and, therefore it is categorically excluded from further review 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 record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 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. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0584 to read as follows:

§ 165.T09–0163 Safety Zone; Rescue Jumpmaster Training, Lake Erie, Dunkirk, NY.

(a) *Location.* This zone will encompass all waters of Lake Erie, Dunkirk, NY within a 1000 yard radius of a drifting training vessel, beginning at position 42°31'34″ N and 079°19'46″ W (NAD 83) and moving with the vessel.

(b) *Effective and Enforcement Period.* This regulation is effective between 11:30 a.m. on July 22, 2013, and 2:30 p.m. on July 27, 2013, and will be enforced at various times throughout the day and night. A Coast Guard vessel will accompany the training vessel during periods of enforcement. Broadcast Notices to Mariners notifying the public will be made via radio prior to all jump evolutions.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: July 2, 2013.

J. S. Imahori,

Commander, U.S. Coast Guard, Acting Captain of the Port Buffalo.

[FR Doc. 2013–16957 Filed 7–15–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AO77

Medications Prescribed by Non-VA Providers

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulation concerning filling prescriptions written by non-VA providers for veterans of a period of war who are receiving increased pension because they are permanently housebound or in need of aid and attendance. This rulemaking revises the regulation to reflect the current statutory periods of war to ensure that eligible veterans engaged in current and future conflicts receive medications prescribed by non-VA physicians when appropriate for their care.

DATES: *Effective Date:* This final rule is effective July 16, 2013.

FOR FURTHER INFORMATION CONTACT: Kristin Cunningham, Director, Business Policy, Chief Business Office (10NB), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 461–1599. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 1712(d), VA is required to furnish prescription drugs and medicine ordered by a duly licensed physician to a veteran as a specific therapy in the treatment of any illness or injury suffered by a veteran who is receiving increased compensation under 38 U.S.C. chapter 11 or increased pension as a veteran of a period of war, by reason of being permanently housebound or in need of regular aid and attendance. VA implemented this authority in 38 CFR 17.96(a)(1), which authorizes VA pharmacies (or non-VA pharmacies in State homes under contract with VA for filling prescriptions for patients in State homes) to fill prescriptions ordered by duly licensed providers not employed by VA for the cohort of veterans described in the statute. In order to assist in identifying wartime veterans in receipt of increased pension, the language of § 17.96(a)(1) listed those periods of war recognized at the time of its publication, which were the Mexican Border Period, World War I, World War II, the Korean Conflict, or the Vietnam Era. In contrast, the statutory authority for this regulation, 38 U.S.C. 1712(d), refers only to ''a veteran of a period of war,'' without setting forth specific periods by name. Since this regulation was published, the United States has become engaged in additional conflicts. Because VA does not intend to deny these prescription services to veterans of later periods of war and has not done so, we are revising this regulation.

''Period of war'' is defined in 38 U.S.C. 101(11) to mean ''the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War, and the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.'' In order to ensure that our regulation comports with the statutory mandate that VA fill prescriptions for all increased pension recipients who are veterans of a period of war, including current and future periods of war, we are revising § 17.96(a)(1) to cross-reference the statute, rather than list each period of war. We are also revising the authority citation at the end of § 17.96. We are not making any other changes to the text in § 17.96.

Administrative Procedure Act

The Secretary of Veterans Affairs (Secretary) finds good cause under the provisions of 5 U.S.C. 553(b)(B) to publish this rule without prior opportunity for public comment. This amendment merely revises VA's regulation to comply with a statutory mandate that VA provide medications prescribed by non-VA providers to increased pension recipients who are veterans who served in wars after Vietnam under the same conditions as those who served in earlier periods of war. Therefore, a prior opportunity for notice and comment is unnecessary. Additionally, for the reason previously stated, the Secretary finds good cause to dispense with the delayed-effective-date requirement of 5 U.S.C. 553(d).

Effect of Rulemaking

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will directly affect only VA pharmacies and non-VA pharmacies in State homes under contract with VA for filling prescriptions for their patients. The State homes that are subject to this rulemaking are State government entities under the control of State governments. All State homes are owned, operated and managed by State governments except for a small number that are operated by entities under contract with State governments. These contractors are not small entities. Moreover, the impact of this rulemaking on these entities will be minimal because the rulemaking affects only certain wartime veterans in receipt of pension and merely authorizes VA to provide prescriptions for such veterans. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866 and 13563

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

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

Unfunded Mandates

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this final rule are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Interim Chief of Staff, approved this document on July 9, 2013, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Dated: July 11, 2013.

Robert C. McFetridge,

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

For the reasons stated in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Revise § 17.96(a)(1) and the authority citation at the end of the section to read as follows:

§ 17.96 Medication prescribed by non-VA physicians.

* * * * *

(a) * * *

(1) A veteran who by reason of being permanently housebound or in need of regular aid and attendance is in receipt of increased compensation under 38 U.S.C. chapter 11, or increased pension under § 3.1(u) (Section 306 Pension) or § 3.1(w) (Improved Pension), of this chapter, as a veteran of a period of war as defined by 38 U.S.C. 101(11) (or, although eligible for such pension, is in receipt of compensation as the greater benefit), or

* * * * *

(Authority 38 U.S.C. 101(11), 1706, 1710, 1712(d))

[FR Doc. 2013–16978 Filed 7–15–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, and 173

[Docket No. PHMSA–2010–0320 (HM–257)]

RIN 2137–AE70

Hazardous Materials: Revision to Fireworks Regulations (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA is revising the Hazardous Materials Regulations applicable to the approval of Division 1.4G consumer fireworks (UN0336 Fireworks) and establishing DOT-approved fireworks certification agencies that provide an alternative to the approval process for Division 1.4G consumer fireworks. PHMSA is also reformatting the procedural regulations pertaining to certification agencies. These actions clarify regulations with respect to PHMSA's fireworks approval process and provide regulatory flexibility in seeking authorization for the transportation of Division 1.4G consumer fireworks.

DATES: *Effective date:* August 15, 2013.

FOR FURTHER INFORMATION CONTACT: Lisa O'Donnell or Rob Benedict, Standards and Rulemaking Division, Office Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, at (202) 366–8553.

SUPPLEMENTARY INFORMATION:

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C. Executive Order 13132
D. Executive Order 13175
E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
F. Paperwork Reduction Act
G. Regulatory Identifier Number (RIN)
H. Unfunded Mandates Reform Act
I. Environmental Assessment
J. Privacy Act
K. International Trade Analysis
L. National Technology Transfer and Advancement Act

I. Background

The pyrotechnic industry is a global logistics supply chain comprised of mostly foreign fireworks manufacturers and domestic importers, retailers, distributors, and consumers. The current Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) require that prior to being transported in the U.S., all explosives, including Division 1.4G consumer fireworks, are classed, approved, and issued a DOT classification approval number (EX number) by PHMSA. The EX number is a unique identifier that indicates a firework device has been classed and approved for transportation into, out of, and throughout the United States.

PHMSA is committed to sustaining the exemplary transportation safety record that Division 1.4G consumer fireworks have had over the past forty years, but seeks to reduce regulatory burden and increase flexibility by providing an alternative to PHMSA's current approval process. PHMSA has conducted an extensive review of the fireworks approval program and has determined that there is an unnecessary delay in the processing of EX approval applications under the current process.

In the notice of proposed rulemaking (NPRM) published in the **Federal Register** on August 30, 2012 [77 FR 52636] under Docket No. PHMSA 2010–0320 (HM–257), PHMSA proposed an alternative to the approval process for Division 1.4G consumer fireworks, allowing manufacturers, or designated U.S. agents, to submit applications for certification to a DOT-approved Fireworks Certification Agency (FCA), in lieu of submitting applications for approval directly to PHMSA. To ensure appropriate oversight of FCAs, the NPRM included reporting and recordkeeping requirements necessary to become a DOT-approved FCA. Additionally, PHMSA proposed to define the term ''consumer firework'' and revise the necessary requirements needed for approval as a certification agency by clearly describing each type of DOT-approved certification agency, and to add requirements for an FCA.

In this final rule, PHMSA has modified the proposed requirements in response to recommendations from commenters. Specifically, the approval process to become an FCA is described in detail, the identification sequence of FCA-certified devices is streamlined, and the FCA firework device review process is simplified to be more consistent with the current PHMSA process.

This final rule affects the following entities and establishes the following requirements:

Affected entities	Revisions
• Division 1.4G consumer fireworks manufacturers complying with part 173. • Division 1.4G consumer fireworks importers complying with part 173 • Division 1.4G consumer fireworks transporters complying with part 173 • Fireworks Certification Agencies • Lighter Testing Agencies • UN Package Testing Agencies • Portable tank and Multiple-Element Gas Container (MEGC) Certification Agencies. • State and local fire and police departments that utilize Division 1.4G consumer fireworks classification approvals under the HMR	• Provide alternative process to legally transport Division 1.4G consumer fireworks. • Require retention of a record by certifying agencies, manufacturers and importers indicating a Division 1.4G consumer firework has been certified in a manner consistent with the requirements. • Provide approval process for a fireworks certification agency. • Clarify approval process for a certification agency for lighter testing agency, UN third-party certification agency (packaging), or Portable tank and MEGC certification agency.

As PHMSA is not requiring fireworks manufacturers to use an FCA, and to do so is completely voluntary, PHMSA is not imposing any additional costs. We estimate an FCA certification fee of between $100 and $450.[1] A firework manufacturer will not pay this fee

[1] The lowest estimate quoted in two comments to the NPRM is $100 and the highest estimate is $450; these estimates were based upon the inclusion of physical examination of a firework device requirement proposed in the NPRM, but not included in the final rule. PHMSA believes these figures still accurately reflect the possible range due to the complexity of firework designs.

unless it believes it is net beneficial to do so. Since the option should speed up the classification process, it could reduce some of the uncertainty as to when a manufacturer can process an importer's order for a firework device, and other supply chain issues. Manufacturers likely to use an FCA will be ones seeking certification relatively closer to peak sales periods (primarily before the 4th of July). If manufacturers plan accordingly and wait for PHMSA to issue an approval, they won't pay the FCA fee. The benefits for manufacturers using the FCA certification process to expedite shipments are difficult to quantify. However, we know that any rational manufacturer will not avail itself to this option unless it makes business sense.

Certain administrative fees arising from this rulemaking that are assessed on consumer fireworks manufacturers will primarily be due to a DOT-approved FCA coming into existence and to a company's expansion of services to act as an FCA. These costs may include expenses for office supplies, other non-capital equipment, and additional direct and indirect labor costs.

PHMSA assumes that a DOT-approved FCA will market to fireworks manufacturers and their U.S.-registered agents its ability to certify such fireworks as an advantage over applying for PHMSA approval because of expected faster certification by an FCA. However, PHMSA believes that, because the FCA will likely assess an explicit cost for its certification services, fireworks manufacturers will individually consider their businesses' potential to benefit from expedited processing against the expected costs of this certification fee. Comments to the NPRM indicated that most manufacturers are of the opinion that the expedited processing of fireworks certifications outweighs the expected costs of the certification fees and that the alternative certification process will not compromise the current level of transportation safety of Division 1.4G consumer fireworks.

A. Notice of Proposed Rulemaking

PHMSA issued an NPRM on August 30, 2012 [77 FR 52636] under Docket No. PHMSA 2010–0320 (HM–257), which proposed to revise Title 49 of the Code of Federal Regulations (CFR) applicable to the approval of Division 1.4G consumer fireworks (UN0336 fireworks) and establish a process for allowing a DOT-approved FCA to certify UN0336 fireworks as an alternative to the current PHMSA approval process. PHMSA also proposed to provide clarity by reformatting the procedural regulations pertaining to certification agencies.

Prior to the transportation into, out of, and throughout the United States, all explosives, including Division 1.4G consumer fireworks, must be classed, approved, and issued an EX number by PHMSA. The EX number is a unique identifier that indicates a specific firework device has been classed and approved for transportation.

In the NPRM, PHMSA proposed a new alternative to permit manufacturers, or their U.S agents, to apply to an FCA to review and certify that Division 1.4G consumer fireworks comply with APA Standard 87–1 and are safe for transportation in commerce. To provide oversight of the FCAs, PHMSA proposed reporting and recordkeeping requirements. PHMSA also proposed to revise subpart E of part 107 to clarify the approval process for designation as a certification agency. We also proposed to require the FCAs to physically examine a sample of the Division 1.4G consumer firework prior to initial shipment to determine whether the device meets the requirements of APA Standard 87–1 and matches the dimensions, chemical composition, and device type specified in the application for certification.

To become an FCA, in the NPRM we proposed that the applicant would be required to submit an application with all procedures it will use to review and certify Division 1.4G consumer fireworks, in accordance with the provisions in subpart E of part 107. These procedures were to be designed by the applicant; however, PHMSA was to review the applicant's procedures to determine whether they are adequate to certify compliance with APA Standard 87–1 and whether the FCA certification process provides an equivalent level of oversight as the current approval process.

PHMSA stated in the NPRM that any domestic or foreign entity may apply to become an FCA provided that it is not directly or indirectly controlled by, or have a direct financial interest in, any entity that manufactures, transports, or imports fireworks, except for collection of fees for services as an FCA. We proposed that to qualify as an FCA, each applicant must: (1) Meet specific criteria designed to ensure that the FCA is an impartial, independent, unbiased, and qualified entity; (2) submit an application, including certification procedures; and (3) successfully complete a facility inspection performed by PHMSA. We indicated that to meet the specific qualification criteria, the applicant will be required to demonstrate knowledge of the applicable regulations, including subpart C of part 173 of the HMR and the APA Standard 87–1, and the ability to review and evaluate design drawings and applications in accordance with the APA Standard 87–1. If approved, PHMSA proposed to issue an approval and an identifying number unique to that FCA.

To differentiate between an approval issued by PHMSA and a certification issued by a DOT-approved FCA, PHMSA proposed to use an FX numbering scheme. Instead of issuing an EX number and approval through PHMSA for a fireworks device, which is the approval designation the Associate Administrator of PHMSA issues to all explosives, including fireworks, we proposed that the DOT-approved FCA would issue a unique identifier (FX number) for devices it certifies as Division 1.4G consumer fireworks. Given the long history and wide recognition of the EX numbering scheme, PHMSA sought specific comments on the supply chain implications, the economic impact and safety concerns associated with the proposed FX numbering system, as well as comments on how to implement the changes if they were adopted.

We requested specific comments on the underlying estimates of the analysis, including the percentage of entities that will choose to have their 1.4G consumer fireworks certified by FCAs instead of being approved by PHMSA, the manner in which records will be kept (i.e., electronic or paper), the estimated cost of the recordkeeping requirements, the number of affected entities (e.g., manufacturers and importers), and the estimated fee an FCA would charge for certification.

Based on the August 30, 2012, NPRM, and comments received, this final rule adopts an alternative option for Division 1.4G consumer fireworks in which manufacturers, or designated U.S. agents, may submit applications for certification to an FCA, in lieu of submitting applications for approval to PHMSA. The specific differences between the proposals in the NPRM and the amendments adopted in the final rule are discussed further below.

B. Comments on the NPRM

The comment period on the NPRM closed on October 29, 2012. PHMSA received comments from various industry associations, fireworks manufacturers, distributers, importers, and transporters. The majority of the comments were positive, citing that the proposed alternative would sustain the current level of safety while allowing

faster time to market for new consumer fireworks. Included with the positive responses, were suggestions on ways to refine or clarify the proposed changes. A number of the comments were beyond-the-scope of the rule as they suggested changes that were not addressed in the NPRM. Three commenters opposed all of the changes proposed in the NPRM; their comments are discussed in detail below. Overall comments were received from 37 entities; many of whom provided comments on a number of subjects. Thirty-three entities provided positive comments. Within the 33 who were in favor of the proposal, nine also provided comments that were beyond-the-scope of this rule. Three commenters provided comments in opposition to the proposal, with one providing an additional comment that was beyond-the-scope of this rule. In addition, these comments addressed issues or asked questions that have been addressed in this final rule. PHMSA has summarized comments to specific sections in the ''Section-by-Section Review'' discussion of this rulemaking. You may review comments in the docket for this action at *http://www.regulations.gov* under docket number PHMSA–2010–0320. For your convenience, a listing of the docket entries is provided below.

Commenter	Docket ID No.
American Fireworks Standards Laboratory (AFSL)	PHMSA–2010–0320–0016
American Pyrotechnics Association (APA)	PHMSA–2010–0320–0017
BJ Alan Company	PHMSA–2010–0320–0026
Elkton Sparkler Company	PHMSA–2010–0320–0005
Fireworks Over America	PHMSA–2010–0320–0010
Fireworks Pyrotechnique by Grucci, Inc.	PHMSA–2010–0320–0021
Forward Fireworks Co. Ltd.	PHMSA–2010–0320–0036
Hamburg Fireworks Display, Inc.	PHMSA–2010–0320–0008
International Technical and Quality Services Limited	PHMSA–2010–0320–0003
Jake's Fireworks, Inc.	PHMSA–2010–0320–0023
Kellner's Fireworks Inc.	PHMSA–2010–0320–0037
Keystone Novelties Distributors, LLC	PHMSA–2010–0320–0018
Legend Fireworks	PHMSA–2010–0320–0012
Legion Fireworks Co., Inc.	PHMSA–2010–0320–0024
Liberty Fireworks, Inc.	PHMSA–2010–0320–0022
Melrose Pyrotechnics, Inc.	PHMSA–2010–0320–0004
National Fireworks Association (NFA)	PHMSA–2010–0320–0039
Next FX and Stage FX	PHMSA–2010–0320–0014
North Central Industries, Inc.	PHMSA–2010–0320–0007
Precocious Pyrotechnics, Inc.	PHMSA–2010–0320–0028
S. Vitale Pyrotechnic Industries	PHMSA–2010–0320–0009
Sparks Fly	PHMSA–2010–0320–0027
Steve Anthony Coman	PHMSA–2010–0320–0033
Stonebraker Rocky Mountain Fireworks Co.	PHMSA–2010–0320–0035
The Alliance of Special Effects Pyrotechnic Operators, Inc.	PHMSA–2010–0320–0030
The International Fireworks Shippers Association (IFSA)	PHMSA–2010–0320–0013
Thunder Fireworks, Inc.	PHMSA–2010–0320–0032
THY Associated, Inc	PHMSA–2010–0320–0031
TNT Fireworks	PHMSA–2010–0320–0019
Tian Cheng Pyrotechnics Laboratory	PHMSA–2010–0320–0038
Veolia ES Technical Solutions, LLC	PHMSA–2010–0320–0034
Wald & Co. Charles Edward Wald	PHMSA–2010–0320–0025
Warpath Tribal Corp.	PHMSA–2010–0320–0006
Weeth Associates. LLC	PHMSA–2010–0320–0020
Western Enterprises, Inc.	PHMSA–2010–0320–0029
Win Da Hong (HK) Co., Ltd.	PHMSA–2010–0320–0011
Winco Fireworks International, LLC	PHMSA–2010–0320–0015

C. Comments Beyond-the-Scope

Allow FCAs To Certify Division 1.3G Fireworks

Four commenters—APA, AFSL, Fireworks By Grucci, Inc., and Melrose Pyrotechnics—suggested that Division 1.3G fireworks be included in § 173.65. Specifically, commenters claimed that Division 1.3G fireworks, like 1.4G consumer fireworks, possess an exemplary safe transportation record and are widely used in the United States. Commenters suggested the expansion of the original proposal in the NPRM to include Division 1.3G fireworks would increase the economic benefits of the original proposal. Specifically, expanding the proposal to include Division 1.3G fireworks would increase the amount of expedited shipments, would provide a cost savings to the industry, and would provide flexibility and innovation for U.S.-based companies. Finally, AFSL noted that an independent review and certification of Division 1.3G fireworks is already being done on a voluntary basis. This Display Fireworks Inspection program includes a factory audit program, product and packaging inspection, as well as container loading supervision requirements.[2]

Division 1.3 fireworks pose a greater hazard than Division 1.4 fireworks by definition.[3] In the NPRM, we proposed the FCA alternative for only the lowest hazard fireworks; i.e., Division 1.4G consumer fireworks. PHMSA noted in the NPRM that over the past forty years, there have been 35 reported transportation incidents in the United States involving fireworks that were

[2] *http://www.afsl.org/sites/default/files/AFSL-DISPLAY%20FIREWORKS%20STANDARDS%20FINAL%2004102012.pdf* (Accessed 02/21/2013).

[3] See 49 CFR 173.50 Class 1—Definitions.

declared hazardous materials. During this same period, there has never been a death or major injury attributed to fireworks while in transportation when there was compliance with the regulations. While there have been two incidents that resulted in fatalities in that forty year period, both involved the improper setup or storage of display fireworks, and were not attributed to the transportation of Division 1.4G consumer fireworks. Furthermore, the majority of PHMSA fireworks approvals (approximately 75 percent) are for Division 1.4G consumer fireworks devices. Limiting the FCA program to Division 1.4G consumer fireworks proved to be the safest and most effective manner to provide regulatory flexibility while maintaining safety.

As the NPRM proposed the FCA alternative for the lowest hazard fireworks only, Division 1.4G consumer fireworks, expanding the proposal in the NPRM to include Division 1.3G fireworks, is considered beyond the scope of this rulemaking. While PHMSA agrees the economic benefits of the original proposal in the NPRM may be increased by allowing other fireworks to be certified by FCAs, a more extensive safety and policy analysis would need to be completed before we expand the applicability beyond that proposed in the NPRM. We will continue to evaluate our fireworks approvals program and monitor the FCA certification process to ensure it provides an equivalent level of oversight as the current approvals process. Further, we will monitor the Consumer Product Safety Commission's (CPSC) compliance efforts and evaluate the appropriateness of a similar program. We may consider authorizing FCAs to certify Division 1.3G fireworks in the future. However, in this final rule, only Division 1.4G consumer fireworks will be authorized to be certified by an FCA.

Incorporate by Reference Revised APA Standard 87–1

Eight commenters [4] asked that we incorporate by reference a revised version of the American Pyrotechnics Association (APA) Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics (2001). Most of the commenters echoed the comments submitted by APA, which indicated:

> The currently-adopted version of APA Standard 87–1 was published in 2001, and went through a lengthy preparation process within the APA that was then followed by a lengthy review by DOT prior to its adoption into Title 49. It is, however, a fifteen year old document that outlines the basic construction and approval requirements for fireworks, novelties, and theatrical pyrotechnics. There have been many advances in the consumer fireworks industry during those 15 years, and even in the decade since it was formally adopted. In particular, a variety of new devices have been developed, including combination devices and girandole, and new technologies have come into the industry. More and more devices, for example, now contain multiple tubes, and represent combinations of effects that previously were limited to single tubes of separate items.

Further, the National Fireworks Association (NFA) suggests that we make various changes to the application form in APA Standard 87–1.

PHMSA understands that APA is working on a revision of the APA Standard 87–1 currently incorporated by reference in the HMR. However, until this updated version is finalized and published, PHMSA cannot adopt the revised APA Standard 87–1. As with any standard incorporated by reference in § 171.7, PHMSA periodically reviews and updates authorized industry consensus standards following a complete review and analysis of the safety and cost implications of that standard. When it is finalized and published by APA, and PHMSA determines that it is appropriate to incorporate that version of the standard, we will do so through the rulemaking process, providing opportunity for public comment. Until that time, we will continue to incorporate by reference the 2001 edition of the APA Standard 87–1, which continues to be used successfully and safely by PHMSA and the regulated community.

Provide Regulatory Relief for Transportation of Consumer Fireworks Shipped for Disposal

Veolia ES Technical Solutions, LLC requested PHMSA adopt certain regulatory relief for the transportation of consumer fireworks being shipped for disposal. They state:

> Consumer fireworks are routinely confiscated by local enforcement officials throughout the country and then packaged in UN specification drums awaiting disposal. Typically water is added to the drums to thoroughly wet the devices and eliminate any potential for ignition of the devices. These containers are then offered for shipment off-site to a disposal facility for destruction. Although this is proven safe practice for managing the consumer fireworks, it creates many issues for environmental management companies like Veolia when attempting to comply with the requirements of the HMR when shipping to a disposal facility.

We agree with Veolia that the transportation of consumer fireworks for disposal is an issue that must be considered. PHMSA is actively working with other Federal agencies to evaluate current fireworks disposal practices and consider changes to enhance the safe disposal of firework devices and debris. This joint effort may lead to future regulatory action. However, as the NPRM under this docket did not propose any requirements for waste consumer fireworks, this comment is considered beyond-the-scope of this rulemaking.

D. Comments Opposed to the FCA Process

Although the comments to the NPRM were predominantly positive, three commenters, Kellner's Fireworks, Inc., the International Fireworks Shippers Association (IFSA), and NFA, opposed the idea of establishing an alternative to the approval process for Division 1.4G consumer fireworks outright. The rationale of each of these commenters' opposition and PHMSA's response is detailed below. However, much of this opposition was predicated on the assumption that PHMSA would require FCAs to physically examine a firework device, which we are not requiring in this final rule.

FCAs Will Not Streamline Review Process

Kellner's Fireworks, Inc., IFSA, and NFA disagree that the alternative option for manufacturers or their designed U.S. agents to apply for certification from an FCA would expedite the process. Kellner's Fireworks Inc., believes that FCAs would take the same time to review applications as it takes PHMSA. They state:

> All of the EX number applications submitted will still need to be completely reviewed by either an FCA or PHMSA and therefore will not necessarily reduce the amount of time it takes to obtain an approval. If every company were to use the same few FCA's the same number of applications currently being reviewed will still only be reviewed by a few people and the FCA's will get bogged down with paperwork just as PHMSA has in the past.

PHMSA agrees with the portion of the above statement that volume of applications submitted should remain relatively constant with the introduction of FCA certification. However, PHMSA does not agree that the introduction of FCAs will have no positive effect on the overall speed of review of a Division 1.4G consumer firework application.

[4] APA, AFSL, Fireworks by Grucci, Inc., Fireworks Over America, Next FX and Stage FX, Precocious Pyrotechnics Inc., The Alliance of Special Effects & Pyrotechnic Operators, and Win Da Hong (HK) Co. Ltd.

PHMSA notes that with the introduction of FCAs, the number of reviewers of Division 1.4G consumer fireworks will increase and consequently divide the workload between FCAs and PHMSA. This division of workload will increase the capacity for applications of Division 1.4G consumer fireworks to be reviewed simultaneously and, therefore, decrease the backlog of fireworks applications awaiting review.

Both Kellner's Fireworks, Inc., and NFA assert that the proposals contained in the NPRM do not streamline the process for obtaining a certification for transportation of Division 1.4G consumer fireworks, and in fact the changes add steps to the process. PHMSA agrees that the requirement to physically examine a sample device of Division 1.4G consumer fireworks, as proposed in the NPRM, does add a layer of complexity not present under the current PHMSA review process. Accordingly, PHMSA has removed the requirement that FCAs physically examine a firework device in this final rule. With this modification, the FCA and PHMSA application review process parallel one another. PHMSA is confident that eliminating the requirement that FCAs physically examine a firework device resolves many of the issues both Kellner and NFA presented.

Proposal Adds Financial Burden

Furthermore, Kellner's Fireworks, Inc. and NFA's opposition to the NPRM is also rooted in their belief that the proposals in the NPRM will add a financial burden and that the NPRM is not in the spirit of Executive Order 13610. A full discussion of Executive Order 13610 is provided later in this document; however, the results of an economic analysis of both the NPRM and final rule demonstrate that establishing and implementing the FCA option to review and certify Division 1.4G consumer firework will be cost beneficial (see ''Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures'' section of this document and economic analysis in the rulemaking docket). In addition, although an FCA will charge a fee for its services, the use of an FCA is optional (not a required cost), and manufacturers will use the FCA option if it is net beneficial to do so; if it is not, they will use the PHMSA approval option.

Difficulty in Oversight

In addition to the comments shared with Kellner, NFA believes that since the vast majority of fireworks are produced in China, FCAs would be established in foreign countries. NFA notes that the location of these FCAs could provide PHMSA with challenges in oversight, specifically noting that monitoring for compliance would be difficult. PHMSA understands that FCAs may be established outside of the United States and does not see this as an impediment to successfully overseeing and monitoring FCAs. With the requirements adopted in this final rule an FCA will, in accordance with its approval, transmit FCA certifications to PHMSA on a regular basis. PHMSA will have the ability to review this documentation to ensure accuracy and consistency.

If the periodic review of the documentation reveals non-compliance, or an FCA does not abide by the terms and conditions of its approval, PHMSA may conduct enforcement investigations, impose penalties for violations and, if appropriate, suspend or terminate the FCA's approval to certify fireworks. Furthermore, cylinders, like fireworks, are manufactured outside of the United States and PHMSA successfully monitors the compliance of these foreign entities.

Applications Denials and Rejections

NFA states that in the NPRM, applications, denials, and rejections were not addressed. Specifically, NFA notes the NPRM does not address how an FCA would handle applications that are initially or repeatedly denied. While the NPRM did address reconsideration of an FCA's approval request, the NPRM did not explicitly address reconsideration of a manufacturer's, or a foreign manufacturer's designated U.S. agent's, certification application request to an FCA, if that request is denied.

In the NPRM, PHMSA proposed that to become a DOT-approved FCA, the applicant will be required to submit an application with all procedures it will use to review and certify Division 1.4G consumer fireworks, in accordance with the provisions in subpart E of part 107. Although not explicitly stated, it is expected these procedures would include an FCA's proposed manner of handling denials and rejections of a manufacturer's, or a designated U.S. agent's, certification application request. Further, as the FCA certification process is designed to parallel the current approval process, PHMSA anticipates that denial and reconsideration procedures would be analogous to those provided for DOT-issued approvals specified in § 107.715.

Further, as part of its certification requirements, in addition to notifying the manufacturer of the reasons a firework device has been denied certification, an FCA must, as a condition of the FCA approval, report its denial of a specific firework device to PHMSA. If a manufacturer resubmits a certification request for the same device to an FCA, and the device is ultimately certified as compliant, the FCA will also submit this information to PHMSA. With respect to applications with formatting or minor editorial errors, PHMSA believes that each FCA would develop a method to expeditiously handle these errors without the need to reject an application.

Implementation Time

Finally, NFA states their belief that ''[e]stablishing a body of FCAs could take years to implement, fine tune, and regulate in an industry that needs relief immediately.'' While the time it will take to realize the full impact of the changes adopted in this final rule is difficult to determine, PHMSA believes the establishment of FCAs will be a long-term, sustainable, and safe solution. Further, PHMSA believes the impact of this alternative process will be realized faster than the time NFA asserts. As with any new regulation, implementing a change takes time, but to lessen the implementation time, PHMSA is updating the current guidance available [5] regarding the approval/certification process and the transportation of fireworks, to include information on the alternative FCA certification process.

Alternative Solution

IFSA voiced its opposition to the proposals in the NPRM and provided an alternative option to the proposals in the NPRM. Specifically, IFSA states ''[t]here is no need for additional FCA's to provide approvals. If PHMSA would modify their current approval process, then all of PHMSA cost, performance, and safety goals can be met.'' IFSA suggests that PHMSA change the current approval document to a checklist format with a certification signature. This checklist would consist of simple ''Yes'' or ''No'' validations to indicate that the device meets all of the requirements of APA Standard 87–1. This checklist application, it maintains, will eliminate the current typical issues of math and spelling errors, which cause the vast majority of PHMSA rejections. IFSA proposes that if PHMSA were to accept this proposed checklist approval document, a cost savings of $26 million

[5] *http://phmsa.dot.gov/hazmat/regs/sp-a/approvals/fireworks* (Accessed 02/21/2013).

per year could be realized by the fireworks industry.

As mentioned above, PHMSA has conducted an intensive retrospective review of the fireworks approval program and, prior to drafting this rulemaking, PHMSA evaluated multiple options to improve the fireworks approval program including options similar to that proposed by IFSA. PHMSA appreciates IFSA's suggestion; however, based on our review, the changes in this final rule will result in the most desirable long-term, sustainable, and safe solution. PHMSA has not verified the IFSA figure of $26 million per year savings for the firework industry, but questions whether the proposed checklist alone would have such a large impact. In addition, we do not believe that a checklist, with yes or no questions provides adequate oversight to the Division 1.4G consumer fireworks classification process. PHMSA believes that each fireworks manufacturer will individually consider its businesses' potential to benefit from expedited processing against the expected costs of this certification fee. Comments to the NPRM indicate that most manufacturers are of the opinion that the expedited processing of fireworks certifications outweighs the expected costs of the certification fees.

II. Amendments Adopted in Final Rule

Based on the August 30, 2012, NPRM, and comments received, this final rule adopts an alternative option for Division 1.4G consumer fireworks in which manufacturers may submit applications for certification to an FCA, in lieu of submitting applications for approval to PHMSA. To ensure oversight of FCAs, this final rule includes reporting and recordkeeping requirements. Additionally, PHMSA defines consumer fireworks and clarifies the approval process for designation as an FCA. The differences between this final rule and the NPRM include: removing the requirement that an FCA must physically examine a firework device; clarifying the FCA certification process; reformatting the certification process for other DOT-approved agencies; removing the requirement that an FCA must be inspected by PHMSA prior to approval; adding preamble discussion regarding the information that will be contained in the FCA approval documentation issued by PHMSA; revising the alpha-numeric scheme for fireworks certified by FCAs; and clarifying the content of the approval issued by PHMSA for designation as an FCA.

The following is a summary of the amendments PHMSA is adopting in the final rule.

- Section 107.401 is amended to include Division 1.4G consumer fireworks.
- Section 107.402 paragraphs (a) and (b) are amended to clarify the application process for designation as a certification agency.
- Section 107.402 paragraph (c) is amended to specify the application procedure to become a third-party packaging certification agency.
- Section 107.402 paragraph (d) is added to specify the application procedure to become a designated fireworks certification agency and a renewal process is established for such agencies.
- Section 107.402 paragraph (e) is added to specify the application procedure to become a designated lighter certification agency.
- Section 107.402 paragraph (f) is added to specify the application procedure to become designated portable tank and MEGC certification agencies.
- Section 107.403 paragraph (c) is amended to clarify the procedures for reconsideration and appeal.
- Section 107.403 paragraph (d) is added to clarify where to find the conditions under which the Associate Administrator may modify, suspend or terminate an approval.
- Section 171.8 is revised to define the term ''FC number.''
- The listing for Fireworks, Division 1.4G in § 172.101, the Hazardous Materials Table, column (7), is amended to refer to new Special Provision 200.
- Special Provision 200 is added to state that Division 1.4G consumer fireworks may be certified by a DOT-approved FCA in accordance with the provisions of § 173.65.
- Sections 172.320(b) and 172.320(d) are amended to allow for firework certification (FC) numbers issued by Firework Certification Agencies (FCAs) in lieu of EX numbers issued by PHMSA.
- Section 173.56(b) is amended to except new fireworks devices meeting the criteria in new §§ 173.64 and 173.65 from the specified requirements for examining, classifying and approving new explosives.
- Section 173.56(b)(1) is amended to indicate EX numbers will be issued to all new explosives by the Associate Administrator, except for Division 1.4G consumer fireworks, which may be issued EX numbers by the Associate Administrator or FC numbers issued by an FCA as set forth in § 173.65.
- A definition for ''consumer fireworks' is added in § 173.59.
- Section 173.64 is added and the current exception, in § 173.56(j), for Divisions 1.3 and 1.4 fireworks to be offered for transportation if they are manufactured in accordance with APA Standard 87–1 and pass a thermal stability test, is moved to this section.
- Section 173.65 is added to provide a new exception for Division 1.4 G consumer fireworks manufacturers, or designated U.S. agents on behalf of a foreign manufacturer, to apply for certification through an FCA.

III. Section-by-Section Review

The following is a section-by-section review of the amendments proposed in the August 30, 2012 NPRM, the comments received in response to those amendments and the modified amendments adopted in this final rule.

Part 107

Part 107 subpart E sets forth procedures for persons seeking approval to serve as a certification agency, including lighter certification agencies, which certify lighter designs, UN third-party packaging certification agencies, which test packaging for compliance with UN recommendations, and independent inspection agencies, which evaluate and certify cylinder manufacturers. PHMSA is revising subpart E of part 107 to clarify the approval process and requirements for new and existing certification agencies and establish alternative procedures used to review and certify Division 1.4G consumer fireworks.

In the NPRM, to clarify and provide consistency in the procedural process for designation as a certification agency, the subpart E heading was proposed to be retitled ''Designation of Certification Agencies.'' PHMSA received no comments on the title change, thus in the final rule PHMSA is adopting the title change as proposed.

Section 107.401

Section 107.401 provides the purpose and scope of the designation of certification agencies. In the NPRM published under this docket no modifications were proposed to § 107.401; however, PHMSA did propose other revisions to procedural regulations pertaining to certification agencies. In this final rule PHMSA is modifying § 107.401 paragraph (a) to reflect revisions to procedures pertaining to certification agencies found in § 107.402. These revisions are editorial in nature and simply denote the types of certification agencies PHMSA currently approves (i.e., packagings, lighters, portable tanks, multiple-element gas containers (MEGC)s, and Division 1.4G consumer fireworks).

Section 107.402

In the NPRM, PHMSA proposed modifications to part 107 subpart E to address the requirements of certification agencies. No new application requirements specific to any certification agencies were proposed in the NPRM. Specifically, PHMSA proposed that:

- The words ''as an approval or'' would be removed from § 107.402.
- General application requirements for designation as a certification agency would be moved to § 107.402(b);
- Application requirements specific to Packaging Certification Agencies and Lighter Certification Agencies would be moved to § 107.402(c); and
- Application requirements specific to Fireworks Certification Agencies would be provided in § 107.402(d).

PHMSA did not receive comments on the words ''as an approval or'' being removed from § 107.402 therefore this editorial change was adopted. Although PHMSA did not receive comments on the formatting of § 107.402, for the purposes of clarity in the final rule, PHMSA is adopting a modified structure of § 107.402. Specifically, the adopted text identifies each type of certification agency PHMSA currently authorizes. These revisions are editorial in nature and simply list the certification agencies PHMSA currently approves (i.e., packagings, lighters, portable tanks, MEGCs, and Division 1.4G consumer fireworks). In this final rule, paragraphs (a) and (b) are revised to provide general application requirements for designation as a certification agency.

This final rule adopts additional editorial changes to the format of § 107.402. Specifically, the application requirements specific to UN Third Party Packaging Certification Agencies are provided in § 107.402(c). The application requirements specific to Lighter Certification Agencies are specified in § 107.402(e). The application requirements specific to Portable Tank and MEGC Certification Agencies are specified in § 107.402(f). No new application requirements specific to UN Third Party Packaging Certification Agencies, Lighter Certification Agencies, or Portable Tank and MEGC Certification Agencies were added and this is simply a formatting change.

In the NPRM, PHMSA proposed modifications to part 107 subpart E to address the parameters of becoming an FCA. Specifically, the proposed amendments specified in § 107.402(d) stated that to be considered an FCA, an applicant would be required to submit an application with procedures it will use to review and certify Division 1.4G consumer fireworks, and PHMSA would review the applicant's procedures to determine whether they are adequate to certify compliance with APA Standard 87–1 and whether they provide a certification process equivalent to the current approval process. Specifically, the proposed language in § 107.402(d) required ''[a] statement that the applicant will perform its functions independent of the manufacturers, transporters, importers, and owners of the fireworks.'' AFSL expressed its concern with this proposed language. AFSL contends that:

> This expertise is possessed by independent organizations like AFSL, as well as the independent testing organizations retained by AFSL to conduct fireworks testing . . . AFSL, for example, is an independent, 501(c)(3) corporation whose primary purpose is to improve the quality and safety of fireworks distributed or used in the U.S. marketplace. Although members of the fireworks industry are represented on the AFSL Board of Directors, AFSL is not financially dependent, controlled, or owned either in whole or in part by any entity that manufactures, transports, or imports fireworks. AFSL offers the only independent third-party testing and certification service for manufacturers and importers to ensure that their products comply with state of the art technical requirements for fireworks. AFSL standards, developed by the independent AFSL Standards Committee comprised of representatives from the fireworks industry, federal and state regulatory authorities, consumers, and technical experts, incorporate all CPSC and DOT fireworks regulations, as well as provisions that go above and beyond the federal regulations to further improve safety and ensure good manufacturing practices for producing consistent, high quality fireworks products.

The intent of the language in § 107.402(d) is to ensure that entities that evaluate and certify fireworks are technically competent to perform the prescribed functions, and free from undue influence by persons who manufacture, own, transport or cause transportation, of firework devices. This is consistent with the current requirements for all other independent certification agencies.

International Technical and Quality Services Limited noted that in the NPRM we neglected to mention if an FCA would be required to periodically renew its authority with PHMSA. PHMSA does intend to establish a renewal process for FCAs. Consistent with other authorization time periods for third-party certification agencies, such as explosive labs, lighter labs, and independent inspection agencies, we will establish a renewal period for FCAs in each separate FCA approval to ensure that FCAs continue to meet the criteria set forth in part 107, subpart E; however, FCA approvals are generally expected to be issued with a maximum five-year renewal period.

In the NPRM we proposed that before an FCA is approved, it would have to successfully complete a facility inspection performed by PHMSA. This requirement was designed to ensure that the FCA is capable of physically examining a firework device. International Technical and Quality Services Limited asked who would bear the cost of such inspections. In this final rule, we are removing the proposed requirement that FCAs physically examine a sample device (see the review of part 173) and, therefore, we do not believe there is a need for a facility inspection as a requirement to be approved as an FCA. For this reason, we are not including pre-approval inspections as a requirement to become an approved FCA in this final rule. We anticipate that inspections of FCAs will be added to our overall field operations inspection program. Since we are not requiring pre-approval inspections of an FCA, FCAs will not incur costs for those inspections.

In the NPRM, we proposed that the FCA applicant would be required to submit an application with all procedures it will use to review and certify Division 1.4G consumer fireworks. We stated that these procedures would be designed by the applicant, but that PHMSA would review the applicant's procedures to determine whether they are adequate to certify compliance with the APA Standard 87–1 and whether the FCA certification process provides an equivalent oversight as the PHMSA explosives approval process.

AFSL and APA stated that the procedures developed by AFSL to test consumer fireworks for compliance with AFSL's voluntary fireworks safety standards would be an ideal model for developing criteria for FCAs. Standards developed by AFSL's Standards Committee incorporate CPSC and DOT performance and labeling requirements. Also, the Committee developed provisions above and beyond the Federal regulations to further improve safety and provide good manufacturing practices for producing consistent, high quality products. As we are not requiring FCAs to physically examine a firework device as part of the certification process in this final rule, we do not believe it is necessary to establish a rigid set of criteria for FCA procedures; however, we will require the FCA to submit standard operating

procedures with their approval application, which PHMSA will review to ensure that each FCA is capable of performing review and certification that is equivalent to the current PHMSA approval process.

As mentioned above, although not explicitly stated, it is expected these procedures would include an FCA's proposed manner of handling denials and rejections of manufacturer or a foreign manufacturer's designated U.S. agent's application requests. Further, as the FCA certification process is designed to parallel the current approvals process, PHMSA anticipates that denial and reconsideration procedures would be analogous to those provided for DOT-issued approvals specified in § 107.715.

While we indicated in the NPRM that the required FCA qualifications would be detailed in each FCA approval, in response to International Technical and Quality Services Limited's comment that ''[i]t is suggested that detailed and specific requirements and procedures are drawn up in order to standardize the work done by different FCAs in the market,'' in addition to the general application requirements for a certification agency specified in § 107.402(b), in this final rule we detail specific requirements in § 107.402(d). The FCA applicant must meet the following requirements:

- Be a U.S. citizen, or have a designated U.S. agent representative as specified in § 105.40;
- Employ personnel with work experience in manufacturing or testing of Division 1.4G consumer fireworks; or a combination of work experience in manufacturing or testing of Division 1.4G consumer fireworks and a degree in the physical sciences or engineering from an accredited university;
- Have the ability to:
  - Review design drawings, and applications to certify that they are in accordance with the APA Standard 87–1; and
  - Verify thermal stability test procedures and results.
- Must be independent of and not owned by any consumer fireworks manufacturer, distributor, import or export company, or proprietorship; and
- Submit an application that includes the following information:
  - Name, address, and country of each facility where Division 1.4G consumer fireworks applications are reviewed and certified;
  - Detailed description of the qualifications[6] of each individual the applicant proposes to employ to review, and certify that the requirements specified in part 173 and the APA Standard 87–1 have been met.
  - Written operating procedures to be used by the fireworks certification agency to review, and certify that a Division 1.4G consumer fireworks application meets the requirements specified in the APA Standard 87–1;
  - Name, address, and principal business activity of each person having any direct or indirect ownership interest in the applicant greater than three percent, and any direct or indirect ownership interest in each subsidiary or division of the applicant; and
  - A statement that the applicant will perform its functions independent of the manufacturers, transporters, importers, and owners of the fireworks.

As with approvals issued to other third-party certification agencies, in addition to the information required in § 107.402(d), the FCA approval documentation issued by PHMSA to the FCA will include additional information detailing operational requirements. PHMSA may also include additional information on the FCA approval documentation as needed. The FCA approval documentation will include:

- The FCA's unique identifier;
- Requirements for the periodic renewal of an FCA;
- Details regarding the submission process and method of transmitting FCA certifications to PHMSA;
- Instructions on issuance of FCs, including unique identifier sequence and tracking numbers;
- Recordkeeping requirements specific to the FCA.
- Qualifications of each employee conducting FCA reviews; and
- Procedures to notify PHMSA in the event of operational changes or modifications (i.e., reporting changes in employment status, hiring of new personnel or changes to standard operating procedures).

Section 107.403

In the NPRM, PHMSA proposed the word ''approval'' would be replaced with ''certification'' in the § 107.403 heading. PHMSA received no comments on the title change thus in the final rule, PHMSA is adopting the title change as proposed.

In the NPRM, PHMSA proposed that if an applicant is denied designation as an FCA, that it may request that PHMSA reconsider the denial in accordance with § 107.403(c). This is consistent with the procedural requirements of subpart H of part 107. Further, we proposed a new subparagraph (d) to be added to § 107.403 to reference the regulations pertaining to modification, suspension, and termination of approvals. In this final rule, we have revised § 107.403(c) to further clarify that a certification agency applicant would be afforded the same reconsideration and appeal process as all other applicants seeking approvals. New subparagraph (d) is adopted as proposed in the NPRM.

Section 107.404

No changes were proposed to § 107.404; therefore, this section remains unchanged.

Section 107.405

Section 107.405 was proposed to be deleted and reserved. PHMSA received no comments on these changes therefore the amendments will be adopted as proposed.

Part 171

Section 171.8 Definitions and Abbreviations

In the NPRM, we proposed to define the term ''FX number'' in § 173.65. In this final rule we are revising ''FX' to ''FC'' (see the review of part 173) and moving the definition of 'FC number'' to the more appropriate § 171.8, which provides definitions and abbreviations. This is consistent with how PHMSA has defined ''EX number.''

Part 172

Section 172.101 Hazardous Materials Table and § 172.102 Special Provisions

In the NPRM, an amendment was proposed to the Hazardous Materials Table (HMT; § 172.101), column (8A), to reference the new § 173.65. PHMSA has concluded that it is more appropriate to add a special provision to the HMT, column (7), as § 173.65 does not provide an exception from regulations as column (8A) implies, rather it provides an alternative certification method for Division 1.4G consumer fireworks. PHMSA is revising the listing for Division 1.4G, Fireworks in § 172.101, the HMT, column (7), to refer to new Special Provision 200 and concurrently establishing Special Provision 200 in § 172.102 to indicate that Division 1.4G consumer fireworks may be certified by a DOT-approved FCA in accordance with the provisions of § 173.65. PHMSA did not receive any comments on the proposed amendment.

Section 172.320

In the NPRM, PHMSA proposed revising § 172.320(b) to indicate that

[6] While the regulations will not specify exact qualifications, applicants should have either work or educational experience, or a combination thereof, with regard to fireworks.

each package containing Division 1.4G consumer fireworks certified in accordance with § 173.65, must be marked with a FX number issued by a fireworks certification agency in lieu of an EX Number. Furthermore PHMSA proposed revising § 172.320(d) to indicate if the FX number of each explosive item described under a proper shipping description is shown in association with the shipping description required by § 172.202(a) of this part, that the requirements of § 172.320 do not apply.

We received no comments on these revisions and, therefore, PHMSA is revising § 172.320(b) to indicate that each packaging containing Division 1.4G consumer fireworks certified in accordance with § 173.65, must be marked with an FC number issued by a FCA in lieu of an EX number. Furthermore, we are also revising § 172.320(d) to indicate if the FC number of each explosive item described under a proper shipping description is shown in association with the shipping description on a shipping paper required by § 172.202(a) of this part, that the requirements of § 172.320 do not apply. These changes provide consistency with the current hazard communication requirements for other explosives and reflect the change from FX to FC number that is described in more detail below.

Part 173

The requirements for the classification and packaging of Class 1 explosive materials are specified in part 173, subpart C of the 49 CFR. Fireworks are considered a Class 1 explosive material and must be classed under one of five hazard Divisions and compatibility groups (1.1G, 1.2G, 1.3G, 1.4G, and 1.4S). As currently specified in the HMR, prior to transportation into, out of, and within the United States, all explosives, including fireworks, must be approved and assigned a classification by PHMSA based on actual testing. Alternatively, Divisions 1.3 and 1.4 fireworks may be approved in accordance with the APA Standard 87–1.

Section 173.56

In the NPRM, we proposed moving the current requirements of § 173.56(j), which authorize Divisions 1.3 and 1.4 fireworks and 1.4 articles, pyrotechnic, to be classed and approved by the Associate Administrator without prior examination and offered for transportation if the device is manufactured in accordance with the APA Standard 87–1 and passes a thermal stability test, to a stand-alone new § 173.64 entitled ''Exceptions for Division 1.3 and 1.4 fireworks.'' Furthermore, PHMSA proposed to modify paragraph (b) of § 173.56 to replace the references to paragraph (j) with references to the new § 173.64. PHMSA did not receive specific comments on the proposed changes; thus, we are adopting the amendments as proposed.

Section 173.59

In the NPRM, PHMSA proposed to add a definition for ''consumer firework'' to § 173.59. Specifically, in the NPRM we proposed that a consumer firework was:

> Any completed firework device that is packaged in a form intended for use by the public that complies with the construction, performance, chemical composition, and labeling requirements codified by the U.S. Consumer Product Safety Commission in Title 16, CFR Parts 1500 and 1507. A consumer firework does not include firework devices, kits or components banned by the U.S. Consumer Product Safety Commission in 16 CFR 1500.17(a)(8).

Since PHMSA did not receive any comments on the definition, we are adopting the amendment as proposed, with minor editorial corrections.

Section 173.64

In the NPRM, PHMSA proposed revising and moving the current requirements of § 173.56(j) to a stand-alone new § 173.64 entitled ''Exceptions for Division 1.3 and 1.4 fireworks.'' As PHMSA did not receive any comments on this amendment specifically, we are adopting the amendment with minor edits.

Section 173.65

In the NPRM, PHMSA proposed to establish new § 173.65, to allow manufacturers to apply for a firework certification from an FCA as an alternative to the PHMSA approval process for Division 1.4G consumer fireworks. In the NPRM we proposed that the process for FCA certification of a device would require the device to be manufactured in accordance with the APA Standard 87–1, pass a thermal stability test, and be physically examined by the FCA.

APA, AFSL, Fireworks Over America and Next FX and Stage FX supported the concept of a physical examination of a sample to determine the per-tube and total per-device weights of pyrotechnic composition and verify that the device meets the requirements in the APA Standard 87–1 for classification as Fireworks 1.4G, UN0336. However, all commenters in favor of physical examination indicated that we need to make clear if the examination requires qualitative chemical analysis.

Kellner's Fireworks Inc., and the NFA opposed the requirement for physical examination of the firework device. Kellner stated that:

> Currently PHMSA only looks at a chemical composition sheet to determine that all of the chemicals used in an item are in compliance with APA 87–1. Requiring a full chemical analysis only adds another time consuming process to the procedures for obtaining an EX number.

The NFA stated:

> The requirement that samples must be supplied to the FCAs in addition to the paper Application Form in no way streamlines the application process and only adds an additional meaningless burden on the manufacturer since the submitted sample would not necessarily represent accurately a production version of the product.
>
> The requirement of samples also means that FCAs could not be established in the USA as it would be impossible to ship physical live samples for inspection without an EX number already in place. This regulation would take jobs away from the domestic market and even if a variance was established the cost to ship samples from China would be prohibitive and as noted already, it is questionable whether the samples would truly represent production made products.

The intent of the proposed requirement was to help ensure that the per-tube and total per-device weights of pyrotechnic composition of a Division 1.4G consumer firework complied with the APA Standard 87–1. However, PHMSA agrees with Kellner and the NFA that the proposed language does little but add an unnecessary and time-consuming requirement to the certification process. Therefore, in this final rule PHMSA is removing the condition that the device must be physically examined under the FCA certification process. The removal of this proposed requirement more closely aligns the FCA certification process with the current PHMSA approval process for Division 1.4G consumer fireworks, providing consistency between the two methods, and reducing potential confusion.

In the proposed § 173.65(a) we also set forth a numbering scheme to discern EX approvals from FCA certifications. We proposed that firework devices certified by FCAs are assigned an ''FX'' number. Given the long history and wide recognition of the EX numbering scheme, in the NPRM PHMSA sought specific comments on the supply chain implications, the economic impact, and safety concerns associated with the proposed FX numbering system, as well as comments on how to implement the changes if they are adopted. A number

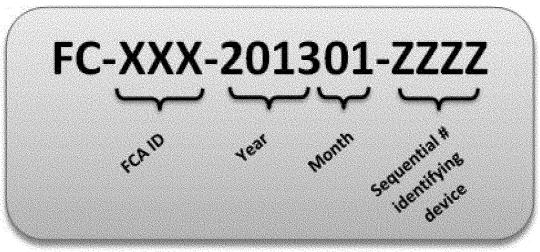
of commenters indicated that the use of ''FX'' would cause confusion. Next FX and Stage FX, and the Alliance of Special Effects & Pyrotechnic Operators, Inc., noted that in the fireworks industry, ''FX'' is used as an abbreviation for term ''effects.'' APA suggested that we include the letters ''EX'' in the beginning of the sequence of letters and numbers, stating that ''[p]eople know what the EX number signifies and may not understand the FX system.''

We agree with the commenters that the letters FX may cause confusion. Further, we understand that that the letters ''EX'' are familiar to people in the fireworks supply chain; however, the definition of ''approval'' is ''a written authorization from the Associate Administrator (AA)'' and an ''EX approval'' is the approval designation the AA issues to explosives, including fireworks. In response to the comments received to the NPRM we are replacing the proposed ''FX'' numbering scheme, with an ''FC'' scheme to denote fireworks certifiers. Furthermore, we are revising the numbering scheme in this final rule to parallel the EX numbering scheme where the year, month and number of devices certified in that month are included.

An example of an FC number would be ''FC–XXX–201301–ZZZZ,'' where ''XXX'' represents the fireworks certification agency's unique identifier assigned by PHMSA, ''201301'' represents the year (i.e. 2013) and month (i.e. 01 as January), and ''ZZZZ'' represents the sequential number issued that month by that specific FCA identifying a particular device. Again, in this final rule we are more closely aligning the identifier issued by an FCA with an approval issued by PHMSA for Division 1.4G consumer fireworks. The diagrams below illustrate the EX identifier for explosives approvals, and the new FC identifier for Division 1.4G consumer fireworks certified by FCAs.

EX Approval Unique Identifiers

FC Certification Unique Identifiers



In this final rule, as with the existing number scheme for EX numbers, the FC numbering scheme is not detailed in the HMR; however, it will be specified in each FCA approval. PHMSA may, in a future rulemaking, propose to assign ''FC'' numbers to all Division 1.4G consumer fireworks, regardless of whether they are certified by an FCA or approved by PHMSA. This would serve to separate and distinguish the lowest hazard fireworks from all other explosives.

Weeth and Associates questioned the need for unique EX numbers for each individual firework device. They state that:

> [Th]e adoption of the UN classification system and APA Standard 87–1 combined with a comprehensive Emergency Response Guidebook negates the need for unique EX numbers.

They further state that:

> [G]iven how rare it is for a shipment to involve only one type of Fireworks, tracing the source of an incident with a high degree of certainty to one of the hundreds of Fireworks in a shipment is virtually impossible.

EX approvals are written approval from PHMSA that allows a manufacturer to ship or transport a specific explosive device. PHMSA's Approvals and Permits and Field Operations Divisions rely on these unique identifiers to track firework devices to ensure that the device that was approved is the same device that is being transported. This method has enabled PHMSA to identify unapproved fireworks in shipments. Further, as the elimination of unique ''EX'' numbers was not considered in the NPRM, it is beyond-the-scope of this final rule.

We received three comments from AFSL, APA, and Fireworks by Grucci, Inc., on the proposed recordkeeping and record retention requirements in § 173.65(b). In the NPRM we proposed that a copy of this record must be retained by the FCAs, manufacturers or designated U.S. agents, and importers for five years after the material is imported. APA recommended that the record retention period proposed in the NPRM be extended to the life of the product. APA states:

> Many consumer fireworks have a shelf life of far more than five years, justifying a longer record retention period. Furthermore, the APA does not expect that an extended record retention period would impose any undue burden on applicants. Furthermore, in the case of a manufacturer that must reapply for device approvals that have expired, the expiration has no impact on downstream transporters or users. Because the life of the product extends beyond five years, the APA recommends that the record retention period be equal to the life of the product.

We agree with APA that the records should be available for the life of the product; however, requiring an FCA or fireworks manufacturer or importer to maintain records for Division 1.4G consumer fireworks for an indefinite period after their function in the transportation stream is complete would be counter to our expressed goal to ease the overall industry burden for transporting Division 1.4G consumer fireworks. While manufacturers are accountable for ensuring that the device that is transported is represented by the unique identifier accompanying the shipment, we believe that the five-year retention period is sufficient for the manufacturer recordkeeping requirements, as well as the FCA and importer recordkeeping requirements. PHMSA notes that FCAs, manufacturers or foreign manufacturers' designated U.S. agents, and importers are permitted to keep records indefinitely if they so choose. Furthermore, as with PHMSA's current practice of retaining approval documentation indefinitely, PHMSA will retain FCA certification records indefinitely.

In this final rule we are adopting the recordkeeping requirements specified in § 173.65(b) as proposed in the NPRM for firework manufacturers and importers; however, we removing reference to the recordkeeping requirement for FCAs.

Although the recordkeeping requirement for FCAs will be consistent with those of firework manufacturers and importers, we will specify the recordkeeping requirements for each FCA in each separate FCA approval. PHMSA believes the FCA approval document is a more appropriate location for the FCA recordkeeping requirements than the HMR as the approval will provide the operational requirements for the FCA. Furthermore, each FCA approval will note that the FC certification for each firework device is to be provided by the manufacturer to any subsequent importer of the certified firework device and be accessible at or through its principal place of business and be made available, upon request, to the Associate Administrator or designated official.

PHMSA believes this record retention period will provide a mechanism for confirmation of shipments of Division 1.4G consumer fireworks throughout the supply chain. During that five-year period, the certification record must be made available to a representative of PHMSA upon request. In addition, FCAs must submit all applications and certification data provided by the manufacturers to PHMSA as stipulated in the FCA approval documentation issued by PHMSA to the FCA.

AFSL and Fireworks by Grucci, Inc., both suggest that we clarify our recordkeeping requirements to require that records that are stored electronically must have DOT-review capability. AFSL indicated that it maintains a database that is accessible to CPSC so that they may easily verify importer compliance with the requirement without the need to contact individual companies directly and that ''a simple modification of that database would allow AFSL to store documents that could be accessible to DOT through a password-protected portal.'' AFSL stated:

> This database would be accessible by AFSL member companies as well as DOT (and CPSC) personnel, and should thereby provide a significant paperwork and record-keeping reduction benefit for our members, as well as a time-saving and useful source of information for DOT at very minimal additional cost.

AFSL suggests that a database of FCA certifications be established and maintained. Further, AFSL suggests that the database should permit FCAs to upload certificates of compliance, indicating that fireworks are certified to meet the requirements of § 173.65, similar to the current database maintained by AFSL for the CPSC.

PHMSA agrees that such an electronic system that is uniform and easily accessible would provide benefits. However, PHMSA is concerned that the system described by AFSL would lead to the use of multiple systems that would create confusion and a burden for both the regulated community and the Federal government. PHMSA appreciates AFSL's offer to expand their current capabilities with the CPSC to PHMSA; however, PHMSA is not requiring FCAs to maintain records in the manner described by AFSL. Rather, as with other third-party certification agency approvals, the approval provided by PHMSA to the FCA will delineate the manner in which documents must be submitted to PHMSA. Required documents will include the FCA certification indicating that the firework device complies with § 173.65, the manufacturer's signed and certified application, relevant background data, and copies of all applicable drawings, and test results for each device certified by the FCA. A PHMSA-operated system would ensure information security of PHMSA information technology infrastructure, provide PHMSA the ability to modify the system as needed, and allow PHMSA to ensure all information posted to the database is accurate. As with EX approvals, PHMSA plans to publish FC certifications on our Web site as they become valid, to provide public access.

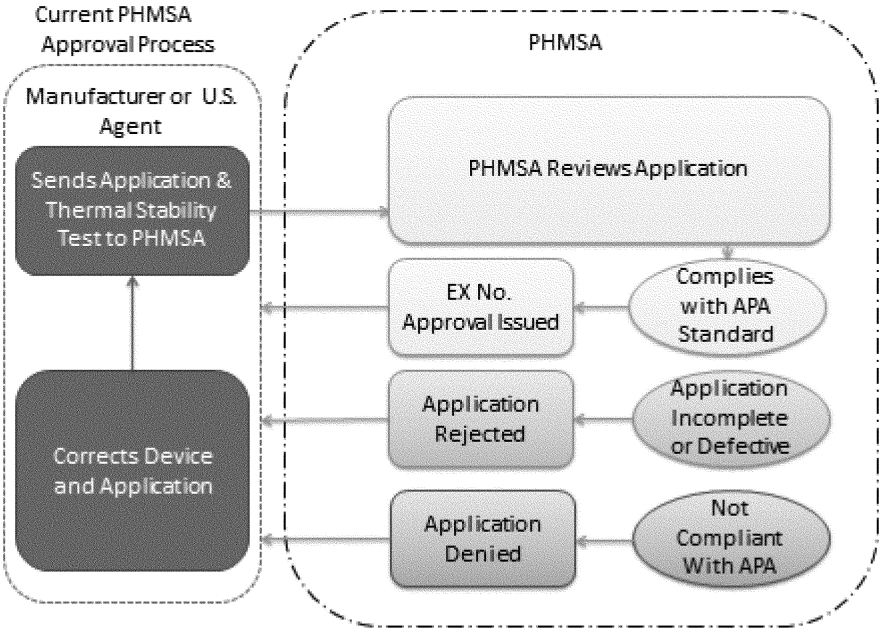
As described above, the database and the manner in which an FCA provides the required documentation will be detailed in each FCA approval. We are further clarifying in this final rule that the FCA certification is not valid until it has been provided to PHMSA and the FCA has received an acknowledgement from PHMSA. Once the FCA receives acknowledgement from PHMSA, the FCA's unique FC identifier that is traceable to the specific device will be valid.

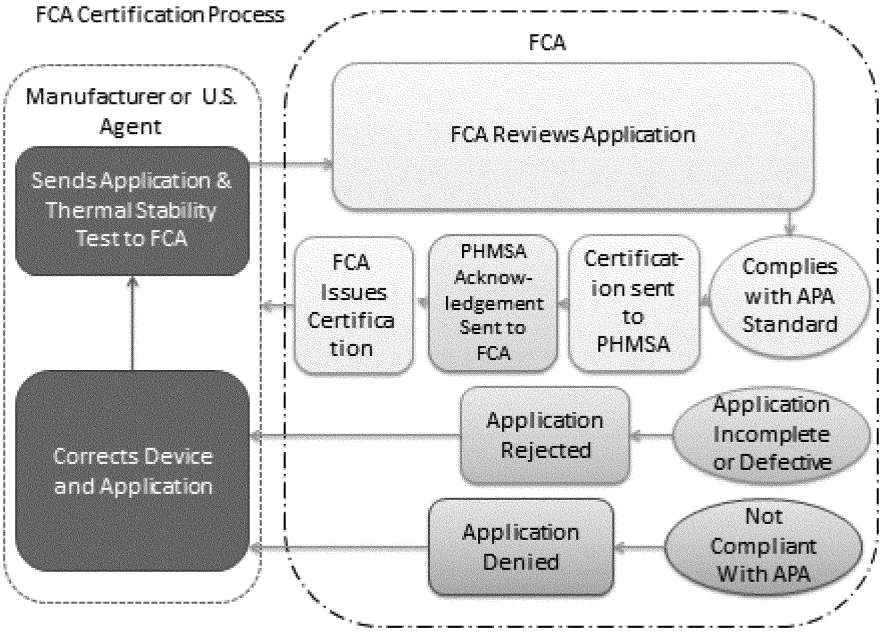
In the NPRM, recordkeeping requirements proposed included the following information: (1) The FX number unique to the FCA that certified that the firework device complies with APA Standard 87–1, including a certification report identifier that is traceable to the manufacturer and specific firework device transported; (2) a copy of the approval application submitted to the DOT-approved fireworks certification agency; and (3) a copy of any certification documentation completed by the fireworks certification agency in accordance with the DOT-approved procedures. PHMSA did not receive any comment on this section; however, upon further review, PHMSA is simplifying the recordkeeping requirements for importers and manufacturers or foreign manufactures' designated agents. Specifically, importers and manufacturers, or foreign manufactures' designated agents, will only be required to retain the certification document issued by the FCA for each Division 1.4G consumer firework certified under § 173.65(a).

As a condition of the DOT approval, the FCA will be required to retain (1) The certification document issued by the FCA; (2) a copy of the certification application submitted to the DOT-approved FCA; and (3) a copy of any certification documentation completed by the fireworks certification agency in accordance with the DOT-approved procedures. Further, in this final rule, in § 173.65(a)(iv) we are instructing manufacturers whose application is denied by an FCA that they may seek reconsideration from the FCA or may appeal the reconsideration decision to PHMSA's Administrator.

In the NPRM, hazard communication requirements for Division 1.4G consumer fireworks were proposed to be specified in paragraph (c) of the new § 173.65. PHMSA did not receive any comment on this section. However, after further consideration PHMSA is not adopting the communication requirements in § 173.65 because § 173.65 does not provide any relief from subparts D and E of part 172 and, therefore, it is redundant to indicate that Division 1.4G consumer firework must be marked and labeled in accordance with subpart D and E of part 172.

The following diagrams show the two alternative processes.





Effective Date of the Rule

In the NPRM published under this docket number, PHMSA requested comment on how to implement the changes if they are adopted. In response to this request PHMSA received comments from the APA, Fireworks Over America and Melrose Pyrotechnic requesting that we implement proposed amendments quickly. Specifically, comments requested that PHMSA expedite the effective date of the rule. Fireworks Over America stated ''We feel that it is imperative that the rule be adopted as soon as possible to eliminate the problems that we incur daily with the existing procedure.''

PHMSA understands that the fireworks industry would like to use the alternative process as soon as possible. For this reason, we are establishing an effective date of thirty days after the publication of this final rule. However, although PHMSA will accept FCA approval applications as of that effective date, PHMSA will require time to review the applications, once received, to ensure that any prospective FCA meets the criteria set forth in this rule. Furthermore, PHMSA anticipates that initial submissions of FCA approval applications may need to be modified as FCAs become familiar with new requirements. Once an FCA is approved by PHMSA, an FCA may begin to certify firework devices and issue FC numbers. Also, PHMSA intends to update the current guidance available on our Web site with respect to the approval/certification process and the transportation of fireworks to include information regarding the FCA process.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101 *et seq.* Section 5103(b) authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This rule provides an alternative to the current process for approving Division 1.4G consumer fireworks more quickly and efficiently, without compromising safety. Furthermore, section 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities.

B. Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures

This rulemaking is considered a non-significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Order 13610 (Identifying and Reducing Regulatory Burdens) reaffirmed the goals of Executive Order 13563 (Improving Regulation and Regulatory Review) issued January 18, 2011, and Executive Order 12866 (Regulatory Planning and Review) issued September 30, 1993. Executive Order 13610 directs agencies to prioritize ''those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment.'' Executive Order 13610 further instructs agencies to give consideration to the cumulative effects of their regulations, including cumulative burdens, and prioritize reforms that will significantly reduce burdens.

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to: (1) Involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) identify and consider regulatory approaches that reduce burden and maintain flexibility; and (4) ensure the objectivity of any scientific or technological information used to support regulatory action; consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

PHMSA has evaluated our fireworks approval program for effectiveness and identified areas that could be modified to enhance the program and increase flexibility for the regulated community while maintaining the current level of safety. In this final rule, the amendments to the HMR will not impose increased compliance costs on the regulated industry. By amending the HMR to allow for an alternative to the approval process for Division 1.4G consumer firework devices, PHMSA is reducing regulatory burden and increasing flexibility to industry, while maintaining an equivalent alternative review process and oversight.

A summary of the regulatory evaluation used to support the proposals presented in this final rule are discussed below. A copy of the full regulatory evaluation explaining the rationale behind PHMSA's conclusions is available in the docket for this rulemaking.

Regulatory Evaluation

For the regulatory evaluation of this final rule, PHMSA assumes that between 25 and 90 percent of applicants will choose to file a Division 1.4G consumer fireworks application with an FCA instead of filing an application with PHMSA. Comments from the APA and AFSL suggested that by not incorporating by reference the most recent revision to APA Standard 87–1, the actual redirected rate could be much less than the initial estimated range used. PHMSA assumes that domestic manufacturers and importers of Division 1.4G consumer fireworks that participate in the voluntary CPSC Domestic Testing Program will choose certification by a DOT-approved FCA. Finally, PHMSA anticipates that existing DOT-approved explosive test laboratories will likely apply for approval as an FCA. Given the uncertainty in the number of manufacturers that will use this alternative and that PHMSA is not aware factors manufacturers will use to weigh their decisions to use the services of an FCA, the benefits of this rule are difficult to quantify.

Current fireworks classification methods have proven effective in achieving a high level of transportation safety. This high level of transportation safety is demonstrated by the fact that over the past 40 years no transportation incidents resulted in death or serious injury while transporting consumer fireworks. Although the current process for classification and approval of fireworks devices has a successful safety history, the process is not without its drawbacks. PHMSA reviews an average of 13,370 applications per year for approval of fireworks. Approximately 75% of these fireworks approvals are for Division 1.4G consumer fireworks devices. This high volume of applications results in an approximate review time of 120 days. The fireworks industry has voiced its frustration with aspects of the current approval process, specifically the time it takes to receive approval for firework devices. Delays in fireworks approvals can have adverse economic impacts on the fireworks industry such as storage costs and the inability to introduce new products in a seasonal market.

This final rule allows an optional method for firework device manufacturers to certify their 1.4G consumer fireworks are properly classified for transportation using an FCA instead of PHMSA's approval process. Without this rulemaking, manufacturers of firework explosive devices will continue to be affected by additional time spent awaiting PHMSA adjudication on Division 1.4G consumer fireworks approval applications. This rulemaking will alleviate industry of some of the time spent, and possibly forgone sales because of added time, awaiting PHMSA action on applications while maintaining the current level of safety.

Manufacturers will use the FCA certification option if it is net beneficial to do so; they will use the PHMSA approval option if it is not. As PHMSA is not requiring manufacturers to use an FCA, and to do so is completely voluntary, PHMSA is not imposing any costs. PHMSA estimates an FCA certification fee of between $100 and $450. Since the option should speed up the certification process it could reduce some of the uncertainty with respect to ordering and other supply chain issues. Those likely doing so will be ones seeking classification relatively closer to peak sales periods (primarily the 4th of July). If manufacturers plan accordingly and wait for PHMSA to issue an approval, they won't pay the FCA fee. The benefits for manufacturers using the FCA certification process to expedite shipments are difficult to quantify. However, we know that any rational business will not use this option unless it makes business sense. The complete

regulatory evaluation is available for review in the public docket for this rulemaking.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''), and the President's memorandum on ''Preemption'' published in the **Federal Register** on May 22, 2009 (74 FR 24693). This rule will preempt State, local, and Indian tribe requirements but does not contain any regulation that has 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.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125 (b)) that preempts State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This rule addresses all the covered subject areas above and will preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' as the Federal requirements. Furthermore, this rule is necessary to update, clarify, and provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA has determined that the effective date of Federal preemption for these requirements will be thirty days from the date of publication of this final rule in the **Federal Register**.

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 rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of rules on small entities are properly considered.

PHMSA expects that U.S. manufacturers and importers of consumer fireworks will be affected by this rulemaking and estimates that there are 10 consumer firework manufactures in the U.S. and between 62 and 211 U.S. importers. The estimate of U.S. consumer firework manufacturers is derived from an analysis of PHMSA's registration data, which indicates that all U.S. consumer firework manufacturers are considered small businesses.

The estimate of U.S. importers is provided as a range, which is a result of combining estimated import data with data provided by a consumer fireworks trade association. The figure of 62 was derived from import data gathered from a survey of fireworks experts, while the figure of 211 was derived from statistics available from the American Fireworks Safety Laboratory (AFSL), a consumer fireworks trade association. PHMSA assumes nearly all U.S. importers are small businesses. Thus, between 72 and 221 U.S. small businesses will be affected by this rule.

The rule provides for an alternative method to certify Division 1.4G consumer fireworks for transportation. This alternative method will require the retention of certification records by certifying agencies, manufacturers and importers indicating a Division 1.4G consumer fireworks classification has been certified in accordance with the regulations. The certification records will be required to be retained for five years and the requirements apply to FCAs, manufacturers that choose certification by a FCA, and importers of fireworks certified by a FCA.

For consumer firework manufacturers, the alternative method is not mandatory and these businesses can voluntarily choose whether using an FCA makes economic sense for their operations. Manufacturers choosing this method will not be responsible for the preparation of certification records and no new professional skills will be needed for record retention.

Foreign consumer firework manufacturers using an FCA will result in additional record retention requirements for consumer firework importers that import from these foreign manufacturers. Consumer firework importers will be required to retain certification records for five years after the importation of the product. Importers will not be responsible for the preparation of the report or record, thus no new professional skills will be needed.

A retrospective review of the fireworks approval program that determined that there is a delay in the processing of EX approval applications under the current process was the impetus for this rule. The purpose of this rule is to maintain the current level of safety while reducing burden and increasing flexibility for the regulated community by providing an alternative to PHMSA's approval process. Benefits of the certification option will be derived from the expedited processing of consumer fireworks applications, resulting in faster time to market for each firework device. By providing increased regulatory flexibility, this rule should reduce the compliance burden on the regulated industry, including small entities, without compromising transportation safety.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of

the public and affected agencies an opportunity to comment on information and recordkeeping requests. Comments received from industry indicate that the recordkeeping requirements proposed in the NPRM were not unduly burdensome. PHMSA currently has an approved information collection under OMB Control Number 2137–0557, entitled ''Approvals for Hazardous Materials,'' with an expiration date of May 31, 2014. PHMSA will submit a request that OMB approve a revised information collection request to account for the recordkeeping and retention requirements in this rule. PHMSA has developed burden estimates to reflect changes in this rule and estimates that the information collection and recordkeeping burdens will be revised as follows:

OMB Control No. 2137–0557

Increase in Annual Number of Respondents: 211

Increase in Annual Responses: 5,175

Increase in Annual Burden Hours: 430

Increase in Annual Burden Costs: $14,875

While this rule may result in a slight increase in the annual paperwork burden and cost to OMB Control Number 2137–0557 for minor record-keeping requirements under §§ 173.64 and 173.65, this rule should result in a net benefit to the fireworks industry by increasing regulatory flexibility, which will provide manufacturers of Division 1.4G consumer fireworks with an alternative that should be more efficient than the current approval process.

Requests for a copy of this information collection should be directed to Steven Andrews or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

G. 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 contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This 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 to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires federal agencies to analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations require federal agencies to conduct an environmental review considering: (1) The need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process.

Following an intensive retrospective review of the fireworks approval program, PHMSA determined that there is a delay in the processing of EX approval applications under the current regulatory scheme. For this reason, PHMSA is establishing an alternative option for Division 1.4G consumer fireworks in which applicants will submit applications for certification to a Fireworks Certification Agency (FCA), in lieu of submitting applications for approval to PHMSA.

Description of Action:

Docket No. PHMSA–2010–0320 (HM–257)] Final Rule

Adopted Amendments to the HMR:

- Section 107.401 is amended to include Division 1.4G consumer fireworks.
- Section 107.402 paragraphs (a) and (b) are amended to clarify the application process for designation as a certification agency.
- Section 107.402 paragraph (c) is amended to specify the application procedure to become a third-party packaging certification agency.
- Section 107.402 paragraph (d) is added to specify the application procedure to become a designated fireworks certification agency and a renewal process is established for such agencies.
- Section 107.402 paragraph (e) is added to specify the application procedure to become a designated lighter certification agency.
- Section 107.402 paragraph (f) is added to specify the application procedure to become designated portable tank and MEGC certification agencies.
- Section 107.403 paragraph (c) is amended to clarify the procedures for reconsideration and appeal.
- Section 107.403 paragraph (d) is added to clarify where to find the conditions under which the Associate Administrator may modify, suspend or terminate an approval.
- Section 171.8 is revised to define the term ''FC number.''
- The listing for Fireworks, Division 1.4G in § 172.101, the Hazardous Materials Table, column (7), is amended to refer to new Special Provision 200.
- Special Provision 200 is added to state that Division 1.4G consumer fireworks may be certified by a DOT-approved FCA in accordance with the provisions of § 173.65.
- Sections 172.320(b) and § 172.320(d) are amended to allow for firework certification (FC) Numbers issued by Firework Certification Agencies (FCAs) in lieu of EX Numbers issued by PHMSA .
- Section 173.56(b) is amended to except new fireworks devices meeting the criteria in new §§ 173.64 and 173.65 from the specified requirements for examining, classifying and approving new explosives.
- Section 173.56(b)(1) is amended to indicate EX numbers will be issued to all new explosives by the Associate Administrator, except for Division 1.4G consumer fireworks, which may be issued EX numbers by the Associate Administrator or FC numbers issued by an FCA as set forth in § 173.65.
- A definition for ''consumer fireworks' is added in § 173.59.
- Section 173.64 is added and the current exception, in § 173.56(j), for Divisions 1.3 and 1.4 fireworks to be offered for transportation if they are manufactured in accordance with APA Standard 87–1 and pass a thermal stability test is moved to this section.
- Section 173.65 is added to provide a new exception for Division 1.4 G consumer fireworks manufacturers, or designated U.S. agents, to apply for certification through an FCA.

Alternatives Considered:

Alternative (1)—No action alternative: Leave the HMR as is; do not adopt above-described amendments.

PHMSA periodically reviews and updates various regulations to improve the clarity of the HMR and provide relief for safe alternatives when necessary. If PHMSA chose the no-action alternative, the public would not receive the benefits of the alternate process for certification of Division 1.4G consumer fireworks, which will provide an equivalent level of oversight as PHMSA's approval process, while lessening the time to market of Division

1.4G consumer fireworks. Therefore, PHMSA rejected the do-nothing alternative.

Alternative (2)—Allow Manufacturers to Self-certify: PHMSA considered allowing manufacturers to self-declare Division 1.4G consumer fireworks in accordance with a specified standard and require manufacturers to maintain records on the product design, classification, and thermal stability testing. This would have placed the burden of proof of compliance with the manufacturers and their designated agents.

Though there might be cost savings to the consumer fireworks industry and to PHMSA by reducing the paperwork burden on the industry and a reduction in the costs associated with processing, reviewing, and maintaining thousands of approval records each year, they are likely outweighed by the negative safety implications of self-declaration of Division 1.4G fireworks (and thus the resulting social costs). The approach would remove a critical control that has been in place successfully for decades. In 2010, after implementing new processing procedures, over 60 percent of firework applications were initially denied. PHMSA's review of recent denials, where the denial was made for technical reasons, found numerous applications were submitted with potentially dangerous errors to include: firework designs with illegal pyrotechnic compounds; misclassified firework devices (e.g., 1.1G vice 1.4G); and designs that did not conform with APA Standard 87–1, such as improper fusing and devices with electronic matches integrated, which is forbidden. Had the applicants been allowed to self-classify their designs, it is likely that misclassified and illegal fireworks would have been introduced into transportation and eventually used by U.S. consumers. These findings suggest that this alternative would not have served to assure safe transportation in commerce of Division 1.4G consumer fireworks and, as such, was rejected.

Alternative (3)—Preferred Alternative: Go forward with the proposed amendments to the HMR in the NPRM with some revisions, as described above.

Environmental Consequences

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous materials regulatory system is a risk management system that is prevention oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. Generally, the regulations require each shipper to classify a material in accordance with these hazard classes and packing groups. The process of classifying a hazardous material is itself a form of hazard analysis. Currently, prior to the transportation all explosives (Hazard Class 1), including Division 1.4G consumer fireworks, must be classed, approved, and issued an EX number by PHMSA. The EX number is a unique identifier that indicates a specific firework device has been classed and approved for transportation.

Further, the regulations require the shipper to communicate a material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard, Packing Group I to a low hazard, Packing Group III material. Unless otherwise noted in part 173, subpart C or § 173.7(a)) all Class 1 (explosive) materials are assigned a Packing Group II. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause human death or injury, the loss of ecological resources (e.g., wildlife habitats), and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. Compliance with the HMR substantially reduces the possibility of accidental release of hazardous materials.

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.

PHMSA believes that the regulatory changes adopted in this rulemaking present no environmental impact on the quality of the human environment because both alternatives deal with the processing of applications. Specifically, these amendments have no impact on: the risk of release and resulting environmental impact; human safety; longevity of the packaging; and none of these amendments would be carried out in a defined geographic area. Furthermore, the amendments only affect the authorization process that deems Division 1.4G consumer fireworks safe for transport and has no impact on any other transport requirements (e.g., packaging, hazard communication, etc.). The action would provide an additional application process that would not impact the exemplary safety record that Division 1.4G consumer fireworks have demonstrated over the past forty years as the same consensus industry standard would be used by both PHMSA and the FCAs when evaluating Division 1.4G consumer fireworks.

Conclusion

PHMSA sought comment on the environmental assessment contained in the August 30, 2012 [77 FR 52636], NPRM published under Docket No. PHMSA 2010–0320. PHMSA did not receive any comments on the environmental assessment contained in that rulemaking. This action has been thoroughly reviewed by PHMSA. The regulatory changes adopted in this rulemaking simply allow an alternate authorization process for the certification of Division 1.4G consumer fireworks. The new process will not impact on the quality of the human environment. Therefore, PHMSA concludes that no significant environmental impact will result from this rule.

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 comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), which may be viewed at *http://www.dot.gov/privacy*.

K. 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 will 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. We have assessed the effects of the rule, and find that because the alternative process parallels the current approval process, it will not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

L. National Technology Transfer and Advancement Act.

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies.

This rulemaking involves one technical standard: American Pyrotechnics Association (APA), APA Standard 87–1 Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version. This technical standard is listed in 49 CFR 171.7.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Applicability, General information, Regulations, and Definitions.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 101 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, 1.96 and 1.97.

■ 2. Revise §§ 107.401 and 107.402 to read as follows:

§ 107.401 Purpose and scope.

(a) This subpart establishes procedures for the designation of agencies to issue certificates and certifications for types of packagings designed, manufactured, tested, or maintained in conformance with the requirements of this subchapter, subchapter C of this chapter, and standards set forth in the United Nations (U.N.) Recommendations (Transport of Dangerous Goods), and for lighters, portable tanks, multi-element gas containers, and Division 1.4G consumer fireworks in conformance with the requirements of this subchapter. Except for certifications of compliance with U.N. packaging standards, this subpart does not apply unless made applicable by a rule in subchapter C of this chapter.

(b) The Associate Administrator may issue approval certificates and certifications addressed in paragraph (a) of this section.

§ 107.402 Application for designation as a certification agency.

(a) Any organization or person seeking to be approved as a certification agency must apply in writing to the Associate Administrator for Hazardous Materials Safety (PHH–32), Department of Transportation, East Building, 1200 New Jersey Avenue SE., Washington DC 20590–0001. Alternatively, the application in an appropriate format may be submitted by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (email) to: *approvals@dot.gov*. Each application must be signed and certified to be correct by the applicant or, if the applicant is an organization, by an authorized officer or official representative of the organization. Any false statement or representation, or the knowing and willful concealment of a material fact, may subject the applicant to prosecution under the provisions of 18 U.S.C. 1001, and result in the denial or termination of a designation.

(b) Each application for approval as a certification agency must be in English and include the following information:

(1) Information required by the provisions in subpart H of this part;

(2) Name and address of the applicant, including place of incorporation if a corporation. In addition, if the applicant is not a resident of the United States, the name and address of a permanent resident of the United States designated in accordance with § 105.40 of this subchapter to serve as agent for service of process. A person approved as a certification agency is not a PHMSA agent or representative;

(3) A statement acknowledging that the Associate Administrator or a designated official may inspect, on demand, its records and facilities in so far as they relate to the certification activities and will cooperate in the conduct of such inspections; and

(4) Any additional information relevant to the applicant's qualifications, upon request of the Associate Administrator or a designated official.

(c) *UN Third-Party Packaging Certification Agency.* In addition to the requirements in paragraph (b) of this section, the application must include the following information:

(1) A listing, by DOT specification (or special permit) number, or U.N. designation, of the types of packagings for which certification authority is sought;

(2) A statement showing proof that the applicant has:

(i) The ability to review and evaluate design drawings, design and stress calculations;

(ii) The knowledge of the applicable regulations of subchapter C of this chapter and, when applicable, U.N. standards;

(iii) The ability to conduct or monitor and evaluate test procedures and results; and

(iv) The ability to review and evaluate the qualifications of materials and fabrication procedures.

(3) A statement that the applicant will perform its functions independent of the manufacturers and owners of the packagings concerned.

(4) If the applicant's principal place of business is in a country other than the United States, a copy of the designation from the Competent Authority of that country delegating to the applicant an approval or designated agency authority for the type of packaging for which a DOT designation is sought, and a statement that the Competent Authority also delegates similar authority to U.S. Citizens or organizations having designations under this subpart from PHMSA.

(d) *Fireworks Certification Agency.* Prior to reviewing, and certifying Division 1.4G consumer fireworks (UN0336) for compliance with the APA Standard 87–1 (IBR, see § 171.7 of this chapter) as specified in part 173 of this chapter, a person must apply to, and be approved by, the Associate Administrator to act as an Fireworks Certification Agency.

(1) *Fireworks Certification Agency applicant requirements.* The Fireworks Certification Agency applicant must—

(i) Be a U.S. citizen, or for non-U.S. citizens, have a designated U.S. agent representative as specified in § 105.40;

(ii) Employ personnel with work experience in manufacturing or testing of Division 1.4G consumer fireworks; or a combination of work experience in manufacturing or testing of Division 1.4G consumer fireworks and a degree in the physical sciences or engineering from an accredited university;

(iii) Have the ability to:

(A) Review design drawings, and applications to certify that they are in accordance with the APA Standard 87–1; and

(B) Verify that the applicant has certified the thermal stability test procedures and results.

(iv) Must be independent of and not owned by any consumer fireworks manufacturer, distributor, import or export company, or proprietorship.

(2) *Fireworks Certification Agency application submittal requirements.* In addition to the requirements of paragraphs (b) and (d)(1) of this section, the Fireworks Certification Agency application must include—

(i) Name, address, and country of each facility where Division 1.4G consumer fireworks applications are reviewed and certified;

(ii) A detailed description of the qualifications of each individual the applicant proposes to employ to review, and certify that the requirements specified by part 173 of this chapter and the APA Standard 87–1 have been met;

(iii) Written operating procedures to be used by the Fireworks Certification Agency to review and certify that a Division 1.4G consumer fireworks application meets the requirements specified in the APA Standard 87–1;

(iv) Name, address, and principal business activity of each person having any direct or indirect interest in the applicant greater than three percent and any direct or indirect ownership interest in each subsidiary or division of the applicant; and

(v) A statement that the applicant will perform its functions independent of the manufacturers, transporters, importers, and owners of the fireworks.

(e) *Lighter Certification Agency.* Prior to examining and testing lighters (UN1057) for compliance with the requirements of § 173.308 of this chapter a person must apply to, and be approved by, the Associate Administrator to act as a lighter certification agency. In addition to paragraph (b) of this section, the application must include the following information:

(1) Name and address of each facility where lighters are examined and tested; and

(2) Detailed description of the applicant's qualifications and ability to, examine and test lighters and certify that the requirements specified by § 173.308 of this chapter have been met.

(f) *Portable tank and MEGC Certification Agencies.* Prior to inspecting portable tanks or multi-element gas containers (MEGCs) for compliance with the requirements of § 180.605(k) of this chapter, requirements for periodic testing, inspection and repair of portable tanks, and § 178.74 of this chapter, approval of MEGCs, a person must apply to, and be approved by, the Associate Administrator to act as a certification agency. In addition to paragraph (b) of this section, the application must provide the following information:

(1) Name and address of each facility where the portable tank or MEGC is examined and tested; and

(2) Detailed description of the applicant's qualifications and ability to, examine and test portable tanks or MEGCs and certify that the requirements specified by § 178.273 of this chapter, specifications for UN portable tanks, or § 178.74 of this chapter, approval of MEGCs, of this chapter have been met.

■ 3. In § 107.403 the section heading and paragraph (c) are revised, and paragraph (d) is added to read as follows.

§ 107.403 Designation of certification agencies.

* * * * *

(c) Within 30 days of an initial denial of an application under paragraph (b) of this section, the applicant may file an amended application. If the application is denied by the Associate Administrator of Hazardous Materials Safety, the applicant may, within 20 days of receipt of the decision, request reconsideration by the Associate Administrator as set forth in § 107.715. If the reconsideration is denied by the Associate Administrator, the applicant may appeal the Associate Administrator's decision, within 30 days of the Associate Administrator's decision, to the Administrator of PHMSA, as specified in § 107.717.

(d) The Associate Administrator may modify, suspend, or terminate an approval submitted under this subpart as set forth in § 107.713.

■ 4. Section 107.405 is removed and reserved to read as follows:

§ 107.405 [Reserved]

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 5. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 6. In § 171.8, add new definition for ''FC number'' in appropriate alphabetical sequence to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

FC number means a number preceded by the prefix ''FC'', assigned by a Fireworks Certification Agency to a Division 1.4G Consumer firework device that has been certified under the provisions of § 173.65 of this subchapter.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 7. The authority citation for part 172 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 8. In § 172.101, the Hazardous Materials Table is amended by revising entries under ''[REVISE]'' in the appropriate alphabetical sequence to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REVISE].												
	*		*	*		*	*		*	*			
	Fireworks	1.4G	UN 0336	II	1.4G	108, 200	None	62	None	Forbidden	75 kg	02	25
	*		*	*		*	*		*	*			

■ 9. In § 172.102(c)(1), Special Provision 200 is added in numerical sequence to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

200 Division 1.4G consumer fireworks may be certified for transportation by a DOT-approved Fireworks Certification Agency in accordance with the provisions of § 173.65 of this subchapter.

* * * * *

■ 10. In § 172.320, paragraph (b) and paragraph (d) are revised to read as follows:

§ 172.320 Explosive hazardous materials.

* * * * *

(b) Except for fireworks approved in accordance with § 173.64 of this subchapter, a package of Class 1 materials may be marked as follows, in lieu of the EX number required by paragraph (a) of this section:

(1) With a national stock number issued by the Department of Defense or identifying information, such as a product code required by regulations for commercial explosives specified in 27 CFR part 555, if the national stock number or identifying information can be specifically associated with the EX number assigned; or

(2) For Division 1.4G consumer fireworks reviewed by a Fireworks Certification Agency approved in accordance with 49 CFR part 107 subpart E and certified in accordance with § 173.65, with the FC number assigned by a DOT-approved Fireworks Certification Agency.

* * * * *

(d) The requirements of this section do not apply if the EX number, FC number, product code or national stock number of each explosive item described under a proper shipping description is shown in association with the shipping description required by § 172.202(a). Product codes and national stock numbers must be traceable to the specific EX number assigned by the Associate Administrator or FC number assigned by a DOT-approved Fireworks Certification Agency.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 11. The authority citation for part 173 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 12. In § 173.56, the introductory text for paragraph (b) is revised to read as follows, and paragraph (j) is removed and reserved.

§ 173.56 New explosives—definitions and procedures for classification and approval.

* * * * *

(b) Examination, classification and approval. Except as provided in §§ 173.64 and 173.65, no person may offer a new explosive for transportation unless that person has specified to the examining agency the ranges of composition of ingredients and compounds, showing the intended manufacturing tolerances in the composition of substances or design of articles which will be allowed in that material or device, and unless it has been examined, classed and approved as follows:

* * * * *

(j) [Reserved]

* * * * *

■ 13. In § 173.59, add new definition for ''consumer firework'' in appropriate alphabetical sequence to read as follows:

§ 173.59 Description of terms for explosives.

* * * * *

Consumer firework. Any finished firework device that is in a form intended for use by the public that complies with any limits and requirements of the APA Standard 87–1 (IBR, see § 171.7 of this subchapter) and the construction, performance, chemical composition, and labeling requirements codified by the U.S. Consumer Product Safety Commission in 16 CFR parts 1500 and 1507. A consumer firework does not include firework devices, kits or components banned by the U.S. Consumer Product Safety Commission in 16 CFR 1500.17 (a)(8).

* * * * *

■ 14. Add new § 173.64 to subpart C to read as follows:

§ 173.64 Exceptions for Division 1.3 and 1.4 fireworks.

(a) Notwithstanding the requirements of § 173.56(b), Division 1.3 and 1.4 fireworks (see § 173.65 for Division 1.4G consumer fireworks) may be classed and approved by the Associate Administrator without prior examination and offered for transportation if the following conditions are met:

(1) The fireworks are manufactured in accordance with the applicable requirements in APA Standard 87–1 (IBR, see § 171.7 of this subchapter);

(2) The device must pass a thermal stability test conducted by a third-party laboratory, or the manufacturer. The test must be performed by maintaining the device, or a representative prototype of a large device such as a display shell, at a temperature of 75 °C (167 °F) for 48 consecutive hours. When a device contains more than one component, those components that could be in physical contact with each other in the finished device must be placed in contact with each other during the thermal stability test;

(3) The manufacturer applies in writing to the Associate Administrator following the applicable requirements in APA Standard 87–1, and is notified in writing by the Associate Administrator that the fireworks have been classed, approved, and assigned an EX number. Each application must be complete and include all relevant background data and copies of all applicable drawings, test results, and any other pertinent information on each device for which approval is being requested. The manufacturer must sign the application and certify that the device for which approval is requested conforms to APA Standard 87–1, that the descriptions and technical information contained in the application are complete and accurate, and that no duplicate application has been submitted to a fireworks certification agency. If the application is denied, the manufacturer will be notified in writing of the reasons for the denial. The Associate Administrator may require that the fireworks be examined by an agency listed in § 173.56(b)(1).

(b) [Reserved]

■ 15. Add new § 173.65 to subpart C to read as follows.

§ 173.65 Exceptions for Division 1.4G consumer fireworks.

(a) Notwithstanding the requirements of §§ 173.56(b), 173.56(f), 173.56(i), and 173.64, Division 1.4G consumer fireworks may be offered for transportation provided the following conditions are met:

(1) The fireworks are manufactured in accordance with the applicable requirements in APA Standard 87–1 (IBR, see § 171.7 of this subchapter);

(2) The device must pass a thermal stability test. The test must be performed by maintaining the device, or a representative prototype of the device, at a temperature of 75 °C (167 °F) for 48 consecutive hours. When a device contains more than one component,

those components that could be in physical contact with each other in the finished device must be placed in contact with each other during the thermal stability test;

(3) The manufacturer of the Division 1.4G consumer firework applies in writing to a DOT-approved Fireworks Certification Agency, and is notified in writing by the DOT-approved Fireworks Certification Agency that the firework has been:

(i) Certified that it complies with APA Standard 87–1, and meets the requirements of this section; and

(ii) Assigned an FC number.

(4) The manufacturer's application must be complete and include:

(i) Detailed diagram of the device;

(ii) Complete list of the chemical compositions, formulations and quantities used in the device;

(iii) Results of the thermal stability test; and

(iv) Signed certification declaring that the device for which certification is requested conforms to the APA Standard 87–1, that the descriptions and technical information contained in the application are complete and accurate, and that no duplicate applications have been submitted to PHMSA. If the application is denied, the Fireworks Certification Agency must notify the manufacturer in writing of the reasons for the denial. As detailed in the DOT-approval issued to the Fireworks Certification Agency, following the issuance of a denial from a Fireworks Certification Agency, a manufacturer may seek reconsideration from the Fireworks Certification Agency, or may appeal the reconsideration decision of the Fireworks Certification Agency to PHMSA's Administrator.

(b) *Recordkeeping requirements.* Following the certification of each Division 1.4G consumer firework as permitted by paragraph (a) of this section, the manufacturer and importer must maintain a paper record or an electronic image of the certificate, demonstrating compliance with this section. Each record must clearly provide the unique identifier assigned to the firework device and the Fireworks Certification Agency that certified the device. The record must be accessible at or through its principal place of business and be made available, upon request, to an authorized official of a Federal, State, or local government agency at a reasonable time and location. Copies of certification records must be maintained by each importer, manufacturer, or a foreign manufacturer's U.S. agent, for five (5) years after the device is imported. The certification record must be made available to a representative of PHMSA upon request.

Issued in Washington, DC, on July 11, 2013, under authority delegated in 49 CFR part 106.

Cynthia L. Quarterman

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–16986 Filed 7–15–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120109034–2171–01]

RIN 0648–XC737

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trip Limit Adjustment for the Common Pool Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; closure.

SUMMARY: This action decreases the landing limit for Southern New England/Mid-Atlantic (SNE/MA) winter flounder for Northeast multispecies common pool vessels for the remainder of the 2013 fishing year (FY). This action also closes the Gulf of Maine (GOM) haddock Trimester Total Allowable Catch Area (TAC) for the remainder of Trimester 1, through August 31, 2013, because the common pool fishery has caught 147 percent of its Trimester 1 TAC for GOM haddock. This action is intended to prevent the overharvest of the common pool's allocation of SNE/MA winter flounder and GOM haddock.

DATES: The trip limit decrease for SNE/MA winter flounder is effective July 16, 2013 through April 30, 2014. The closure of the GOM haddock Trimester TAC Area is effective July 16, 2013, through August 31, 2013.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fishery Management Specialist, 978–675–2153, Fax 978–281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the Northeast (NE) multispecies fishery are found at 50 CFR part 648, subpart F. The regulations authorize the Regional Administrator (RA) to adjust the possession limits for common pool vessels in order to optimize the harvest of NE regulated multispecies by preventing the overharvest or underharvest of the pertinent common pool sub-annual catch limits (ACLs). Based on data reported through June 19, 2013, the common pool fishery has caught approximately 53 percent of its FY 2013 SNE/MA winter flounder allocation of 136 mt (299,829 lb). The current trip limit for SNE/MA winter flounder is 5,000 lb (2,268 kg) per day-at-sea (DAS), and up to 15,000 lb (6,804 kg) per trip for common pool vessels. However, recent analysis shows that the common pool would likely exceed its FY 2013 allocation for SNA/MA winter flounder if the trip limit is not reduced. As a result, the trip limit is reduced to 1,000 lb (453.6 kg) per trip for all common pool vessels. The trip limit adjustment is effective July 16, 2013, through April 30, 2014.

The regulations also require the RA to close the Trimester TAC Area for a stock when 90 percent of the Trimester TAC is projected to be caught. The Trimester TAC Area for a stock will close to all common pool vessels fishing with gear capable of catching that stock for the remainder of the trimester. Any overages of a trimester TAC will be deducted from Trimester 3, and any overages of the common pool's sub-ACL at the end of the FY will be deducted from the common pool's sub-ACL the following FY. Any uncaught portion of the Trimester 1 and Trimester 2 TAC will be carried over into the next trimester. Any uncaught portion of the common pool's sub-ACL may not be carried over into the following FY.

The FY 2013 common pool sub-ACL for GOM haddock is 2 mt (4,409 lb), and the Trimester 1 TAC is 0.5 mt (1,102 lb). Because there are relatively few common pool vessels, and the Trimester 1 TAC for GOM haddock is so small, it was difficult to project when 90 percent of the Trimester TAC would be reached. Based on the most recent data, which include vessel trip reports (VTRs), dealer reported landings, and vessel monitoring system (VMS) information, NMFS has projected that 147 percent of the Trimester 1 TAC for GOM haddock has been caught. Therefore, effective July 16, 2013, the GOM haddock Trimester TAC Area is closed for the remainder of Trimester 1, through August 31, 2013, to all common pool vessels fishing with trawl gear, sink gillnet gear, and longline/hook gear. The GOM haddock Trimester TAC Area will reopen to common pool vessels fishing with trawl, sink gillnet, and longline/hook gear at the beginning of Trimester 2, on September 1, 2013. Any overage of the Trimester 1 TAC for GOM haddock

will be deducted from the Trimester 3 TAC for the stock.

Catch will continue to be monitored through VTRs, dealer-reported landings, VMS catch reports, and other available information, and if necessary, additional adjustments to common pool management measures may be made.

Classification

This action is required by 50 CFR part 648, and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. Pursuant to 5 U.S.C. 553(d)(3), the AA also finds good cause to waive the 30-day delayed effectiveness period.

The regulations at § 648.86(o) grant the RA authority to adjust the NE multispecies trip limits for common pool vessels in order to prevent the overharvest or underharvest of the pertinent common pool sub-ACLs. In addition, the regulations require the RA to close a trimester TAC area when 90 percent of the respective Trimester TAC has been caught by common pool vessels. The catch data used as the basis for this action only recently became available. The available analysis indicates that if the SNE/MA winter flounder trip limit is not reduced quickly, the common pool fishery would likely exceed its FY 2013 allocation for this stock. In addition, the recent catch data show that the common pool fishery has already exceeded its Trimester TAC for GOM haddock. As a result, this action reduces the probability of the common pool fishery exceeding its sub-ACLs for SNE/MA winter flounder and GOM haddock. Any overages of the common pools sub-ACLs for these stocks would undermine conservation objectives and trigger the implementation of accountability measures that would have negative economic impacts on the common pool vessels. As a result, the time necessary to provide for prior notice and comment, and a 30-day delay in effectiveness, would prevent NMFS from implementing the necessary trip limit adjustment and Trimester TAC closure in a timely manner, which could undermine conservation objectives of the NE Multispecies Fishery Management Plan, and cause negative economic impacts to the common pool fishery.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 11, 2013.

Galen Tromble,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–17034 Filed 7–15–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 78, No. 136

Tuesday, July 16, 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.

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2012–BT–TP–0016]

RIN 1904–AC76

Energy Conservation Program for Consumer Products: Test Procedures for Refrigerators, Refrigerator-Freezers, and Freezers

Correction

In proposed rule document 2013–16281, appearing on pages 41610–41675 in the issue of Wednesday, July 10, 2013, make the following correction:

On page 41610, in the second column, in the third paragraph, in the first and second lines, the electronic-mail address in item number ''2.'' that reads ''*#Res-Refrig-Freezer-2012-BT-TP-0016@ee.doe.gov.*'' should read ''*Res-Refrig-Freezer-2012-BT-TP-0016@ee.doe.gov.*''

[FR Doc. C1–2013–16281 Filed 7–15–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.: FAA–2013–0142; Notice No. 25–139]

RIN 2120–AK12

Harmonization of Airworthiness Standards—Gust and Maneuver Load Requirements

Correction

In proposed rule document 2013–12445 appearing on pages 31851–31860 in the issue of Tuesday, May 28, 2013, make the following corrections:

§ 25.341 [Corrected]

1. In the second column, in the twelfth line from the bottom, the entry ''$U_{\sigma\rho\varepsilon\varphi}$'' should read ''$U_{\sigma ref}$''.

In a correction to the above referenced document, C1–2013–12445, appearing on page 37722, in the issue of Monday, June 24, 2013, make the following correction:

§ 25.341 [Corrected]

2. In the third column, on lines eight and nine the entry ''$U_{\sigma\rho\varepsilon\varphi}$'' should read: ''$U_{\sigma ref}$''.

[FR Doc. C2–2013–12445 Filed 7–15–13; 8:45 am]

BILLING CODE 1505–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2013–0174: FRL–9834–2]

Approval and Promulgation of Implementation Plans; Washington: Puget Sound Clean Air Agency Regulatory Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve several revisions to Washington's State Implementation Plan (SIP) submitted by the Washington State Department of Ecology (Ecology) on February 4, 2005 and August 2, 2006. The submissions contain revisions to the Puget Sound Clean Air Agency (PSCAA or PS Clean Air) regulations approved by the PSCAA Board in 2003, 2004, and 2005.

DATES: Comments must be received on or before August 15, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2013–0174, by one of the following methods:

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

B. *Mail:* Jeff Hunt, EPA, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101

C. *Email: R10-Public_Comments@epa.gov*

D. *Hand Delivery:* EPA, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Jeff Hunt, Office of Air Waste, and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2013–0174. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information that is restricted by statute from disclosure. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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 that is restricted by statute from disclosure. 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 at *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, (206) 553–0256; or by email at *hunt.jeff@epa.gov*
mailto:body.steve@epa.gov

SUPPLEMENTARY INFORMATION:

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I. This Action

Title I of the Clean Air Act (CAA), as amended by Congress in 1990, specifies the general requirements for states to submit SIPs to attain and maintain the National Ambient Air Quality Standards (NAAQS) and the EPA's actions regarding approval of those SIPs. As described in more detail in the following section, the EPA is proposing action on several revisions to the Washington SIP. We are proposing to approve and incorporate by reference into the SIP revisions to the PSCAA regulations found in Regulation I, Section 12.03 ''Continuous Emission Monitoring Systems'' adopted September 23, 2004; Regulation II, Section 1.05 ''Special Definitions'' adopted July 24, 2003; and Regulation II, Section 3.04 ''Motor Vehicle and Mobile Equipment Coating Operations'' adopted July 24, 2003. The EPA is also proposing to remove from the Washington SIP Regulation II, Section 3.11 ''Coatings and Ink Manufacturing'' repealed February 24, 2005. Lastly, the EPA is proposing to take no action on revisions to PSCAA Regulation I, Article 13 ''Solid Fuel Burning Device Standards''; Regulation I, Section 3.11 ''Civil Penalties''; Regulation I, Section 3.25 ''Federal Regulation Reference Date''; and Regulation II, Section 2.07 ''Gasoline Dispensing Facilities'' contained in Ecology's February 4, 2005 and August 2, 2006 submissions because those regulations were subsequently revised by PSCAA.

II. Why are we proposing to approve these revisions?

We are proposing to approve the SIP revisions submitted by Ecology on February 4, 2005 and August 2, 2006, because they serve to clarify and strengthen the State's existing SIP and are consistent with the CAA requirements. A more detailed explanation of the basis for our proposed action is provided below and in the materials included in the docket.

A. The EPA's Review of PSCAA Regulation I, Section 12.03 ''Continuous Emission Monitoring System'' Adopted September 23, 2004

EPA last approved Regulation I, Section 12.03 ''Continuous Emission Monitoring System'' on August 31, 2004, based on the PSCAA regulations adopted April 9, 1998 (69 FR 53007). As part of the review for that action, the EPA raised two concerns regarding the version adopted in 1998. First, the EPA was concerned that exemption language contained in subsection 12.03(b)(1) referring to ''demonstrates to the Control Officer'' could be construed to limit the EPA's independent enforcement authority (69 FR 53008). At that time, the PSCAA satisfied the EPA's concern by submitting a letter clarifying that the control officer's determination is not binding on the EPA or citizens in an enforcement action. A footnote in the EPA's final approval states, ''To avoid any ambiguity regarding the issue in the future, PS Clean Air has advised EPA that it will make clarifying changes to Subsection 12.03(b)(1) within the next six months to remove the language 'to the Control Officer.' The EPA supports this clarifying change.'' The EPA's second concern was related to subsection 12.03(b)(2) of the PSCAA regulations as they existed at that time. The EPA determined that exemption language contained in subsection 12.03(b)(2) ''would authorize PS Clean Air to modify standards or requirements relied on to attain and maintain the NAAQS by granting an exemption or alternative to such requirements without going through a SIP revision and, as such, is not approvable'' (69 FR 17370). In the EPA's final rulemaking, we specifically excluded subsection 12.03(b)(2) from the approved SIP.

The revised PSCAA regulations in Ecology's February 4, 2005 SIP submittal address both concerns. First, a revised version of Regulation I, Section 12.03 ''Continuous Emission Monitoring System,'' adopted September 23, 2004, follows up on PSCAA's commitment to remove the 'to the Control Officer' language previously identified by the EPA as a concern in subsection 12.03(b)(1). Second, PSCAA eliminated subsection 12.03(b)(2) in response to the EPA's concern that the previous exemption language lacked explicit standards. Based on our review of the changes, the EPA is now proposing to approve all of Regulation I, Section 12.03 as meeting the requirements of the CAA.

B. The EPA's Review of PSCAA Regulation II, Section 1.05 ''Special Definitions'' and Regulation II, Section 3.04 ''Motor Vehicle and Mobile Equipment Coating Operations'' Adopted July 24, 2003

Ecology's February 4, 2005 submittal includes revisions to PSCAA Regulation II, Section 3.04 ''Motor Vehicle and Mobile Equipment Coating Operations'' adopted July 24, 2003. The submittal also includes changes to Regulation II, Section 1.05 ''Special Definitions'' corresponding to the changes in Section 3.04. EPA last approved Regulation II, Section 3.04 ''Motor Vehicle and Equipment Coating Operations'' on June 29, 1995, based on the PSCAA regulations adopted December 9, 1993 (60 FR 33734). PSCAA adopted these regulations to control volatile organic compound (VOC) emissions from original vehicle coating and vehicle refinishing. Following adoption of the PSCAA rules, the EPA issued a new federal rule to regulate automobile refinishing on September 11, 1998 (40 CFR Parts 9 and 59—National VOC Emissions Standards for Auto Refinishing Coatings). Because the new federal automobile refinishing rule was more stringent than the existing PSCAA regulations, the PSCAA Board modified Section 3.04 to apply only to original equipment manufacturers, relying on the more stringent federal standards for auto refinishing. Similarly, the PSCAA Board revised Section 1.05 ''Special Definitions'' to be consistent with Section 3.04, as well as other minor definition changes. More detailed analyses and strikeout versions of exact changes are included in Ecology's February 4, 2005 submittal, contained in the docket for this action. In the regulation revision impact analysis, PSCAA estimated that relying on ''(t)he EPA refinishing rule should reduce emissions from auto refinishing within the Agency's jurisdiction by about 113 tons VOC per year over the Agency's current rule. This is a 12% reduction in auto refinishing emissions.'' The EPA reviewed these changes and is proposing to approve Regulation II, Sections 1.05 and 3.04 as meeting the requirements of the CAA.

C. The EPA's Review of PSCAA Regulation II, Section 3.11 ''Coatings and Ink Manufacturing'' Repealed February 24, 2005

The EPA last approved PSCAA Regulation II, Section 3.11 ''Coatings and Ink Manufacturing'' on March 20, 1997, based on PSCAA regulations adopted April 11, 1996 (62 FR 13331). PSCAA originally adopted these

regulations in 1991 to reduce VOC emissions from coating and ink manufactures. As a requirement of the 1990 CAA Amendments, the EPA published new Maximum Achievable Control Technology (MACT) standards for miscellaneous coating manufacturing that were much more stringent than the existing PSCAA regulations (National Emission Standards for Hazardous Air Pollutants (NESHAP): Miscellaneous Coating Manufacturing, December 11, 2003, 68 FR 69164, MACT Subpart HHHHH). In 2005, the PSCAA Board repealed Regulation II, Section 3.11, and is implementing and enforcing the more stringent MACT Subpart HHHHH NESHAP under a delegation agreement with the EPA. A copy of PSCAA's NESHAP delegation agreement with EPA is included in the docket. The EPA and PSCAA have concurrent enforcement authority for MACT Subpart HHHHH. The EPA is therefore proposing to approve Ecology's August 2, 2006 request to remove Regulation II, Section 3.11 ''Coatings and Ink Manufacturing'' from the SIP.

III. Summary of Action

The EPA is proposing to approve, and incorporate by reference into the SIP, revisions to the PSCAA regulations found in Regulation I, Section 12.03 ''Continuous Emission Monitoring Systems'' adopted September 23, 2004; Regulation II, Section 1.05 ''Special Definitions'' adopted July 24, 2003; and Regulation II, Section 3.04 ''Motor Vehicle and Mobile Equipment Coating Operations'' adopted July 24, 2003, because they are consistent with CAA requirements. The EPA is proposing to remove from the Washington SIP Regulation II, Section 3.11 ''Coatings and Ink Manufacturing,'' because these emission sources are covered by more stringent federal standards. Lastly, the EPA is proposing to take no action on revisions to PSCAA Regulation I, Article 13 ''Solid Fuel Burning Device Standards''; Regulation I Section 3.11 ''Civil Penalties''; Regulation I Section 3.25 ''Federal Regulation Reference Date''; and Regulation II Section 2.07 ''Gasoline Dispensing Facilities'' contained in Ecology's February 4, 2005 and August 2, 2006 submittals because these regulations were subsequently revised by PSCAA.

IV. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law. The SIP is not approved to apply in Indian country located in the State, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989,* 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area and EPA is therefore approving this SIP on such lands. Consistent with EPA policy, the EPA nonetheless provided a consultation opportunity to the Puyallup Tribe in a letter dated June 6, 2013. The EPA did not receive a request for consultation.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Volatile organic compounds.

Dated: July 2, 2013.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2013–17007 Filed 7–15–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0413; FRL–9834–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The Commonwealth of Pennsylvania made a submittal addressing the infrastructure requirements for the 2008 lead NAAQS. This action proposes approval of portions of the submittal. This action is being taken under the CAA.

DATES: Written comments must be received on or before August 15, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0413 by one of the following methods:

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

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0413, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2013–0413. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by email at *knapp.ruth@epa.gov.*

SUPPLEMENTARY INFORMATION: On September 24, 2012, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 lead NAAQS.

I. Background

On October 15, 2008, EPA substantially strengthened the primary and secondary lead NAAQS (hereafter the ''2008 lead NAAQS''), revising the level of the primary (health-based) standard from 1.5 micrograms per cubic meter (μg/m^3) to 0.15 μg/m^3, measured as total suspended particles (TSP) and not to be exceeded with an averaging time of a rolling 3-month period. EPA also revised the secondary (welfare-based) standard to be identical to the primary standard, as well as the associated ambient air monitoring requirements. *See* 40 CFR 50.16.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS or within such shorter period as EPA may prescribe. The contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(1) provides the procedural and timing requirements for SIPs and section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. More specifically, section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS.

For the 2008 lead NAAQS, states typically have met many of the basic program elements required in CAA section 110(a)(2) through earlier SIP submissions in connection with previous lead NAAQS. Nevertheless, pursuant to CAA section 110(a)(1), states have to review and revise, as appropriate, their existing lead NAAQS SIPs to ensure that the SIPs are adequate to address the 2008 lead NAAQS. To assist states in meeting this statutory requirement, EPA issued a guidance on October 14, 2011, entitled, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (hereafter the ''2011 Lead Infrastructure Guidance''), which lists the basic elements that states should include in their SIPs for the 2008 lead NAAQS.

II. Summary of SIP Revision

On September 24, 2012, PADEP provided a submittal to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 lead NAAQS. This submittal addresses the following infrastructure elements, which EPA is proposing to approve: CAA section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. EPA is taking separate action on the portion of (E)(ii) as it relates to CAA section 128 (State Boards). Pennsylvania did not submit element (I) which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process.

In accordance with the decision of the U.S. Court of Appeals for the DC Circuit, the EPA at this time is not treating the 110(a)(2)(D)(i)(I) SIP submission from the Commonwealth of Pennsylvania as a required SIP submission. *See EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7 (DC Cir. 2012), *reh'g denied* 2013 U.S. App. LEXIS 1623 (Jan. 24. 2013). However, even if the submission is not considered to be ''required,'' the EPA must act on the 110(a)(2)(D)(i)(I) SIP submission from Pennsylvania because section 110(k)(2) of the CAA requires the EPA to act on all SIP submissions. Unless the *EME Homer City* decision is

reversed or otherwise modified by the Supreme Court, states are not required to submit 110(a)(2)(D)(i)(I) SIPs until the EPA has quantified their obligations under that section. In this action, EPA is proposing to act on the Commonwealth of Pennsylvania's 110(a)(2)(D)(i)(I) submission.

III. Proposed Action

EPA is proposing to approve the following section 110(a)(2) elements of Pennsylvania's SIP revision: (A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. EPA will take separate action on section 110(a)(2)(E)(ii). Pennsylvania's SIP revision provides the basic program elements specified in CAA section 110(a)(2) necessary to implement, maintain, and enforce the 2008 lead NAAQS. This SIP revision was submitted on September 24, 2012. This action does not include section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule, which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2008 lead NAAQS for the Commonwealth of Pennsylvania, 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, Incorporation by reference, Lead, Reporting and recordkeeping requirements.

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

Dated: July 2, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–17020 Filed 7–15–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[Docket No. EP 719]

Small Entity Size Standards Under the Regulatory Flexibility Act

AGENCY: Surface Transportation Board (Board or STB), DOT.

ACTION: Notice of proposed size standards for purposes of the Regulatory Flexibility Act (RFA) and request for public comment.

SUMMARY: The Board is proposing to define ''small business'' for the purpose of RFA analyses as including only those rail carriers with revenues that would bring them within the definition of a Class III rail carrier.

DATES: Comments are due by August 15, 2013.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245–0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The RFA requires agencies to consider the impact of their regulatory proposals on small entities. The RFA defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [1] 5 U.S.C. 601(6). Generally, a small business is a business concern that is independently owned and operated, and is not dominant in its field of operation. 5 U.S.C. 601(3); 15 U.S.C. 632. The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act. An agency may establish other definitions for ''small business'' that are appropriate to the agency's activities after consultation with the SBA's Office of Advocacy and opportunity for public comment. 5 U.S.C. 601(3).

Pursuant to its statutory authority, the SBA promulgated regulations that clarify the term ''small business'' by industry, using number of employees or annual income as criteria. Under these regulations, line-haul railroads with 1,500 or fewer employees and short line railroads with 500 or fewer employees constitute small entities. 13 CFR 121.201 (industry subsector 482). The Board proposes to establish a size standard for purposes of RFA analysis for rail carriers subject to our jurisdiction based on annual operating revenues rather than number of employees.

The Board was created by the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), on January 1, 1996, to assume some functions of the Interstate Commerce Commission (ICC), which was terminated by that same Act.

[1] The RFA defines ''small organization'' as meaning ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field . . . ,'' and ''small governmental jurisdiction'' as meaning ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. . . .'' 5 U.S.C. 601(4) & (5).

The majority of the functions that the Board assumed are related to the regulation of freight railroads. The ICC had previously developed a classification system for freight railroads based on annual operating revenue, pursuant to which railroads were classified as Class I, II, or III. This classification system was used by the ICC as early as 1911, and the Board continues to use it in the administration of its duties. Currently, the Board's regulations define Class I rail carriers as having operating revenues of $250 million or more, Class II rail carriers as having less than $250 million but in excess of $20 million, and Class III rail carriers as having $20 million or less, after applying the railroad revenue deflator formula. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its Web site.

This classification system is used pervasively by the Board and the railroad industry to identify rail entities by size. The Board's governing statute, its precedent, and its regulations often impose different requirements depending on the class of carrier involved. In 2003, the Federal Railroad Administration acknowledged the soundness of this system when it adopted, after consultation with the SBA's Office of Advocacy and opportunity for public comment, a definition of small entity for RFA purposes as including only those rail carriers with revenues that would bring them within the Class III definition. 68 FR 24,891 (2003); *see also* 62 FR 43,024 (1997). The SBA's Office of Advocacy has been consulted with respect to the Board's decision to use this system for the purpose of RFA analyses. The Board proposes to define ''small business'' as including only those rail carriers with revenues that would bring them within the Class III definition. The Board believes that this definition is more realistic and useful than the general definitions previously established by the SBA, and it is consistent with the practices of the Federal Railroad Administration.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments are due by August 15, 2013.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

3. Notice of this decision will be published in the **Federal Register**.

4. This decision is effective on its service date.

Decided: July 11, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–17022 Filed 7–15–13; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register

Vol. 78, No. 136

Tuesday, July 16, 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 AGRICULTURE

Forest Service

Notice of New Recreation Fees; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Manti-La Sal National Forest, Forest Service, USDA.

ACTION: Notice of New Recreation Fees.

SUMMARY: The Manti-La Sal National Forest is proposing to add the Orange Olsen Administrative Site facilities into the recreation rental program. The facilities proposed for the recreation rental program include: (1) Orange Olsen Dwelling and (2) Orange Olsen Bunkhouse with four trailer pads. The proposal is to charge $60.00 per night at the Dwelling and $40.00 per night at the Bunkhouse. The fee for the Bunkhouse would also include four trailer pads with water and sewer hookups. Visitors will have the option of reserving the Dwelling or the Bunkhouse separately, or the entire site. Fees are assessed based on the level of amenities and services provided, cost of operation and maintenance, and market comparison. Funds from fees would be retained locally and used for the operations and maintenance, and future improvements including historical information on the cabins.

The Orange Olsen Dwelling has a front room, two bedrooms (sleeping up to six people), kitchen, and bathroom with shower. An accessible ramp provides entrance to the back door of the facility. The Orange Olsen Bunkhouse has a combination kitchen/bedroom (sleeping up to four people), bathroom with shower, and four trailer pads with water and sewer hookups. Both of the buildings have photovoltaic (solar) lighting, propane fueled appliances, water, and sewer.

DATES: Send any comments about these fee proposals by December 31, 2013 so comments can be compiled, analyzed and shared with the Utah Bureau of Land Management Recreation Resource Advisory Committee (RRAC). If this fee proposal is approved, it is anticipated that the Orange Olsen Administrative Site facilities would become available for overnight rental in the summer of 2014.

ADDRESSES: Allen Rowley, Acting Forest Supervisor, Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 84501

FOR FURTHER INFORMATION CONTACT: Ann King, Public Service Group Leader, 435–636–3535 or email at *aking@fs.fed.us.* Information about the proposed new fees can also be found on the Manti-La Sal National Forest Web site: *http://www.fs.usda.gov/mantilasal/.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by the Utah Bureau of Land Management Recreation Resource Advisory Council (RRAC) prior to final decision and implementation by the Regional Forester, Intermountain Region, USDA Forest Service.

People wanting to reserve Orange Olsen Dwelling or Bunkhouse would need to do so through the National Recreation Reservation Service (NRRS), at www.recreation.gov or by calling 1–877–444–6777 when it becomes available. The NRRS charges a $9 fee for internet reservations and $10 fee for phone reservations.

Dated: July 9, 2013.

Allen Rowley,

Acting Forest Supervisor.

[FR Doc. 2013–17028 Filed 7–15–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Recreation Fee; Federal Lands Recreation Enhancement Act

AGENCY: Coronado National Forest, USDA Forest Service, Tucson, Arizona.

ACTION: Notice of new recreation fee.

SUMMARY: The Coronado National Forest is proposing to add the Portal CCC House and Portal Bunkhouse into the recreation rental program. The proposal is to charge $125.00 per night at the Portal CCC House and $100.00 per night at the Portal Bunkhouse. The Portal CCC House has two bedrooms (one with a futon couch, the second with a set of bunk beds), a single bathroom (with a shower), a small dining/living room combination, and a fully-equipped kitchen. It can accommodate up to five people. The Portal Bunkhouse has one bedroom (with a set of bunk beds and a small rollaway bed), a single bathroom (with a shower), and a small kitchen/dining room combination. It can accommodate up to four people. Both facilities have electric lights, heat, and running water.

Other cabin rentals on National Forests in Arizona have shown the public appreciates the enhanced recreational opportunity afforded by these rehabilitated historic structures. Revenues from the rentals will be used for the continued operation and maintenance of this facility and other properties in the Arizona ''Rooms with a View'' Cabin Rental Program.

DATES: Send any comments about these fee proposals by November 1, 2013, so comments can be compiled, analyzed, and shared with the BLM Arizona Recreation Resource Advisory Council (R–RAC). If this proposal is approved, it is anticipated that the Portal CCC House and Portal Bunkhouse would become available for overnight rental in the spring 2014.

ADDRESSES: Forest Supervisor, Coronado National Forest, 300 West Congress, Tucson, AZ 85701.

FOR FURTHER INFORMATION CONTACT: Kathy Makansi, Archaeologist, Coronado National Forest at (520) 760–2502 or by email at *kmakansi@fs.fed.us.* Information about the proposed new fees can also be found on the Coronado National Forest Web site: *http://www.fs.usda.gov/coronado.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by the Bureau of Land Management Arizona Recreation Resource Advisory Council

(R–RAC) prior to final decision and implementation by the Regional Forester, Southwest Region, USDA Forest Service.

The Coronado National Forest currently has four other cabin rental facilities, which are booked regularly throughout the year. The public has expressed interest in additional cabin rental opportunities on the Coronado National Forest.

People wanting to rent the Portal CCC House or Portal Bunkhouse would need to do so through the National Recreation Reservation Service at *www.recreation.gov,* or by calling 1–877–444–6777, The National Recreation Reservation Service charges a $9 reservation fee for online reservations and a $10 reservation fee for phone reservations.

Dated: July 8, 2013.

Jamie Kingsbury,

Deputy Forest Supervisor, Coronado National Forest.

[FR Doc. 2013–16931 Filed 7–15–13; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice: 2014 call for nominations.

SUMMARY: The National Urban and Community Forestry Advisory Council, (NUCFAC) will be filling five positions that will expire December 31, 2013. Interested applicants may download a copy of the application and position descriptions from the U.S. Department of Agriculture, Forest Service's Urban and Community Forestry Web site: *www.fs.fed.us/ucf/nucfac.*

DATES: Nomination(s) must be ''received'' (not postmarked) by August 31, 2013.

ADDRESSES: Nomination applications by courier should be addressed to: Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, RPE9, 1621 North Kent Street, Rosslyn, VA 22209. Please submit electronic nomination(s) to: *nucfac_ucf_proposals@fs.fed.us.* The subject line should read: 2014 NUCFAC Nominations.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff to the National Urban and Community Forestry Advisory Council, 1400 Independence Avenue SW., Yates Building (1 Central) MS–1151, Washington, DC, phone 202–205–7829.

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 Day Light Savings Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Facsimiles will not be accepted as official nominations. Email or courier service is recommended. Regular mail submissions must be screened by the Agency and may delay the receipt of the application.

A total of five positions will be filled. The following five positions will serve a 3-year term from January 1, 2014, to December 31, 2016:

- One of two members representing a national non-profit forestry and/or conservation citizen organization;
- A member representing State government;
- A member representing county government;
- A member representing urban forestry, landscape, and design consultants;
- A member representing a professional renewable natural resource or arboriculture society.

Dated: July 9, 2013.

Gregory Parham,

Assistant Secretary of Administration.

[FR Doc. 2013–16991 Filed 7–15–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines; Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funds availability.

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces its Public Television Station Digital Transition Grant Program application window for fiscal year (FY) 2013. The FY 2013 funding for the Public Television Station Digital Transition Grant Program is $2,775,327.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must carry proof of shipping no later than August 30, 2013 to be eligible for FY 2013 grant funding. Late applications are not eligible for FY 2013 grant funding.
- Electronic copies must be received by August 30, 2013 to be eligible for FY 2013 grant funding. Late applications are not eligible for FY 2013 grant funding.

ADDRESSES: You may obtain the application guide and materials for the Public Television Station Digital Transition Grant Program at the following sources:

- The Internet at *http://www.rurdev.usda.gov/UTP_DTV.html.*
- You may also request the application guide and materials from RUS by contacting the appropriate individual listed in Section VII of the **SUPPLEMENTARY INFORMATION** section of this notice.

Completed applications may be submitted the following ways:

- *Paper:* Submit completed paper applications for grants to the: Telecommunications Program, Rural Utilities Service, 1400 Independence Ave. SW., Room 2844, STOP 1550, Washington, DC 20250–1550. Applications should be marked ''Attention: Director, Advanced Services Division.''
- *Electronic:* Submit electronic grant applications to Grants.gov at the following Web address: *http://www.grants.gov/* (Grants.gov), and follow the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Petra Schultze, Financial Analyst, Advanced Services Division, Telecommunications Program, Rural Utilities Service, email: *petra.schultze@wdc.usda.gov,* telephone: (202) 690–4493, fax: (202) 720–1051. Additional point of contact: Norberto Esteves, Acting Director, Advanced Services Division at *norberto.esteves@wdc.usda.gov* or at same phone numbers listed previously.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Public Television Station Digital Transition Grant Program.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.861.

Dates: Deadline for completed grant applications submitted electronically or on paper.

Items in Supplementary Information

I. *Funding Opportunity:* Brief introduction to the Public Television Station Digital Transition Grant Program

II. *Award Information:* Maximum amounts

III. *Eligibility Information:* Who is eligible, what kinds of projects are eligible, and what criteria determine basic eligibility

IV. *Application and Submission Information:* Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, and items that are eligible

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VI. *Award Administration:* Award notice information, award recipient reporting requirements

VII. *Agency Contacts:* Web, phone, fax, email, contact name

I. Funding Opportunity

As part of the nation's transition to digital television, the Federal Communications Commission (FCC) required all television broadcasters to have converted their transmitters to broadcast digital signals by June 12, 2009. While stations must broadcast their main transmitter signal in digital, many rural stations have yet to complete a full digital transition of their stations across all equipment. Rural stations often have translators serving small or isolated areas and some of these have not completed the transition to digital.

The 2009 FCC deadline did not apply to translators, and in 2011 the FCC adopted a final deadline for analog-to-digital conversion of all translators by September 1, 2015. Because of this, translators have been allowed to continue broadcasting in analog, and stations are still in the process of converting some of their translators to digital. Some rural stations also have not fully converted their production and studio equipment to digital, which has impaired their ability to provide the same quality local programming that they provided in analog. The digital transition has also created some service gaps where households that received an analog signal are now unable to receive a digital signal. For rural households the digital transition has meant in some cases diminished over-the-air public television service. These rural households are the focus of the Agency's Public Television Station Digital Transition Grant Program.

Most applications to the Public Television Station Digital Transition Grant Program have sought assistance towards the goal of replicating analog coverage areas through transmitter and translator transitions. The first priority has been to initiate digital broadcasting from their main transmitters. As many stations have completed the digital transition of their transmitters, the focus has shifted to power upgrades and translators, as well as digital program production equipment and multicasting/data casting equipment. There are some rural stations that may need to install translators to provide fill-in service to areas that previously received analog but are now unable to receive digital. In FY 2012, 10 awards were made, including the following project purposes: transmitter equipment, translators, studio and production equipment, master control equipment, and microwave equipment. When compared with the first few years of the program, as the digital transition progresses, more applications were received for translators and master control and production equipment, than for transmitters. However, some stations may remain that have not achieved full analog parity in program management and creation. Continuation of reliable public television service to all current patrons understandably is still the focus for many broadcasters.

It is important for public television stations to be able to tailor their programs and services (e.g., education services, public health, homeland security, and local culture) to the needs of their rural constituents. If public television programming is lost, many school systems may be left without educational programming they count on for curriculum compliance.

This notice has been formatted to conform to a policy directive issued by the Office of Federal Financial Management (OFFM) of the Office of Management and Budget (OMB), published in the **Federal Register** on June 23, 2003, (68 FR 37370). This Notice does not change the Public Television Station Digital Transition Grant Program regulation (7 CFR part 1740).

II. Award Information

A. Available Funds for Grants

1. The amount available for grants for FY 2013 is $2,775,327. The maximum amount for grants under this program is $750,000 per public television station per year.

2. Assistance instrument: Grant documents appropriate to the project will be executed with successful applicants prior to any advance of funds.

B. Public Television Station Digital Transition Grants

Grants cannot be renewed nor can they be extended. Award documents specify the term length of each award.

III. Eligibility Information

A. Who is eligible for grants? (See 7 CFR 1740.3.)

1. Public television stations which serve rural areas as defined in 7 CFR 1740.2 are eligible for Public Television Station Digital Transition Grants. A public television station is a noncommercial educational television broadcast station that is qualified for Community Service Grants by the Corporation for Public Broadcasting under section 396(k) of the Communications Act of 1934.

2. Individuals are not eligible for Public Television Station Digital Transition Grant Program financial assistance directly.

3. Corporations that have been convicted of a felony (or had an officer or agency acting on behalf of the corporation convicted of a felony) within the past 24 months are not eligible. Any corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible.

B. What are the basic eligibility requirements for a project?

1. Grants shall be made to perform digital transition of television broadcasting stations serving rural areas. Grant funds may be used to acquire, lease, and/or install facilities and software necessary to the digital transition. Specific purposes include:

a. Digital transmitters, translators, and repeaters, including all facilities required to initiate digital television (DTV) broadcasting. All broadcast facilities acquired with grant funds shall be capable of delivering DTV programming and high definition television (HDTV) programming, at both the interim and final channel and power authorizations. There is no limit to the number of transmitters or translators that may be included in an application;

b. Power upgrades of existing DTV transmitter equipment, including replacement of existing low-power digital transmitters with digital transmitters capable of delivering the final authorized power level;

c. Studio-to-transmitter links;

d. Equipment to allow local control over digital content and programming, including master control equipment;

e. Digital program production equipment, including cameras, editing, mixing and storage equipment;

f. Multicasting and data casting equipment;

g. Cost of the lease of facilities, if any, for up to three years; and,

h. Associated engineering and environmental studies necessary to implementation.

2. Matching contributions: There is no requirement for matching funds in this program (see 7 CFR 1740.5).

3. The following are not eligible for grant funding (see 7 CFR 1740.7):

a. Funding for ongoing operations or for facilities that will not be owned by the applicant, except for leased facilities as provided above;

b. Costs of salaries, wages, and employee benefits of public television station personnel unless they are for construction or installation of eligible facilities;

c. Facilities for which other grant funding from any other source has been approved; and,

d. Expenditures made prior to the application deadline specified in this Notice of Funds Availability.

C. Summary Discussion of a Completed Application

See paragraph IV.B of this notice for a summary discussion of the items that make up a completed application. You will find more complete information in the FY 2013 Public Television Station Digital Transition Grant Program Application Guide. You may also refer to 7 CFR 1740.9 for completed grant application requirements.

IV. Application and Submission Information

A. Where To Get Application Information

The application guide, copies of necessary forms and samples, and the Public Television Station Digital Transition Grant Program regulation are available from these sources:

1. The Internet: *http://www.rurdev.usda.gov/UTP_DTV.html,* or *http://www.grants.gov*.

2. The RUS Advanced Services Division, for paper copies of these materials call (202) 690–4493.

B. What constitutes a completed application?

1. Detailed information on each item required can be found in the Public Television Station Digital Transition Grant Program regulation and application guide. Applicants are strongly encouraged to read and apply both the regulation and the application guide. This Notice does not change the requirements for a completed application specified in the program regulation. The program regulation and application guide provide specific guidance on each of the items listed and the application guide provides all necessary forms and sample worksheets.

2. A completed application must include the following documentation, studies, reports and information in form satisfactory to RUS. Applications should be prepared in conformance with the provisions in 7 CFR part 1740, subpart A, and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Applicants must use the application guide for this program, which contains instructions and all necessary forms, as well as other important information, in preparing their application. Completed applications must include the following:

a. An application for Federal assistance, Standard Form 424.

b. An executive summary, not to exceed two pages, describing the public television station, its service area and offerings, its current digital transition status, and the proposed project.

c. Evidence of the applicant's eligibility to apply under this Notice, demonstrating that the applicant is a Public Television Station as defined in this Notice, and that it is required by the FCC to perform the digital transition.

d. A spreadsheet showing the total project cost, with a breakdown of items sufficient to enable RUS to determine individual item eligibility.

e. A coverage contour map showing the digital television coverage area of the application project. This map must show the counties (or county) comprising the Core Coverage Area by shading and by name. Partial counties included in the applicant's Core Coverage Area must be identified as partial and must contain an attachment with the applicant's estimate of the percentage that its coverage contour comprises of the total area of the county. If the application is for a translator, the coverage area may be estimated by the applicant through computer modeling or some other reasonable method, and this estimate is subject to acceptance by RUS. (In the Application Guide, see Section C. 3, Project Core Coverage Area Map(s).)

f. The applicant's own calculation of its Rurality score, supported by a worksheet showing the population of its Core Coverage Area, and the urban and rural populations within the Core Coverage Area. The data source for the urban and rural components of that population must be identified. If the application includes computations made by a consultant or other organization outside the public television station, the application shall state the details of that collaboration. (In the Application Guide, see Section D. Scoring Documentation.)

g. The applicant's own calculation of its Economic Need score, supported by a worksheet showing the National School Lunch Program (NSLP) eligibility levels for all school districts within the Core Coverage Area and averaging these eligibility percentages. The application must include a statement from the state or local organization that administers the NSLP program certifying that the school district scores used in the computations are accurate. Applicants are to use the most recent data available. Some official NSLP data is posted on state and/or local government Web sites, in which case a printout of the data may be provided as long as it documents the Web site source. (In the Application Guide, see Section D. Scoring Documentation.)

h. A presentation not to exceed five pages demonstrating the Critical Need for the project.

i. Evidence that the FCC has authorized the initiation of digital broadcasting at the project sites. In the event that an FCC construction permit has not been issued for one or more sites, RUS may include those sites in the grant, and make advance of funds for that site conditional upon the submission of a construction permit.

j. Compliance with other Federal statutes. The applicant must provide evidence or certification that it is in compliance with all applicable Federal statutes and regulations, including, but not limited to the following (sample certifications are provided in the application guide):

(i) Equal Opportunity and Nondiscrimination;

(ii) Architectural barriers;

(iii) Flood hazard area precautions;

(iv) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(v) Drug-Free Workplace Act of 1998 (41 U.S.C. 701);

(vi) Debarment, Suspension; and Other Responsibility Matters—Primary Covered Transactions;

(vii) Lobbying for Contracts, Grants, Loans, and Cooperative Agreements Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

(viii) Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants

k. Environmental impact and historic preservation. The applicant must provide details of the digital transition's impact on the environment and historic preservation, and comply with 7 CFR part 1794, which contains the Agency's

policies and procedures for implementing a variety of federal statutes, regulations, and executive orders generally pertaining to the protection of the quality of the human environment. This must be contained in a separate section entitled ''Environmental Impact of the Digital Transition,'' and must include the Environmental Questionnaire/Certification, available from RUS, describing the impact of its digital transition. Submission of the Environmental Questionnaire/Certification alone does not constitute compliance with 7 CFR part 1794.

3. DUNS Number. As required by the OMB, all applicants for grants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. The applicant can obtain the DUNS number free of charge by calling Dun and Bradstreet. Please see *http://fedgov.dnb.com/webform* for more information on how to obtain a DUNS number or how to verify your organization's number.

4. Prior to submitting an application, the applicant must register in the System for Award Management (SAM) (formerly Central Contractor Registry, (CCR)).

a. Applicants may register for the SAM at *https://www.sam.gov/.*

b. The SAM registration must remain active with current information at all times while RUS is considering an application or while a Federal Grant Award or loan is active. To maintain the registration in the SAM database the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete.

C. How many copies of an application are required?

1. Applications submitted on paper: Submit the original application and two (2) copies to RUS.

2. Electronically submitted applications: The additional paper copies for RUS are not necessary if you submit the application electronically through *http://www.grants.gov.*

D. How and where to submit an application?

Grant applications may be submitted on paper or electronically.

1. Submitting applications on paper.

a. Address paper applications for grants to the Telecommunications Program, RUS, 1400 Independence Ave. SW., Room 2844, STOP 1550, Washington, DC 20250–1550. Applications should be marked ''Attention: Director, Advanced Services Division.''

b. Paper applications must show proof of mailing or shipping consisting of one of the following:

(i) A legibly dated postmark applied by the U. S. Postal Service;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Non-USPS-applied postage dating, i.e. dated postage meter stamps, do not constitute proof of the date of mailing.

d. Due to screening procedures at the Department of Agriculture, packages arriving via the USPS are irradiated, which can damage the contents. RUS encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Electronically Submitted Applications.

a. Applications will not be accepted via facsimile machine transmission or electronic mail.

b. Electronic applications for grants will be accepted if submitted through the Federal government's Grants.gov initiative at *http://www.grants.gov.*

c. How to use Grants.gov:

(i) Navigate your Web browser to *http://www.grants.gov.*

(ii) Follow the instructions on that Web site to find grant information.

(iii) Download a copy of the application package.

(iv) Complete the package off-line.

(v) Upload and submit the application via the Grants.gov Web site.

d. Grants.gov contains full instructions on all required passwords, credentialing and software.

e. RUS encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadline. Difficulties encountered by applicants filing through Grants.gov will not justify filing deadline extensions.

f. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov Web site.

E. Deadlines

1. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than August 30, 2013 to be eligible for FY 2013 grant funding. Late applications are not eligible for FY 2013 grant funding.

2. Electronic grant applications must be received by August 30, 2013 to be eligible for FY 2013 funding. Late applications are not eligible for FY 2013 grant funding.

V. Application Review Information

A. Criteria

1. Grant applications are scored competitively and subject to the criteria listed below.

2. Grant application scoring criteria are detailed in 7 CFR 1740.8. There are 100 points available, broken down as follows:

a. The Rurality of the Project (up to 50 points);

b. The Economic Need of the Project's Service Area (up to 25 points), and;

c. The Critical Need for the project, and of the applicant, including the benefits derived from the proposed service (up to 25 points).

B. Review Standards

1. All applications for grants must be delivered to RUS at the address and by the date specified in this notice to be eligible for funding. RUS will review each application for conformance with the provisions of this part. RUS may contact the applicant for additional information or clarification.

2. Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned and will not be considered for FY 2013 funding.

3. Applications conforming with this part will be evaluated competitively by a panel of RUS employees selected by the Administrator of RUS, and will be awarded points as described in the scoring criteria in 7 CFR 1740.8. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

4. Regardless of the score an application receives, if the RUS determines that the Project is technically or financially infeasible, the Agency will notify the applicant, in writing, and the application will be returned and will not be considered for FY 2013 funding.

C. Scoring Guidelines

1. The applicant's calculated scores in Rurality and Economic Need will be checked and, if necessary, corrected by RUS.

2. The Critical Need score will be determined by RUS based on information presented in the application. The Critical Need score is a subjective score based on the reviewer's assessment of the supporting

arguments made in the application. The score aims to assess how the specific digital transition purpose fits with the unique need of the television station as it moves all of its equipment through the digital transition. This score is intended to capture, from the rural public's standpoint, the necessity and usefulness of the proposed project. This scoring category will also recognize that at a specific time, some transition purposes are perceived to be more essential than others and that, over time, this perception changes. For example, during the transition from analog to digital transmitters, which concluded on June 12, 2009, a first time transition of a primary transmitter was the most essential project that could be undertaken for most stations and would have been scored accordingly. Now that all transmitters have completed the transition to digital, the focus may shift to some of the other eligible purposes such as translators, studio and production equipment, and master control equipment. But what equipment specifically is most essential may vary from station to station. For example, local production equipment can be a high priority especially if it produces an area's only local news or if the station has been historically active in producing local programming. Repositioning a digital transmitter on a tower can also be a high priority in cases where the original analog coverage area was not adequately replicated after the transition. In addition to being a subjective score, the Critical Need score is also relative since each application is scored in comparison to other applications in the competition. These various factors explain why a similar application may receive a different Critical Need score in different years of this program.

VI. Award Administration Information

A. Award Notices

The Agency generally notifies applicants whose projects are selected for awards by faxing an award letter or emailing a PDF facsimile of the award letter. The Agency follows the award letter with a grant agreement that contains the terms and conditions for the grant. A copy of the standard agreement is posted on the RUS Web site at *http://www.rurdev.usda.gov/UTP_DTVResources.html.*

An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement.

B. Administrative and National Policy Requirements.

The items listed in the program regulation at 7 CFR 1740.9(j) implement the appropriate administrative and national policy requirements.

C. Reporting

1. All recipients of Public Television Station Digital Transition Grant Program financial assistance must provide semiannual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last semiannual report. The final report must include an evaluation of the success of the project.

2. Recipient and Subrecipient Reporting

The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170, § 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

a. First Tier Sub-Awards of $25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR part 170) must be reported by the Recipient to *http://www.fsrs.gov* no later than the end of the month following the month the obligation was made. Please note that currently underway is a consolidation of eight federal procurement systems, including the Sub-award Reporting System (FSRS), into one system, the System for Award Management (SAM). As result the FSRS will soon be consolidated into and accessed through SAM at *https://www.sam.gov/portal/public/SAM/.*

b. The Total Compensation of the Recipient's Executives (5 most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR part 170) to www.sam.gov by the end of the month following the month in which the award was made.

c. The Total Compensation of the Subrecipient's Executives (5 most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR part 170) to the Recipient by the end of the month following the month in which the sub-award was made.

3. Systems Necessary to Meet Reporting Requirements

The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparence Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170, § 170.110(b).

VII. Agency Contacts

A. *Web site: http://www.usda.gov/rus/.* The Web site maintains up-to-date resources and contact information for the Public Television Station Digital Transition Grant Program.

B. *Phone:* (202) 690–4493.

C. *Fax:* (202) 720–1051.

D. *Main points of contact:* Petra Schultze, Financial Analyst, Advanced Services Division, Telecommunications Program, RUS, telephone: (202) 690–4493, fax: (202) 720–1051, or email: *petra.schultze@wdc.usda.gov.* Additional point of contact at the same telephone number, or email: *norberto.esteves@wdc.usda.gov:* Norberto Esteves, Acting Director, Advanced Services Division.

Dated: June 19, 2013.

John Charles Padalino,

Administrator, Rural Utilities Service.

[FR Doc. 2013–16953 Filed 7–15–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967; C–570–968]

Aluminum Extrusions from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

SUMMARY: On June 20, 2013, the United States Court of International Trade (''CIT'' or ''Court'') sustained the Department of Commerce's (''Department'') final results of remand redetermination, in which it determined that T-Series and M-Series components for automotive heating/cooling systems (''components for automotive heating/cooling systems'') imported by Valeo, Inc., Valeo Engine Cooling Inc., and Valeo Climate Control Corp. (collectively, ''Valeo'') are subassemblies that meet the description of excluded ''finished goods'' and are not covered by the scope of the

antidumping and countervailing duty orders on aluminum extrusions from the People's Republic of China,[1] pursuant to the CIT's remand order in *Valeo, Inc., Valeo Engine Cooling, Inc., and Valeo Climate Control Corp.* v. *United States,* Court No. 12–00381 (CIT February 13, 2013).[2]

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*''), the Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's Final Scope Ruling on Automotive Heating and Cooling Systems [3] and is amending its final scope ruling.

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

FOR FURTHER INFORMATION CONTACT: Brooke Kennedy, Office 8, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3818.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 2012, Valeo submitted a scope request claiming that two distinct types of automotive heating and cooling components are outside the scope of the *Orders.* The Department issued its Final Scope Ruling on Automotive Heating and Cooling Systems on October 31, 2012. In that ruling, the Department determined that Valeo's components for automotive heating/cooling systems are covered by the scope of the *Orders.*

On November 26, 2012, Valeo filed a complaint with the CIT. On February 12, 2013, the Department asked that the Court grant a voluntary remand to allow the Department to re-examine its determination in the Final Scope Ruling on Automotive Heating and Cooling Systems. On February 13, 2013, the Court granted the Department's request for a voluntary remand. In the Remand Results, the Department determined that Valeo's components for automotive heating/cooling systems, at the time of importation, contain all of the necessary parts required for integration into a larger system. The Department applied the ''subassemblies test'' developed in the Side Mount Valve Controls Scope Ruling,[4] and determined that Valeo's components for automotive heating/cooling systems are subassemblies that constitute excluded ''finished goods,'' as described in the *Orders,* and are not covered by the scope. On June 20, 2013, the CIT sustained the Department's Remand Results.[5]

Timken Notice

In its decision in *Timken,* as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's June 20, 2013, judgment in this case constitutes a final decision of that court that is not in harmony with the Department's Final Scope Ruling on Automotive Heating and Cooling Systems. This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of components for automotive heating/cooling systems pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Scope Ruling

Because there is now a final court decision with respect to this case, the Department is amending its final scope ruling and finds that the scope of the *Orders* does not cover Valeo's components for automotive heating/cooling systems. The Department will instruct U.S. Customs and Border Protection (''CBP'') that the cash deposit rate will be zero percent for Valeo's components for automotive heating/cooling systems. In the event that the CIT's ruling is not appealed, or if appealed, upheld by the CAFC, the Department will instruct CBP to liquidate entries of Valeo's components for automotive heating/cooling system without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: July 10, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–17041 Filed 7–15–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011) (''*Orders*'').

[2] *See* Final Results of Redetermination Pursuant to Court Remand, *Valeo, Inc., Valeo Engine Cooling, Inc., and Valeo Climate Control Corp.* v. *United States,* Court No. 12–00381 (May 13, 2013) (''Remand Results'').

[3] *See* the Department's memorandum regarding: Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China—Final Scope Ruling on Valeo's Automotive Heating and Cooling Systems, dated October 31, 2012 (''Final Scope Ruling on Automotive Heating and Cooling Systems'').

[4] *See* the Department's memorandum regarding: Final Scope Ruling on Side Mount Valve Controls, dated October 26, 2012 (''SMVCs Scope Ruling''); *see also* the Department's memorandum regarding: Antidumping Duty (AD) and Countervailing Duty (CVD) Orders: Aluminum Extrusions from the People's Republic of China (PRC), Initiation and Preliminary Scope Ruling on Side Mount Valve Controls, dated September 24, 2012.

[5] *See Valeo Inc., et al.* v. *United States,* Court No. 12–00381 (CIT June 20, 2013) (judgment sustaining Remand Results).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 12, 2013, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp from India.[1] The period of review (POR) is February 1, 2011, through January 31, 2012. Based on our analysis of the comments received, we have made certain changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Review.'' Further, we find that two companies had no shipments of subject merchandise during the POR.

DATES: *Effective Date:* July 16, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or David Crespo, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC, 20230;

[1] *See Certain Frozen Warmwater Shrimp From India; Preliminary Results of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 15691 (Mar. 12, 2013) and accompanying Decision Memorandum (*Preliminary Results*).

telephone (202) 482–3874 or (202) 482–3693, respectively.

Background

This review covers 193 producers/exporters. The respondents which the Department selected for individual examination are Apex Frozen Foods Private Limited (Apex) and Devi Fisheries Limited (Devi Fisheries). The Department also accepted one voluntary respondent, Falcon Marine Exports Limited/K.R. Enterprises (Falcon). The respondents which were not selected for individual examination are listed in the ''Final Results of the Review'' section of this notice.

On March 12, 2013, the Department published the *Preliminary Results.* In April 2013, we received case and rebuttal briefs from the Ad Hoc Shrimp Trade Action Committee; the American Shrimp Processors Association; and Apex, Devi Fisheries, and Falcon (collectively, ''the respondents''). Also in June 2013, the Department held a public hearing at the request of the respondents.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[2] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

Determination of No Shipments

As noted in the *Preliminary Results,* we received no-shipment claims from two companies under review (*i.e.,* Baby Marine International and Baby Marine Sarass). These companies reported that they made no shipments of subject merchandise to the United States during the POR.[3]

We confirmed the claims from these companies with U.S. Customs and Border Protection (CBP). Therefore, because we find that the record indicates that the two companies listed above did not export subject merchandise to the United States during the POR, we determine that they had no reviewable transactions during the POR.

As we stated in the *Preliminary Results,* our former practice concerning respondents submitting timely no-shipment certifications was to rescind the administrative review with respect to those companies if we were able to confirm the no-shipment certifications through a no-shipment inquiry with CBP.[4] As a result, in such circumstances, we normally instructed CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, clarification of the ''automatic assessment'' regulation, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding.[5] As noted in the *Preliminary Results,* because ''as entered'' liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by the above listed companies and exported by other parties at the all-others rate. In addition, we continue to find that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to the two companies listed above and issue appropriate instructions to CBP based on the final results of this administrative review. *See* the ''Assessment Rates'' section of this notice below.

Analysis of Comments Received

All issues raised in the case briefs by parties are addressed in the Issues and Decision Memo. A list of the issues which parties raised and to which we respond in the Issues and Decision Memo is attached to this notice as Appendix I. The Issues and Decision Memo is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memo can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memo and the electronic versions of the Issues and Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made changes to the margin calculations for Devi Fisheries to correct certain calculation errors. For further discussion, *see* the Issues and Decision Memo.

Period of Review

The POR is February 1, 2011, through January 31, 2012.

Final Results of the Review

We are assigning the following dumping margins to the firms listed below as follows:

Manufacturer/Exporter	Percent Margin
Apex Frozen Foods Private Limited	3.49
Devi Fisheries Limited/Satya Seafoods Private Limited/Usha Seafoods	0.23
Falcon Marine Exports Limited/K.R. Enterprises	(*de minimis*) 0.00

[2] For a complete description of the Scope of the Order, *see* the ''Issues and Decision Memorandum for the Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, which is dated concurrently with, and adopted by, this notice (Issues and Decision Memo).

[3] For a full explanation of the Department's analysis, *see* the *Preliminary Results* and accompanying Decision Memorandum at 6.

[4] *See Antidumping Duties; Countervailing Duties; Final rule,* 62 FR 27296, 27393 (May 19, 1997); *see also Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results of Antidumping Duty Administrative Review,* 75 FR 76700, 76701 (Dec. 9, 2010).

[5] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

Review-Specific Average Rate Applicable to the Following Companies:[6]

Manufacturer/Exporter	Percent Margin
Abad Fisheries Pvt. Ltd	3.49
Accelerated Freeze-Drying Co	3.49
Adilakshmi Enterprises	3.49
Allana Frozen Foods Pvt. Ltd	3.49
Allanasons Ltd	3.49
AMI Enterprises	3.49
Amulya Seafoods	3.49
Anand Aqua Exports	3.49
Ananda Aqua Applications/Ananda Aqua Exports (P) Limited/Ananda Foods	3.49
Andaman Sea Foods Private Limited	3.49
Angelique Intl	3.49
Anjaneya Seafoods	3.49
Arvi Import & Export	3.49
Asvini Exports	3.49
Asvini Fisheries Private Limited	3.49
Avanti Feeds Limited	3.49
Ayshwarya Seafood Private Limited	3.49
Baby Marine Exports	3.49
Baby Marine International	*
Baby Marine Sarass	*
Bhatsons Aquatic Products	3.49
Bhavani Seafoods	3.49
Bijaya Marine Products	3.49
Blue Fin Frozen Foods Pvt. Ltd	3.49
Blue Water Foods & Exports P. Ltd	3.49
Bluefin Enterprises	3.49
Bluepark Seafoods Private Ltd	3.49
BMR Exports	3.49
Britto Exports	3.49
C P Aquaculture (India) Ltd	3.49
Calcutta Seafoods Pvt. Ltd	3.49
Capithan Exporting Co	3.49
Castlerock Fisheries Ltd	3.49
Chemmeens (Regd)	3.49
Cherukattu Industries (Marine Division)	3.49
Choice Canning Company	3.49
Choice Trading Corporation Private Limited	3.49
Coastal Corporation Ltd	3.49
Cochin Frozen Food Exports Pvt. Ltd	3.49
Coreline Exports	3.49
Corlim Marine Exports Pvt. Ltd	3.49
Damco India Private	3.49
Devi Marine Food Exports Private Ltd./Kader Exports Private Limited/Kader Investment and Trading Company Private Limited/Liberty Frozen Foods Pvt. Ltd./Liberty Oil Mills Ltd./Premier Marine Products/Universal Cold Storage Private Limited	3.49
Devi Sea Foods Limited[7]	3.49
Diamond Seafood Exports/Edhayam Frozen Foods Pvt. Ltd./Kadalkanny Frozen Foods/Theva & Company	3.49
Digha Seafood Exports	3.49
Esmario Export Enterprises	3.49
Exporter Coreline Exports	3.49
Five Star Marine Exports Private Limited	3.49
Forstar Frozen Foods Pvt. Ltd	3.49
Frontline Exports Pvt. Ltd	3.49
G A Randerian Limited	3.49
Gadre Marine Exports	3.49
Galaxy Maritech Exports P. Ltd	3.49
Gayatri Seafoods	3.49
Geo Aquatic Products (P) Ltd	3.49
Geo Seafoods	3.49
Grandtrust Overseas (P) Ltd	3.49
Goodwill Enterprises	3.49
GVR Exports Pvt. Ltd	3.49
Haripriya Marine Export Pvt. Ltd	3.49

[6] This rate is based on the margin calculated for Apex because it is the only above *de minimis* margin calculated in this administrative review. Further, pursuant to 19 CFR 351.204(d)(3), we have not included Falcon's weighted-average dumping margin in our calculation of the review-specific average rate.

[7] The Department received a request for an administrative review of the antidumping order on shrimp from India with respect to Devi Sea Foods Limited (Devi). Shrimp produced and exported by Devi was excluded from this order effective February 1, 2009. *See Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part,* 75 FR 41813, 41814 (July 19, 2010). However, shrimp produced by other Indian producers and exported by Devi remains subject to the order. Thus, this administrative review with respect to Devi covers only shrimp which was produced in India by other companies and exported by Devi.

Manufacturer/Exporter	Percent Margin
Harmony Spices Pvt. Ltd	3.49
HIC ABF Special Foods Pvt. Ltd	3.49
Hindustan Lever, Ltd	3.49
Hiravata Ice & Cold Storage	3.49
Hiravati Exports Pvt. Ltd	3.49
Hiravati International Pvt. Ltd. (located at APM—Mafco Yard, Sector—18, Vashi, Navi, Mumbai —400 705, India)	3.49
Hiravati International Pvt. Ltd. (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)	3.49
IFB Agro Industries Ltd	3.49
Indian Aquatic Products	3.49
Indo Aquatics	3.49
Innovative Foods Limited	3.49
International Freezefish Exports	3.49
Interseas	3.49
ITC Limited, International Business	3.49
ITC Ltd	3.49
Jagadeesh Marine Exports	3.49
Jaya Satya Marine Exports	3.49
Jaya Satya Marine Exports Pvt. Ltd	3.49
Jayalakshmi Sea Foods Private Limited	3.49
Jinny Marine Traders	3.49
Jiya Packagings	3.49
K R M Marine Exports Ltd	3.49
K.V. Marine Exp.	3.49
Kalyan Aqua & Marine Exp. India Pvt. Ltd	3.49
Kalyanee Marine	3.49
Kanch Ghar	3.49
Kay Kay Exports	3.49
Kings Marine Products	3.49
Koluthara Exports Ltd	3.49
Konark Aquatics & Exports Pvt. Ltd	3.49
Landauer Ltd	3.49
Libran Cold Storages (P) Ltd	3.49
Lighthouse Trade Links Pvt. Ltd	3.49
Magnum Estates Limited	3.49
Magnum Export	3.49
Magnum Sea Foods Limited	3.49
Malabar Arabian Fisheries	3.49
Malnad Exports Pvt. Ltd	3.49
Mangala Marine Exim India Pvt. Ltd	3.49
Mangala Sea Products	3.49
Meenaxi Fisheries Pvt. Ltd	3.49
MSC Marine Exporters	3.49
MSRDR Exports	3.49
MTR Foods	3.49
N.C. John & Sons (P) Ltd	3.49
Naga Hanuman Fish Packers	3.49
Naik Frozen Foods	3.49
Naik Frozen Foods Pvt., Ltd	3.49
Naik Seafoods Ltd	3.49
Navayuga Exports	3.49
Nekkanti Sea Foods Limited	3.49
Nila Sea Foods Pvt. Ltd	3.49
Nine Up Frozen Foods	3.49
Overseas Marine Export	3.49
Paragon Sea Foods Pvt. Ltd	3.49
Parayil Food Products Pvt., Ltd	3.49
Penver Products (P) Ltd	3.49
Pesca Marine Products Pvt., Ltd	3.49
Pijikay International Exports P Ltd	3.49
Pisces Seafoods International	3.49
Premier Exports International	3.49
Premier Marine Foods	3.49
Premier Seafoods Exim (P) Ltd	3.49
R V R Marine Products Private Limited	3.49
Raa Systems Pvt. Ltd	3.49
Raju Exports	3.49
Ram's Assorted Cold Storage Ltd	3.49
Raunaq Ice & Cold Storage	3.49
Raysons Aquatics Pvt. Ltd	3.49
Razban Seafoods Ltd	3.49
RBT Exports	3.49
RDR Exports	3.49
Riviera Exports Pvt. Ltd	3.49
Rohi Marine Private Ltd	3.49

Manufacturer/Exporter	Percent Margin
S & S Seafoods	3.49
S Chanchala Combines	3.49
S. A. Exports	3.49
Safa Enterprises	3.49
Sagar Foods	3.49
Sagar Grandhi Exports Pvt. Ltd	3.49
Sagar Samrat Seafoods	3.49
Sagarvihar Fisheries Pvt. Ltd	3.49
SAI Marine Exports Pvt. Ltd	3.49
SAI Sea Foods	3.49
Sandhya Aqua Exports	3.49
Sandhya Aqua Exports Pvt. Ltd	3.49
Sandhya Marines Limited	3.49
Santhi Fisheries & Exports Ltd	3.49
Sarveshwari Exp.	3.49
Sarveshwari Ice & Cold Storage Pvt. Ltd	3.49
Sawant Food Products	3.49
Seagold Overseas Pvt. Ltd	3.49
Selvam Exports Private Limited	3.49
Sharat Industries Ltd	3.49
Shimpo Exports	3.49
Shimpo Exports Pvt. Ltd	3.49
Shippers Exports	3.49
Shiva Frozen Food Exp. Pvt., Ltd	3.49
Shree Datt Aquaculture Farms Pvt. Ltd	3.49
Shroff Processed Food & Cold Storage P Ltd	3.49
Silver Seafood	3.49
Sita Marine Exports	3.49
Sowmya Agri Marine Exports	3.49
Sprint Exports Pvt. Ltd	3.49
Sri Chandrakantha Marine Exports	3.49
Sri Sakkthi Cold Storage	3.49
Sri Sakthi Marine Products P Ltd	3.49
Sri Satya Marine Exports	3.49
Sri Venkata Padmavathi Marine Foods Pvt. Ltd	3.49
Srikanth International	3.49
SSF Ltd	3.49
Star Agro Marine Exports Private Limited	3.49
Sun Bio-Technology Limited	3.49
Suryamitra Exim (P) Ltd	3.49
Suvarna Rekha Exports Private Limited	3.49
Suvarna Rekha Marines P Ltd	3.49
TBR Exports Pvt Ltd	3.49
Teekay Marine P. Ltd	3.49
Tejaswani Enterprises	3.49
The Waterbase Ltd	3.49
Triveni Fisheries P Ltd	3.49
Uniroyal Marine Exports Ltd	3.49
V.S Exim Pvt Ltd	3.49
Veejay Impex	3.49
Victoria Marine & Agro Exports Ltd	3.49
Vinner Marine	3.49
Vishal Exports	3.49
Wellcome Fisheries Limited	3.49
West Coast Frozen Foods Private Limited	3.49
Z A Sea Foods Pvt. Ltd	3.49

* No shipments or sales subject to this review.

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), because Apex reported the entered value for all of its U.S. sales, we have calculated importer-specific *ad valorem* duty assessment rates for these sales based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific *ad valorem* ratios based on the entered value. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is de minimis (*i.e.,* less than 0.50 percent).

Regarding Devi Fisheries and Falcon, pursuant to the *Final Modification for*

Reviews,[8] because the weighted-average dumping margins for these two companies are *de minimis* or zero, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[9]

For the companies which were not selected for individual examination, we have used as the assessment rate the cash deposit rate assigned to these exporters, in accordance with our practice. *See, e.g., Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination,* 77 FR 48048, 40853 (July 11, 2012).

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Assessment Policy Notice.* This clarification applies to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company(ies) involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, as well as those companies listed in the ''Determination of No Shipments'' section, above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate established in the LTFV investigation.[10] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 10, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

Issues

1. Targeted Dumping Allegation
2. Treatment of Assessed Antidumping Duties
3. Devi Fisheries' Margin Calculation

[FR Doc. 2013–17044 Filed 7–15–13; 8:45 am]

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[8] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[9] *See Final Modification for Reviews,* 77 FR at 8102.

[10] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147, 5148 (Feb. 1, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Revocation of Order (in Part); 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 12, 2013, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Thailand. The period of review (POR) is February 1, 2011, through January 31, 2012. Based on our analysis of the comments received, we have made certain changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Review.'' We have also determined to revoke the antidumping duty order with respect to shrimp from Thailand produced and exported by Marine Gold Products Limited (MRG) and to rescind the review with respect to two firms. Finally, we find that 11 companies had no shipments of subject merchandise during the POR.

DATES: *Effective Date:* July 16, 2013.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Dennis McClure, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–6345 or (202) 482–5973, respectively.

Background

This review covers 149[1] producers/exporters. The respondents which the Department selected for individual examination are MRG and Thai Union Frozen Products Public Co., Ltd./Thai Union Seafood Co., Ltd. (collectively, Thai Union). The respondents which were not selected for individual

[1] This figure does not include those companies for which the Department is rescinding the administrative review.

examination are listed in the ''Final Results of the Review'' section of this notice.

On March 12, 2013, the Department published the *Preliminary Results.*[2]

On April 2, 2013, we notified parties of our intent to rescind the review for a company not selected for individual examination, Kosamut Frozen Foods Co., Ltd. (Kosamut) because it is neither a producer nor an exporter of subject merchandise.[3] We provided parties an opportunity to comment on this preliminary decision. No party commented on the intent to rescind the review for Kosamut. Also in April 2013, we received case and rebuttal briefs from the Ad Hoc Shrimp Trade Action Committee (the petitioner), the American Shrimp Processors Association, as well as from MRG and Thai Union (collectively, ''the respondents'') regarding the *Preliminary Results.*

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[4] The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

Determination of No Shipments

As noted in the *Preliminary Results,* we received no-shipment claims from 13 companies named in the *Initiation Notice.*[5] We confirmed the claims of 11 of these companies with U.S. Customs and Border Protection (CBP). Therefore, because we find that the record indicates that the 11 companies listed below did not export subject merchandise to the United States during the POR, we determine that they had no reviewable transactions during the POR. These companies are:

(1) Anglo-Siam Seafoods Ltd.
(2) Daedong (Thailand) Co. Ltd.
(3) Leo Transport Corporation Ltd.
(4) Grobest Frozen Foods Co.
(5) Lucky Union Foods Co., Ltd.
(6) Namprick Maesri Ltd. Part.
(7) S&P Syndicate Public Company Ltd.
(8) S.K. Foods (Thailand) Public Co. Limited
(9) Siamchai International Food Co., Ltd.
(10) Thai Union Manufacturing Company Limited
(11) V. Thai Food Product Co., Ltd.

See Preliminary Results, 78 FR at 15687.

As we stated in the *Preliminary Results,*[6] our former practice concerning respondents submitting timely no-shipment certifications was to rescind the administrative review with respect to those companies if we were able to confirm the no-shipment certifications through a no-shipment inquiry with CBP.[7] As a result, in such circumstances, we normally instructed CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, clarification of the ''automatic assessment'' regulation, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding.[8] As noted in the *Preliminary Results,* because ''as entered'' liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by the above listed companies and exported by other parties at the all-others rate.[9] In addition, we continue to find that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to the 11 companies listed above and issue appropriate instructions to CBP based on the final results of this administrative review. *See* the ''Assessment Rates'' section of this notice below.

With respect to the two remaining companies (*i.e.,* C Y Frozen Food Co., Ltd. (C Y Frozen Food) and Kosamut), the no-shipment claims received from these companies contained procedural deficiencies.[10] One of these companies, C Y Frozen Food did not remedy the deficiencies prior to these final results. Specifically, we find that there is insufficient evidence on the record of this review to conclude C Y Frozen Food made no shipments of subject merchandise to the United States during the POR because it failed to certify its statement of no shipments in accordance with 19 CFR 351.303(g)(1), despite the Department's request that it do so. Therefore, we have continued to assign it a final dumping margin based on the average of the rates calculated for the mandatory respondents.

Regarding Kosamut, the no-shipment statement received from this company related only to its own exports and not also to those of another affiliated exporter which has, to date, been treated as the same entity as Kosamut for cash deposit purposes. After receiving additional data from Kosamut regarding its relationship with this affiliate, as well as its production facilities and product line, we find that it is appropriate to rescind the review for this company. For further discussion, *see* the ''Rescission, in Part'' section of this notice, below.

Rescission, in Part

In the *Preliminary Results,* the Department found that Tanaya International Co., Ltd. and Tanaya Intl. (collectively, Tanaya) is neither an exporter nor a manufacturer of the subject merchandise, and it made no entries, exports, or sales of the subject merchandise during the POR. Because no party has commented on this preliminary finding, we continue to find that Tanaya is not an exporter or producer, as defined in 19 CFR 351.213(b), and, accordingly, the Department is rescinding the review

[2] *See Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke the Order (in Part); 2011–2012,* 78 FR 15686 (Mar. 12, 2013) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[3] *See* the Memorandum from Dennis McClure, Senior Analyst, Office 2, to James Maeder, Director, Office 2, entitled ''Frozen Warmwater Shrimp From Thailand: Intent to Rescind Review for Kosamut Frozen Foods Co., Ltd.,'' dated April 2, 2013 (Kosamut Rescission Memo).

[4] For a complete description of the Scope of the Order, *see* the ''Issues and Decision Memorandum for the Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with, and adopted by, this notice (Issues and Decision Memo).

[5] *See Certain Frozen Warmwater Shrimp from Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews and Request for Revocation of Order in Part,* 77 FR 19612 (Apr. 2, 2012) (*Initiation Notice*).

[6] *See Preliminary Results,* 78 FR at 15687.

[7] *See Antidumping Duties; Countervailing Duties; Final rule,* 62 FR 27296, 27393 (May 19, 1997); *see also Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results of Antidumping Duty Administrative Review,* 75 FR 76700, 76701 (Dec. 9, 2010).

[8] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[9] *See Preliminary Results,* 78 FR at 15690.

[10] *See id.,* 78 FR at 15687.

with respect to Tanaya, pursuant to 19 CFR 351.213(d)(3).

Similarly, in March 2013, at our request, we received information from Kosamut indicating that: (1) This company is not a producer or exporter of subject merchandise; and (2) it shares no sales information, production facilities, or employees with The Siam Union Frozen Foods Co., Ltd (Siam Union), an affiliated shrimp producer also involved in this administrative review. After analyzing this information, in April 2013, we preliminarily found that Kosamut and Siam Union are separate entities for purposes of this proceeding. Therefore, we announced our intention to rescind the review for Kosamut because it is not an exporter or producer of subject merchandise.[11] Because no party has commented on this preliminary finding, we continue to find that Kosamut and Siam Union are separate entities, and we are rescinding the review for Kosamut, pursuant to 19 CFR 351.213(d)(3).

Determination To Revoke Order, In Part

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Act.[12] While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following: 1) a certification that the company has sold the subject merchandise at not less than normal value (NV) in the current review period and that the company will not sell subject merchandise at less than NV in the future; 2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and 3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV.[13] Upon receipt of such a request to revoke an order in part, the Department will consider: (1) Whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and (3) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.[14]

As noted in the *Preliminary Results,* MRG submitted the proper certifications pursuant to 19 CFR 351.222(e), and requested revocation of the antidumping duty order, in part, based on an absence of dumping for at least three consecutive years. With regard to the criteria of 19 CFR 351.222(b)(2), based on our examination of the data submitted by MRG, we determine that it sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by MRG to support its request for revocation.[15] Moreover, we find that MRG did not engage in dumping during the same three years under consideration. Specifically, our final margin calculations show that MRG sold shrimp at not less than NV during the current review period. In addition, MRG sold shrimp at not less than NV in the previous administrative review in which it was individually examined.[16] Moreover, in the course of the current review, we examined MRG's sales and cost data from the 2010–2011 administrative review period for the purpose of determining MRG's eligibility for revocation and determined that MRG did not engage in dumping during the 2010–2011 review period.[17] Therefore, we determine that MRG's exports of subject merchandise qualify for revocation from the order pursuant to 19 CFR 351.222(b)(2).

Also, we find that application of the antidumping duty order to MRG is no longer warranted because: (1) MRG has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV; and (2) the continued application of the order is not otherwise necessary to offset dumping based on our review of the record. Therefore, we find that MRG qualifies for revocation of the antidumping duty order on shrimp from Thailand under 19 CFR 351.222(b)(2). Accordingly, we are revoking the order with respect to subject merchandise produced and exported by MRG. For further discussion, *see* the Issues and Decision Memo at Comment 4.

Effective Date of Revocation

Pursuant to 19 CFR 351.222(f)(3), this revocation applies to all entries of subject merchandise that are produced and exported by MRG, and are entered, or withdrawn from warehouse, for consumption on or after February 1, 2012 (*i.e.,* the first day after the period under review). The Department will order the suspension of liquidation lifted for all such entries and will instruct CBP to release any cash deposits or bonds. The Department will further instruct CBP to refund with interest any cash deposits on entries made on or after February 1, 2012.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the Issues and Decision Memo, which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memo is attached to this notice as Appendix I. The Issues and Decision Memo is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memo can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memo and the electronic versions of the Issues and Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made changes in the margin calculations for MRG and Thai Union in these final results.

[11] *See* the Kosamut Rescission Memo.

[12] In May 2012, the Department amended its regulations to eliminate the provision for revocation of an antidumping or countervailing duty order with respect to individual exporters or producers based on those individual exporters or producers having received antidumping rates of zero for three consecutive years. *See Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders,* 77 FR 29875 (May 21, 2012). The Department's amendment applies to all reviews initiated on or after June 20, 2012. The instant review was initiated in April 2012.

[13] *See* 19 CFR 351.222(e)(1).

[14] *See* 19 CFR 351.222(b)(2)(i). *See also Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order in Part,* 67 FR 69719, 69720 (Nov. 19, 2002).

[15] *See* the Memorandum to the File, from Blaine Wiltse, Senior Analyst, Office 2, AD/CVD Operations, entitled, ''Analysis of Commercial Quantities for Marine Gold Products Limited's Request for Revocation,'' dated March 4, 2013.

[16] *See Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination,* 76 FR 40881, 40883 (July 12, 2011).

[17] *See* Preliminary Decision Memorandum at 5–7.

Specifically, we altered the targeted dumping analysis for MRG and Thai Union, as well as corrected certain calculation errors and granted a CEP offset for Thai Union. These changes are further discussed in the relevant sections of the Issues and Decision Memo.

Period of Review

The POR is February 1, 2011, through January 31, 2012.

Final Results of the Review

We are assigning the following dumping margins to the firms listed below for the period February 1, 2011, through January 31, 2012, as follows:

Manufacturer/Exporter	Percent Margin
Marine Gold Products Limited	0.00
Thai Union Frozen Products Public Co., Ltd./Thai Union Seafood Co., Ltd	0.00

Review-Specific Average Rate Applicable to the Following Companies:

Manufacturer/Exporter	Percent Margin
A Foods 1991 Co., Ltd	0.00
A. Wattanachai Frozen Products Co., Ltd	0.00
A.S. Intermarine Foods Co., Ltd	0.00
ACU Transport Co., Ltd	0.00
Anglo-Siam Seafoods Co., Ltd	*
Apex Maritime (Thailand) Co., Ltd	0.00
Apitoon Enterprise Industry Co., Ltd	0.00
Applied DB	0.00
Asian Seafood Coldstorage (Sriracha)	0.00
Asian Seafoods Coldstorage Public Co., Ltd./Asian Seafoods Coldstorage (Suratthani) Co./STC Foodpak Ltd	0.00
Assoc. Commercial Systems	0.00
B.S.A. Food Products Co., Ltd	0.00
Bangkok Dehydrated Marine Product Co., Ltd	0.00
C Y Frozen Food Co., Ltd	0.00
C.P. Retailing and Marketing Co., Ltd	0.00
Calsonic Kansei (Thailand) Co., Ltd	0.00
Century Industries Co., Ltd	0.00
Chaivaree Marine Products Co., Ltd	0.00
Chaiwarut Company Limited	0.00
Charoen Pokphand Foods Public Company Limited	0.00
Chonburi LC	0.00
Chue Eie Mong Eak Ltd. Part.	0.00
Commonwealth Trading Co., Ltd	0.00
Core Seafood Processing Co., Ltd	0.00
CP Merchandising Co., Ltd[3]	0.00
Crystal Frozen Foods Co., Ltd. and/or Crystal Seafood	0.00
Daedong (Thailand) Co. Ltd	*
Daiei Taigen (Thailand) Co., Ltd	0.00
Daiho (Thailand) Co., Ltd	0.00
Dynamic Intertransport Co., Ltd	0.00
Earth Food Manufacturing Co., Ltd	0.00
F.A.I.T. Corporation Limited	0.00
Far East Cold Storage Co., Ltd	0.00
Findus (Thailand) Ltd	0.00
Fortune Frozen Foods (Thailand) Co., Ltd	0.00
Frozen Marine Products Co., Ltd	0.00
Gallant Ocean (Thailand) Co., Ltd	0.00
Gallant Seafoods Corporation	0.00
Global Maharaja Co., Ltd	0.00
Golden Sea Frozen Foods Co., Ltd	0.00
Golden Thai Imp. & Exp. Co., Ltd	0.00
Good Fortune Cold Storage Co. Ltd	0.00
Good Luck Product Co., Ltd	0.00
Grobest Frozen Foods Co., Ltd	*
GSE Lining Technology Co., Ltd	0.00
Gulf Coast Crab Intl.	0.00
H.A.M. International Co., Ltd	0.00
Haitai Seafood Co., Ltd	0.00
Handy International (Thailand) Co., Ltd	0.00
Heng Seafood Limited Partnership	0.00
Heritrade Co., Ltd	0.00
HIC (Thailand) Co., Ltd	0.00
High Way International Co., Ltd	0.00
I.T. Foods Industries Co., Ltd	0.00
Inter-Oceanic Resources Co., Ltd	0.00
Inter-Pacific Marine Products Co., Ltd	0.00
K & U Enterprise Co., Ltd	0.00

Manufacturer/Exporter	Percent Margin
K Fresh	0.00
K.D. Trading Co., Ltd	0.00
K.L. Cold Storage Co., Ltd	0.00
KF Foods Limited	0.00
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd	0.00
Kibun Trdg	0.00
Kingfisher Holdings Ltd	0.00
Kitchens of the Oceans (Thailand) Company, Limited	0.00
Klang Co., Ltd	0.00
Kongphop Frozen Foods Co., Ltd	0.00
Lee Heng Seafood Co., Ltd	0.00
Leo Transports	*
Li-Thai Frozen Foods Co., Ltd	0.00
Lucky Union Foods Co., Ltd	*
Maersk Line	0.00
Magnate & Syndicate Co., Ltd	0.00
Mahachai Food Processing Co., Ltd	0.00
Merit Asia Foodstuff Co., Ltd	0.00
Merkur Co., Ltd	0.00
Ming Chao Ind Thailand	0.00
N&N Foods Co., Ltd	0.00
NR Instant Produce Co., Ltd	0.00
Namprik Maesri Ltd. Part.	*
Narong Seafood Co., Ltd	0.00
Nongmon SMJ Products	0.00
Ongkorn Cold Storage Co., Ltd./Thai-Ger Marine Co., Ltd	0.00
Pacific Queen Co., Ltd	0.00
Pakfood Public Company Limited/Asia Pacific (Thailand) Co., Ltd./Chaophraya Cold Storage Co., Ltd./Okeanos Co.,Ltd./Okeanos Food Co., Ltd./Takzin Samut Co., Ltd.[18]	0.00
Penta Impex Co., Ltd	0.00
Pinwood Nineteen Ninety Nine	0.00
Piti Seafood Co., Ltd	0.00
Premier Frozen Products Co., Ltd	0.00
Preserved Food Specialty Co., Ltd	0.00
Queen Marine Food Co., Ltd	0.00
Rayong Coldstorage (1987) Co., Ltd	0.00
S&D Marine Products Co., Ltd	0.00
S&P Aquarium	0.00
S&P Syndicate Public Company Ltd	*
S. Chaivaree Cold Storage Co., Ltd	0.00
S. Khonkaen Food Industry Public Co., Ltd. and/or S. Khonkaen Food Ind. Public	0.00
S.K. Foods (Thailand) Public Co. Limited	*
Samui Foods Company Limited	0.00
SB Inter Food Co., Ltd	0.00
SCT Co., Ltd	0.00
Sea Bonanza Food Co., Ltd	0.00
SEA NT'L CO., LTD.	0.00
Seafoods Enterprise Co., Ltd	0.00
Seafresh Fisheries/Seafresh Industry Public Co., Ltd	0.00
Search & Serve	0.00
Shianlin Bangkok Co., Ltd	0.00
Shing Fu Seaproducts Development Co.	0.00
Siam Food Supply Co., Ltd	0.00
Siam Intersea Co., Ltd	0.00
Siam Marine Products Co. Ltd	0.00
Siam Ocean Frozen Foods Co. Ltd	0.00
Siamchai International Food Co., Ltd	*
Smile Heart Foods	0.00
SMP Products, Co., Ltd	0.00
Southport Seafood Co., Ltd	0.00
Star Frozen Foods Co., Ltd	0.00
Starfoods Industries Co., Ltd	0.00
Suntechthai Intertrading Co., Ltd	0.00
Surapon Foods Public Co., Ltd./Surat Seafoods Co., Ltd.	0.00
Surapon Nichirei Foods Co., Ltd	0.00
Suratthani Marine Products Co., Ltd	0.00
Suree Interfoods Co., Ltd	0.00
T.S.F. Seafood Co., Ltd	0.00
Tep Kinsho Foods Co., Ltd	0.00
Teppitak Seafood Co., Ltd	0.00
Tey Seng Cold Storage Co., Ltd	0.00
Thai Agri Foods Public Co., Ltd	0.00
Thai Mahachai Seafood Products Co., Ltd	0.00
Thai Ocean Venture Co., Ltd	0.00

Manufacturer/Exporter	Percent Margin
Thai Patana Frozen	0.00
Thai Prawn Culture Center Co., Ltd	0.00
Thai Royal Frozen Food Co., Ltd	0.00
Thai Spring Fish Co., Ltd	0.00
Thai Union Manufacturing Company Limited	*
Thai World Imports and Exports Co., Ltd	0.00
Thai Yoo Ltd., Part.	0.00
The Siam Union Frozen Foods Co., Ltd	0.00
The Union Frozen Products Co., Ltd./Bright Sea Co., Ltd.	0.00
Trang Seafood Products Public Co., Ltd	0.00
Transamut Food Co., Ltd	0.00
Tung Lieng Tradg	0.00
United Cold Storage Co., Ltd	0.00
V. Thai Food Product Co., Ltd	*
Xian-Ning Seafood Co., Ltd	0.00
Yeenin Frozen Foods Co., Ltd	0.00
YHS Singapore Pte	0.00
ZAFCO TRDG	0.00

* No shipments or sales subject to this review.

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), the Department has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise and deposits of estimated duties, where applicable, in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Pursuant to the *Final Modification for Reviews,*[19] because the respondents' weighted-average dumping margins are zero, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[20]

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Assessment Policy Notice.* This clarification applies to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company(ies) involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the reviewed firms will be equal to the weighted-average dumping margins established in the final results of this administrative review (*i.e.,* zero percent); (2) for previously reviewed or investigated companies not listed above, as well as those companies listed in the ''Determination of No Shipments'' section, above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.34 percent, the all-others rate made effective by the Section 129 Determination.[21] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply

[18] In the 2007–2008 administrative review, the Department found that the following companies comprised a single entity: Pakfood Public Company Limited, Asia Pacific (Thailand) Co., Ltd., Chaophraya Cold Storage Co. Ltd., Okeanos Co. Ltd., Okeanos Food Co. Ltd., and Takzin Samut Co. Ltd. *See Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 47551 (Sept. 16, 2009), and accompanying Issues and Decision Memorandum at Comment 6. No party has submitted arguments or evidence that the Department should reconsider this single entity treatment. Accordingly, we have continued to treat these companies as a single entity for purposes of this administrative review.

[19] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (Feb. 14, 2012) (*Final Modification for Reviews*).

[20] *See id.,* 77 FR at 8102.

[21] Effective January 16, 2009, there is no longer a cash deposit requirement for certain producers/exporters in accordance with the *Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Thailand: Notice of Determination under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand,* 74 FR 5638 (Jan. 30, 2009) (Section 129 Determination).

with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.222.

Dated: July 10, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

General Issues

1. Targeted Dumping Allegation
2. Applicability of Cohen's D Test
3. Assignment of a Final Dumping Margin to the Non-selected Respondents

MRG Issues

4. Time Period Covered in MRG's Targeted Dumping Analysis
5. MRG's Cost Reporting Methodology

Thai Union Issues

6. Thai Union's Constructed Export Price (CEP) Offset Claim
7. Treatment of Assessed Antidumping Duties Paid by Thai Union
8. Thai Union Calculation Issues

[FR Doc. 2013–17042 Filed 7–15–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No.: 130708596–3596–01]

Call for Applications for the International Buyer Program Select Service for Calendar Year 2014

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice and Call for Applications.

SUMMARY: The U.S. Department of Commerce (DOC) announces that it will accept applications for the International Buyer Program (IBP) Select service for calendar year 2014 (January 1, 2014 through December 31, 2014). This announcement sets out the objectives, procedures and application review criteria for IBP Select. Under the IBP Select the International Trade Administration (ITA) recruits international buyers to U.S. trade shows to meet with U.S suppliers exhibiting at those shows. The main difference between IBP and IBP Select is that IBP offers worldwide promotion, whereas IBP Select focuses on promotion and recruitment in no more than five international markets. Specifically, through the IBP Select, the DOC selects domestic trade shows that will receive DOC assistance in the form of targeted promotion and recruitment in five foreign markets, export counseling to exhibitors, and export counseling and matchmaking services at the trade show. This notice covers selection for IBP Select participation during calendar year 2014. It also announces a new pilot initiative for the IBP Select, which will allow selected trade show organizers to add target markets beyond the five selected markets at a cost.

DATES: Applications for IBP Select must be received by August 16, 2013.

Application: The IBP Select application is available at *http:///www.export.gov/IBP.* Applications must be completed and submitted via the online form.

FOR FURTHER INFORMATION CONTACT: Gary Rand, Director, International Buyer Program, Trade Promotion Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 1300 Pennsylvania Ave. NW., Ronald Reagan Building, Suite 800M—Mezzanine Level—Atrium North, Washington, DC 20004; Telephone (202) 482–0691; Facsimile: (202) 482–7800; Email: *IBP2014@trade.gov.*

SUPPLEMENTARY INFORMATION: The IBP was established in the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, title II, § 2304, codified at 15 U.S.C. 4724) to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The IBP emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. Shows selected for the IBP Select will provide a venue for U.S. companies interested in expanding their sales into international markets.

Through the IBP, the DOC selects trade shows that DOC determines to be leading trade shows with participation by U.S. firms interested in exporting. DOC provides successful applicants with assistance in the form of overseas promotion of the show by U.S. Embassies and Consulates; outreach to show participants about exporting; recruitment of potential buyers to attend the events; and staff assistance in setting up and staffing international trade centers at the events. Targeted promotion in no more than five markets can be executed through the overseas offices of ITA or in U.S. Embassies in countries where ITA does not maintain offices.

ITA is accepting applications for IBP Select from trade show organizers of trade events taking place between January 1, 2014 and December 31, 2014. Selection of a trade show for IBP Select is valid for one event. A trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. For events that occur more than once in a calendar year, the trade show organizer must submit a separate application for each event.

There is no fee required to submit an application. For IBP Select in calendar year 2014, ITA expects to select approximately 10 events from among the applicants. ITA will select those events that are determined to most clearly support the statutory mandate in 15 U.S.C. 4721 to promote U.S. exports, especially those of small- and medium-sized enterprises, and that best meet the selection criteria articulated below. Once selected, applicants will be required to enter into a Memorandum of Agreement (MOA) with the DOC, and submit payment of the $6,000 2014 participation fee within 30 days of written notification of acceptance into IBP Select. The MOA constitutes an agreement between the DOC and the show organizer specifying which responsibilities for international promotion and export assistance services at the trade shows are to be undertaken by the DOC as part of the IBP Select and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone requesting application information will be sent a sample copy of the MOA along with the link to the online application form and a copy of this **Federal Register** Notice. Applicants are encouraged to review the MOA closely, as IBP Select participants are expected to comply with all terms, conditions, and obligations in the MOA. Trade show organizer obligations include the construction of an International Trade Center at the trade show, production of an export interest directory, and provision of complimentary hotel accommodations for DOC staff as explained in the MOA. The responsibilities to be undertaken by the DOC will be carried out by ITA. ITA responsibilities include targeted promotion of the trade show and, where feasible, recruitment of international buyers to that show from the five target markets identified, provision of on-site export assistance to U.S. exhibitors at the show, and the reporting of results to the show organizer.

For this selection cycle only, ITA is piloting the opportunity for selected

show organizers to procure the services of our staff in the Embassies and Consulates beyond the five already agreed-upon markets to (1) escort buyers from those markets to the show, and (2) provide at-show services such as translation, logistical support, and introductions to U.S. suppliers. This secondary level of service for markets beyond the original five markets does not include recruitment of the delegations from those markets. The cost for this additional service is based on the cost of the Embassy or Consulate staff person, i.e., delegation leader, escorting the delegation to the show and providing at-show services. This secondary service will be priced at $1,250 per each additional delegation, and the total fee to be charged will not exceed $9,750 (meaning no more than three additional delegations are acceptable) for participating in the IBP Select. The show organizer will also be responsible for providing complimentary lodging for the delegation leader providing this secondary service.

Selection as an IBP Select show does not constitute a guarantee by DOC of the show's success. IBP Select participation status is not an endorsement of the show except as to its international buyer activities. Neither non-selection of an applicant for IBP Select status nor selection for only one calendar year should be viewed as a determination that the event will not be successful in promoting U.S. exports.

Eligibility: 2014 U.S. trade events, through the show organizer, with 1,200 or fewer exhibitors are eligible to apply for IBP Select participation. First-time events will also be considered. Exclusions: U.S. trade shows with over 1,200 exhibitors will not be considered for IBP Select. General Evaluation Criteria: ITA will evaluate applicants for IBP Select participants using the following criteria:

(a) *Level of Intellectual Property Rights Protection (IPR):* The trade show organizer includes in the terms and conditions of its exhibitor contracts provisions for the protection of IPR; has procedures in place at the trade show to address IPR infringement, which, at a minimum, provide information to help U.S. exhibitors procure legal representation during the trade show; and agrees to assist the DOC to reach and educate U.S. exhibitors on the Strategy Targeting Organized Piracy (STOP!), IPR protection measures available during the show, and the means to protect IPR in overseas markets, as well as in the United States.

(b) *Export Potential:* The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, including industry analysts' assessment of export potential, US&FCS best prospects lists, and U.S. export analysis.

(c) *Level of International Interest:* The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by ITA. Previous international attendance at the show may be used as an indicator.

(d) *Scope of the Show:* The event must offer a broad spectrum of U.S. made products and services for the subject industry. Trade shows with a majority of U.S. firms as exhibitors are given preference.

(e) *U.S. Content of Show Exhibitors:* Trade shows with exhibitors featuring a high percentage of products produced in the United States or products with a high degree of U.S. content will be preferred.

(f) *Stature of the Show:* The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally, and as a showplace for the latest technology or services in that industry.

(g) *Level of Exhibitor Interest:* There is significant interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of U.S. exhibitors should be new-to-export or seeking to expand their sales into additional export markets.

(h) *Level of Overseas Marketing:* There has been a demonstrated effort by the applicant to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, and explain how efforts should increase individual and group international attendance.

(i) *Level of Cooperation:* The applicant demonstrates a willingness to cooperate with ITA to fulfill the program's goals and adhere to the target dates set out in the MOA and in the event timetables, both of which are available from the program office (see the **FOR FURTHER INFORMATION CONTACT** section above). Past experience in the IBP will be taken into account in evaluating the applications received.

(j) *Delegation Incentives:* Waived or reduced admission fees are required for international attendees who are participating in the IBP. Delegation leaders also must be provided complimentary admission to the event. In addition, show organizers should offer a range of incentives to delegations and/or delegation leaders recruited by the DOC overseas posts. Examples of incentives to international visitors and to organized delegations include: Waived or reduced admission fees; special organized events, such as receptions, meetings with association executives, briefings, and site tours; or complimentary accommodations for delegation leaders.

Review Process: ITA will vet all applications received based on the criteria set out in this notice. Vetting will include soliciting input from ITA industry analysts, as well as domestic and international field offices, focusing primarily on the export potential, level of international interest, and stature of the show. In reviewing applications, ITA will also consider sector and calendar diversity in terms of the need to allocate resources to support selected events. The Assistant Secretary for Trade Promotion and Director General of the US&FCS will make all selection decisions.

Application Requirements: Show organizers submitting applications for the 2014 IBP Select are required to submit: (1) A narrative statement addressing each question in the application, OMB 0625–0143; and (2) a signed statement that ''The above information provided is correct and the applicant will abide by the terms set forth in this Call for Applications for the International Buyer Program Select (January 1, 2014 through December 31, 2014);'' on or before the deadline noted above. There is no fee required to apply. ITA expects to issue the results of this process in August 2013.

Legal Authority: The statutory program authority for ITA to conduct the IBP is 15 U.S.C. 4724. ITA has the legal authority to enter into MOAs with show organizers under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (MECEA), as amended (22 U.S.C. sections 2455(f) and 2458(c)). MECEA allows ITA to accept contributions of funds and services from firms for the purposes of furthering its mission.

The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program (0625–0143) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (OMB Control No. 0625–0143). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of

information displays a currently valid OMB Control Number.

FOR FURTHER INFORMATION CONTACT: Gary Rand, Director, International Buyer Program (*Gary.Rand@trade.gov*).

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2013–17027 Filed 7–15–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Healthcare Education Mission to New Delhi, Hyderabad, and Ahmedabad, India, January 27—February 1, 2014

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. & Foreign Commercial Service, is organizing a healthcare education trade mission to India (New Delhi, Hyderabad, and Ahmedabad) from January 27—February 1, 2014. This mission will include representatives of regionally accredited graduate programs and 4–year undergraduate programs. This mission will seek to connect United States education institutions in the field of healthcare to potential students, university/institution partners and hospitals and research labs/pharmaceutical companies in India. The mission will include one-on-one meetings with potential partners, embassy briefings, student interactions and networking opportunities in New Delhi, Hyderabad and Ahmedabad, three of the top cities for recruiting Indian students to the United States. These cities have been top of the list of the healthcare industry in India that includes education institutions, healthcare facilities and companies in the sectors of healthcare-related services, drugs, pharmaceuticals and research.

The mission will be open to regionally accredited United States education institutions at the four year undergraduate level and at the graduate level that wish to either attract students to the United States or meet with potential partners for collaboration in India. The mission will be an opportunity for participants to meet with policy makers, visit institutions imparting healthcare education and healthcare facilities, to get acquainted with the functioning of hospitals in India and the varied standards of healthcare delivery. The mission participants will have one-on-one meetings with medical colleges, dental colleges, pharmacy colleges, nursing colleges, hospitals, pharmaceutical companies and interactions with students pursuing various streams of healthcare education.

Commercial Setting

In the 2011/12 academic year, 100,270 students (including both graduate and undergraduate) from India were studying in the United States. India is the second leading place of origin for students coming to the United States. Students from India make up approximately 13.1% of the total foreign student population in the United States. Of the 100,270 students, 4.8% choose to study in the health professions fields, and 11.4% choose to study in the life sciences fields.

India is primarily a market for U.S. graduate institutions interested in attracting students. Though there is some interest in U.S. undergraduate studies and transfer admissions, limited scholarships and the increasing cost of education are major deterrents. However, with the increase of international schools in India, the interest in undergraduate study in the United States is expected to increase in the years to come. India also offers substantial opportunities for U.S. universities and other institutions of higher learning to establish schools, programs and curriculum in India. According to industry experts, the higher education sector in India, which is currently at US$ 8.38 billion, is expected to grow at a compound annual growth rate of 18.0% through 2020 and to reach US$ 42.17 billion.

The Indian healthcare industry is expected to reach US$ 280 billion by 2020, driven by increasing demand for specialized and quality healthcare facilities. The Indian pharmaceuticals market is expected to grow to $ 55 billion in 2020 resulting in extensive employment opportunities in the Indian pharmaceutical industry. The Indian healthcare sector is witnessing robust growth, which calls for adequate reforms in current healthcare education to deliver a trained taskforce matching the market needs.

Healthcare education in India seldom addresses topics such as regulatory norms, ethics compliance, entrepreneur skills and does not focus on creating an innovation-oriented educational environment and research facilities all of which has direct impact on healthcare delivery. In India, healthcare delivery and medical education have largely been governmental functions and despite its best efforts, the government has not been able to provide medical education to keep up with the advancements in the sector.

Most of the public sector teaching hospitals are not well equipped to impart training to the residents according to the guidelines of the Medical Council of India (MCI), the apex governing body. With the rapid advancement in medical technology over the last decade, the Indian government is finding it increasingly difficult to keep these teaching hospitals up-to-date. India has some top quality medical institutes that provide quality education and a huge number of professionals are added to the sector every year, yet there is a huge unmet demand for quality and well-trained professionals.

The Foreign Educational Institutions (Regulation of Entry and Operations) Bill has been pending in Parliament since 2010. At this time we cannot say with any confidence if it will be passed. AICTE has in place regulations for Foreign Universities/Institutes which propose to collaborate/enter into twinning arrangements (where a student does a part of the course in India and part overseas) in Technical Education.

Mission Goals

The goals of the United States Healthcare Education Mission to India are:

(1) To help participants gain market exposure and introduce participants to the vibrant Indian market in the three cities of New Delhi, Hyderabad and Ahmedabad;

(2) To provide an opportunity for participants to assess current and future business prospects by establishing valuable contacts with prospective business partners and clients, including companies, hospitals, students and education institutions; and

(3) To provide an opportunity for participants to develop market knowledge and relationships leading to student recruitment and potential partnerships.

Mission Scenario

New Delhi—The first stop for the delegation is the capital city of India, which will provide an opportunity for the delegates to directly interact with officials from the Government of India (GOI) regarding policies, procedures and opportunities in the country's

healthcare education sector. New Delhi has many of the finest education institutions of India. There are 15 universities and nearly 85 colleges, 55 management institutes, 7 medical colleges, 10 engineering colleges, a large number of computer institutes, 314 higher secondary schools, hundreds of preparatory schools and a good number of other institutes spread across the city.

New Delhi is widely regarded as an important center of education in India. The local Government authorities are striving to promote higher education in terms of providing the necessary infrastructure facilities, resources, and proper environment to the institutions working in the field of higher education. Several regulatory bodies, including the Medical Council of India, All India Council of Technical Education (AICTE), and Central Drugs Standard Control Organization (CDSCO) are located in New Delhi. One of the foremost medical institutes in India is the All India Institute of Medical Sciences (AIIMS). The Institute has comprehensive facilities for teaching, research and patient-care and conducts teaching programs in medical and paramedical courses both at undergraduate and postgraduate levels and awards its own degrees. Several corporate hospital chains have their headquarters in New Delhi, such as Max group and Medicity Medanta.

Hyderabad—This city is the capital of the state of Andhra Pradesh (AP), and is a booming education and healthcare center in the south of India. It is gaining recognition as a dynamic location for student recruitment by U.S. universities, many of which recruit a large number of students from Hyderabad. Andhra Pradesh has 1,330 arts, science and commerce colleges, 847 engineering colleges and 53 medical colleges. The state of Andhra Pradesh contributes the majority of students to the student population pursuing higher education in the United States.

AP has emerged as a key state for the knowledge-based industry including IT, pharmaceuticals and biotechnology. Over 70 of the 500 top global corporations are present in the state. Hyderabad is the hub of the bulk-drugs industry, accounting for one-third of the national production of bulk drugs. The state produces a majority of the 500 basic drugs produced in the country. The presence of related educational infrastructure has also helped the pharmaceutical and biotech industry. Hyderabad is home to the Birla Institute of Technology and Science (BITS), National Institute of Pharmaceutical Education and Research (NIPER), Indian Institute of Technology (IIT), Tata Institute of Fundamental Research, National Institute of Nutrition (NIN), Centre for Cellular and Molecular Biology (CCMB) and Indian Institute of Chemical Technology (IICT). Leading hospitals like Apollo, Nizam's Institute of Medical Sciences, Krishna Institute of Medical Sciences, MNJ Institute of Oncology and Regional Cancer Centre, L V Prasad Eye Institute, Basavatarakamma Indo American Cancer Hospital & Research Institute are all located in Hyderabad. Companies like Dr. Reddy's Laboratories, Mylan, Albany, Novartis, Aurobindo Pharma, Bharat Biotech are headquartered in Hyderabad.

Ahmedabad—This is the largest city in Gujarat and the 7th largest city in India, with a population of nearly 6 million. This is one of the fastest growing and most business-friendly states in India and has some of the country's most dynamic entrepreneurs. The state's capital, Gandhinagar, is the second planned city in the country and is located just 32 kilometers from Ahmedabad, the commercial capital of Gujarat.

At present, there are approximately 3,500 drug manufacturing facilities in Gujarat. The state houses several established companies, such as Torrent Pharma, Zydus Cadila, Alembic, Sun Pharma Claris, Intas Pharmaceuticals and Dishman Pharmaceuticals, which have operations in the world's major pharmaceutical markets. The first pharmacy college in India was established in Gujarat—L.M. College of Pharmacy—in 1947 and provides diploma, bachelor and master courses in pharmacy. There are other education institutions and research centers of renown active in Gujarat, namely Nirma Institute of Pharmacy, Zydus Research Center, B.V. Patel PERD center, National Research Center for Medicines & Aromatic Plants, Sun Pharma Research Center, MS University of Vadodara etc. Over the last few years, Gujarat's contribution in the growth of India's pharmaceutical/healthcare industry has been significant. Gujarat has a 42% share of India's pharmaceutical/healthcare business.

Mission Scenario

Participation in the mission will include the following:

- Pre-travel briefings/webinars;
- Airport transfers in New Delhi, Hyderabad, and Ahmedabad;
- Embassy/consulate and industry briefings;
- Pre-scheduled meetings with representatives of medical colleges, dental colleges, pharmacy colleges, nursing colleges, hospitals, pharmaceutical companies in all three cities; and
- Site visits and interaction with students pursuing various streams of healthcare education.

Proposed Mission Schedule—January 27–February 1, 2014

Sunday—January 26, 2014

—Arrive in New Delhi (evening arrival)
—Check into hotel

New Delhi—January 27–28, 2014

Monday, January 27, 2014

—Embassy Briefing
—Government of India (GOI) meeting(s)
—Working Lunch hosted by University or by a trade association
—Site visit
—Networking event with New Delhi-based top Indian Pharmaceutical Company

Tuesday, January 28, 2014

—One-on-one matchmaking meetings
—Late afternoon departure for Hyderabad
—Arrive in Hyderabad and check into hotel

Hyderabad—January 28–30, 2014

Wednesday, January 29, 2014

—Consular briefing
—One-on-one matchmaking meetings
—Luncheon hosted by TBD
—Site visit

Thursday, January 30, 2014

—Half day site visit TBD
—Late afternoon depart for Ahmedabad
—Arrive in Ahmedabad and check into hotel.

Ahmedabad—January 31–February 1, 2014

Friday, January 31, 2014

—Briefing by industry experts
—Site visits (Pharma Companies/Hospital/College)
—Networking lunch with industry representatives
—One-on-one matchmaking meetings (Half day)

Saturday, February 1, 2014

—Half day site visit—to be finalized
—Late afternoon departure from Ahmedabad. Fly via New Delhi to USA

Participation Requirements

All parties interested in participating in the Mission to India must complete and submit an application for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain

conditions and best satisfy the selection criteria as outlined below. The mission will be open on a first-come, first-served basis to 15 regionally accredited U.S. Universities/colleges offering graduate programs and 4-year undergraduate programs.

Conditions for Participation

An applicant must submit a timely, completed and signed mission application and supplemental application materials, including adequate information on the applicant's accreditation, courses offerings, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

All applicants seeking to participate must be appropriately accredited by one of the six regional institutional accreditors in the United States. Each participant is subject to and must meet the US&FCS service eligibility requirements.

Selection Criteria for Participation

—Consistency of the applicant's goals and objectives with the stated scope of the mission.

—Applicant's potential for doing business in India, including likelihood of service exports (education)/knowledge transfer resulting from the mission

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Fees and Expenses

After a representative of a regionally accredited graduate program or 4-year undergraduate program has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee is $3150 for one principal representative from each regionally accredited education institution. The fee for each additional representative is $750. Expenses for lodging, some meals, incidentals, and all travel (except for transportation to and from airports in-country, previously noted) will be the responsibility of each mission participant.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.trade.gov/trade-missions*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than November 1, 2013. The mission will be open on a first-come, first-served basis. Applications received after November 1, 2013 will be considered only if space and scheduling constraints permit.

CONTACT INFORMATION:

U.S. Commercial Service in India

Sathya Prabha, Commercial Assistant, Hyderabad, Tel: (91–40) 2330 4025, Email: *Sathya.Prabha@trade.gov*.

U.S. Export Assistance Center

Patrick Kenny, International Trade Specialist, Central-Southern NJ, Tel: 1 609 896 2731, Email: *Patrick.Kenny@trade.gov*.

Elnora Moye,

Trade Promotion Assistant.

[FR Doc. 2013–16816 Filed 7–15–13; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 130212127–3580–03]

Proposed Establishment of a Federally Funded Research and Development Center-Third Notice

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST), Department of Commerce, intends to sponsor a Federally Funded Research and Development Center (FFRDC) to facilitate public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. This is the third of three notices which must be published over a 90-day period in order to advise the public of the agency's intention to sponsor an FFRDC.

DATES: Written comments must be received by 5:00 p.m. Eastern time on July 22, 2013.

ADDRESSES: Comments on this notice must be submitted to Keith Bubar either electronically at *keith.bubar@nist.gov,* or at: Keith Bubar, NIST, 100 Bureau Drive Mail Stop 1640, Gaithersburg, MD 20899–1640.

FOR FURTHER INFORMATION CONTACT: Keith Bubar via email at *Keith.Bubar@nist.gov* or telephone 301.975.8329. Or Keith Bubar, NIST, 100 Bureau Drive Mail Stop 1640, Gaithersburg, MD 20899–1640.

SUPPLEMENTARY INFORMATION: The National Cybersecurity Center of Excellence (NCCoE), hosted by NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE will bring together experts from industry, government and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems, lower risk for companies and individuals in the use of IT systems, and encourage development of innovative, job-creating cybersecurity products and services.

NIST has identified the need to support the NCCoE's mission through the establishment of an FFRDC. In evaluating the need for the FFRDC, NIST determined that no existing FFRDC or contract vehicles provide the scope of services NIST requires. The proposed NCCoE FFRDC will have three primary purposes: (1) Research, Development, Engineering and Technical support; (2) Program/Project Management, to include but not limited to expert advice and guidance in the areas of program and project management focused on increasing the effectiveness and efficiency of cybersecurity applications, prototyping, demonstrations, and technical activities; and (3) Facilities Management. The proposed NCCoE FFRDC may also be utilized by non-sponsors.

The FFRDC will be established under the authority of 48 CFR 35.017.

The NCCoE FFRDC Contractor will be available to provide a wide range of support including, but not limited to:

• Research, Development, Engineering and Technical Support:

○ Establish relationships with private sector organizations to use private sector

resources to accomplish tasks that are integral to the operations and mission of the NCCoE.

○ Research and develop frameworks and implementation strategies for inducing industry to invest in and expedite adoption of effective cybersecurity controls and mechanisms on an enterprise-wide scale; and in collaboration with Federal and local governments, deliver planning and documentation support needed to transfer technologies developed by Federal cybersecurity organizations and the NCCoE to production, integration, economic development, and operational implementation entities.

○ Provide systems engineering support to NCCoE programs and proposed security platform development, selection, and implementation. This will include NCCoE infrastructure, project planning, project implementation, and technology transfer components of the NCCoE's efforts to accelerate adoption of robust cybersecurity technologies in the government and private sectors.

○ Generate technical expertise to create a relevant cybersecurity workforce in coordination with the NCCoE staff and in close collaboration with the National Initiative for Cybersecurity Education and with Federal government, university, and industry participants and collaborators in NCCoE activities.

○ Deliver strategies and plans for applying cybersecurity standards, guidelines, and best practice inducements and capabilities to both government and private sectors.

• Program/Project Management:

○ Work within the purpose, mission, general scope, or competency as assigned by the sponsoring agency.

○ Develop and maintain in-depth institutional knowledge of NCCoE programs and operations in order to maintain continuity in the field of cybersecurity and to maintain a high degree of competence, objectivity, and independence in order to respond effectively to the emerging cybersecurity needs of the Nation.

• Facilities Management:

○ In coordination with NCCoE staff, and in collaboration with the State of Maryland and Montgomery County, Maryland, manage physical and logical collaborative facilities to support the acceleration and adoption of robust cybersecurity technologies in the government and private sectors. The activity includes staff support for information technology operations, custodial functions, physical access management, and maintenance operations.

The FFRDC will partner with the sponsoring agency in the design and pursuit of mission goals; provide rapid responsiveness to changing requirements for personnel in all aspects of strategic, technical and program management; recognize Government objectives as its own objectives, partner in pursuit of excellence in public service; and allow for use of the FFRDC by non-sponsors.

We are publishing this notice in accordance with 48 CFR 5.205(b) of the Federal Acquisition Regulations (FAR), to enable interested members of the public to provide comments on this proposed action. This is the third of three notices issued under the authority of 48 CFR 5.205(b). In particular, we are interested in feedback regarding the proposed scope of the work to be performed by the FFRDC, and the presence of any existing private- or public-sector capabilities in this area that NIST should be considering. NIST intends to publicly summarize and address all comments received in response to these notices.

It is anticipated that a Request for Proposal (RFP) will be posted on FedBizOpps in the summer of 2013. Alternatively, a copy of the RFP can be obtained by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section above once the RFP is posted.

Dated: July 11, 2013.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2013–17025 Filed 7–15–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC289

Notice of Availability of Draft Environmental Assessment on the Effects of Issuing an Incidental Take Permit No. 16230 to the North Carolina Division of Marine Fisheries for the Continued Operation of the North Carolina Inshore Gillnet Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a Draft Environmental Assessment; request for comments.

SUMMARY: NMFS announces the availability of the ''Draft Environmental Assessment (EA) on the Effects of Issuing an Incidental Take Permit No. 16230 to the North Carolina Division of Marine Fisheries for the Continued Operation of the North Carolina Inshore Gillnet Fishery''. Publication of this notice begins the official public comment period for this draft EA. Per the National Environmental Policy Act (NEPA), the purpose of the draft EA is to evaluate the potential direct, indirect, and cumulative impacts caused by the issuance of Permit No. 16230 to North Carolina Division of Marine Fisheries (NCDMF) for the incidental take of threatened and endangered sea turtles during management of North Carolina inshore gillnet fisheries. All comments received will become part of the public record and will be available for review. An electronic copy of the revised application and proposed conservation plan may be obtained by contacting NMFS Office of Protected Resources (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at *www.nmfs.noaa.gov/pr/permits/esa_review.htm.*

DATES: Submit comments on or before July 31, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0231, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2011–0231,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Sara McNulty, Office of Protected Resources, 1315 East West Highway, 13th Floor, Silver Spring, MD 20910.

• *Fax:* 301–713–0376; Attn: Sara McNulty.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Sara McNulty (ph. 301–427–8402, email

Sara.McNulty@noaa.gov) or Kristy Long (ph. 301–427–8402, email *Kristy.Long@noaa.gov*).

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act (ESA, 16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the taking of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are published at 50 CFR 222.307.

Since 2000, NMFS has issued four separate incidental take permits (ITP's) to NCDMF for the incidental take of sea turtles in inshore gillnet fisheries occurring in Pamlico Sound. Since 2006, incidental take of sea turtles has been documented in areas outside Pamlico Sound, which are not covered under an existing ITP. In 2010, the Duke Environmental Law and Policy Clinic filed suit against NCDMF and the North Carolina Marine Fisheries Commission on behalf of the Karen Beasley Sea Turtle Rescue and Rehabilitation Center for the illegal taking of sea turtles in state regulated inshore gillnet fisheries. As a result of the lawsuit and resulting settlement agreement, NCDMF has amended their commercial fishing regulations through Proclamations for their inshore gillnet fishery to minimize the incidental capture of sea turtles and subsequent discussions with NMFS.

On June 14, 2010, the NCDMF submitted an application for an ITP to address sea turtle interactions with set gillnets in NC internal coastal waters. Based on comments from NMFS, a revised ITP application was submitted on August 17, 2011. On October 5, 2011 NMFS published a Notice of Receipt of the State's draft application in the **Federal Register** and made the application and conservation plan available for public review and comment for 30 days (76 FR 61670, October 5, 2011). Upon reviewing the public comments, NMFS requested for NCDMF to make several modifications to the application.

On September 6, 2012, NCDMF submitted an amended application to NMFS. On October 31, 2012, NMFS published a second Notice of Receipt in the **Federal Register** and made the application and conservation plan available for public review and comment for 30 days (77 FR 65864, October 31, 2012). Public comments received during both comment periods have been summarized in the draft EA as part of the public scoping process.

The EA analyzes the effects to the human and natural environment caused by the issuance of ITP No. 16230 to NCDMF for the incidental take of threatened and endangered sea turtles during management of North Carolina inshore gillnet fisheries. As required by regulations implementing section 10(a)(1)(B) of the ESA, the conservation plan must, based on the best scientific and commercial data available, specify:

- The impact which will likely result from the taking;
- How the applicant will minimize and mitigate those impacts, and the funding available to implement;
- What alternative actions the applicant considered, and why those actions are not being pursued;
- Other measures the Secretary of Commerce may require; and
- All sources of data relied on in preparing the plan.

The conservation plan prepared by NCDMF describes measures designed to monitor, minimize, and mitigate the incidental take of ESA-listed sea turtles. The conservation plan includes managing inshore gill net fisheries by dividing estuarine waters into 6 management units (i.e., A, B, C, D1, D2, E). Each of the management units would be monitored seasonally and by fishery (i.e., large mesh and small mesh gillnet).

Alternatives Considered

In preparing the draft EA, NMFS considered the following 3 alternatives for the action.

Alternative 1—No Action. Under the No Action alternative no ITP would be issued for the incidental take of sea turtles. NCDMF would not receive an exemption for the commercial inshore gillnet fishery from the ESA prohibitions against take.

Alternative 2—Issue ITP as Requested in Application. Under Alternative 2, an ITP would be issued to exempt NCDMF from the ESA prohibition on taking sea turtles during the otherwise lawful commercial inshore gillnet fishery.

Alternative 3 (Preferred)—Issue ITP as Requested in Application, with Modifications and Additional Requirements. Under Alternative 3, the ITP would be issued as described in Alternative 2, with modifications to the anticipated incidental take authorization and with additional monitoring and reporting requirements.

Environmental Consequences of Alternatives

The draft EA presents the scientific and analytic basis for comparison of the direct, indirect, and cumulative effects of the alternatives. Regulations for implementing the provisions of NEPA (42 U.S.C. 4331 *et seq.*) require considerations of both the context and intensity of a proposed action (40 CFR 1508.27). Each of the alternatives is expected to result in both live captures (non-lethal take) and mortalities (lethal take) of sea turtles. Although Alternative 1 is no action, or denial of the ITP request, in this analysis NMFS assumes that the status quo would largely be maintained for the fishery. No take authorization would be provided; however, it is likely that if the state continues to operate the fishery without an ITP, both live captures and mortalities would occur. For Alternatives 2 and 3, incidental take of sea turtles would be authorized for both live captures and mortalities.

Since 2005, the majority (78.2%) of all observed sea turtle incidental captures in North Carolina inshore gillnets have been released alive. However, it is expected that some proportion of the sea turtles that are released alive after capture in a gillnet will succumb to post-release mortality due the physiological effects of the capture, or they will experience a decreased ability to forage or migrate, which may make them more susceptible to re-capture within a short period of time.

The expected mortalities that result from the operation of the North Carolina inshore gillnet fishery can be reasonably expected to impact recovery of the listed species in the wild by removing individuals and the potential for those individuals to reproduce in the future.

NMFS is currently preparing a biological opinion, pursuant to section 7(b) of the ESA, evaluating the effects of the issuance of the ITP on listed species under NMFS purview. The biological opinion will conclude the potential impacts of the action and if the issuance of the ITP is likely to jeopardize the continued existence of any species of sea turtle.

Incidental Take of Other Species

In consultation with the United States Fish and Wildlife Service, it was determined that the proposed action is not likely to adversely affect the West Indian manatee. Manatees are rare in North Carolina waters, and therefore it is not likely that any alternative would have a significant impact on manatees. Seabirds are susceptible to capture and drowning in the sink gillnets used in

North Carolina inshore waters; and, therefore, there may be some impact to sea birds from all of the alternatives.

Social and Economic Impacts

Under the no action alternative, all large mesh gillnet fishing in Pamlico Sound in the fall of each year would be closed per NMFS regulations (CFR 223.206(d)(7)). Interactions and subsequent mortality of sea turtles in large mesh gillnet gear would be prevented in that area. Due to the seasonal nature of the flounder fishery, no fisherman is exclusively dependent on the flounder fishery, rather the participants are diversified into other fisheries, such as blue crab trap and gillnets in the ocean and other inshore areas for various target species. As such, the fall Pamlico Sound large mesh gillnet closure would not result in a total loss of revenue from the flounder fishery or for the participating fisherman.

Under the no action alternative, NCDMF would not receive an exemption from the ESA prohibitions against take; therefore, any incidental takes of sea turtles resulting from the North Carolina commercial inshore gillnet fishery would not be exempted. If NCDMF continues to operate an inshore gillnet fishery without an ITP, and sea turtle takes continue to occur, both NCDMF and the individual fisherman could be liable under third party lawsuits and enforcement action by NMFS for violating the ESA and illegally taking endangered or threatened species.

Alternatives 2 and 3 may result in a minimal additional burden to licensed North Carolina inshore gillnet fisherman, through a requirement to carry or work closely with observers within the fishery and for reporting sea turtle takes to NCDMF. The North Carolina observer program is not expected to cause significant additional burden to the fisherman because this fishery is already subject to both NCDMF and NMFS observer coverage independent of the state program; and, further, the gillnet fisherman in North Carolina have been working within the monitoring framework of the proposed application since 2010, through measures put in place by NCDMF's 2010 Proclamation. Fishermen will be required to report incidental takes to NCDMF and undertake specific measures to resuscitate turtles as necessary and follow disposition guidelines; however, as mentioned above, fishermen have been subject to these requirements since 2010. This ITP issuance is not expected to cause further socio-economic burden.

Implementing Agreement

NMFS and NCDMF are developing an implementing agreement to define roles and responsibilities of each party and provide a common understanding of actions to be undertaken to minimize and mitigate the effects of anchored gillnet fishing in inshore waters on threatened and endangered sea turtles. The agreement describes obligations of both parties, including how changed and unforeseen circumstances will be addressed, as well as the responsibilities of each party in implementing the conservation plan. Additionally, the agreement describes the process for initiating and implementing adaptive management as needed to achieve the Plan's biological objectives or respond to new information (e.g., observer data).

Next Steps

This notice is provided pursuant to section 10(c) of the ESA. The application, supporting documents, public comments, and views already received by the agency, as well as those submitted in response to this notice, will be fully considered and evaluated as we prepare the final EA and determine whether to issue a Finding of No Significant Impact. The final NEPA document and ITP determinations will not be completed until after the end of the 15-day comment period. NMFS will publish a record of its final action in the **Federal Register**. We will also make any final NEPA documents available to the public.

Dated: July 10, 2013.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–17037 Filed 7–15–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–37]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–37 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 11, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUL 01 2013

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-37, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Australia for defense articles and services estimated to cost $83 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 13–37

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Australia

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$ 61 million
Other	$ 22 million
Total	$ 83 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* up to 100 MK 54 All-Up-Round Torpedoes, 13 MK 54 Exercise Sections, 13 MK 54 Exercise Fuel Tanks, 5 Recoverable Exercise Torpedoes, support and test equipment for Maintenance Facility upgrade to MK 695 Mod 1capability, spare and repair parts, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Navy (AZO)

(v) *Prior Related Cases, if any:* FMS case AHV–$168M–12Sep11

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached

(viii) *Date Report Delivered to Congress:* 01 July 2013

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia—MK 54 Lightweight Torpedoes

The Government of Australia has requested a possible sale of up to 100 MK 54 All-Up-Round Torpedoes, 13 MK 54 Exercise Sections, 13 MK 54 Exercise Fuel Tanks, 5 Recoverable Exercise Torpedoes, support and test equipment for Maintenance Facility upgrade to MK 695 Mod 1 capability, spare and repair parts, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical and logistics support services, and other related elements of logistics support. The estimated cost is $83 million.

Australia is an important ally in the Western Pacific that contributes significantly to ensuring peace and stability in the region. Australia's efforts in peacekeeping and humanitarian operations have made a significant impact on regional, political and economic stability and have served U.S. national security interests.

Australia will use the MK 54 torpedo on its MH–60R helicopters and intends to use the torpedo on a planned purchase of the P–8A Increment 2 Maritime Patrol and Response aircraft. Australia, which currently has MK 54 torpedoes in its inventory, will have no difficulty absorbing these additional torpedoes into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Integrated Defense Systems in Keyport, Washington. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of U.S. Government or contractor representatives to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–37

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The MK 54 is a conventional torpedo that can be launched from surface ships, helicopters, and fixed wing aircraft. The MK 54 is an upgrade of the MK 46 torpedo. The upgrade to MK 54 entails replacement of the torpedo's sonar and guidance and control systems with updated technology using a mixture of commercial off-the-shelf and custom-built electronics. The warhead, fuel tank, and propulsion system from the MK 46 torpedo are reconfigured for use in the MK 54. The MK 54 is highly effective against modern diesel and nuclear submarines, but currently does not have the capability to attack surface ships. The MK 54 uses advanced logic to detect and prosecute threat submarines operating in challenging littoral environments and is effective in the presence of advanced acoustic countermeasures.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2013–17017 Filed 7–15–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–342–A]

Application to Export Electric Energy; Royal Bank of Canada

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Royal Bank of Canada (RBC) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before August 15, 2013.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Lamont Jackson, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Lamont.Jackson@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Lamont Jackson (Program Office) at 202–586–0808, or by email to *Lamont.Jackson@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On September 4, 2008, DOE issued Order No. EA–342, which authorized RBC to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authority expires on September 4, 2013. On July 3, 2013, RBC filed an application with DOE for renewal of the export authority contained in Order No. EA–342 for an additional five-year term.

In its application, RBC states that it does not own, operate or control any electric generating or transmission facilities nor does the applicant have a franchised service area. The electric energy that RBC proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. The existing international transmission facilities to be utilized by RBC have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the RBC application to export electric energy to Canada should be clearly marked with OE Docket No. EA–342–A. An additional copy is to be provided directly to Matthew S. Arnold, Senior Counsel, Royal Bank of Canada, 200 Bay Street, 14th Floor, North Tower, Toronto, Ontario, Canada M5J 2J5 and Elizabeth Jordan, Director, Compliance, RBC Capital Markets, 200 Bay Street, 9th Floor, South Tower, Toronto, Ontario, Canada M5J 2J2. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy

Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on July 9, 2013.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2013–17004 Filed 7–15–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP13–507–000; PF12–20–000]

Northwest Pipeline GP; Notice of Application

Take notice that on June 25, 2013, Northwest Pipeline GP (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP13–507–000 an abbreviated application under sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, seeking a certificate of public convenience and necessity to grant abandonment authorizations and issue a certificate authorizing Northwest to construct and operate its Washington Expansion Project (Project). The Project consists of: (i) Ten segments totaling approximately 140 miles of 36-inch-diameter pipeline on Northwest's existing system between Sumas and Woodland, Washington; (ii) additional compression totaling 89,620 horsepower at five existing compressor stations between Sumas and Woodland; (iii) metering facilities in Whatcom County, Washington; and (iv) miscellaneous appurtenances, 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.

The Project is designed to transport approximately 750,000 dekatherms per day of natural gas from Northwest's Sumas Meter Station to serve LNG Development Company, LLC (d/b/a Oregon LNG) (Oregon LNG) via an interconnect with Oregon Pipeline Company, LLC's proposed project filed with the Commission in Docket Nos. CP09–6–001 and CP09–7–001 on June 7, 2013, as well as to provide natural gas to growing markets in the state of Washington.

Questions regarding this application should be directed to Pam Barnes, Project Manager—Certificates at (801) 584–6857, Northwest Pipeline GP, 295 Chipeta Way, Salt Lake City, Utah 84108.

On July 16, 2012, the Commission staff granted Northwest's request to utilize the Pre-Filing Process and assigned Docket No. PF12–20 to staff activities involved with Northwest's project. Now, as of the filing of the application on June 25, 2013, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP13–507–000, as noted in the caption of this Notice.

Furthermore, all e-Subscribers to PF12–20–000 received automatically generated email stating that your e-Subscription to Docket No. PF12–20–000 has also been assigned to Docket No. CP13–507–000, which includes all sub-docket numbers. The applicant has filed an application with the Commission in the new Docket No. CP13–507, which again includes all sub-docket numbers. The pre-filing Docket No. PF12–20 is now closed but will remain part of the record for this project. All future activity will be in the CP docket and you will continue to receive eSubscription emails for submittals and issuances in this proceeding, including any that may be filed under Docket No. PF12–20.

Because the Washington Expansion Project is a necessary part of the Oregon LNG bi-directional Terminal and Pipeline Project, the Commission will prepare a single Environmental Impact Statement (EIS) addressing both projects in order to comply with the National Environmental Policy Act (NEPA) of 1969. Pursuant to section 157.9 of the Commission's rules, 18 CFR 57.9, and to ensure compliance with the NEPA, 42 USC § 4321–4347, the Commission staff will issue a Notice of Schedule for Environmental Review within 90 days of the date of this Notice. The Notice of Schedule for Environmental Review will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final EIS for the proposal. The Notice will also alert other agencies of the requirement to complete necessary reviews and authorizations within 90 days of the date of issuance of the Commission staff's final EIS.

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 August 12, 2013.

Dated: July 10, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–16998 Filed 7–15–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–508–000]

City of Clarksville, Tennessee; Notice of Application

Take notice that on June 26, the City of Clarksville, Tennessee (Clarksville) filed an application pursuant to section 7(f) of the Natural Gas Act (NGA) requesting the determination of service areas within which Clarksville may, without further commission authorization, provide natural gas distribution service. Clarksville also requests a waiver of the Commission's accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Joshua L. Menter, Miller, Balis & O'Neil, P.C 1015 15th Street NW., 12th Floor, Washington, DC 20005, or call (202) 296–2960, or by email *jmenter@mbolaw.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* 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: July 31, 2013.

Dated: July 10, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–16999 Filed 7–15–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2602–005.

Applicants: NewPage Energy Services, LLC.

Description: NewPage Energy Services, LLC Market-Based Rate Tariff to be effective 7/8/2013.

Filed Date: 7/8/13.

Accession Number: 20130708–5124.

Comments Due: 5 p.m. ET 7/29/13.

Docket Numbers: ER10–2609–005; ER10–2604–003; ER10–2603–003; ER10–2602–006; ER10–2606–005.

Applicants: Escanaba Paper Company, Luke Paper Company, Rumford Paper Company, NewPage Energy Services, LLC, Consolidated Water Power Company.

Description: Notice of Change in Status of the NewPage MBR Companies.

Filed Date: 7/8/13.

Accession Number: 20130708–5161.

Comments Due: 5 p.m. ET 7/29/13.

Docket Numbers: ER10–2616–004; ER10–2618–002; ER10–2619–002; ER11–4398–001; ER11–4400–001; ER10–2617–002; ER10–2613–002; ER10–2585–002.

Applicants: Dynegy Marketing and Trade, LLC, Dynegy Danskammer, L.L.C., Dynegy Kendall Energy, LLC, Dynegy Power Marketing, LLC, Dynegy Midwest Generation, LLC, Ontelaunee Power Operating Company, LLC, Sithe/Independence Power Partners, L.P., Casco Bay Energy Company, LLC.

Description: Notice of Change in Status of Dynegy Inc. MBR subsidiaries.

Filed Date: 7/8/13.
Accession Number: 20130708–5166.
Comments Due: 5 p.m. ET 7/29/13.

Docket Numbers: ER12–360–004.
Applicants: New York Independent System Operator, Inc.
Description: NYISO further compliance filing—NCZ to be effective 9/1/2012.
Filed Date: 7/8/13.
Accession Number: 20130708–5125.
Comments Due: 5 p.m. ET 7/29/13.

Docket Numbers: ER13–1906–000.
Applicants: Guttman Energy Inc.
Description: Original Volume No. 1 to be effective 8/15/2013.
Filed Date: 7/8/13.
Accession Number: 20130708–5097.
Comments Due: 5 p.m. ET 7/29/13.

Docket Numbers: ER13–1907–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2013–07–08 SA 1756 METC-Consumers (G479B) to be effective 7/4/2013.
Filed Date: 7/8/13.
Accession Number: 20130708–5122.
Comments Due: 5 p.m. ET 7/29/13.

Docket Numbers: ER13–1908–000.
Applicants: Virginia Electric and Power Company, Dominion Energy Marketing, Inc., Dominion Nuclear Connecticut, Inc., Dominion Energy Kewaunee, Inc., Dominion Energy Brayton Point, LLC, Dominion Energy Manchester Street, Inc., Dominion Retail, Inc., Elwood Energy, LLC, Fairless Energy, LLC, Kincaid Generation, L.L.C., NedPower Mount Storm, LLC, Fowler Ridge Wind Farm LLC, Dominion Bridgeport Fuel Cell, LLC.
Description: Request for waiver of certain affiliate restrictions requirements of Virginia Electric and Power Company and its Market-Regulated Power Sales Affiliates.
Filed Date: 7/8/13.
Accession Number: 20130708–5160.
Comments Due: 5 p.m. ET 7/29/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 9, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–17009 Filed 7–15–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–1048–000.
Applicants: Equitrans, L.P.
Description: NAESB Copyright Waiver to be effective 8/7/2013.
Filed Date: 7/8/13.
Accession Number: 20130708–5004.
Comments Due: 5 p.m. ET 7/22/13.

Docket Numbers: RP13–1049–000.
Applicants: Texas Eastern Transmission, LP.
Description: Range 8929197 7–6–2013 Negotiated Rate to be effective 7/6/2013.
Filed Date: 7/8/13.
Accession Number: 20130708–5080.
Comments Due: 5 p.m. ET 7/22/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–1111–002.
Applicants: Total Peaking Services, L. L. C.
Description: Total Peaking—Compliance Filing in RP12–1111 to be effective 12/1/2012.
Filed Date: 7/8/13.
Accession Number: 20130708–5066.
Comments Due: 5 p.m. ET 7/22/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 9, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–17011 Filed 7–15–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–1050–000.
Applicants: Rockies Express Pipeline LLC.
Description: Neg Rate 2013–07–09 BP NRA NC to be effective 7/10/2013.
Filed Date: 7/9/13.
Accession Number: 20130709–5156.
Comments Due: 5 p.m. ET 7/22/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–1043–000.
Applicants: Texas Gas Transmission, LLC.
Description: Withdraw filing in RP13–1043–000.
Filed Date: 7/9/13.
Accession Number: 20130709–5135.
Comments Due: 5 p.m. ET 7/22/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests,

service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 10, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–17012 Filed 7–15–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2119–000.
Applicants: Entergy Texas, Inc.
Description: Refund Report—Docket No. ER11–2161, to be effective N/A.
Filed Date: 7/9/13.
Accession Number: 20130709–5074.
Comments Due: 5 p.m. ET 7/30/13.

Docket Numbers: ER11–3643–006.
Applicants: PacifiCorp.
Description: OATT Revised Sections per Transmission Rate Case Further Compliance Filing to be effective 12/25/2011.
Filed Date: 7/9/13.
Accession Number: 20130709–5072.
Comments Due: 5 p.m. ET 7/30/13.

Docket Numbers: ER13–1225–000; ER13–1226–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits its response to the Commission's Letter Order dated May 30, 2013 requesting MISO to provide additional information.
Filed Date: 6/27/13.
Accession Number: 20130627–5074.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1910–000.
Applicants: Guzman Power Markets.
Description: GPM FERC Filing Transmittal Letter to be effective 8/20/2013.
Filed Date: 7/9/13.
Accession Number: 20130709–5048.
Comments Due: 5 p.m. ET 7/30/13.

Docket Numbers: ER13–1911–000.
Applicants: PJM Interconnection, L.L.C.
Description: OATT Sch 6A re Black Start Service System Restoration Planning Improvements to be effective 9/9/2013.
Filed Date: 7/9/13.
Accession Number: 20130709–5085.
Comments Due: 5 p.m. ET 7/30/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 9, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–17010 Filed 7–15–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2266–102; Project No. 2310–193; Project No. 14530–000; Project No. 14531–000]

Nevada Irrigation District; Pacific Gas and Electric Company; Public Meetings Soliciting Comments on the Draft Environmental Impact Statement for the Drum-Spaulding and Yuba-Bear Hydroelectric Projects

On May 17, 2013, the Commission issued a Notice of Availability of the Draft Environmental Impact Statement for the Drum-Spaulding and Yuba-Bear Hydroelectric Projects. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicants, and Commission staff. All written comments must be filed by August 22, 2013, and should reference Project Nos. 2266–102, 2310–193, 14530–000, and 14531–000. More information on filing comments can be found in the letter at the front of the draft EIS or on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Although the Commission strongly encourages electronic filing, documents may also be paper-filed.

In addition to or in lieu of sending written comments, you are invited to attend public meetings that will be held to receive comments on the draft EIS. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization comments, while the evening meeting is primarily for receiving input from the public. All interested individuals and entities are invited to attend one or both of the public meetings. The time and location of the meetings are as follows:

Date: Wednesday, August 14, 2013.

Time: Daytime meeting—9 a.m.; Evening meeting—7 p.m.

Place: Holiday Inn, Auburn, California.

Address: 120 Grass Valley Highway, Auburn, California 95603, 530–887–8787.

At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS. The meeting will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public record for the project. This meeting is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

For further information, contact Alan Mitchnick at (202) 502–6074 or at *alan.mitchnick@ferc.gov.*

Dated: July 10, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–16996 Filed 7–15–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–502–000]

Iroquois Gas Transmission System, L.P.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Wright Interconnect Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of two related projects proposed by Iroquois Gas Transmission System, L.P. (Iroquois) and Constitution Pipeline Company, LLC (Constitution). On September 7, 2012, the FERC issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Constitution Pipeline Project,*

Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings. At that time, Constitution proposed to construct a new compressor station as part of its Constitution Pipeline Project (which also included other facilities). However, Constitution has since identified that the objectives of the new compressor station could be met by making modifications at Iroquois' existing Wright Compressor Station in Schoharie County, New York. The other aspects of the Constitution Pipeline Project remain unchanged.[1]

These modifications, known as the Wright Interconnect Project (WIP), would render the proposed compressor station for the Constitution Pipeline Project unnecessary. The impacts of Constitution's modified proposal together with the WIP will be discussed collectively in one EIS. This EIS, analyzing both the Constitution Pipeline Project and the WIP, will be used by the Commission in its decision-making process to determine whether the two related projects are in the public convenience and necessity.

This notice announces the opening of the scoping process that the Commission will use to gather input from the public and interested agencies on the WIP. Your input will help us [2] determine what issues need to be evaluated in the EIS. Please note that the scoping period will close on August 9, 2013. Scoping comments received previously on the Constitution Pipeline Project will be considered in our EIS and do not need to be resubmitted.

This notice is being sent to the Commission's current environmental mailing list for the WIP. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

Iroquois has proposed to construct and operate the WIP within the property boundary, (but outside of the existing fence-line) of its existing Wright Compressor Station in Schoharie County, New York. The WIP would provide firm natural gas capacity to Constitution through a long-term capacity lease agreement.

The proposed WIP would consist of the following:

- Construction of the Constitution Transfer Station, which would contain two approximately 10,900-horsepower turbo-compressors, natural gas coolers, gas filters, and an emergency generator;
- Modifications to the existing Wright Compressor Station including the installation of a blend valve and upgraded piping;
- Installation of additional pumps on the existing Wright Odorization System to increase reliability;
- Upsizing gas piping and measurement controls at the existing Wright Meter Station to accommodate additional gas delivery to the Tennessee Gas Pipeline Company, LLC's system; and
- Construction of an interconnect between the proposed Constitution Pipeline Project and Iroquois' Wright Compressor Station.

The general location of the proposed project facilities is shown in Appendix 1.[3]

Land Requirements for Construction

Construction of the WIP would disturb approximately 12.5 acres of land already owned by Iroquois, but outside the fence-line of its existing facility. Following construction, about 7.5 acres would be used for permanent operation of the facilities. The remaining acreage would be restored and allowed to revert to former uses.

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 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 WIP 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 WIP under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Endangered and threatened species;
- Cultural resources;
- Air quality and noise;
- Socioeconomics;
- Cumulative impacts; and
- Public safety.

We will also evaluate reasonable 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. The EIS will be published and distributed for public comment. 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 on page 5.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EIS.[4] These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the ''Public Participation'' section of this notice. The U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, New York State Department of Agriculture and Markets, and the Federal Highway Administration are already participating as cooperating agencies in the preparation of the EIS to satisfy their NEPA responsibilities associated with these proposals.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office (SHPO), and to solicit their and those of other governmental agencies,

[1] On June 13, 2013, Constitution filed an application with the FERC to construct and operate approximately 122 miles of 30-inch-diameter pipeline in various counties in New York and Pennsylvania in Docket No. CP13–499–000.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call 202–502–8371. For instructions on connecting to eLibrary, refer to the last ''Additional Information'' section of this notice.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, § 1501.6.

interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EIS for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the WIP. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impact. 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 they will be received in Washington, DC on or before August 9, 2013.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP13–502–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) as individuals who own homes within 0.5 mile of the proposed WIP. 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. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Mailing List Form (Appendix 2).

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC, or on the FERC Web site at (*www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP13–502). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact 1–202–502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the Commission offers a free service called eSubscription that 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, Iroquois has established an internet Web site for the project at *http://www.iroquois.com/Project/WIP/.* The Web site includes a description of the project, contact information, and copies of project filings. You can also request additional information or provide comments directly to Iroquois at 203–925–7209.

Dated: July 10, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–17000 Filed 7–15–13; 8:45 am]

BILLING CODE 6717–01–P

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 18, 2013, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined

in the Commission's Public Reference Room.

996TH—Meeting

Regular Meeting

July 18, 2013

10:00 a.m.

Item No	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD02–1–000	Agency Business Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations
	ELECTRIC	
E–1	ER13–897–000	Louisville Gas and Electric Company and Kentucky Utilities Company.
	ER13–908–000	Alabama Power Company.
	ER13–913–000	Ohio Valley Electric Corporation
E–2	ER13–366–000, ER13–367–000	Southwest Power Pool, Inc.
	ER13–75–000	Public Service Company of Colorado.
	ER13–100–000	Kansas City Power & Light Company.
E–3	EL12–104–000	Interstate Power and Light Company v. ITC Midwest, LLC.
E–4	RM05–5–022	Standards for Business Practices and Communication Protocols for Public Utilities.
E–5	RM13–11–000	Frequency Response and Frequency Bias Setting Reliability Standard.
E–6	RM12–19–000	Revisions to Modeling, Data, and Analysis Reliability Standard.
E–7	RM13–7–000	Protection System Maintenance Reliability Standard.
E–8	RM13–13–000	Regional Reliability Standard BAL–002–WECC–2-Contingency Reserve.
E–9	RC13–4–000	South Louisiana Electric Cooperative Association.
E–10	ER11–2715–000, ER11–2715–001, ER11–2715–003	Interstate Power and Light Company and ITC Midwest LLC.
	EL10–68–000	Resale Power Group of Iowa and WPPI Energy v. ITC.
	EL10–68–001	Midwest LLC and Interstate Power and Light Company.
	EL09–71–001	Resale Power Group of Iowa and WPPI Energy.
E–11	ER10–2142–000	ITC Midwest LLC and Interstate Power and Light Company.
E–12	EL10–65–002	Louisiana Public Service Commission v. Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Texas, Inc.
E–13	ER13–73–000	Electric Energy, Inc.
E–14	OMITTED.	
E–15	OMITTED.	
E–16	OMITTED.	
E–17	OMITTED.	
E–18	ER12–1178–002	PJM Interconnection, L.L.C.
E–19	OMITTED.	
E–20	EL01–10–122	Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western System Power Pool Agreement.
E–21	OMITTED.	
E–22	RM11–24–000, AD10–13–000	Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies.
E–23	EC13–81–000	Bangor Hydro Electric Company, Maine Public Service Company.
E–24	ER13–1125–000	Bangor Hydro Electric Company.
E–25	ER12–550–001	Southwest Power Pool, Inc.
E–26	EL10–86–002, EL10–86–003	Jeffers South, LLC v. Midwest Independent Transmission System Operator, Inc.
E–27	ER12–1204–003, ER12–1204–004, ER12–2391–002, ER12–2391–003, (not consolidated).	PJM Interconnection, L.L.C.
E–28	ER11–4100–001	California Independent System Operator Corporation.
E–29	ER11–4100–002, ER11–4100–003, ER11–3616–003, ER11–3616–004, ER11–3616–005.	California Independent System Operator Corporation.
	MISCELLANEOUS	
M–1	RM13–17–000	Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators.

Item No	Docket No.	Company
	GAS	
G–1	RM12–17–000	Revisions to Procedural Regulations Governing Transportation by Intrastate Pipelines.
G–2	RM12–18–000	Revisions to Page 700 of FERC Form No. 6.
G–3	IS13–17–000	Enbridge Energy, Limited Partnership.
G–4	OR13–15–000	ExxonMobil Canada Energy, Flint Hills Resources, Canada, LP, Imperial Oil, NOVA Chemicals (Canada), Ltd., PBF Holding Company LLC and Toledo Refining Company LLC, Pennzoil-Quaker State Canada, Inc., (operating as Shell Trading Canada), Phillips 66 Canada ULC, St. Paul Park Refining Co., LLC, Suncor Energy Marketing, Inc., and United Refining Company v. Enbridge Energy, Limited Partnership.
G–5	RP13–990–000	ProLiance Energy, LLC.
G–6	RP13–238–000, RP13–238–001, RP12–39–000, RP12–39–001, RP12–39–002, RP13–1040–000.	Algonquin Gas Transmission, LLC.
G–7	RP13–237–000	Texas Eastern Transmission, LP.
G–8	IS10–399–003, IS11–146–000	Enbridge Pipelines (Southern Lights) LLC.
G–9	IS09–348–007, IS09–348–000, IS09–395–000, IS09–395–007, IS10–204–000, IS10–204–005, IS10–491–000, IS11–335–000, OR11–10–000.	BP Pipelines (Alaska) Inc.
	IS09–384–000, IS09–384–007, IS10–205–000, IS10–205–001, IS10–205–006, IS10–476–000, IS11–306–000.	ConocoPhillips Transportation Alaska, Inc.
	IS09–391–000, IS09–391–007, IS09–177–000, IS09–177–008, IS10–200–000, IS10–200–005, IS10–547–000, IS11–336–000.	ExxonMobil Pipeline Company.
	IS09–176–000, IS09–176–007, IS10–52–000, IS10–52–004, IS10–490–000, IS11–3–000, IS11–546–000, OR10–3–000, OR10–3–005.	Unocal Pipeline Company.
	IS10–54–000, IS10–54–004, IS10–496–000, IS11–328–000 (consolidated).	Koch Alaska Pipeline Company, L.L.C.
	HYDRO	
H–1	UL11–1–001, P–2299–079	Turlock Irrigation District and Modesto Irrigation District.
H–2	P–14241–004	Alaska Energy Authority.
	CERTIFICATES	
C–1	CP12–497–000	Transcontinental Gas Pipe Line Company, LLC.

Issued: July 11, 2013.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2013–17101 Filed 7–12–13; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14472–000]

Control Technology, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 18, 2012, Control Technology, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the River Mountain Pumped Storage Project, at the U.S. Army Corps of Engineers (Corps) Lake Dardanelle on the Arkansas River in Logan County, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) A new 177-acre upper reservoir, lined with an impermeable membrane, having 11,500 acre-feet gross storage capacity; (2) the existing Corps Lake Dardanelle as its lower reservoir, (3) a reinforced concrete penstock with intake/outlet structure in the upper reservoir; (4) a 30-foot diameter, concrete-lined penstock approximately 680 feet long connecting the upper reservoir's intake and outlet structure to an underground, horizontal power tunnel; (5) a 30-foot-diameter, concrete-lined, power tunnel that extends 1,250 feet from the vertical shaft to the

penstocks; (6) three 16-foot diameter penstocks approximately 450 feet long, 250 feet of which are steel-lined; (7) an underground powerhouse, containing three reversible pump-turbine generator units, each generating with up to 13,200 cfs and pumping with up to 10,560 cfs with a total generating capacity of 600 megawatts; (8) a 4,800 feet-long tailrace tunnel; (9) a 2,700 foot-long access tunnel; (10) a 500-kV transmission line from the powerhouse to an existing transmission line owned by Arkansas Power and Light. The project would generate approximately 6,000 megawatt-hours per day and operate as directed by the Corps.

Applicant Contact: David Kates, Control Technology, Inc., 2416 Cades Way, Vista, CA 92083; phone 760–599–0086; fax 760–599–1815.

FERC Contact: Chris Casey, *christiane.casey@ferc.gov,* (202) 502–8577.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14472) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 10, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–16997 Filed 7–15–13; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standards 45 and Scheduled Public Hearing

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standard 45, *Deferral of the Transition to Basic Information for Long-Term Projections.*

The Standard is available at *http://www.fasab.gov/accounting-standards/authoritative-source-of-gaap/accounting-standards/fasab-handbook/*

For assistance in accessing the document contact FASAB at (202) 512–7350.

Notice is also given that the Federal Accounting Standards Advisory Board (FASAB) will hold a public hearing in conjunction with its August 28, 2013 Board meeting to hear testimony about comments on the recently published exposure draft (ED) *Reporting Entity.* The public hearing will also permit the Board to ask questions about information and points of view submitted by respondents. Those interested in testifying should contact Melissa Loughan, Assistant Director, no later than one week prior to the hearing. Ms. Loughan can be reached at 202–512–5976 or via email at *loughanm@fasab.gov.* Also, they should at the same time provide a short biography and written copies of their testimony. The ED is available on the FASAB Web site *http://www.fasab.gov/board-activities/documents-for-comment/exposure-drafts-and-documents-for-comment/.*

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building Security requires advance notice of your attendance. Please notify FASAB of your planned attendance by calling 202–512–7352 at least one day prior to the respective meeting.

FOR FURTHER INFORMATION CONTACT: Wendy M. Payne, Executive Director, 441 G St. NW., Mail Stop 6H19, Washington, DC 20548 or call 202–512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: July 10, 2013.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2013–16925 Filed 7–15–13; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three

years, without revision, of the following report:

Report title: Reporting and Disclosure Requirements Associated with the Policy on Payments System Risk.

Agency form number: FR 4102.

OMB control number: 7100–0315.

Frequency: Biennial.

Reporters: Payment and securities settlement systems.

Annual reporting hours: 210 hours.

Estimated average hours per response: 70 hours.

Number of respondents: 3.

General description of report: The Federal Reserve has determined that sections 11(i) & (j), 13, 16, and 19(f) of the Federal Reserve Act authorize the Board to exercise general supervision of the Reserve Banks, to make rules and regulations to perform effectively its duties and functions, and to determine and regulate fees charged by member or nonmember banks for the collection or payment of checks, among other things (12 U.S.C. 248(i) & (j), 248–1, 342, 360, and 464). Additionally, depending upon the individual institution, the information collection may be authorized under a more specific statute. Specifically, the Board is authorized to collect information from state member banks under section 9 of the Federal Reserve Act (12 U.S.C. § 324); from bank holding companies (and their subsidiaries) under section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)); from savings and loan holding companies under 12 U.S.C. 1467a(b)(3) and 5412; from Edge and agreement corporations under sections 25 and 25A of the Federal Reserve Act (12 U.S.C. 602 and 625); and from U.S. branches and agencies of foreign banks under section 7(c)(2) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(2)), and under section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)). Together, these statutory provisions provide the legal authorization for the reporting and disclosure requirements associated with the FR 4102. Because the self-assessments are to be publicly disclosed and because the Federal Reserve will not collect any information pursuant to this information collection beyond what is made publicly available, no confidentiality issue arises with regard to the FR 4102. The reporting and disclosure requirements of the FR 4102 are mandatory.

Abstract: The FR 4102 was implemented in January 2007 as a result of revisions to the Federal Reserve's Policy on Payment System Risk (PSR policy). Under the revised policy, systemically important payment and settlement systems as determined by the Board at that time and subject to the Federal Reserve's authority are expected to complete and disclose publicly self-assessments against the principles and minimum standards in the policy. The self-assessment should be reviewed and approved by the system's senior management and board of directors upon completion and made readily available to the public. In addition, a self-assessment should be updated following material changes to the system or its environment and, at a minimum, reviewed by the system every two years.

Current actions: On April 18, 2013, the Federal Reserve published a notice in the **Federal Register** (78 FR 23253) seeking public comment for 60 days on the extension, without revision, of the FR 4102. The comment period for this notice expired on June 17, 2013. The Federal Reserve did not receive any comments.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

Report title: Transfer Agent Registration and Amendment Form.

Agency form number: FR TA–1.

OMB control number: 7100–0099.

Frequency: On occasion.

Reporters: State member banks (SMBs) and their subsidiaries, bank holding companies (BHCs), certain nondeposit trust company subsidiaries of BHCs, and savings and loan holding companies (SLHCs).

Annual reporting hours: 4 hours.

Estimated average time per response: Registrations: 1.25 hours; Amendments: 10 minutes.

Number of respondents: Registrations: 2; Amendments: 4.

General description of report: The FR TA–1 is mandatory and that its collection is authorized by sections 17A(c), 17(a)(3), and 23(a)(1) of the Securities Exchange Act of 1934 (the Act), as amended (15 U.S.C. 78q-1(c), 78q(a)(3), and 78w(a)(1)). Additionally, Section 3(a)(34)(B)(ii) of the Act (15 U.S.C. 78c(a)(34)(B)(ii)) provides that the Board is the appropriate regulatory agency for purposes of various filings by SMBs and their subsidiaries, BHCs, SLHCs and certain nondepository trust company subsidiaries of BHCs that act as a clearing agency or transfer agent. The registrations are public filings and are not considered confidential.

Abstract: The Act requires any person acting as a transfer agent to register as such and to amend registration information when it changes. SMBs and their subsidiaries, BHCs, and certain nondeposit trust company subsidiaries of BHCs register with the Federal Reserve System by submitting Form TA–1. The information collected is available to the public upon request and includes the company name, all business addresses, and several questions about the registrant's proposed activities as a transfer agent.

Current Actions: On April 18, 2013, the Federal Reserve published a notice in the **Federal Register** (78 FR 23253) seeking public comment for 60 days on the extension, with revision, of the FR TA–1. The comment period for this notice expired on June 17, 2013. The Federal Reserve did not receive any comments. The revision will be implemented as proposed.

Board of Governors of the Federal Reserve System, July 10, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–16906 Filed 7–15–13; 8:45 am]

BILLING CODE 6210–01–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 July 30, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Gregory F. Steil,* Hinsdale, Illinois; to retain voting shares of LWCBancorp, Inc., New Lenox, Illinois, and thereby indirectly retain voting shares of LincolnWay Community Bank, New Lenox, Illinois.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Barbara Carlson, Sauk Centre, Minnesota, individually; Sarah Beuning, Springfield, Illinois, Steven Beuning,

Edina, Minnesota, Eric Beuning, Scott Beuning, and Tyler Carlson, all of Sauk Centre, Minnesota, as members of the Carlson/Beuning family shareholder group; Mary Jeanne Woodward, Sartell, Minnesota, Lisa DuBois Schmitze and John DuBois, both of Sauk Centre, Minnesota, as members of the Margaret DuBois Family Sharesholder group; to retain voting shares of DuBois Bankshares, Inc., and thereby indirectly retain voting shares of First State Bank of Sauk Centre, both in Sauk Centre, Minnesota.

Board of Governors of the Federal Reserve System, July 10, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–16923 Filed 7–15–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 9, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Home Bancorp Wisconsin, Inc.,* Madison, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Home Savings Bank, Madison, Wisconsin.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Dacotah Banks, Inc.,* Aberdeen, South Dakota; to merge with Donnelly Bancshares, Inc., and thereby indirectly acquire United Farmers and Merchants State Bank, both of Morris, Minnesota.

Board of Governors of the Federal Reserve System, July 10, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–16922 Filed 7–15–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 9, 2013.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Ford Financial Fund II, L.P., Ford Management II, L.P., Ford Ultimate Management II, LLC, 2009 TCRT, GJF Financial Management II, LLC, Ford Fund Investment LP, and LR Acquisition Company LLC,* all of Dallas, Texas, each to become a bank holding company by directly or indirectly acquiring control of Metropolitan National Bank, Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, July 11, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–16980 Filed 7–15–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under the Home Owners' Loan Act (HOLA) (12 U.S.C. 1461 *et seq.*), and Regulation LL (12 CFR Part 238) or Regulation MM (12 CFR part 239) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is described in §§ 238.53 or 238.54 of Regulation LL (12 CFR 238.53 or 238.54) or § 239.8 of Regulation MM (12 CFR 239.8). Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 10a(c)(4)(B) of HOLA (12.U.S.C. 1467a(c)(4)(B)).

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 2013.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *Sunshine Financial, Inc.,* Tallahassee, Florida; to originate, purchase or sell loans and participations, pursuant to section 238.53(b)(1) of Regulation LL.

Board of Governors of the Federal Reserve System, July 10, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–16921 Filed 7–15–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 9, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *First Merchants Corporation,* Muncie, Indiana, to merge with CFS Bancorp, Inc., Munster, Indiana, and thereby indirectly acquire control of Citizens Financial Bank, Munster, Indiana, a federal savings bank, pursuant to sections 225.28(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, July 11, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–16979 Filed 7–15–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice-MVC–2013–02; Docket 2013–0081; Sequence 2]

Leasing versus Renting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Request for information.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are seeking information that will assist in determining if there is a distinction between leasing and renting that is useful for the purposes stated in the Federal Acquisition Regulation (FAR). This Request for Information (RFI) does not address real property or its leasing.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at the address shown below on or before September 16, 2013.

ADDRESSES: Submit comments by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching for ''Notice-MVC–2013–02''. Select the link ''Summit a Comment'' that corresponds with ''Notice-MVC–2013–02''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Notice-MVC–2013–02; Leasing versus Renting'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only in all correspondence related to this request. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949 for clarification of content. The Regulatory Secretariat at 202–501–4755 for information pertaining to status or publication schedules.

SUPPLEMENTARY INFORMATION: The Councils are seeking public input on whether there is a distinction between renting and leasing that would be useful in performing the analysis required at FAR subpart 7.4 to determine the most cost effective approach, all factors considered. This RFI does not address real property or its leasing. ''Real property'' is defined in the Federal Management Regulation (FMR) at 41 CFR 102–71.20, and generally describes buildings and land.

Some have suggested that there is no legal distinction between leasing and renting per the Uniform Commercial Code and that any distinctions in practice are irrelevant to FAR subpart 7.4, which is seeking the most cost effective method. Others have suggested there are distinctions in the terms and conditions that would be useful to recognize. We note that the FMR at 41 CFR Part 102–34 ''Motor Vehicle Management'' provides brief definitions of commercial vehicle rentals and leases at 41 CFR 102–34.35, with the only difference being that a rental is for less than 120 continuous days while a lease is 120 continuous days or more. We also note that at FAR subpart 8.11, Leasing of Motor Vehicles, the definition of ''leasing'' of motor vehicles uses ''hire'' and ''rent'' as synonyms for leasing.

The Councils are also seeking any additional information to improve the guidance at FAR subpart 7.4. The Government Accountability Office (GAO) issued a report dated February 7, 2012, entitled ''Air Force and Interior Can Benefit from Additional Guidance When Deciding Whether to Lease or Purchase Equipment'' (GAO–12–281R). The GAO report noted that during fiscal years 2006 through 2010, Federal agencies spent more than $200 billion annually, on average, to purchase or lease equipment, with purchases accounting for 99 percent of this spending. GAO stated that this suggests that agencies may overlook the potential for savings by almost always purchasing when equipment is needed on a temporary basis. The GAO report focused on the lease versus purchase analysis, which they generally found inadequate in their selected sampling. While the only GAO recommendation for the FAR was that subpart 7.4 be revised to update the GSA contact information, some contracting officers suggested to GAO that they were uncertain about how and when to perform the analysis required in FAR subpart 7.4. The FAR Council welcomes all suggestions for revisions to FAR subpart 7.4 and, in particular, seeks input on the following questions:

- Is there a distinction between rental agreements and leases (not related to real property)?

○ Are there uniform and recognized differences in the lengths of rental and leasing agreements? Do these lead to special funding considerations for the government?

○ Are there specific differences in other terms and conditions, such as maintenance, warranty, insurance, taxes, storage, and transportation? What are the specific distinctions?

• FAR 7.402(a) and (b) provide circumstances indicating when the purchase or lease method is appropriate. Should rent be added as a third method? If so, when is renting a more appropriate method than purchasing or leasing and in what way would it impact the determination of most effective procurement approach (*e.g.,* cost savings and efficiencies)?

• Does short-term rental offer cost savings and efficiencies unavailable through leasing?

• What additional guidance might be provided at FAR subpart 7.4 to clarify when and how to perform the required analysis?

Dated: July 9, 2013.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–16920 Filed 7–15–13; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting; Subcommittee for Dose Reconstruction Reviews, Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

Time and Date: 10:00 a.m.–5:00 p.m., Eastern Time, August 7, 2013.

Place: Audio Conference Call via FTS Conferencing. The USA toll-free, dial-in number is 1–866–659–0537, and the pass code is 9933701.

Status: Open to the public, but without an oral public comment period.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000, to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2013.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters To Be Discussed: The agenda for the Subcommittee meeting includes: dose reconstruction program quality management and assurance activities, including current findings from NIOSH internal dose reconstruction blind reviews; and discussion of dose reconstruction cases under review (sets 8–9, and Savannah River Site, Rocky Flats Plant, and Los Alamos National Laboratory cases from sets 10–13).

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Theodore Katz, Designated Federal Official, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone: (513) 533–6800, Toll Free 1 (800) CDC–INFO, Email: *ocas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dana Redford,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 2013–16964 Filed 7–15–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting; State, Tribal, Local and Territorial (STLT) Subcommittee, Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned subcommittee:

Time and Date: 8:30 a.m.–4:00 p.m., EDT, August 9, 2013.

Place: CDC, Building 19, Rooms 254 and 255, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting rooms accommodate approximately 20 people. The public is welcome to participate during the public comment period, which is tentatively scheduled from 3:15 p.m. to 3:35 p.m. This meeting will also be available by teleconference. Please dial (888) 233–0592 and enter code 33288611.

Purpose: The Subcommittee will provide advice to the CDC Director through the ACD on strategies and future needs and challenges faced by State, Tribal, Local and Territorial health agencies, and will provide guidance on opportunities for CDC.

Matters To Be Discussed: The STLT Subcommittee members will discuss implementation of ACD-adopted recommendations related to the health department of the future and how CDC can best support STLT health departments.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Judy Monroe, M.D., Designated Federal Officer, STLT Subcommittee—ACD, CDC, 1600 Clifton Road, NE., M/S E–70, Atlanta, Georgia 30333, Telephone: (404) 498–0300, Email: *OSTLTSDirector@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Dana Redford,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–16965 Filed 7–15–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0254]

Salmonella Contamination of Dry Dog Food; Withdrawal of Compliance Policy Guide

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; Withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of the compliance policy guide (CPG) entitled ''Sec. 690.700 *Salmonella* Contamination of Dry Dog Food.'' This CPG is obsolete.

DATES: The withdrawal is effective July 16, 2013.

FOR FURTHER INFORMATION CONTACT: Diane D. Jeang, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 301–796–3890.

SUPPLEMENTARY INFORMATION: FDA issued the CGP entitled ''Sec. 690.700 *Salmonella* Contamination of Dry Dog Food (CPG 690.700)'' on October 1, 1980. CPG 690.700 was issued as a result of a human case of salmonellosis traced to dry dog food; a subsequent FDA-conducted survey of dry dog food; a risk analysis; and the development of an appropriate sampling technique to test dry dog food for *salmonella* organisms.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a new CPG to address all food for animals that may contain *salmonella* organisms, including dry dog food. This new CPG, entitled ''Compliance Policy Guide Sec. 690.800 *Salmonella* in Food for Animals,'' supersedes CPG 690.700 and makes CPG 690.700 obsolete. The notice of availability for CPG ''Sec. 690.800 *Salmonella* in Food for Animals'' is published elsewhere in this issue of the **Federal Register**.

FDA is withdrawing CPG 690.700, in its entirety, to eliminate obsolete compliance policy.

Dated: July 10, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–16973 Filed 7–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0378]

Compliance Policy Guide Sec. 690.800 *Salmonella* in Food for Animals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of guidance for our staff entitled ''Compliance Policy Guide Sec. 690.800 *Salmonella* in Food for Animals'' (the CPG). The CPG provides guidance to FDA staff on *Salmonella*-contaminated food for animals.

DATES: Submit either electronic or written comments on the CPG at any time.

ADDRESSES: Submit written requests for single copies of the CPG to the Food and Feed Policy Staff, Office of Policy and Risk Management, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the CPG.

Submit electronic comments on the CPG to *http://www.regulations.gov.* Submit written comments on the CPG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kim Young, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9207, *kim.young@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance document entitled ''Compliance Policy Guide Sec. 690.800 *Salmonella* in Food for Animals'' (the CPG). The CPG provides guidance to FDA staff on *Salmonella*-contaminated food for animals. The CPG is being issued consistent with our good guidance practices regulation (21 CFR 10.115). The CPG represents FDA's current thinking on *Salmonella*-contaminated food for animals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

In the **Federal Register** of August 2, 2010 (75 FR 45130), we announced the availability of a draft CPG entitled ''Compliance Policy Guide Sec. 690.800 *Salmonella* in Animal Feed,'' and gave interested persons an opportunity to submit comments by November 1, 2010, for us to consider before beginning our work on the final version of the CPG. In the **Federal Register** of October 29, 2010 (75 FR 66769), we published a notice extending the comment period until December 31, 2010. We received numerous comments on the draft CPG and have modified the final CPG where appropriate. The CPG announced in this notice finalizes the draft CPG announced on August 2, 2010.

Changes to the CPG include:

- The title of the CPG is changed from ''*Salmonella* in Animal Feed'' to ''*Salmonella* in Food for Animals.'' FDA made this change to clarify that the CPG covers all animal food. The term ''food for animals'' here includes pet food and animal feed.
- The term ''Direct Human Contact Animal Feed'' has been removed from the CPG, because commenters found the term to be confusing. The term pet food is now used instead. It is defined to mean food for pets and includes treats and chews for pets.

The CPG explains criteria that FDA personnel should consider in recommending enforcement action against food for animals that is adulterated due to the presence of *Salmonella.* In particular, the CPG provides regulatory action guidance relating to pet food or pet food ingredients that are contaminated with *Salmonella.* In addition, the CPG provides regulatory action guidance relating to animal feed and animal feed ingredients that are contaminated with certain *Salmonella* serotypes that are pathogenic to the particular species of animal for which the animal feed or animal feed ingredients are intended. The CPG also contains information that may be useful to regulated industry and the public.

This notice is related to two notices published elsewhere in this issue of the **Federal Register**, in which FDA is announcing: (1) The removal of 21 CFR 500.35 ''Animal feeds contaminated with *Salmonella* microorganisms,'' and

(2) the withdrawal of ''Compliance Policy Guide Sec. 690.700 *Salmonella* Contamination of Dry Dog Food.'' The enforcement policy in the CPG supersedes the policies articulated in 21 CFR 500.35 and CPG Sec. 690.700.

II. Comments

Interested persons may submit either electronic comments regarding the CPG 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.*

III. Electronic Access

Persons with access to the Internet may obtain the CPG at either *http://www.fda.gov/ora/compliance_ref/cpg/default.htm* or at *http://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the CPG.

Dated: July 10, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–16975 Filed 7–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of patent applications.

Islet Beta Cell Only M3 Muscarinic Acetylcholine Receptor Knockout Mouse

Description of Technology: Researchers at NIH have developed islet beta cell M3 muscarinic acetylcholine receptor knockout mouse. The mice were generated by crossing floxed mouse M3 muscarinic acetylcholine receptor mice with mice in which Cre recombinase was controlled by the beta-cell specific rat insulin promoter (RIP-Cre mice).

Potential Commercial Applications: Study of the physiological role of beta-cell M3 muscarinic receptors in the regulation of glucose homeostasis and insulin release in vivo.

Competitive Advantages: Allows for study of the role of the M3 receptors in the pancreas without whole body effects confounding the results.

Development Stage: In vivo data available (animal)

Inventor: Jürgen Wess, Ph.D. (NIDDK)

Publication: Gautam D, et al. A critical role for beta cell M3 muscarinic acetylcholine receptors in regulating insulin release and blood glucose homeostasis in vivo. Cell Metab. 2006 Jun;3(6):449–61. [PMID 16753580]

Intellectual Property: HHS Reference No. E–452–2013/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Jaime M. Greene, M.S.; 301–435–5559; *greenejaime@mail.nih.gov.*

Transgenic Mice With Constitutively Active M3 Muscarinic Receptor in Islet Beta Cells

Description of Technology: Q490L point mutation was introduced into the rat M3 muscarinic receptor cDNA to confer persistent, constitutive (ligand-independent) activity. Expression of the M3 receptor mutant was placed under the control of a 650 bp fragment of the rat insulin promoter II (RIP II) to limit expression to the islet beta cell.

Potential Commercial Applications: Diabetes research, especially type II Diabetes.

Competitive Advantages: Beneficial metabolic effects of this mouse model include high basal insulin secretion, improved glucose tolerance, increased serum insulin, and resistance to high-fat diet-induced glucose intolerance and hyperglycemia.

Development Stage: In vivo data available (animal)

Inventor: Jürgen Wess, Ph.D. (NIDDK)

Publication: Gautam D, et al. Beneficial metabolic effects caused by persistent activation of beta-cell M3 muscarinic acetylcholine receptors in transgenic mice. Endocrinology. 2010 Nov;151(11):5185–94. [PMID 20843999]

Intellectual Property: HHS Reference No. E–453–2013/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Jaime M. Greene, M.S.; 301–435–5559; *greenejaime@mail.nih.gov.*

Transgenic Mice Overexpressing Islet Beta Cell M3 Muscarinic Acetylcholine Receptors

Description of Technology: Researchers at NIH have generated transgenic mice in which the M3 muscarinic receptor is overexpressed in pancreatic beta cells. This was done by placing the receptor gene under the control of the 650 bp rat insulin promoter II (RIP II). The resulting mice show a pronounced increase in glucose tolerance and enhanced plasma insulin levels. Strikingly, these mutant mice were resistant to diet-induced glucose intolerance and hyperglycemia.

Potential Commercial Applications: Diabetes research, especially type II Diabetes.

Competitive Advantages: These transgenic mice overexpress the M3 muscarinic acetylcholine receptor only in pancreatic beta cells but notably are resistant to diet-induced glucose intolerance and hyperglycemia.

Development Stage: In vivo data available (animal).

Inventor: Jürgen Wess, Ph.D. (NIDDK).

Publication: Gautam D, et al. A critical role for beta cell M3 muscarinic acetylcholine receptors in regulating insulin release and blood glucose homeostasis in vivo. Cell Metab. 2006 Jun;3(6):449–61. [PMID 16753580].

Intellectual Property: HHS Reference No. E–455–2013/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Jaime M. Greene, M.S.; 301–435–5559; *greenejaime@mail.nih.gov.*

An Improved System for Production of Recombinant Baculovirus

Description of Technology: Baculoviruses have been used for decades to produce proteins in insect cell hosts. Current systems for generating recombinant baculovirus have several shortcomings which prevent their easy use in high-throughput applications. The present

invention discloses an improved system to quickly and efficiently generate recombinant baculoviruses which produce recombinant proteins. In the new system, the baculovirus transfer vector, transposition helper plasmid and E. coli strain carrying the bacmid DNA were modified to eliminate the need for screening positive clones and improve the efficiency of baculovirus production. Taken together, these improvements permit facile high-throughput recombinant baculovirus production at reduced cost and improved speed over the currently available systems.

Potential Commercial Applications:

- High-throughput protein production
- Generation of virus-like particles in insect cells

Competitive Advantages:

- Elimination of background plasmid DNA during recombinant baculovirus production
- Elimination of nonproductive transposition events leading to false positives
- Lower cost production of baculovirus
- Increased speed of baculovirus production (allowing high-throughput production with limited screening)
- Higher efficiency cloning of baculovirus constructs

Development Stage:

- Prototype
- Pilot
- In vitro data available

Inventor: Dominic Esposito (NCI).

Intellectual Property: HHS Reference No. E–287–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Related Technology: HHS Reference No. E–164–2011—Combinatorial Cloning Platform.

Licensing Contact: Susan Ano, Ph.D.; 301–435–5515; *anos@mail.nih.gov.*

Dated: July 9, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–16947 Filed 7–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel RFA–AT–11–011: Mechanistic Research on CAM Natural Products (R01).

Date: September 13, 2013.

Time: 7:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Martina Schmidt, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Complementary & Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–594–3456, *schmidma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: July 10, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–16940 Filed 7–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; Member Conflict: Risk, Prevention and Health Behavior.

Date: July 24, 2013.

Time: 10:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 10, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–16939 Filed 7–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 materials, 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 Neurological Disorders and Stroke Special Emphasis Panel; EUREKA.

Date: August 14, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific

Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–402–0288, *Natalia.Strunnikova@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 10, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–16946 Filed 7–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 on Deafness and Other Communication Disorders Special Emphasis Panel; R01—Vestibular Neural Prosthesis Review.

Date: July 29, 2013.

Time: 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 10, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–16944 Filed 7–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Resource related project on genetically modified mice.

Date: August 14, 2013.

Time: 11:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892, *sunnarborgsw@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 10, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–16941 Filed 7–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Initial Review Group; Epidemiology, Prevention and Behavior Research Review Subcommittee.

Date: October 22, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAAA, 5635 Fishers Lane, T510, Rockville, MD 20852.

Contact Person: Katrina L Foster, Ph.D., Scientific Review Administrator, National Institutes on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 3037, Rockville, MD 20852, 301–443–3037, *katrina@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS)

Dated: *July 10, 2013.*

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–16942 Filed 7–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 materials, 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 Neurological Disorders and Stroke Special Emphasis Panel Review of the Diversity Program

Date: July 23, 2013.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Raul A. Saavedra, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel P30 and R24 Review.

Date: August 7, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chicago—O'Hare/Rosemont, 550 North River Road, Rosemont, IL 60018.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *benzingw@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Stroke Trials Network NCCC SEP.

Date: August 15, 2013.

Time: 8:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Stroke Trial Network Sites.

Date: August 15–16, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 10, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–16945 Filed 7–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Initial Review Group; Clinical, Treatment and Health Services Research Review Subcommittee.

Date: October 15, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAAA, 5635 Fishers Lane, T508 Rockville, MD 20852.

Contact Person: Katrina L Foster, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 2019, Rockville, MD 20852, 301–443–4032, *katrina@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS)

Dated: July 10, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–16943 Filed 7–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive License: Human Papillomavirus 16 E2 and E6 Peptides for Cervical Cancer Vaccine Development

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive worldwide license to practice the inventions embodied in:

NIH Ref. No.	Patent application No.	Filing date	Issued patent no. (*if any*)
NIH Ref. E–126–2001/0–AU–06	2002258614	March 22, 2002	2002258614
NIH Ref. E–126–2001/0–CA–04	2441947	March 22, 2002	
NIH Ref. E–126–2001/0–EP–05	2728570.9	March 22, 2002	
NIH Ref. E–126–2001/0–PCT–02	PCT/US02/09261	March 22, 2002	(Expired)
NIH Ref. E–126–2001/0–US–01	60/278,520	March 23, 2001	(Expired)
NIH Ref. E–126–2001/0–US–03	10/472,661	September 23, 2003	7,189,513
NIH Ref. E–126–2001/0–US–07	11/685,632	March 13, 2007	7,507,538
NIH Ref. E–155–2005/0–US–01	60/671,463	April 15, 2005	(Expired)
NIH Ref. E–155–2005/1–US–01	60/680,000	May 12, 2005	(Expired)
NIH Ref. E–155–2005/2–US–01	60/724,783	October 11, 2005	(Expired)
NIH Ref. E–155–2005/3–AU–04	2006236905	April 11, 2006	

NIH Ref. No.	Patent application No.	Filing date	Issued patent no. (*if any*)
NIH Ref. E–155–2005/3–CA–05	2604909	April 11, 2006	
NIH Ref. E–155–2005/3–EP–03 (CH, DE, FR, GB, and IE)	6749659.6	April 11, 2007	1877087
NIH Ref. E–155–2005/3–PCT–01	PCT/US2006/1331	April 11, 2006	(Expired)
NIH Ref. E–155–2005/3–US–02	11/918,557	October 11, 2006	7,691,579

to Georgia Health Sciences University Research Institute, Inc. having a principal place of business in Augusta, Georgia.

The United States of America is an assignee to the patent rights of these inventions.

The contemplated exclusive license may be in a field of use directed to cervical cancer vaccines.

DATES: Only written comments and/or applications for a license that are received by the NIH Office of Technology Transfer on or before August 15, 2013 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael Shmilovich, Esq, CLP, Senior Licensing and Patent Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; Email: *shmilovm@od.nih.gov.* A signed confidential disclosure agreement may be required to receive copies of patent applications assuming it has not already issued or been published under either the publication rules of either the US Patent and Trademark Office or World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION:

NIH Ref. No. E–155–2005/0–3 (as Above)

The invention pertains primarily to CD8+ T cell epitopes from HPV16 E2. These epitopes generated from amino acid positions 69–77 (ALQAIELQL) and 138–147 (YICEEASVTV) bind to HLA.A2 and elicit CD8+ cytotoxic T cell responses that lyse tumor cells of low-grade cervical neoplasia (wart).

NIH Ref. No. E–126–2001/0 (as Above)

Immunogenic peptides from the HPV–18E6 (X_1KLPDLCTELX^2;, wherein X_2 and X_1 are peptides of 0–11 amino acids in length comprising contiguous HPV 18 E6 amino acid sequences) protein that comprise class I restricted T cell epitopes and methods of administering the same. The HPV–18E6 peptide cross-reacts immunologically with both HPV type 16 and HPV type 18 with higher affinity than most common human lymphocyte antigen (HLA), HLA–A2 than the homologous peptide from HPV 16. E6 peptide vaccines are potentially prophylactic or therapeutic for cervical cancer, other genital cancers, head and neck cancers, and upper digestive tract cancers. It could also be potentially used in the treatment of patients presenting with pre-malignant cervical disease, especially in underdeveloped countries with no access to surgical treatment or to completely avoid surgical treatment.

The prospective exclusive license will be royalty-bearing and comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 9, 2013.

Richard Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–16949 Filed 7–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Ophthalmic Diagnostic Devices

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of a worldwide exclusive start-up patent license, to practice the inventions embodied in U.S. Patent 8,132,911 (HHS Ref. No. E–279–2006/0) to OptoBiometrics Designs, Inc., a company incorporated under the laws of the State of California having its headquarters in Pleasant Hill, California. The United States of America is the assignee of the rights of the above inventions. The contemplated exclusive license may be granted in a field of use limited to ocular fundus examination devices and systems.

DATES: Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before July 31, 2013 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael A. Shmilovich, Esq., CLP, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; Email: *shmilovm@mail.nih.gov.* A signed confidentiality nondisclosure agreement will be required to receive copies of any patent applications that have not been published by the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: The issued patent covers an optical system that permits targeted photo-stimulation of the retina by positioning a stimulus location under visual guidance through a fundus camera. The instant system is designed to elicit, under direct infrared (IR) visual control of stimulus size and position in the retina, electroretinograms (ERGs) in response to photo-stimulation from selected regions of the retina, as well as to present small light stimuli to a selected area to explore visual sensitivity properties. For example, the detected ERGs can be the basis for diagnosing or characterizing patient retina with early stage retinal disease versus healthy retina from the opposite eye. The system can be mounted on commercially available fundus cameras that have IR capabilities (or would accept IR bandpass filtering of

their retinal illumination output) and will accept a near IR CCD camera connected to a TV mounted on the photographic-camera port.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 9, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–16950 Filed 7–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Start-Up Exclusive Evaluation Option License: Methods of Treating Giardiasis Using Available Compounds

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a start-up exclusive evaluation option license to practice the inventions embodied in U.S. provisional Applications 61/392,096 (E–211–2010/0–US–01) filed October 12, 2010 and 61/411,509 filed November 9, 2010 (E–211–2010/1–US–01); PCT application No. PCT/US2011/055902 filed October 12, 2011 (E–211–2010/2–PCT–01); US patent application No. 13/878,832 filed April 11, 2013 (E–211–2010/2–US–06); European patent application No. 11773158.8 filed May 2, 2013 (E–211–2010/2–EP–04); Canadian application No. 2,814,694 filed April 11, 2013 (E–211–2010/2–CA–03); Australia application No. 2011316657 filed April 12, 2013 (E–211–2010/2–AU–02); and Indian application No. 1137/KOLNP/2013 filed April 22, 2013 (E–211–2010/2–IN–05); each entitled ''Methods of Treating Giardiasis'' by Wei Zheng et al. to BrioMed, Inc., having a place of business at 1743 S. Westgate Ave, Los Angeles, CA 90025 USA. The patent rights in this invention have been assigned to the United States of America and the University of Maryland.

DATES: Only written comments and/or application for a license that are received by the NIH Office of Technology Transfer on or before July 31, 2013 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Tedd Fenn, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: *Tedd.Fenn@mail.nih.gov;* Telephone: 301–435–5031; Facsimile: 301–402–0220.

SUPPLEMENTARY INFORMATION: The prospective start-up exclusive evaluation option license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective start-up exclusive evaluation option license may be granted unless, within fifteen (15) days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

This technology includes a group of at least twenty-nine, diverse, commercially available compounds that are newly identified for activity against Giardia lamblia parasites. At least six of the candidate compounds, Bortezomib, Decitabine, Hydroxocobalamin, Amlexanox, Idarubicin, and Auranofin have preexisting FDA approval for human use for other (non-Giardia) conditions. Another three compounds, Fumagillin, Nitarsone and Carbadox have preexisting approval for veterinary use for non-Giardia conditions. Additional active compounds identified include: Acivicin, Riboflavin butyrate, BTO–1, GW9662, Dinitroph-dfgp, Deserpidine, Tetramethylthiuram disulsulfide, Disulfiram, Mitoxantrone, Ecteinascidin 743, 17-allyaminogeldanamycin, Carboquone and Nocodazole. The anti-Giardial activity of these compounds presents a cost saving opportunity for the rapid development of new, better tolerated treatments for the most prevalent human intestinal parasite infection in the United States and the world.

The proposed field of exclusivity may be limited to therapeutics for treatment of Giardia infection in mammals.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 9, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 2013–16948 Filed 7–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Cooperative Research and Development Agreement (CRADA) Opportunity With the Department of Homeland Security for the Development of a Foot-and-Mouth Disease 3ABC ELISA Diagnostic Kit; Correction

AGENCY: Science and Technology Directorate, Plum Island Animal Disease Center, Department of Homeland Security.

ACTION: Notice of intent; correction.

SUMMARY: The Department of Homeland Security Science and Technology Directorate (DHS S&T), through its Plum Island Animal Disease Center (PIADC), published a document in the **Federal Register** of May 16, 2013, seeking industry collaborators to aid DHS S&T in developing and validating an ELISA diagnostic kit for detection of Foot and Mouth Disease Virus (FMDV) non-structural proteins. The document did not specify dates for when the submission of proposals are due.

FOR FURTHER INFORMATION CONTACT: Angela Ervin, 202–254–5624.

Correction

In the **Federal Register** of May 16, 2013, in FR Doc. DHS–2013–0036, on page 1, in the third column, correct the **DATES** caption to read:

DATES: Submit proposals on or before August 8, 2013.

Correction

In the **Federal Register** of May 16, 2013, in FR Doc. DHS–2013–0036, on

page 1, in the third column, correct the **ADDRESSES** caption to read:

ADDRESSES: Mail comments and requests to participate to Dr. Angela Ervin, (ATTN: Angela Ervin, 245 Murray Lane SW., Washington, DC 20528–0075). Submit electronic proposals, along with comments and other data to *Angela.Ervin@hg.dhs.gov* on or before August 8, 2013.

Dated: July 8, 2013.

James Johnson,

Director, Office of National Laboratories.

[FR Doc. 2013–16952 Filed 7–15–13; 8:45 am]

BILLING CODE 9910–9F–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2013–0133]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an revision of a currently approved collection of information: 1625–0056; Labeling Required In 33 CFR parts 181 and 183 and 46 CFR 25.10–3. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before August 15, 2013.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2013–0133] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov.*

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF 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:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, 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 the 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–611), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St. SW., STOP 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: 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 Hairston, 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. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2013–0133], and must be received by August 15, 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–2013–0133], 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 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–2013–0133'' in the ''Keyword'' box. 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 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–2013–0133'' 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.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0056.

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).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (78 FR 19504, April 1, 2013) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Requests

Title: Labeling Required In 33 CFR parts 181 and 183 and 46 CFR 25.10–3.

OMB Control Number: 1625–0056.

Type of Request: Extension of a currently approved collection.

Respondents: Manufacturers of boats, fuel tanks, fuel hoses and navigation lights.

Abstract: Requires manufacturers to display various labels evidencing compliance: Hull Identification Numbers; U.S. Coast Guard Maximum Capacities; Gasoline Fuel Tank label; USCG Type Fuel Hose Label; and Certified Navigation Light Label.

Forms: N/A.

Burden Estimate: The estimated burden has decreased from 299,142 hours to 156,170 hours a year due to smaller numbers of boat manufacturers and numbers of boats sold.

Dated: July 3, 2013.

R. E. Day,

Rear Admiral, U. S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2013–16959 Filed 7–15–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2013–0164]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding Information Collection Requests (ICRs), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collections of information: 1625–0049, Waterfront Facilities Handling Liquefied Natural Gas (LNG) and Liquefied Hazardous Gas (LHG) and 1625–0063, Marine Occupational Health and Safety Standards for Benzene—46 CFR 197 subpart C. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before August 15, 2013.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2013–0164] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov.*

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF 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:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, 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 the 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.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), ATTN: Paperwork Reduction Act Manager, US Coast Guard, 2100 2nd St. SW., STOP 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Anthony Smith, Office of Information Management, telephone 202–475–3532 or fax 202–475–3929, for questions on these documents. Contact Ms. Barbara Hairston, 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 Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (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 information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICRs referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2013–0164], and must be received by August 15, 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–2013–0164]; 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 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–2013–0164'' in the ''Keyword'' box. 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 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–2013–0164'' 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.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Numbers: 1625–0049 and 1625–0063.

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).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (78 FR 19502, April 1, 2013) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Requests

1. *Title:* Waterfront Facilities Handling Liquefied Natural Gas (LNG) and Liquefied Hazardous Gas (LHG).

OMB Control Number: 1625–0049.

Type Of Request: Revision of a currently approved collection.

Respondents: Owners and operators of waterfront facilities that transfer LNG or LHG.

Abstract: Liquefied Natural Gas (LNG) and other Liquefied Hazardous Gases (LHG) present a risk to the public when handled at waterfront facilities. These rules should either prevent accidental releases at waterfront facilities or mitigate their results. They are necessary to promote and verify compliance with safety standards.

Forms: None.

Burden Estimate: The estimated burden has decreased from 9,504 hours to 6,425 hours a year due to the change from 7 to 1 WSA's per year. There is also an increase in response due to the change in the number of respondents.

2. *Title:* Marine Occupational Health and Safety Standards for Benzene—46 CFR 197 Subpart C.

OMB Control Number: 1625–0063.

Type Of Request: Revision of a currently approved collection.

Respondents: Owners and operators of vessels.

Abstract: To protect marine workers from exposure to toxic Benzene vapor, the Coast Guard implemented 46 CFR part 197 subpart C to reduce the number of deaths. This information collection is vital to verifying compliance. Respondents are owners and operators of vessels.

Forms: None.

Burden Estimate: The estimated burden has decreased from 59,766 hours to 38,165 hours a year, due to a correction in the method of calculating burden.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: July 3, 2013.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2013–16960 Filed 7–15–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2013–0519]

Information Collection Requests 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 Information Collection Requests (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of revisions to the following collections of information: 1625–0074, Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels; 1625–0084, Audit Reports under the International Safety Management Code and 1625–0093, Facilities Transferring Oil or Hazardous

Materials in Bulk—Letter of Intent and Operations Manual. Our ICRs describe the information we seek to collect from the public. Before submitting these ICRs to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before September 16, 2013.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2013–0519] 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 the 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.*

Copies of the ICRs are 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 Hairston, 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 Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (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 information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval for the Collections. 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–2013–0519], and must be received by September 16, 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–2013–0519], 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–2013–0519'' in the ''Keyword'' box. 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 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–2013–0519'' 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 Requests

1. *Title:* Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels.

OMB Control Number: 1625–0074.

Summary: This collection requires the submission of identifying information such as a vessel's name and identification number, and of the owner's choice whether or not to pay fees for future years. A written request to the Coast Guard is necessary.

Need: The Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508], which amended 46 U.S.C. 2110,

requires the Coast Guard to collect user fees from inspected vessels. To properly collect and manage these fees, the Coast Guard must have current information on identification. This collection helps to ensure that we get that information and manage it efficiently.

Forms: N/A.

Respondents: Owners of vessels.

Frequency: Annually.

Burden Estimate: The estimated burden has decreased from 4,160 hours to 2,782 hours a year due to a reduction in the estimated annual number of response.

2. *Title:* Audit Reports under the International Safety Management Code.

OMB Control Number: 1625–0084.

Summary: This information helps to determine whether U.S. vessels, subject to SOLAS 74, engaged in international trade, are in compliance with that treaty. Organizations recognized by the Coast Guard conduct ongoing audits of vessels' and companies' safety management systems.

Need: Title 46 U.S.C. 3203 authorizes the Coast Guard to prescribe regulations regarding safety management systems. Title 33 CFR part 96 contains the rules for those systems and hence the safe operation of vessels.

Forms: N/A.

Respondents: Owners and operators of vessels, and organizations authorized to issue ISM Code certificates for the United States.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 18,610 hours to 17,660 hours a year due to a reduction in the estimated annual number of respondents.

3. *Title:* Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent and Operations Manual.

OMB Control Number: 1625–0093.

Summary: A Letter of Intent is a notice to the Coast Guard Captain of the Port that an operator intends to operate a facility that will transfer bulk oil or hazardous materials to or from vessels. An Operations Manual (OM) is also required for this type of facility. The OM establishes procedures to follow when conducting transfers and in the event of a spill.

Need: Under 33 U.S.C. 1321 and Executive Order 12777 the Coast Guard is authorized to prescribe regulations to prevent the discharge of oil and hazardous substances from facilities and to contain such discharges. The Letter of Intent regulation is contained in 33 CFR 154.110 and the OM regulations are contained in 33 CFR part 154 subpart B.

Forms: N/A.

Respondents: Operators of facilities that transfer oil or hazardous materials in bulk.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 84,247 hours to 45,748 hours a year due to a reduction in the estimated annual number of respondents.

Dated: July 3, 2013.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2013–16961 Filed 7–15–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4116–DR; Docket ID FEMA–2013–0001]

Illinois; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA–4116–DR), dated May 10, 2013, and related determinations.

DATES: *Effective Date:* July 2, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Illinois is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 10, 2013.

Putnam and Warren Counties for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–16924 Filed 7–15–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–NEW]

Agency Information Collection Activities: Online Survey of Web Services Employers; New Information Collection; Comment Request

ACTION: 60-Day Notice.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 16, 2013.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Office of Policy and Strategy, Laura Dawkins, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. Comments may be submitted to DHS via email at *uscisfrcomment@dhs.gov* and must include OMB Control Number 1615–NEW in the subject box. Comments may also be submitted via the Federal eRulemaking Portal at *www.Regulations.gov* under e-Docket ID number USCIS–2013–0003.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *www.Regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make

to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *www.Regulations.gov*.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Online Survey of Web Services Employers.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File OMB–70; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or private sector. It is necessary that USCIS obtains data on the E-Verify Program Web Services. Gaining an understanding of the Web Services process should enable USCIS to identify programmatic improvements to better meet the goals of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the legislation on which the E-Verify evaluations are based.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 569 respondents averaging 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 285 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal at: *www.Regulations.gov*.

We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377.

Dated: July 11, 2013.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–16968 Filed 7–15–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID: BSEE–2013–0003; OMB Control Number 1014–0006; 13XE1700DX EX1SF0000.DAQ000 EEEE500000]

Information Collection Activities: Sulphur Operations, Proposed Collection; Comment Request

ACTION: 60-Day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a renewal to the paperwork requirements in the regulations under, Subpart P, *Sulphur Operations.*

DATES: You must submit comments by September 16, 2013.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically: go to *http://www.regulations.gov.* In the Search box, enter BSEE–2013–0003 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *nicole.mason@bsee.gov.* Mail or hand-carry comments to the Department of the Interior; BSEE; Regulations and Standards Branch; Attention: Nicole Mason; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference ICR 1014–0006 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations and Standards Branch at (703) 787–1605 to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart P, Sulphur Operations.

OMB Control Number: 1014–0006.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop mineral resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations ''to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein'' and to include provisions ''for the prompt and efficient exploration and development of a lease area.'' These authorities and responsibilities are among those delegated to BSEE to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of

determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

This ICR addresses the regulations at 30 CFR 250, subpart P, Sulphur Operations, and any associated supplementary Notices to Lessees and Operators (NTLs) intended to provide clarification, description, or explanation of these regulations.

Currently, there are no active sulphur lease operations on the OCS. Therefore, this ICR and its relevant hours represent one potential respondent.

Regulations at 30 CFR part 250, subpart P, implement these statutory requirements. The BSEE uses the information collected to ascertain the condition of drilling sites for the purpose of preventing hazards inherent in sulphur drilling and production operations and to evaluate the adequacy of equipment and/or procedures to be used during the conduct of drilling, well-completion, well-workover, and production operations. The BSEE uses the information to:

- Ascertain that a discovered sulphur deposit can be classified as capable of production in paying quantities.
- Ensure accurate and complete measurement of production to determine the amount of sulphur royalty payments due the United States; and that the sale locations are secure, production has been measured accurately, and appropriate follow-up actions are initiated.
- Ensure the adequacy and safety of firefighting plans; the drilling unit is fit for the intended purpose; and the adequacy of casing for anticipated conditions.
- Review drilling, well-completion, well-workover diagrams and procedures, as well as production operation procedures to ensure the safety of the proposed sulphur drilling, well-completion, well-workover and proposed production operations.
- Monitor environmental data during sulphur operations in offshore areas where such data are not already available to provide a valuable source of information to evaluate the performance of drilling rigs under various weather and ocean conditions. This information is necessary to make reasonable determinations regarding safety of operations and environmental protection.

The BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2); 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection;* and 30 CFR part 252, *OCS Oil and Gas Information Program.* No items of a sensitive nature are collected. Responses are mandatory.

Frequency: Occasional and varies by section, but information concerning drilling, well-completion, and well-workover operations and production is collected only once for each particular activity.

Estimated Number and Description of Respondents: Approximately 1 Federal OCS sulphur lessee.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 903 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250	Reporting and recordkeeping requirement	Hour burden
	Submittals/Notifications	
1600; 1617	Submit exploration or development and production plan, under 30 CFR 550, subpart B.	Burden covered under (1010–0151).
1617; 1618; 1619(b); 1622	Submit forms BSEE–0123 (Application for Permit to Drill), BSEE–0124 (Application for Permit to Modify), BSEE–0125 (End of Operations Report).	Burden covered under (1014–0018).
1605(b)(2), (3)	Make drilling units available for inspection; submit and/or resubmit data and information on fitness of drilling unit.	4.
1605(d)	Submit results of additional surveys and soil borings upon request	1.
1605(f)	Submit application for installation of fixed drilling platforms or structures	Burden covered under (1014–0011).
1608(a), (c)	Submit well casing and cementing plan or modification	5.
1619(c), (d), (e)	Submit copies of records, logs, reports, charts, etc., upon request	1.
1628(b), (d)	Submit application for design and installation features of sulphur production facilities and fuel gas safety system; certify new installation conforms to approved design.	4.
1630(a)(6)	Notify BSEE of pre-production test and inspection of safety system and commencement of production.	30 minutes.
1633(b)	Submit application for method of production measurement	2.
	Requests	
1603(a)	Request determination whether sulphur deposit can produce in paying quantities	1.
1605(e)(5)	Request copy of directional survey (by holder of adjoining lease)	1.
1607	Request establishment, amendment, or cancellation of field rules for drilling, well-completion, or well-workover.	8.
1610(d)(7+8)	Request exception to ram-type blowout preventer (BOP) system components rated working pressure.	1.
1611(b); 1625(b)	Request exception to water-rated working pressure to test ram-type and annular BOPs and choke manifold.	1.
1611(f); 1625(f)	Request exception to recording pressure conditions during BOP tests on pressure charts; certify by representative.	1.
1612	Request exception to § 250.462 requirements for well-control drills	1.
1615	Request exception to blind-shear ram or pipe rams and inside BOP to secure wells	1.

Citation 30 CFR 250	Reporting and recordkeeping requirement	Hour burden
1629(b)(3)	Request approval of firefighting systems; post firefighting system diagram	4.
1608(b), (c); 1629(b)(3); 1600–1634.	General departure and/or alternative compliance requests not specifically covered elsewhere in subpart P.	2.
	Record/Retain	
1604(f)	Check traveling-block safety device for proper operation weekly and after each drill-line slipping; enter results in log.	15 minutes.
1605(c)	Report oceanographic, meteorological, and drilling unit performance data upon request.	1.
1609(a)	Pressure test casing; record time, conditions of testing, and test results in log	2.
1611(d)(3); 1625(d)(3)	Record in driller's report the date, time, and reason for postponing pressure testing	10 minutes.
1611(f), (g); 1625(f), (g)	Conduct tests, actuations, inspections, maintenance, and crew drills of BOP systems at least weekly; record results in driller's report; certify by representative; retain records for 2 years following completion of drilling activity.	6.
1613(d)	Pressure test diverter sealing element/valves weekly; actuate diverter sealing element/valves/control system every 24 hours; test diverter line for flow every 24 hours; record test times and results in driller's report.	2.
1616(c)	Retain training records for lessee and drilling contractor personnel	Burden covered under 1014–0008.
1619(a); 1623(c)	Retain records for each well and all well operations for 2 years; calculate well-control fluid volume and post near operators' station.	12.
1621	Conduct safety meetings prior to well-completion or well-workover operations; record date and time.	1.
1628(b), (d)	Maintain information on approved design and installation features for the life of the facility.	1.
1629(b)(1)(ii)	Retain pressure-recording charts used to determine operating pressure ranges for 2 years.	12.
1630(b)	Maintain records for each safety device installed for 2 years; make available for review.	1.
1631	Conduct safety device training prior to production operations and periodically thereafter; record date and time.	1.
1634(b)	Report evidence of mishandling of produced sulphur or tampering or falsifying any measurement of production.	1.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: There are no non-hour cost burdens associated with this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ". . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .". Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BSEE Information Collection Clearance Officer: Cheryl Blundon, (703) 787–1607.

Dated: June 27, 2013.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2013–16990 Filed 7–15–13; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2013–N148; FXES11130600000D2–123–FF06E00000]

Endangered and Threatened Species; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service, have issued the following permits to conduct certain activities with endangered species under the authority of the Endangered Species Act, as amended (Act).

FOR FURTHER INFORMATION CONTACT: Kathy Konishi, Permit Coordinator Ecological Services, (303) 236–4212 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION: We have issued the following permits in response to recovery permit applications we

received under the authority of section 10 of the Act (16 U.S.C. 1531 *et seq.*). Each permit listed below was issued only after we determined that it was applied for in good faith, that granting the permit would not be to the disadvantage of the listed species, and that the terms and conditions of the permit were consistent with purposes and policy set forth in the Act.

Applicant name	Permit No.	Date issued	Date expired
ARIZONA GAME AND FISH DEPARTMENT	163125	11/19/2012	12/31/2016
BROWN AND CALDWELL	75311A	6/5/2012	4/30/2017
BUREAU OF LAND MANAGEMENT	121911	8/23/2012	12/31/2016
BUREAU OF LAND MANAGEMENT	180540	1/2/2013	12/31/2017
BUREAU OF LAND MANAGEMENT	057401	4/12/2013	12/31/2018
CEDAR CITY CORP. AND WILDLIFE SERVICES	76106A	8/22/2012	5/30/2017
CO DEPT OF TRANSPORTATION	01741B	4/8/2013	12/31/2018
COLORADO STATE UNIVERSITY	76718A	7/26/2012	5/30/2017
DENVER BOTANIC GARDENS, INC.	106182	6/13/2013	3/31/2018
DENVER ZOOLOGICAL GARDENS	064679	12/18/2012	12/31/2022
DUNMIRE CONSULTING	94926A	4/8/2013	12/31/2018
EDM INTERNATIONAL, INC.	89157A	12/5/2012	12/31/2017
HAYDEN-WING ASSOCIATES, LLC	237961	3/27/2013	12/31/2016
INTERWEST WILDLIFE & ECOLOGICAL SERVICES, INC.	054317	7/13/2012	4/30/2016
KANSAS STATE UNIVERSITY	067729	7/6/2012	6/30/2016
LIVING PLANET AQUARIUM	131638	4/24/2013	3/31/2018
MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS	047250	7/9/2012	9/30/2016
NATIONAL PARK SERVICE	057485	7/26/2012	12/31/2016
NATIONAL PARK SERVICE	191853	12/7/2012	12/31/2017
NATIONAL PARK SERVICE	064680	3/4/2013	12/31/2017
NATIONAL PARK SERVICE	067734	5/28/2013	3/31/2018
NATIONAL ZOO	051828	7/6/2012	5/30/2016
NEBRASKA DEPARTMENT OF ROADS	186282	1/15/2013	12/31/2017
NELSON CONSULTING	220648	7/13/2012	12/31/2013
SOUTH DAKOTA DEPT OF ENVIRONMENT AND NATURAL RESOURCES	98708A	4/22/2013	3/31/2018
SOUTH DAKOTA GAME, FISH AND PARKS	00670A	7/13/2012	12/31/2014
STEGER, LAURA DEANNE	96435A	3/11/2013	12/31/2016
SWCA, INC. ENVIRONMENTAL CONSULTANTS	047252	10/1/2012	9/30/2016
TOLEDO ZOOLOGICAL GARDENS	052627	2/12/2013	9/30/2016
TRC ENVIRONMENTAL CORP.	052582	8/22/2012	9/30/2016
TURNER ENDANGERED SPECIES FUND	051139	11/16/2012	12/31/2016
UNIVERSITY OF KANSAS	038527	6/4/2013	3/31/2018
UNIVERSITY OF NEBRASKA AT KEARNEY	045150	9/17/2012	1/30/2016
UNIVERSITY OF NORTHERN COLORADO	99605A	4/17/2013	3/31/2018
US FISH AND WILDLIFE SERVICE	704930	1/14/2013	12/31/2017
US FOREST SERVICE	053737	6/5/2012	9/30/2016
US FOREST SERVICE	054237	7/27/2012	9/30/2017
US FOREST SERVICE	131639	1/31/2013	12/31/2018
US FOREST SERVICE, BRIDGER-TETON NATIONAL FOREST	106387	6/6/2013	3/31/2018
US GEOLOGICAL SURVEY	121914	7/30/2012	9/30/2016
US GEOLOGICAL SURVEY	052284	11/30/2012	12/31/2012
US GEOLOGICAL SURVEY	047282	3/14/2013	12/31/2017
VIRGINIA POLYTECHNIC INSTITUTE	103272	2/25/2013	9/30/2018
WEBER STATE UNIVERSITY	207948	3/4/2013	12/31/2017
WESTERN ECOSYSTEMS TECHNOLOGY, INC.	050706	10/1/2012	12/31/2015
WESTERN WILDLIFE INSTITUTE	056100	6/5/2012	4/30/2017
WHITE, JEREMY A,	79842A	4/12/2013	3/30/2017

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written requires for a copy of such documents to Kathy Konishi (see **FOR FURTHER INFORMATION CONTACT**).

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: July 9, 2013.

Nicole Alt,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2013–17033 Filed 7–15–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2013–N143; 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 August 15, 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–131638).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (e.g., Permit No. TE–131638) 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 the permittee to conduct 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–09941B

Applicant: Felsburg, Holt & Ullevig, Inc., 315 S. 9th Street, Ste. 201, Lincoln, NE 68508.

The applicant requests a permit to conduct presence/absence surveys through trap (take) and release of the American burying beetle (*Nicrophorus americanus*) for the purpose of enhancing the species' survival.

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: July 9, 2013.

Nicole Alt,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2013–17032 Filed 7–15–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DR.5A211.IA000413]

Renewal of Agency Information Collection for Federal Acknowledgment of Tribes

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for Federal Acknowledgment of Tribes authorized by OMB Control Number 1076–0104. This information collection expires July 31, 2013.

DATES: Interested persons are invited to submit comments on or before August 15, 2013.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Please send a copy of your comments to R. Lee Fleming, Director, Office of Federal Acknowledgment, Assistant Secretary—Indian Affairs, 1951 Constitution Avenue NW., MS–34B SIB, Washington, DC 20240; facsimile: (202) 219–3008; email: *Lee.Fleming@bia.gov.*

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, (202) 513–7650. You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Assistant Secretary—Indian Affairs is seeking renewal of the approval for the information collection conducted under 25 CFR part 83, to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a government-to-government relationship with the United States. Federal recognition makes the group eligible for benefits from the Federal Government. Approval for this collection expires July 31, 2013. Three forms are used as part of this information collection.

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personally identifiable 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.

III. Data

OMB Control Number: 1076–0104.

Title: Documented Petitions for Federal Acknowledgment as an Indian Tribe, 25 CFR 83.

Brief Description of Collection: Submission of this information allows Office of Federal Acknowledgment (OFA) to review applications for the Federal acknowledgment of a group as an Indian tribe. The acknowledgment regulations at 25 CFR part 83 contain seven criteria that unrecognized groups seeking Federal acknowledgment as Indian tribes must demonstrate that they meet. Information collect from petitioning groups under these regulations provide anthropological, genealogical and historical data used by the Assistant Secretary—Indian Affairs to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a government-to-government relationship with the United States. Respondents are not required to retain copies of the information submitted to OFA but will probably maintain copies for their own use; therefore, there is no recordkeeping requirement included in this information collection. A response is required to obtain a benefit.

Type of Review: Extension without change of currently approved collection.

Respondents: Groups petitioning for Federal acknowledgment as Indian tribes.

Number of Respondents: 10 per year, on average.

Number of Responses: 10 per year, on average.

Frequency of Response: Once.

Estimated Time per Response: 2,075 hours.

Estimated Total Annual Hour Burden: 20,750 hours.

Estimated Total Annual Cost: $0.

Dated: July 10, 2013.

John Ashley,

Acting Assistant Director for Information Resources.

[FR Doc. 2013–17026 Filed 7–15–13; 8:45 am]

BILLING CODE 4310–G1–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14900–A2; LLAK940000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision Approving Lands for Conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision will be issued by the Bureau of Land Management (BLM) to The Kuskokwim Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to The Kuskokwim Corporation. The lands are in the vicinity of Napaimute, Alaska, and are located in:

Seward Meridian, Alaska

T. 15 N., R. 51 W.,
Secs. 3, 4, and 5;
Secs. 10 and 11.
Containing 3,009.12 acres.

T. 16 N., R. 51 W.,
Secs. 29, 30, and 31;
Secs. 32, and 33.
Containing 3,016.78acres.

T. 19 N., R. 51 W.,
Secs. 10, 11, and 12.
Containing 3,840 acres.
Aggregating 9,865.90 acres.

Notice of the decision will also be published once a week for four consecutive weeks in the *Delta Discovery.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until August 15, 2013 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *blm_ak_akso_public_room@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 the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Ralph L. Eluska, Sr.,

Land Transfer Resolution Specialist, Division of Lands and Cadastral.

[FR Doc. 2013–16970 Filed 7–15–13; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000 L1610000.DP0000]

Call for Nominations for the Rio Grande Natural Area Commission, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior (Secretary) was directed by the Rio Grande Natural Area Act of 2006 to establish the Rio Grande Natural Area Commission (Commission). The nine-member Commission was formed in February 2011 to advise the Secretary with respect to the Rio Grande Natural Area (Natural Area) and to prepare a management plan relating to non-Federal land in the Natural Area. Since this Commission was formed, one of its members representing the general public resigned due to time conflicts. As a result, the Secretary is soliciting applications to replace the current occupant of that seat.

DATES: Submit nomination packages on or before August 15, 2013.

ADDRESSES: Send completed Council nominations to Tom Heinlein, District Manager, BLM Front Range District Office, 3028 East Main St., Cañon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: Tom Heinlein, District Manager, 3028 East Main St., Cañon City, CO 81212. Phone: 719–269–8554. Email: *theinlei@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 the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Commission is a statutory advisory committee established under Section 4 of the Rio Grande Natural Area Act of 2006 (16 U.S.C. 460rrr–2). The Commission shall be composed of nine members appointed by the Secretary, of whom:

1. One member shall represent the Colorado State Director of the BLM;
2. One member shall be the manager of the Alamosa National Wildlife Refuge, ex officio;
3. Three members shall be appointed based on the recommendation of the Governor of Colorado, among whom:
   a. One member shall represent the Colorado Parks and Wildlife division;
   b. One member shall represent the Colorado Division of Water Resources; and
   c. One member shall represent the Rio Grande Water Conservation District.
4. Four members shall:
   a. Represent the general public;
   b. Be citizens of the local region in which the Natural Area is established; and
   c. Have knowledge and experience in fields of interest relating to the preservation, restoration and use of the Natural Area.

Individuals may nominate themselves or others. The BLM will evaluate nominees based on their education, training, experience and knowledge of the geographical area the Commission serves. Nominees should demonstrate a commitment to collaborative resource decision-making. The following must accompany all nominations:

1. At least one letter of reference from represented interests or organizations;
2. A completed background information nomination form; and
3. Any other information that addresses the nominee's qualifications.

The Obama Administration prohibits individuals who are currently federally-registered lobbyists to serve on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees or councils. Nomination forms may be downloaded from the Rio Grande Natural Area Commission Web site: *http://www.blm.gov/co/st/en/fo/slvfo/rio_grande_natural.html.*

The Bureau of Land Management's (BLM) San Luis Valley Field Office will review the nomination packages in coordination with the Governor of Colorado before forwarding recommendations to the Secretary, who will make the appointments.

The Commission shall be subject to the FACA, 5 U.S.C. App. 2; and the Federal Land Management Policy Act of 1976, 43 U.S.C. 1701 et seq.

Authority: 43 CFR 1784.4–1.

Helen M. Hankins,

BLM Colorado State Director.

[FR Doc. 2013–16972 Filed 7–15–13; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Outer Continental Shelf (OCS), Gulf of Mexico (GOM), Oil and Gas Lease Sale, Western Planning Area (WPA) Lease Sales 238, 246, and 248 MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Intent (NOI) to Prepare a Supplemental Environmental Impact Statement (EIS)

SUMMARY: Consistent with the regulations implementing the National Environmental Policy Act, as amended (42 U.S.C. 4321 et seq.) (NEPA), BOEM is announcing its intent to prepare a Supplemental EIS for proposed WPA lease sales beginning with Lease Sale 238 (WPA Lease Sales 238, 246, and 248 Supplemental EIS). Lease Sale 238 is the next proposed lease sale in the Gulf of Mexico's WPA off the States of Texas and Louisiana. The WPA Lease Sales 238, 246, and 248 Supplemental EIS will update the environmental and socioeconomic analyses in the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2012–2017; Western Planning Area Lease Sales 229, 233, 238, 246, and 248; Central Planning Area (CPA) Lease Sales 227, 231, 235, 241, and 247, Final Environmental Impact Statement* (OCS EIS/EA BOEM 2012–019) (WPA/CPA Multisale EIS) and the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2013–2014; Western Planning Area Lease Sale 233; Central Planning Area Lease Sale 231-Final Supplemental Environmental Impact Statement* (OCS EIS/EA BOEM 2013–0118) (WPA 233/CPA 231 Supplemental EIS). The WPA/CPA Multisale EIS was completed in July 2012. The WPA 233/CPA 231 Supplemental EIS was completed in April 2013.

A Supplemental EIS is deemed appropriate to supplement the NEPA documents cited above for these lease sales in order to consider possible new circumstances and information arising from, among other things, the *Deepwater Horizon* explosion, oil spill, and response. The WPA Lease Sales 238, 246, and 248 Supplemental EIS analysis will focus on updating the baseline conditions and potential environmental effects of oil and natural gas leasing, exploration, development, and production in the WPA.

The WPA Lease Sales 238, 246, and 248 Supplemental EIS analysis will focus on the potential environmental effects of oil and natural gas leasing, exploration, development, and production in the WPA identified through the Area Identification procedure as the proposed lease sale area. In addition to the no action alternative (i.e., canceling the proposed sale), other alternatives may be considered for the proposed lease sales, including WPA Lease Sale 238, such as deferring certain areas from the proposed lease sales.

SUPPLEMENTARY INFORMATION: On June 28, 2012, the Department of the Interior released the *Proposed Final OCS Oil & Gas Leasing Program: 2012–2017* (Five-Year Program), which included five proposed WPA Lease Sales. WPA Lease Sales 238, 246, and 248 are proposed for 2014, 2015, and 2016 respectively. The general area proposed for these WPA lease sales, including Lease Sale 238, encompasses virtually all unleased blocks in approximately 28.58 million acres in the western portion of the GOM (excluding whole and partial blocks

within the boundary of the Flower Garden Banks National Marine Sanctuary).

This **Federal Register** notice is not an announcement to hold a proposed lease sale, but it is a continuation of information gathering and is published early in the environmental review process, in furtherance of the goals of NEPA. The comments received during the scoping comment period will help inform the content of the WPA Lease Sales 238, 246, and 248 Supplemental EIS and will be summarized in presale documentation prepared prior to holding proposed WPA Lease Sale 238. If, after completion of the WPA Lease Sales 238, 246, and 248 Supplemental EIS, the Secretary of the Interior's decision is to hold a lease sale, then the lease sale areas identified in the Notice(s) of Sale may exclude or defer certain lease blocks from the areas offered. However, for purposes of the WPA Lease Sales 238, 246, and 248 Supplemental EIS and to adequately assess the potential impacts of an areawide lease sale, BOEM is assuming that all unleased blocks may be offered in proposed WPA Lease Sale 238 and the remaining WPA lease sales.

In order to ensure a greater level of clarity during the Outer Continental Shelf Lands Act (OCSLA) stages and tiered NEPA processes of the Five-Year Program, BOEM established an alternative and mitigation tracking table, which is designed to track the receipt and treatment of alternative and mitigation suggestions. Section 4.3.2 of the *Outer Continental Shelf Oil and Gas Leasing Program: 2012–2017; Final Programmatic Environmental Impact Statement* (the Five-Year Program EIS) (*http://www.boem.gov/5-year/2012-2017/PEIS.aspx*) contains a list of deferral and alternative requests that were received during the development of the Five-Year Program EIS, but that were determined to be more appropriately considered at subsequent OCSLA and NEPA stages. The WPA/CPA Multisale EIS addressed these deferral and alternative requests, but they were ultimately deemed inappropriate for further analysis as a separate alternative or deferral from those already included and considered in the WPA/CPA Multisale EIS. In this and future NEPA analyses, BOEM will continue to evaluate whether these or other deferral or alternative requests warrant additional consideration as appropriate. (Please refer to Chapters 2.2.1.1 and 2.2.1.2 of the WPA/CPA Multisale EIS for a complete discussion; *http://www.boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/nepaprocess.aspx*). A key principle at each stage in the NEPA process is to identify how the recommendations for deferral and mitigation requests are being addressed and whether new information or circumstances favor new or different analytical approaches in response to these requests.

Additionally, BOEM has created a tailored map of the potentially affected area through the Multipurpose Marine Cadastre (MMC) Web site (*http://boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/Lease-Sale-Schedule/Interactive-Maps.aspx*). This map is an integrated marine information system that provides a more comprehensive look at geospatial data and ongoing activities and studies occurring in the area being considered. This Web site provides the ability to view multiple data layers of existing geospatial data. Commenters can suggest data layers for consideration by following the commenting instructions below.

Scoping Process: This NOI also serves to announce the scoping process for identifying issues for the WPA Lease Sales 238, 246, and 248 Supplemental EIS. Throughout the scoping process, Federal, State, Tribal, and local government agencies, and the general public have the opportunity to help BOEM determine significant resources and issues, impacting factors, reasonable alternatives, and potential mitigation measures to be analyzed in the WPA Lease Sales 238, 246, and 248 Supplemental EIS, and to provide additional information. BOEM will also use the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), as provided for in 36 CFR 800.2(d)(3).

Pursuant to the regulations implementing the procedural provisions of NEPA (42 U.S.C. 4321 *et seq.*), BOEM will hold public scoping meetings in Texas and Louisiana on the WPA Lease Sales 238, 246, and 248 Supplemental EIS. The purpose of these meetings will be to solicit comments on the scope of the WPA 238 Supplemental EIS. BOEM's scoping meetings will be held at the following places and times:

- Galveston, Texas: Tuesday, August 6, 2013, Courtyard Galveston Island Gulf Front Marriott, 9550 Seawall Boulevard, Galveston Texas 77554, one meeting beginning at 6:30 p.m. CDT; and
- New Orleans, Louisiana: Thursday, August 8, 2013, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123, one meeting beginning at 1:00 p.m. CDT.

Cooperating Agency: BOEM invites other Federal agencies and State, Tribal, and local governments to consider becoming cooperating agencies in the preparation of the WPA Lease Sales 238, 246, and 248 Supplemental EIS. We invite qualified government entities to inquire about cooperating agency status for the WPA Lease Sales 238, 246, and 248 Supplemental EIS. Following the guidelines from the Council of Environmental Quality (CEQ), qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process. Upon request, BOEM will provide potential cooperating agencies with a written summary of expectations for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and availability of predecisional information. BOEM anticipates this summary will form the basis for a Memorandum of Agreement between BOEM and any cooperating agency. Agencies should also consider the ''Factors for Determining Cooperating Agency Status'' in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: *Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act.* These documents are available at the following locations on the Internet: *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html;* and *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagency memofactors.html.*

BOEM, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to BOEM during the normal public input stages of the NEPA/EIS process. For further information about cooperating agencies, please contact Mr. Gary D. Goeke at (504) 736–3233.

Comments: All interested parties, including Federal, State, Tribal, and local governments, and others, may submit written comments on the scope of the WPA Lease Sales 238, 246, and 248 Supplemental EIS, significant issues that should be addressed, alternatives

that should be considered, potential mitigation measures, and the types of oil and gas activities of interest in the proposed WPA lease sale area.

Written scoping comments may be submitted in one of the following ways:

1. In an envelope labeled ''Scoping Comments for the WPA Lease Sales 238, 246, and 248 Supplemental EIS'' and mailed (or hand delivered) to Mr. Gary D. Goeke, Chief, Environmental Assessment Section, Office of Environment (GM 623E), Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394;

2. Through the regulations.gov web portal: Navigate to *http://www.regulations.gov* and search for ''Oil and Gas Lease Sales: Gulf of Mexico, Outer Continental Shelf; Western Planning Area Lease Sales 238, 246, and 248.'' (Note: It is important to include the quotation marks in your search terms.) Click on the ''Comment Now!'' button to the right of the document link. Enter your information and comment, then click ''Submit''; or

3. BOEM's email address: *wpa238@boem.gov*.

Petitions, although accepted, do not generally provide useful information to assist in development of alternatives, resources and issues to be analyzed, or impacting factors. BOEM does not consider anonymous comments; please include your name and address as part of your submittal. BOEM makes all comments, including the names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that BOEM withhold their names and/or addresses from the public record; however, BOEM cannot guarantee that we will be able to do so. If you wish your name and/or address to be withheld, you must state your preference prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

DATES: Comments should be submitted by August 15, 2013 to the address specified above.

FOR FURTHER INFORMATION CONTACT: For information on the WPA Lease Sales 238, 246, and 248 Supplemental EIS, the submission of comments, or BOEM's policies associated with this notice, please contact Mr. Gary D. Goeke, Chief, Environmental Assessment Section, Office of Environment (GM 623E), Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, LA 70123–2394, telephone (504) 736–3233.

Authority: This Notice of Intent to Prepare a Supplemental EIS (NOI) is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the NEPA.

Dated: July 11, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–17048 Filed 7–15–13; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–449 and 731–TA–1118–1121 (Review)]

Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey: Notice of Commission Determinations to Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty order on light-walled rectangular pipe and tube from China and the antidumping duty orders on light-walled rectangular pipe and tube from China, Korea, Mexico, and Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective July 5, 2013.

FOR FURTHER INFORMATION CONTACT: Edward Petronzio (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On July 5, 2013, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group responses to its notice of institution (78 FR 19526, April 1, 2013) were adequate and that the respondent interested party group response with respect to Mexico was adequate, and decided to conduct a full review of the antidumping duty order on light-walled rectangular pipe and tube from Mexico. Although the Commission received a response to its notice of institution from the Government of Turkey, the Commission found that the respondent interested party group responses with respect to China, Korea, and Turkey were inadequate. However, the Commission determined to conduct full reviews concerning the orders on light-walled rectangular pipe and tube from China, Korea, and Turkey to promote administrative efficiency in light of its decision to conduct a full review with respect to Mexico. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 10, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–16873 Filed 7–15–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On July 10, 2013 the Department of Justice filed a Complaint and

simultaneously lodged a proposed Consent Decree with the United States District Court for the District of Colorado in the lawsuit entitled *United States* v. *Jamesway Cartage, Inc.,* Civil Action No. 1:13–cv–01816. In its Complaint the United States seeks reimbursement of response costs incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the BioEnergy of Colorado Superfund Site located on 821 West 56th Avenue, City and Adams County, Colorado 80216. BioEnergy of Colorado, LLC, now defunct, operated a bio-diesel production facility at the Site under a lease arrangement with Jamesway Cartage, Inc., the Site owner. EPA removed low pH, caustic materials and methanol used by BioEnergy in the production of bio-fuel that had been spilled, leaked, or abandoned at the Site. Under the settlement Jamesway stipulates to entry of judgment for the full amount of EPA's past response costs, including interest ($332,801.43), and is required to sell the property within two years and pay 90% of the sales proceeds to satisfy the judgment amount. In return, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), to recover Past Response Costs.

The publication of this notice opens a period for public comment. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Jamesway Cartage, Inc.,* D.J. Ref. No. DOJ #90–11–3–10524. 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, D.C. 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Bob Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–16966 Filed 7–15–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On July 10, 2013, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of Texas in the lawsuit entitled *United States* v. *Shell Oil Co., et al.,* Civil Action No. 4:13-cv-2009.

In the Complaint, the United States alleges that Shell Oil Co. and two of its affiliated partnerships (''Shell'') violated, at their petroleum refinery and chemical plant in Deer Park, Texas, various provisions of the Clean Air Act, 42 U.S.C. 7401 *et seq.;* the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9609(c) and 9613(b); and the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. 11045(b)(3).

Under the consent decree, Shell will implement innovative pollution control technologies to reduce emissions of sulfur dioxide, volatile organic compounds (''VOCs''), and hazardous air pollutants from the twelve flares it operates at its Deer Park facility. Shell has agreed to limit the waste gas it sends to its flares by installing and/or operating systems that will recover and recycle waste gas back into plant processes (*i.e.,* flare gas recovery) and Shell has agreed to an overall ''cap'' on the volume of waste gas it flares. For waste gas that is flared, Shell will operate numerous monitoring systems and comply with several operating parameters to ensure that the flares adequately combust the gases. In addition, at a cost of between $15 and $60 million, Shell will undertake numerous activities at its wastewater treatment plant, its tanks, and its benzene extraction unit to reduce VOC emissions and mitigate the effect of alleged past excess VOC emissions. Shell also will install a $1 million state-of-the-art monitor at its fenceline to record benzene emissions and make the results available to the public, as well as spend $200,000 to retrofit publicly-owned diesel vehicles in the vicinity of the plant to reduce emissions. Finally, Shell will pay a civil penalty of $2.6 million.

The publication of this notice opens a period of public comment on the consent decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Shell Oil Co., et al.,* D.J. Ref. No. 90–5–2–1–09388/1. 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	Acting Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check in the amount of $62.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–16969 Filed 7–15–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree under the Clean Air Act

On July 11, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Maryland in the lawsuit entitled *United States* v. *Holcim (US) Inc. and St. Lawrence Cement Company, LLC,* Civil Action No. 1:11–cv–01119–CCB.

The United States filed this lawsuit under the Clean Air Act (''Act''). The United States' complaint seeks injunctive relief and civil penalties for violations of: (a) the Prevention of Significant Deterioration (''PSD'') provisions of the Act, 42 U.S.C. 7470–92, and Maryland's PSD program in the federally enforceable Maryland State Implementation Plan (''Maryland SIP''), Code of Maryland Regulations (''COMAR''), Title 26, Subtitle 11, Chapter 06.14, entitled ''Control of PSD Sources,'' and (b) Title V of the Act, 42 U.S.C. 7661–7661f, and Title V's implementing federal regulations, 40 CFR part 70, and Maryland's federally enforceable Title V program, COMAR 26.11.03, entitled ''Permits, Approvals, and Registration—Title V Permits'', at Holcim's portland cement plant in Hagerstown, Maryland. The Consent Decree requires the defendant to perform injunctive relief, pay a $700,000 civil penalty, and perform an environmental mitigation project.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Holcim (US) Inc. and St. Lawrence Cement Company, LLC,* D.J. Ref. No. 90–5–2–1–09594. 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 Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $12.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–16995 Filed 7–15–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for the Benefits, Timeliness, and Quality Data Collection System; Extension With Revisions

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data about the proposed extension of the Benefits Timeliness and Quality (BTQ) data collection system, which is part of the Unemployment Insurance (UI) Performs measurement system (current expiration date is February 28, 2014).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before September 16, 2013.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Room S4220, Washington, DC 20210, Attention: Delores Ferrell. Telephone number: 202–693–3183 (this is not a toll-free number). Fax: 202–693–3975. Email: *Ferrell.Delores@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Labor, under the Social Security Act, Title III, Section 302 (42 U.S.C. 502), funds the necessary cost of proper and efficient administration of each state UI law. The BTQ program collects information and analyzes data. The BTQ data measure the timeliness and quality of states' administrative actions and administrative decisions related to UI benefit payments.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* 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 submissions of responses.

III. Current Actions

Type of Review: Extension with revisions.

Title: Benefits, Timeliness, and Quality Review.

OMB Number: 1205–0359.

Affected Public: State governments.

Form(s): ETA–9050, ETA–9051, ETA–9052, ETA–9054, ETA–9055, ETA–9056, ETA–9057.

Total Annual Respondents: 53 state agencies.

Annual Frequency: Monthly and Quarterly.

Total Annual Responses: 28,836.

Average Time per Response: 80.5 minutes.

Estimated Total Annual Burden Hours: 38,692 hours.

MONTHLY UNIVERSE MEASURES: STATE STAFF HOURS PER YEAR

ETA Report	Measure	Number of respondents	Reports per year	Total responses	Hours per response	Total hours/year
9050	First Payment Time Lapse, Core Measure.	53	12	636	.5	318
9050	First Payment Time Lapse, Partial/Part Total Claims, Management Information Measure.	53	12	636	.5	318
9050	First Payment Time Lapse, Workshare Claims, Management Information Measure.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Management Information Measure.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Partial Part/Total, Management Information Measure.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Workshare, Management Information Measure.	53	12	636	.5	318
9052	Nonmonetary Determinations Time Lapse, Detection Date, Core Measure.	53	12	636	1.0	636
9054	Lower Authority Appeals Time Lapse, Management Information Measure.	53	12	636	.5	318
9055	Lower Authority Appeals Case Aging, Core Measure.	53	12	636	1.0	636
9054	Higher Authority Appeals Time Lapse, Management Information Measure.	53	12	636	.5	318
9055	Higher Authority Appeals Case Aging, Core Measure.	53	12	636	1.0	636
Subtotal						4452

QUARTERLY SAMPLE REVIEW MEASURES: STATE STAFF HOURS PER YEAR

ETA Report	Measure	Number of respondents	Sampled cases reviewed per year	Total cases reviewed per year	Hours per response	Total hours/year
9056	Nonmonetary Determination Quality, Core Measure.	27 Small States	240	6,480	1	6,480
9056	Nonmonetary Determination Quality, Core Measure.	26 Large States ...	400	10,400	1	10,400
9057	Lower Authority Appeals Quality, Core Measure.	44 Small States	80	3,520	3.5	12,320
9057	Lower Authority Appeals Quality, Core Measure.	9 Large States	160	1,440	3.5	5,040
Subtotal	.....	.....	.....	.....	.....	34,240

Total Annual Burden Cost for Respondents $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 8, 2013.

Gerri Fiala,

Acting Assistant Secretary, Employment and Training Administration.

[FR Doc. 2013–16905 Filed 7–15–13; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0042]

Conflict of Interest and Disclosure Form; Extension of the Office of Management and Budget's Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the proposed Conflict of Interest (COI) and Disclosure Form which will be used to determine whether or not a conflict of interest exists for a potential peer review panel member.

DATES: Comments must be submitted (postmarked, sent, or received) by September 16, 2013.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer

than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0042, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2009–0042) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

OSHA conducts peer reviews to review a draft product for quality by specialists in the field who were not involved in producing the draft. The selection of participants in a peer review is based on expertise, with due consideration of independence. The Office of Management and Budget published the ''Final Information Quality Bulletin for Peer Review'' on December 15, 2004. The Bulletin states ''. . . the agency must address reviewers' potential conflicts of interest (including those stemming from ties to regulated businesses and other stakeholders) and independence from the agency.'' The Bulletin requires agencies to adopt or adapt the committee selection policies employed by the National Academy of Sciences (NAS) when selecting peer reviewers who are not government employees. To fulfill this requirement, OSHA has developed a Conflict of Interest (COI) and Disclosure Form, based on NAS' Conflict of Interest Disclosure form. This form will be used to determine whether or not a conflict exists for a potential peer review panel member.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend OMB's approval of the COI form, retaining OSHA's current burden hour estimate of 27 hours. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB.

Type of Review: Extension of a currently approved collection.

Title: OSHA's Conflict of Interest (COI) and Disclosure Form.

OMB Control Number: 1218–0255.

Affected Public: Individuals and households.

Number of Respondents: 36.

Frequency of Response: On occasion.

Total Responses: 36.

Average Time per Response: OSHA estimates it will take 30 minutes (.5 hour) to complete the COI short form, and one (1) hour to complete the COI long form.

Estimated Total Burden Hours: 27.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0042). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627). Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA

cautions commenters about submitting personal information such as Social Security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on July 9, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–16974 Filed 7–15–13; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting Notice

DATE AND TIME: The Legal Services Corporation's Board of Directors and its six committees will meet July 21–23, 2013. On Sunday, July 21, the first meeting will commence at 1:30 p.m., Mountain Daylight Time (MDT), with the meeting thereafter commencing promptly upon adjournment of the immediately preceding meeting. On Monday, July 22, the first meeting will commence at 1:45 p.m., MDT, with each meeting thereafter commencing promptly upon adjournment of the immediately preceding meeting. On Tuesday, July 23, the first meeting will commence at 8:30 a.m., MDT, and it will be followed by the meeting of the Board of Directors which will commence promptly upon adjournment of the first meeting.

LOCATION: Millennium Ballroom, Warwick Hotel, 1776 Grant Street, Denver, Colorado 80203.

PUBLIC OBSERVATION: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL–IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

Meeting Schedule

SUNDAY, JULY 21, 2013	Time*
1. Finance Committee	1:30 p.m.
2. Audit Committee	
3. Institutional Advancement Committee	
MONDAY, JULY 22, 2013	
1. Operations and Regulations Committee	1: 45 p.m.
2. Promotion & Provision for the Delivery of Legal Services Committee	
TUESDAY, JULY 23, 2013	
1. Governance and Performance Review Committee	8:30 a.m.
2. Board of Directors	

*Please note that all times in this notice are in the *Mountain Daylight Time.*

STATUS OF MEETING: Open, except as noted below.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to hear briefings by management and LSC's Inspector General, to consider and act on the General Counsel's report on potential and pending litigation involving LSC and on a list of prospective funders, and to receive a presentation by, and discuss with, the General Counsel on privileged legal advice.**

Institutional Advancement Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to discuss prospective funders for LSC's 40th anniversary celebration and development activities, prospective honorees for LSC's 40th anniversary celebration, and prospective members for an LSC 40th anniversary honorary committee.

Audit Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to further discuss follow-up work by the Office of Compliance and Enforcement relating to open Office of Inspector General investigations.**

A verbatim written transcript will be made of the closed session of the Board, Institutional Advancement Committee, and Audit Committee meetings. The transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), (7), (9) and (10), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

July 21, 2013

Finance Committee

1. Approval of agenda
2. Presentation on LSC's financial report for the eight-month period ending May 31, 2013
   - Presentation by David Richardson, Treasurer/Comptroller
3. Consider and act on a Revised Consolidated Operating Budget for FY 2013, including internal budgetary adjustments and COB reallocation, and recommendation of *Resolution 2013–XXX* to the Board of Directors
   - Presentation by David Richardson, Treasurer/Comptroller
4. Report of the selection of accounts and depositories for LSC Funds
   - Presentation by David Richardson, Treasurer & Comptroller
5. Discussion regarding the status of the FY 2014 appropriations process
   - Carol Bergman, Director, Government Relations and Public Affairs
6. Consider and act on the recommendation to the Board on Temporary Operating Authority for FY 2014 and recommendation of *Resolution 2013–XXX* to the Board of Directors
   - David Richardson, Treasurer/Comptroller
7. Consider and act on recommendation to the Board of Directors for FY 2015 appropriation request
   - Presentation by Jim Sandman, President
8. Public comment
9. Consider and act on other business
10. Consider and act on adjournment of meeting

** Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

Audit Committee

Open Session

1. Approval of agenda
2. Report on Management activities for grantee training
- Lynn Jennings, Vice President for Grants Management
3. Briefing by Office of Inspector General
- Jeffrey Schanz, Inspector General
4. Further discussion regarding risk assessment by Management and the Office of Inspector General
- Jim Sandman, President
- Ronald Flagg, Vice President for Legal Affairs
- David Richardson, Treasurer/Comptroller
- Jeffrey Schanz, Office of Inspector General
5. Further discussion of Compliance and Enforcement follow-up to OIG investigation and audit reports
- Jeffrey Schanz, Inspector General
- Lora Rath, Director of Compliance and Enforcement
6. Public comment
7. Consider and act on other business

Closed Session

8. Further discussion of Office of Compliance and Enforcement follow-up to OIG open investigations
- Jeffrey Schanz, Inspector General
- Lora Rath, Director of Compliance and Enforcement
9. Consider and act on adjournment of meeting

Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's open session meeting of April 9, 2013
3. Approval of minutes of the Committee's open session meeting of April 15, 2013
4. Approval of minutes of the Committee's open session meeting of April 23, 2013
5. Approval of minutes of the Committee's open session meeting of May 14, 2013
6. Approval of minutes of the Committee's open session meeting of May 28, 2013
7. Approval of minutes of the Committee's open session meeting of June 11, 2013
8. Discussion of LSC's 40th anniversary calendar
9. Consider and act on the Minnesota Charitable Organization Initial Registration and Annual Report Form
- *Resolution 2013–XXX* Approving the Minnesota Charitable Organization Initial Registration and Annual Report Form
10. Consider and act on the North Dakota Charitable Organization Registration Statement
- *Resolution 2013–XXX* Approving the North Dakota Charitable Organization Registration Statement
11. Discussion of LSC's development plan
12. Public comment
13. Consider and act on other business

Closed Session

14. Approval of minutes of the Committee's closed session meeting of March 26, 2013
15. Approval of minutes of the Committee's closed session meeting of April 9, 2013
16. Approval of minutes of the Committee's closed session meeting of April 15, 2013
17. Approval of minutes of the Committee's closed session meeting of May 14, 2013
18. Discussion of prospective funders for LSC's 40th anniversary celebration and development activities
19. Discussion of prospective honorees for LSC's 40th anniversary celebration
20. Discussion of prospective members for an LSC 40th anniversary honorary committee
21. Consider and act on adjournment of meeting

July 22, 2013

Operations and Regulations Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's meeting on September 20, 2012
3. Approval of minutes of the Committee's meeting on April 14, 2013
4. Discussion of 45 CFR part 1613—Restrictions on Legal Assistance with Respect to Criminal Proceedings, and the Tribal Law and Order Act of 2010, Title II of Public Law 111–211

(a) Panel discussion regarding the effects of the Tribal Law and Order Act of 2010 on LSC recipients serving tribal communities
- Gloria Valencia-Weber, LSC Board of Directors, Emerita Professor of Law, University of New Mexico School of Law
- Howard Belodoff, Associate Director and Indian Law Unit Director, Idaho Legal Aid Services, Inc.
- John Dossett, General Counsel, National Congress of American Indians
- Troy Eid, Chair, Indian Law & Order Commission
- Carole Goldberg, Commissioner, Indian Law & Order Commission
- Tracy Toulou, Director, Office of Tribal Justice, U.S. Department of Justice

(b) Public comment

5. Consider and act on 45 CFR part 1626—Restrictions on Legal Assistance to Aliens

(a) Rulemaking Options Paper (ROP) and Notice of Proposed Rulemaking (NPRM) regarding updates to Part 1626 to conform to existing statutory authorities
- Mark Freedman, Senior Assistant General Counsel
- Charlie Martel, Assistant General Counsel (by phone)

(b) Public comment

6. Other public comment
7. Consider and act on other business
8. Consider and act on adjournment of meeting

Promotion and Provision for the Delivery of Legal Services Committee

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Committee's meeting of April 15, 2013
3. Discussion of Committee's charter
4. Presentation by Colorado Legal Services
- Jon Asher, Executive Director
- Patricia Craig, Administrator Northwest Colorado Legal Services Project
- Tina Smith, Client—Eligible Board Member, Board of Directors
5. Public comment
6. Consider and act on other business
7. Consider and act on motion to adjourn the meeting

July 23, 2013

Governance and Performance Review Committee

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of April 14, 2013
3. Report on progress in implementing GAO recommendations
4. Recommendation to Committee on Board evaluations
- Presentation by Carol Bergman
5. Report on Public Welfare Foundation grant and LSC research agenda
- Presentation by Jim Sandman
6. Consider and act on amending the LSC Bylaws to include a Temporary Recess Provision for Committees
- Presentation by Ron Flagg
7. Consider and act on resolution to appoint a new Ethics Officer
- Presentation by Jim Sandman
8. Consider and act on other business

9. Public comment
10. Consider and act on motion to adjourn meeting

July 23, 2013

Board of Directors

Open Session

1. Pledge of Allegiance
2. Approval of agenda
3. Approval of minutes of the Board's meeting of April 16, 2013
4. Approval of minutes of the Board's telephonic meeting of May 21, 2013
5. Chairman's Report
6. Members' Reports
7. President's Report
8. Inspector General's Report
9. Report on implementation of recommendations of the Pro Bono Task Force
10. Consider and act on the report of the Promotion and Provision for the Delivery of Legal Services Committee
11. Consider and act on the report of the Finance Committee
12. Consider and act on the report of the Audit Committee
13. Consider and act on the report of the Operations and Regulations Committee
14. Consider and act on the report of the Governance and Performance Review Committee
15. Consider and act on the report of the Institutional Advancement Committee
16. Public comment
17. Consider and act on other business
18. Consider and act on whether to authorize an executive session of the Board to address items listed below, under Closed Session

Closed Session

19. Approval of minutes of the Board's closed session meeting of April 16, 2013
20. Approval of minutes of the Board's closed session telephonic meeting of May 21, 2013
21. Briefing by Management
22. Briefing by the Inspector General
23. Consider and act on General Counsel's report on potential and pending litigation involving LSC
24. Consider and act on list of prospective funders
25. Presentation by, and discussion with, General Counsel on privileged legal advice
26. Consider and act on motion to adjourn meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1628. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

NON-CONFIDENTIAL MEETING MATERIALS: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC Web site, at *http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session.*

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: July 12, 2013.

Atitaya C. Rok,

Staff Attorney.

[FR Doc. 2013–17145 Filed 7–12–13; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (13–081)]

NASA Advisory Council; Information Technology Infrastructure Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a meeting for the Information Technology Infrastructure Committee (ITIC) of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Tuesday, July 30, 2013, 8:30 a.m.–5:30 p.m.; and Wednesday, July 31, 2013, 8:30 a.m.–10:00 a.m., Local Time.

ADDRESSES: NASA Headquarters, Room 7Q48, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Diaz, ITIC Executive Secretariat, NASA Headquarters, 300 E Street SW., Washington, DC 20546, Phone: (202) 358–2582.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may call the USA toll free conference call number (877) 917–5780 to telephonically join the meeting on either day. A conference operator will request the passcode of ''NASANACIT''. Callers must provide their name and organization to join the teleconference. The WebEx link for Tuesday, July 30, 2013, is *https://nasa.webex.com/,* meeting number 993 076 160, and password OCIO1234! The WebEx link for Wednesday, July 31, 2013, is *https://nasa.webex.com/,* meeting number 996 415 641, and password OCIO1234!

The agenda topics for the meeting will include:

- Budget Request and Managing thru Sequester
- Governance/Role of the Chief Information Officer
- Gene Lab
- New Developments in Space Communication
- Space Launch System (SLS) System Engineering
- Science Data

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be required to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa on addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender, date/place of birth; citizenship; visa information (number, type, expirations date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address via fax (202) 358–3017, noting at the top of the page, ''Public Admission to the NAC ITIC meeting.'' U.S. citizens and Permanent Residents (green card holders) are requested to their name and affiliation 3 working days prior to the meeting. For security questions, please call Brenda Maxwell at (202) 358–4616.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–16912 Filed 7–15–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that 18 meetings of the Humanities Panel will be held during August 2013 as follows. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended).

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The meetings will be held at the Old Post Office Building, 1100 Pennsylvania Ave. NW., Washington, DC 20506. See **SUPPLEMENTARY INFORMATION** section for meeting room numbers.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 1100 Pennsylvania Ave. NW., Room, 529, Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION:

Meetings

1. *Date:* August 01, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subject of Religious Studies, submitted to the Division of Research Programs.

2. *Date:* August 02, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subjects of European Literature and Studies, submitted to the Division of Research Programs.

3. *Date:* August 05, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subjects of American Literature and Studies, submitted to the Division of Research Programs.

4. *Date:* August 05, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 415
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subject of East Asian Studies, submitted to the Division of Research Programs.

5. *Date:* August 06, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 415
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subject of Art History, submitted to the Division of Research Programs.

6. *Date:* August 06, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subjects of Political Science, Urban Studies, and Jurisprudence, submitted to the Division of Research Programs.

7. *Date:* August 07, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subject of American History, submitted to the Division of Research Programs.

8. *Date:* August 08, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subject of American Studies, submitted to the Division of Research Programs.

9. *Date:* August 08, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 415
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subjects of American History and Studies, submitted to the Division of Research Programs.

10. *Date:* August 08, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 421
This meeting will discuss applications for the Preservation and Access Research and Development grant program, submitted to the Division of Preservation and Access.

11. *Date:* August 12, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subjects of Ancient and Classical Studies, submitted to the Division of Research Programs.

12. *Date:* August 13, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 415
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subjects of African and Middle Eastern Studies, submitted to the Division of Research Programs.

13. *Date:* August 13, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subjects of Medieval and Renaissance Studies, submitted to the Division of Research Programs.

14. *Date:* August 14, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subjects of Music and Dance, submitted to the Division of Research Programs.

15. *Date:* August 14, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 415
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subjects of Communications, Media, Rhetoric, and Linguistics, submitted to the Division of Research Programs.

16. *Date:* August 15, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subject of Latin American Studies, submitted to the Division of Research Programs.

17. *Date:* August 15, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 415
This meeting will discuss applications for the Fellowships for University Teachers grant program on the subject of Latin American Studies, submitted to the Division of Research Programs.

18. *Date:* August 22, 2013
Time: 8:30 a.m. to 5:00 p.m.
Room: 527
This meeting will discuss applications for the Preservation Education and Training grant program, submitted to the Division of Preservation and Access.

Because these meetings will include review of personal and/or proprietary

financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5 U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: July 9, 2013.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2013–16902 Filed 7–15–13; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities, Arts and Artifacts Indemnity Panel Advisory Committee Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts Domestic Indemnity Panel. The purpose of the meeting is for panel review, discussion, evaluation, and recommendation of applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after October 1, 2013.

DATES: The meeting will be held on Monday, August 5, 2013, from 9:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Old Post Office Building, 1100 Pennsylvania Ave. NW., Washington, DC 20506, in Room 730.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 1100 Pennsylvania Ave. NW., Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION: Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified, and the methods of transportation and security measures confidential, the meeting will be closed to the public pursuant to section 552b(c)(4) of Title 5 U.S.C., as amended. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: July 9, 2013.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2013–16901 Filed 7–15–13; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0131]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection: 10 CFR Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''*

2. *Current OMB approval number: 3150–0151.*

3. *How often the collection is required:* Whenever applications are made for early site permits (ESPs), standard design certifications (SDCs), combined licenses (COLs), standard design approvals (SDAs), or manufacturing licenses (MLs); at certain intervals after receipt of a COL; and every 10 to 20 years for applications for renewal.

4. *Who is required or asked to report:* Designers of commercial nuclear power plants (NPPs), electric power companies, and any person eligible under the Atomic Energy Act to apply for ESPs, SDCs, COLs, or MLs.

5. *The number of annual respondents:* 20.

6. *The number of hours needed annually to complete the requirement or request:* 199,169 (194,867 reporting, 4,302 recordkeeping).

7. *Abstract:* Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), establishes requirements for the granting of ESPs, certifications of standard NPP designs, and licenses which combine in a single license a construction permit, and an operating license with conditions, OLs, MLs, SDAs, and preapplication reviews of site suitability issues. Part 52 also establishes requirements for renewal of those approvals, permits, certifications, and licenses; amendments to them; exemptions from certifications; and variances from ESPs. NRC uses the information collected to assess the adequacy and suitability of an applicant's site, plant design, construction, training and experience, plans and procedures for the protection of public health and safety. The NRC review of such information and the findings derived from that information form the basis of NRC decisions and actions concerning the issuance, modification or revocation of site permits, DCs, COLs, and MLs for NPPs.

Submit, by September 16, 2013, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you

do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2013–0131. You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2013–0131. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258, email: *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 10th day of July, 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–16989 Filed 7–15–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–309 and 72–30; NRC–2013–0156]

Maine Yankee Atomic Power Company; Maine Yankee Atomic Power Plant Issuance of Environmental Assessment and Finding of No Significant Impact Regarding an Exemption Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: John Goshen, Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–287–9250, Fax number: 301–287–9341; Email: *John.Goshen@nrc.gov.*

1.0 Introduction

On November 23, 2011, the U.S. Nuclear Regulatory Commission (NRC) issued a final rule amending certain emergency planning (EP) requirements in the regulations that govern domestic licensing of production and utilization facilities (76 FR 72560; November 23, 2011) (EP Final Rule). The EP Final Rule was effective on December 23, 2011, with various implementation dates for each of the rule changes.

Maine Yankee Atomic Power Company (MYAPC) is holder of Facility Operating License DPR–36 for the Maine Yankee Atomic Power Plant (MY). The license, issued pursuant to the Atomic Energy Act of 1954, as amended, and part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), allows MY to possess and store spent nuclear fuel at the permanently shut down and decommissioned facility under the provision of 10 CFR part 72, subpart K, ''General License for Storage of Spent Fuel at Power Reactor Sites.'' In a letter dated August 7, 1997 (Agencywide Document Access and Management System (ADAMS) Legacy Accession No. 9708140225), MYAPC informed the NRC that the MY facility had permanently ceased power operations and fuel had been removed from the reactor and placed in the fuel pool.

After ceasing operations at the reactor, MYAPC began transferring spent nuclear fuel from the spent fuel pool to the MY independent spent fuel storage installation (ISFSI) for long- term dry storage. These activities were completed in 2004, and final decommissioning of the reactor site was completed in 2005. The MY ISFSI is a vertical dry cask storage facility for spent nuclear fuel. The ISFSI is located on approximately three acres of land that was not released for unrestricted use after completion of decommissioning of the reactor (ADAMS Accession No. ML052380223).

On June 8, 2012, MYAPC submitted a letter, ''Request for Exemption to Revised Emergency Planning Regulations'' (ADAMS Accession No. ML12172A298 *), requesting exemption from specific EP requirements of 10 CFR 50.47 and Appendix E to 10 CFR part 50 for the MY ISFSI.

MYAPC states that this exemption request and its impact on the corresponding emergency plan: (1) Is authorized by law; (2) will not present an undue risk to the public health and safety; and (3) is consistent with the common defense and security in accordance with 10 CFR 50.12. MYAPC states that its intent in submitting this exemption request is to maintain the regulatory structure in place prior to issuance of the EP Final Rule and, therefore, does not propose any changes to the emergency plan or implementing procedures other than simple regulatory reference changes that can be implemented under 10 CFR 50.54(q).

* Document contains sensitive security related information and is not publically available.

2.0 Discussion

On August 7, 1997, MYAPC notified the NRC that it had decided to cease operating MY. On November 6, 1997 (ADAMS Legacy Accession No. 9711130334), MYAPC requested an exemption from the provisions of 10 CFR 50.54(q) that required emergency plans to meet all of the standards of 10 CFR 50.47(b) and all of the requirements of Appendix E to 10 CFR part 50 so that the licensee would have to meet only certain EP standards and requirements. Additionally, MYAPC requested approval of a proposed MY Defueled Emergency Plan (DEP) that proposed to meet those limited standards and requirements.

The NRC approved the requested exemption and the DEP on September 3, 1998 (ADAMS Legacy Accession No. 9809140214). The safety evaluation report (SER) established EP requirements for MY as documented in the DEP. The NRC staff concluded that the licensee's emergency plan was acceptable in view of the greatly reduced offsite radiological consequences associated with the decommissioning plant status. The staff found that the postulated dose to the general public from any reasonably conceivable accident would not exceed the U.S. Environmental Protection Agency (EPA) Protective Action Guides (PAGs), and for the bounding accident, the length of time available to respond to a loss of spent fuel cooling or reduction in water level gave confidence that offsite measures for the public could be taken without preparation.

On August 28, 2002 (ADAMS Accession No. ML022550037 *), the DEP was revised under 10 CFR 50.54(q) to include an emergency plan specific to the onsite ISFSI as the licensee commenced moving spent nuclear fuel to the ISFSI. This ISFSI Emergency Plan was included as an Attachment III to the DEP.

According to MYAPC, the power plant buildings have been dismantled and the materials to be removed have been shipped offsite. As part of completing decommissioning, all spent nuclear fuel and greater than class C waste was ultimately transferred to the ISFSI in February 2004.

On September 27, 2004 (ADAMS Accession No. ML042790408 *), the DEP was revised under 10 CFR 50.54(q) to reflect that all spent nuclear fuel had been transferred into the ISFSI, the Spent Fuel Pool was drained, and all evolutions that could produce a radiological event serious enough to trigger the declaration of an emergency at the plant have been completed.

Therefore, the licensee terminated the DEP but retained the MY ISFSI Emergency Plan. This action eliminated all facets of the emergency plan not related to the ISFSI. The standalone MY ISFSI Emergency Plan reflected the emergency preparedness and response requirements applicable to MYAPC in light of the exemption granted in 1998. The ISFSI Emergency Plan provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the MY ISFSI for the same reasons that the NRC found that the DEP met the applicable EP requirements. Since the approval and SER for the original MY DEP, MYAPC has not requested nor received substantive exemptions from emergency planning requirements.

Revision 1 of the MY ISFSI Emergency Plan, February 17, 2011 (ADAMS Accession No. ML110601310 *), reflects the current conditions, where the only thing remaining onsite is the ISFSI and its related support systems, structures, and components.

With the Final EP Rule, several requirements in 10 CFR part 50 were modified or added, including changes in § 50.47, § 50.54, and Appendix E. Specific implementation dates were provided for each EP rule change. The Final EP Rule codified certain voluntary protective measures contained in NRC Bulletin 2005–02, ''Emergency Preparedness and Response Actions for Security-Based Events,'' and generically applicable requirements similar to those previously imposed by NRC Order EA–02–026, ''Order for Interim Safeguards and Security Compensatory Measures,'' dated February 25, 2002.

In addition, the EP Final Rule amended other licensee emergency plan requirements to: (1) Enhance the ability of licensees in preparing for and in taking certain protective actions in the event of a radiological emergency; (2) address, in part, security issues identified after the terrorist events of September 11, 2001; (3) clarify regulations to effect consistent emergency plan implementation among licensees; and (4) modify certain EP requirements to be more effective and efficient. However, the EP Final Rule was only an enhancement to the NRC's regulations and was not necessary for adequate protection. On page 72563 of the **Federal Register** notice for the EP Final Rule, the Commission ''determined that the existing regulatory structure ensures adequate protection of public health and safety and common defense and security.''

3.0 Regulatory Evaluation

In the Final Rule for Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites (55 FR 29181; July 18, 1990), the NRC amended its regulations to provide for the storage of spent nuclear fuel under a general license on the site of any nuclear power reactor. In its Statement of Considerations (SOC) for the Final Rule (55 FR 29185), the Commission responded to comments related to emergency preparedness for spent fuel dry storage, stating, ''The new 10 CFR 72.32(c) . . . states that, 'For an ISFSI that is located on the site of a nuclear power reactor licensed for operation by the Commission, the emergency plan required by 10 CFR 50.47 shall be deemed to satisfy the requirements of this section.' One condition of the general license is that the reactor licensee must review the reactor emergency plan and modify it as necessary to cover dry cask storage and related activities. If the emergency plan is in compliance with 10 CFR 50.47, then it is in compliance with the Commission's regulations with respect to dry cask storage.''

In the SOC for the Final Rule for EP requirements for ISFSIs and Monitored Retrievable Storage Installation (MRS) (60 FR 32430; June 22, 1995), the Commission stated, in part, that ''current reactor emergency plans cover all at- or near-reactor ISFSI's. An ISFSI that is to be licensed for a stand-alone operation will need an emergency plan established in accordance with the requirements in this rulemaking'' (60 FR 32431). The Commission responded to comments (60 FR 32435) concerning offsite emergency planning for ISFSIs or an MRS and concluded that ''the offsite consequences of potential accidents at an ISFSI or a MRS would not warrant establishing Emergency Planning Zones.''

As part of the review for MYAPC's current exemption request, the staff also used the EP regulations in 10 CFR 72.32 and Spent Fuel Project Office Interim Staff Guidance (ISG)—16, ''Emergency Planning,'' (ADAMS Accession No. ML003724570) as references to ensure consistency between specific-licensed and general-licensed ISFSIs.

4.0 Technical Evaluation

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff reviewed this request to determine whether the specific exemptions should be granted, and the safety evaluation (SE) is provided in its letter to MYAPC, dated May 2, 2013 (ADAMS Accession No. ML13112A842). After evaluating the exemption requests, the staff determined MYAPC should be granted the exemptions detailed in the SE.

The NRC has found that MYAPC meets the criteria for an exemption in § 50.12. The Atomic Energy Act of 1954, as amended, and the Commission's regulations permit the Commission to grant exemptions from the regulations in 10 CFR part 50. Granting exemptions is consistent with the authority provided to the Commission in the Atomic Energy Act of 1954, as amended. Therefore, the exemption is authorized by law.

As noted in Section 2.0, ''Discussion'' above, MYAPC's compliance with the EP requirements in effect before the effective date of the EP Final Rule demonstrated reasonable assurance of adequate protection of the public health and safety and common defense and security. In its SE, the NRC staff explains that MYAPC's implementation of its ISFSI emergency plan, with the exemptions, will continue to provide this reasonable assurance of adequate protection. Thus, granting the exemptions will not present an undue risk to public health or safety and is not inconsistent with the common defense and security.

For the Commission to grant an exemption, special circumstances must exist. Under § 50.12(a)(2)(ii), special circumstances are present when ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.'' These special circumstances exist here. The NRC has determined that MYAPC's compliance with the regulations described in its SE is not necessary for the licensee to demonstrate that, under its emergency plan, there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Consequently, special circumstances are present because requiring MYAPC to comply with the regulations that the staff describes in its SE is not necessary to achieve the underlying purpose of the EP regulations.

5.0 Environmental Assessment (EA)

Identification of Proposed Action

By letter dated June 8, 2012, MYAPC submitted an exemption request in accordance with 10 CFR 50.12 from specific EP requirements of 10 CFR 50.47 and Appendix E to 10 CFR part 50 for MY. Specifically, the exemption would eliminate unnecessary requirements associated with offsite consequences, protective actions, hostile action and emergency facilities due to the current status of MY.

Need for the Proposed Action

In accordance with 10 CFR 50.82, the 10 CFR part 50 licensed area for MY has been reduced to a small area surrounding the ISFSI. In this condition, MY poses a significantly reduced risk to public health and safety from design basis accidents or credible beyond design basis accidents since these cannot result in radioactive releases which exceed EPA PAGS at the site boundary. Because of this reduced risk, compliance with all the requirements in 10 CFR 50.47 and 10 CFR part 50, Appendix E is not appropriate. The requested exemption from portions of 10 CFR 50.47 and 10 CFR part 50, Appendix E is needed to continue implementation of the MY ISFSI emergency plan that is appropriate for a stand-alone ISFSI and is commensurate with the reduced risk posed by the facility. The requested exemption will allow spent fuel to continue to be stored safely without imposing burdensome and costly new requirements that provide no increased safety benefit.

Environmental Impacts of the Proposed Action

The NRC has determined that, given the continued implementation of the MY ISFSI emergency plan, with the exemptions noted in its SE, no credible events would result in doses to the public beyond the owner controlled area boundary that would exceed the EPA PAGs. Additionally, the staff has concluded that the MY ISFSI emergency plan, with the exemptions described in its SE, provides for an acceptable level of emergency preparedness at the MYAPC facility in its shutdown and defueled condition, and also provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the MYAPC facility. Based on these findings, the NRC concludes that there are no radiological environmental impacts due to granting the approval of the exemptions, the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types or quantities of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. The proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological impacts associated with the proposed action. Based on the assessment above, the proposed action will not have a significant effect on the quality of the human environment.

Alternative to the Proposed Action

Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. This alternative would have the same environmental impact.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the EA, the Commission finds that the proposed action of granting an exemption will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

6.0 Conclusion

The NRC concludes that the licensee's request for an exemption from certain requirements of 10 CFR 50.47(b) and 10 CFR part 50, Appendix E, Section IV as specified in the SE are acceptable in view of the greatly reduced offsite radiological consequences associated with the ISFSI.

The exemption request has been reviewed against the acceptance criteria included in 10 CFR 50.47, Appendix E to 10 CFR part 50, 10 CFR 72.32 and Interim Staff Guidance—16. The review considered the ISFSI and the low likelihood of any credible accident resulting in radiological releases requiring offsite protective measures. These evaluations were supported by the previously documented licensee and staff accident analyses. The staff concludes that: the MY ISFSI Emergency Plan provides: (1) An adequate basis for an acceptable state of emergency preparedness; and (2) the emergency plan, in conjunction with arrangements made with offsite response agencies, provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the MYAPC facility.

The NRC has determined that pursuant to 10 CFR 50.12, the exemptions described in the SE are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest, and special circumstances are present.

7.0 Further Information

Documents related to this action, including the application for renewal and supporting documentation, are available online in the NRC library at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 28th day of June, 2013.

For the Nuclear Regulatory Commission.

Michele M. Sampson,

Acting Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2013–16988 Filed 7–15–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0149]

Proposed Revision 0 to Fitness-for-Duty Standard Review Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on draft NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' LWR Edition: Section 13.7 ''Fitness-for-Duty,'' and Section 13.7.1 ''Fitness-for-Duty—Operational

Program.'' The NRC seeks comments on the proposed new sections of the Standard Review Plan (SRP), concerning implementation of a Fitness-for-Duty (FFD) program. The current SRP does not contain guidance on the review of an applicant's proposed FFD program.

DATES: Comments must be filed no later than August 15, 2013. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0149. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0149. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN 6–A56, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Wesley Held, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1583 or email: *Wesley.Held@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0149 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0149.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS Accession numbers for the proposed new sections of the SRP are available in ADAMS under Accession Nos.: ML113250516 (Section 13.7, ''Fitness for Duty—Introduction''), and ML113250541 (Section 13.7.1, ''Fitness for Duty—Operational Program'').
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0149 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

The NRC seeks public comment on the proposed new sections of the SRP. These sections have been developed to assist NRC staff with the review of applications for certain construction permits, early site permits, licenses, license amendments, and combined licenses and to inform new reactor applicants and other affected entities of proposed SRP guidance regarding an acceptable method by which to evaluate a proposed Fitness-for-Duty program for compliance with part 26 of Title 10 of the *Code of Federal Regulations* (10 CFR).

Following NRC staff evaluation of public comments, the NRC intends to incorporate the final approved guidance into the next revision of NUREG–0800. The SRP is guidance for the NRC staff. The SRP is not a substitute for the NRC regulations, and compliance with the SRP is not required.

Backfitting and Issue Finality

Issuance of this draft SRP, if finalized, would not constitute backfitting as defined in section 50.109 of Title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR). The NRC's position is based upon the following considerations.

1. *The draft SRP positions, if finalized, would not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the draft SRP to existing licenses and regulatory approvals. Hence, the issuance of a final SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52— would not need to be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. #Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain

exclusions—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants. The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the draft SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the draft SRP in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Dated at Rockville, Maryland, this 27th day of June 2013.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2013–16985 Filed 7–15–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of July 15, 22, 29, August 5, 12, 19, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 15, 2013

There are no meetings scheduled for the week of July 15, 2013.

Week of July 22, 2013—Tentative

There are no meetings scheduled for the week of July 22, 2013.

Week of July 29, 2013—Tentative

There are no meetings scheduled for the week of July 29, 2013.

Week of August 5, 2013—Tentative

There are no meetings scheduled for the week of August 5, 2013.

Week of August 12, 2013—Tentative

There are no meetings scheduled for the week of August 12, 2013.

Week of August 19, 2013—Tentative

There are no meetings scheduled for the week of August 19, 2013.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

Additional Information

By a vote of 5–0 on July 10, 2013, the Commission determined pursuant to U.S.C. 552b(e) and '9.107(a) of the Commission's rules that a Discussion of Management and Personnel Issues (Closed—Ex. 2 & 6) be held on July 11, 2013, with less than one week notice to the public. The meeting was held on July 11, 2013.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: July 11, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–17124 Filed 7–12–13; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0152]
[EA–13–033; Project No. 0782]

In the Matter of Korea Hydro and Nuclear Power, Co., Ltd. and All Other Persons Who Seek or Obtain Access to Safeguards Information Described Herein; Order Imposing Protection Requirements for Access to Safeguards Information (Effective Immediately)

I

Korea Hydro and Nuclear Power, Co., Ltd. (KHNP) submitted a letter of intent to the U.S. Nuclear Regulatory Commission (NRC) for a design certification (DC) application in 2013.

In June 2009, the Commission published a rulemaking in the **Federal Register** (FR) (74 FR 28112) requiring applicants for a variety of licensing activities, including nuclear power plant designers, to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft and to incorporate design features and functional capabilities into the nuclear power plant design to provide additional inherent protection with reduced use of operator actions. A discussion of the specific requirements for applicants for new nuclear power reactors can be found in Section V of the **Federal Register** notice. To assist designers in completing this assessment, the Commission has decided to provide the detailed aircraft impact characteristics that should be used as reasonable inputs for reactor vendors and architect and engineers who have the need to know and who meet the NRC's requirements for the disclosure of such information to use in the required aircraft impact assessments.

The NRC derived the characteristics from agency analyses performed on operating reactors to support, in part, the development of a broadly effective set of mitigation strategies to combat fires and explosions from a spectrum of hypothetical aircraft impacts. Although the detailed characteristics were not selected as a basis for designing new reactors, the staff is suggesting them as a starting point for aircraft impact assessments. On August 5, 2011, the NRC issued *Regulatory Guide (RG) 1.217, ''Guidance for the Assessment of Beyond-Design-Basis Aircraft Impacts,''* (NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML092900004), which endorses the methodologies described in the industry guidance document, *Nuclear Energy Institute (NEI) 07–13,*

''Methodology for Performing Aircraft Impact Assessments for New Plant Designs,'' Revision 8, dated April 2011 (ADAMS Accession No. ML111440006). NEI 07–13 includes the aircraft impact characteristics in two appendices. In addition, the staff recognizes that no national or international consensus has been reached on the selection of appropriate characteristics for such analyses. Therefore, the information should be considered preliminary and subject to authorized stakeholder comment. The detailed aircraft characteristics that are the subject of this Order are hereby designated as Safeguards Information (SGI) [1] in accordance with Section 147 of the *Atomic Energy Act of 1954, as amended* (AEA).

On October 24, 2008, the NRC revised Title 10 of the *Code of Federal Regulations* (10 CFR) *73.21, ''Protection of Safeguards Information: Performance Requirements,''* to include applicants in the list of entities required to protect SGI (*73 FR 63546*). The NRC is issuing this order to KHNP to impose requirements for the protection of SGI in addition to the requirements set forth in 10 CFR 73.21, which include nomination of a reviewing official, restrictions on storage of SGI, and access to SGI by certain individuals.

To implement this Order, KHNP must nominate an individual who will review the results of the Federal Bureau of Investigation (FBI) criminal history records check to make SGI access determinations. This individual, called the reviewing official, must be someone who seeks access to SGI. Based on the results of the FBI criminal history records check, the NRC staff will determine if this individual may have access to SGI. If the NRC determines that the individual may not be granted access to SGI, the enclosed order prohibits that individual from obtaining access to any SGI. Once the NRC approves a reviewing official, this reviewing official—and only this reviewing official—can make SGI access determinations for other individuals who KHNP identifies as having a need for SGI, who have been fingerprinted, and who have had a criminal history records and background check in accordance with this Order. The reviewing official can only make SGI access determinations for other individuals but cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if KHNP wishes to have a new or additional reviewing official, the NRC must approve this individual before he or she can act in that capacity.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such orders, as necessary, to prohibit the unauthorized disclosure of SGI. To provide assurance that KHNP continues to implement appropriate measures to ensure a consistent level of protection to prohibit unauthorized disclosure of SGI, as well as to comply with the fingerprinting, criminal history records check, and background check requirements for access to SGI, KHNP shall implement the requirements for the protection of SGI as set forth in *10 CFR 73.21, 10 CFR 73.22, ''Protection of Safeguards Information: Specific Requirements,''* and this Order.

By rule, certain categories of individuals are exempted from the fingerprinting requirements under *10 CFR 73.59,* ''Relief from Fingerprinting, Identification and Criminal History Records Checks and Other Elements of Background Checks for Designated Categories of Individuals.'' Those individuals include Federal, State, and local law enforcement personnel in the United States (U.S.); Agreement State inspectors who conduct security inspections on behalf of the NRC; members of the U.S. Congress; certain employees of members of Congress or congressional committees who have undergone fingerprinting for a previous U.S. Government criminal history check; and representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have had a favorably decided U.S. Government criminal history check within the last 5 years, or individuals who have active U.S. Federal security clearances (provided in either case that they provide the appropriate documentation), have already been subjected to fingerprinting and criminal history checks and, thus, have satisfied the fingerprinting requirement.

In addition, under *10 CFR 2.202,* ''Orders,'' the NRC finds that, in light of the matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, under Sections 147, 149, 161b, 161i, 161o, 182, and 186 of the AEA, and the Commission's regulations in 10 CFR 2.202 and10 CFR part 73, ''Physical Protection of Plants and Materials,'' *it is hereby ordered,* effective immediately, that KHNP and all other persons who seek or obtain access to safeguards information as described herein shall comply with the requirements set forth in 10 CFR 73.21, 10 CFR 73.22, and this order.

A

(1) No person shall have access to any SGI if the NRC, when making an SGI access determination for a nominated reviewing official, has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person nominated may not have access to SGI.

(2) KHNP shall store SGI designated by this Order only in the facility or facilities specifically approved in writing by the NRC for storage of SGI designated by this Order. KHNP may request, in writing, NRC approval of additional facilities for the storage of the SGI designated by this Order that the NRC will consider on a case-by-case basis.

(3) KHNP may provide SGI designated by this Order to individuals (such as foreign/non-U.S. nationals, U.S. citizens living in foreign countries, or individuals under the age of 18) for whom fingerprinting and an FBI criminal history records check are not reasonably expected to yield sufficient criminal history information to form the basis of an informed decision on granting access to SGI, provided that the individual satisfies the requirements of this Order, and that KHNP has implemented measures, in addition to those set forth in this Order, to ensure that the individual is suitable to have access to the SGI designated by this Order. Such additional measures must include, but are not limited to, equivalent criminal history records checks conducted by a U.S. local, U.S. State, or foreign governmental agency and enhanced background checks, including employment and credit history. The NRC must review these additional measures and approve them in writing.

B. No person may provide SGI to another person, except in accordance with Section III.A. above. Before a person provides SGI to any person, a copy of this Order shall be provided to that person.

C. KHNP shall comply with the following requirements:

[1] SGI is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

(1) KHNP shall, within 20 days of the date of this Order, submit the fingerprints of one individual whom (a) it nominates as the reviewing official for determining access to SGI by other individuals, and (b) has an established need to know the information. The NRC will determine if this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as KHNP's reviewing official.[2] KHNP may, at the same time or later, submit the fingerprints of other individuals to whom it seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the attachment to this Order.

(2) KHNP shall, in writing, within 20 days of the date of this Order, notify the Commission (1) if it is unable to comply with any of the requirements described in the Order, including the attachment, or (2) if compliance with any of the requirements is unnecessary in its specific circumstances.

The notification shall provide KHNP's justification for seeking relief from, or variation of, any specific requirement.

KHNP shall submit responses to C.(1) and C.(2) above to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. In addition, KHNP shall mark its responses as ''Security-Related Information-Withhold Under 10 CFR 2.390.''

Except for the requirements for fingerprinting, the Director, Office of New Reactors, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by KHNP.

IV

In accordance with 10 CFR 2.202, KHNP must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, the NRC will consider extending the time to request a hearing. A request for an extension to submit an answer or request a hearing must be made in writing to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law by which KHNP or other entities adversely affected rely, and the reasons as to why the NRC should not have issued this Order.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August, 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for a hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC's guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting

[2] The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 3 to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If KHNP, or a person whose interest is adversely affected, requests a hearing, the Commission will issue an order designating the time and place of the hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Under 10 CFR 2.202(c)(2)(i), KHNP may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the order on the grounds that the order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified above in Section III shall be final 20 days from the date of this Order without further order or proceedings.

If the agency approves an extension for a hearing, the provisions, as specified above in Section III, shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 1st day of July 2013.

For the U.S. Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Office of New Reactors.

Guidance for Evaluation of Access to Safeguards Information with the Inclusion of Criminal History Records (Fingerprint) Checks

When a licensee or other person [3] submits fingerprints to the U.S. Nuclear Regulatory Commission (NRC) under an NRC Order, it will receive a criminal history summary of information, provided in U.S. Federal records, since the individual's 18th birthday. Individuals retain the right to correct and complete information and to initiate challenge procedures described in Enclosure 3. The licensee will receive the information from the criminal history records check for those individuals requiring access to Safeguards Information (SGI), and the reviewing official will evaluate that information using the guidance below. Furthermore, the requirements for all Orders, which apply to the information and material to which access is being granted, must be met.

The licensee's reviewing official is required to evaluate all pertinent and available information in making a determination of access to SGI, including the criminal history information about the individual as required by the NRC Order. The criminal history records check is used when determining if an individual has a record of criminal activity that indicates that the individual should not have access to SGI. Each determination of access to SGI, which includes a review of criminal history information, must be documented to include the basis for the decision that is made.

(i) If negative information is discovered that the individual did not provide, or which is different in any material respect from the information that the individual provided, this information should be considered, and decisions made based on these findings must be documented.

(ii) Any record containing a pattern of behaviors that indicates that the behaviors could recur or continue, or recent behaviors that cast doubt on whether an individual should have access to SGI, should be carefully evaluated before any authorization of access to SGI.

It is necessary for a licensee to resubmit fingerprints only under two conditions:

(1) The FBI has determined that the fingerprints cannot be classified because of poor quality in the mechanics of taking the initial impressions.

(2) The initial submission is lost.

If the FBI advises that four sets of fingerprints are unclassifiable because they are unreadable, the NRC will automatically forward a name search to the FBI. When those search results are received from the FBI, no further search is necessary.

Process To Challenge NRC Denials or Revocations of Access to Safeguards Information

1. Policy

This policy establishes a process for individuals whom the U.S. Nuclear Regulatory Commission (NRC) licenses or other person [4] nominated as reviewing officials to challenge and appeal NRC denials or revocations of access to Safeguards Information (SGI). Any individual nominated as a licensee reviewing official whom the NRC has determined may not have access to SGI shall, to the extent provided below, be afforded an opportunity to challenge and appeal the NRC's determination. This policy shall not be construed to require the disclosure of SGI to any person; neither shall it be construed to create a liberty or property interest of any kind in the access of any individual to SGI.

2. Applicability

This policy applies solely to those employees of licensees who are nominated as reviewing officials and who are thus considered, by the NRC, for initial or continued access to SGI in that position.

[3] As used herein, ''licensee'' means any licensee or other person who is required to conduct fingerprinting.

[4] As used herein, ''licensee'' means any licensee or other person who is required to conduct fingerprinting.

3. SGI Access Determination Criteria

The NRC will determine whether access to SGI will be granted to an individual nominated to be a reviewing official. Access to SGI shall be denied or revoked whenever it is determined that an individual does not meet the applicable standards. Any doubt about an individual's eligibility for initial or continued access to SGI shall be resolved in favor of the national security, and access will be denied or revoked.

4. Procedure To Challenge the Contents of Records Obtained From the FBI

a. Before a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall have the following recourse:

(i) Be given the contents of records obtained from the FBI for the purpose of assuring correct and complete information. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures, including either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation, Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI will forward the challenge to the submitting agency and request that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any necessary changes in accordance with the information supplied by that agency.

(ii) Be afforded 10 days to initiate an action challenging the results of an FBI criminal history records check (described in (i), above) after the record is made available to the individual for his or her review. If the individual initiates such a challenge, the NRC Facilities Security Branch Chief may make a determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record.

5. Procedure To Provide Additional Information

a. Before a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall have the following recourse:

(i) Be afforded an opportunity to submit information relevant to the individual's trustworthiness and reliability. The NRC Facilities Security Branch Chief shall, in writing, notify the individual of this opportunity and any deadlines for submitting this information. The NRC Facilities Security Branch Chief may make a determination of access to SGI only upon receipt of the additional information that the individual submits, or, if no such information is submitted, when the deadline to submit such information has passed.

6. Procedure To Notify an Individual of the NRC Facilities Security Branch Chief Determination To Deny or Revoke Access to SGI

Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or has his or her access to SGI revoked, the individual shall be given a written explanation of the basis for this determination.

7. Procedure To Appeal an NRC Determination To Deny or Revoke Access to SGI

Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or has his or her access to SGI revoked, the individual shall be given an opportunity to appeal this determination to the Director, Division of Facilities and Security. The determination must be appealed within 20 days of receipt of the written notice of the determination by the Facilities Security Branch Chief and may either be in writing or in person. Any appeal made in person shall take place at the NRC's headquarters and shall be at the individual's own expense. The determination by the Director, Division of Facilities and Security, shall be rendered within 60 days after receipt of the appeal.

8. Procedure To Notify an Individual of the Determination by the Director, Division of Facilities and Security, Upon an Appeal

A determination by the Director, Division of Facilities and Security, shall be provided to the individual in writing and include an explanation of the basis for this determination. A decision by the Director, Division of Facilities and Security, to affirm the Facilities Branch Chief's determination to deny or revoke an individual's access to SGI is final and not subject to further administrative appeals.

General Requirements

Licensees and other persons who are required to conduct fingerprinting shall comply with the requirements of this enclosure.[5]

The licensee shall notify the U.S. Nuclear Regulatory Commission (NRC) of any desired change in reviewing officials, in compliance with C.1 of the subject Order. The NRC will determine if the individual nominated as the new reviewing official may have access to Safeguards Information (SGI) based on a previously obtained or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in Part 73 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Physical Protection of Plants and Materials,'' Section 4, ''Communications,'' submit one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) to the NRC's Division of Facilities and Security, Mail Stop TWB–05B32M, or, where practicable, other fingerprint records for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked to the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing to the Office of Information Services, U.S. Nuclear Regulatory Commission, Region III, Attn: Deborah Hersey, Mail Stop: Region III—DRP, 2443 Warrenville Road, Suite 210, Lisle, IL 60532–4352, or by calling 1–630–829–9565 or sending email to *Forms.Resource@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4, ''Communications.'' The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards because of illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for

[5] As used herein, ''licensee'' means any licensee or other person who is required to conduct fingerprinting in accordance with these requirements.

corrections. The fee for processing fingerprint checks includes one re-submission if the Federal Bureau of Investigations (FBI) returns the initial submission because the fingerprint impressions cannot be classified. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment made payable to the NRC. (For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at 301–492–3531) Combined payment for multiple applications is acceptable. The application fee (currently $26.00) is the sum of the user fee that the FBI charges for each fingerprint card or other fingerprint record that the NRC submits on behalf of a licensee and an NRC processing fee, which covers administrative costs associated with the NRC's handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Before any final adverse determination, the licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for 1 year from the date of the notification. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update the alleged deficiency, or explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information or direct challenge to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation, Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged data. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information that agency supplies. The licensee must give at least 10 days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available to that individual for his or her review. The licensee may make a final SGI access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the licensee shall give the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

(1) Each licensee who obtains a criminal history record on an individual under this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

(2) The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his or her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to Safeguards Information (SGI). No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know claim.

(3) The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his or her file, and the current licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

(4) The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

(5) The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for 3 years after termination of employment or determination of access to SGI (whether access was approved or denied). After the required 3 years, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. 2013–16984 Filed 7–15–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Extension of Call for Nominations for the Advisory Committee on the Medical Uses of Isotopes

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: A call for nominations was published by the U.S. Nuclear Regulatory Commission (NRC) in the **Federal Register** (78 FR 28652) on May 15, 2013 for the position of Agreement State representative on the Advisory Committee on the Medical Uses of Isotopes (ACMUI). The nomination period ends on July 15, 2013. This notice confirms a 30 day extension of the nomination period until August 15, 2013.

DATES: Nominations are due on or before August 15, 2013.

Nomination Process: Submit an electronic copy of a resume or curriculum vitae, along with a cover letter, to Ms. Sophie Holiday, at *sophie.holiday@nrc.gov.*

The resume or curriculum vitae for the Agreement State representative should include the following information, as applicable: Education; certification, current state regulatory experience, professional association membership, committee membership activities, and leadership activities. The nominee must be an employee of an Agreement State Radiation Control Program.

FOR FURTHER INFORMATION CONTACT: Ms. Sophie Holiday, U.S. Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs; (301) 415–7865; *sophie.holiday@nrc.gov.*

Dated at Rockville, Maryland this 10th day of July, 2013.

For the U.S. Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2013–16987 Filed 7–15–13; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–72; Order No. 1775]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Global Expedited Package Services (GEPS) 3 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 17, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Background
III. Contents of Filing
IV. Commission Action
V. Ordering Paragraphs

I. Introduction

On July 9, 2013, the Postal Service filed a notice stating that it has entered into an additional Global Expedited Package Services (GEPS) 3 negotiated service agreement (Agreement).[1] The Postal Service seeks inclusion of the Agreement within the GEPS 3 product. *Id.* at 2.

II. Background

The Commission first approved the addition of a GEPS negotiated service agreement to the competitive product list as a result of consideration of Governors' Decision No. 08–7 in Docket No. CP2008–5.[2] The Commission later added GEPS 3 to the competitive product list and authorized the agreement filed in Docket No. CP2010–71 to serve as the baseline agreement for comparison of potentially functionally equivalent agreements.[3]

The Agreement is a successor to the negotiated service agreement that was the subject of Docket No. CP2012–35 and is set to expire on July 31, 2013. Notice at 3. The effective date of the Agreement is August 1, 2013. *Id.* It is set to expire on the last day of the month, which falls one calendar year from the effective date. *Id.* Attachment 1 at 7.

III. Contents of Filing

The Notice includes the following attachments:

- Attachment 1—a redacted copy of the Agreement;
- Attachment 2—a redacted copy of the certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 08–7, which establishes prices and classifications for Global Expedited Package Services Contracts; and
- Attachment 4—an application for non-public treatment of materials to be filed under seal.

Materials filed under seal include unredacted copies of the Agreement, the certified statement, and supporting financial workpapers. *Id.* Attachment 4 at 3. The Postal Service filed redacted versions of the financial workpapers as public Excel files.

In the Notice, the Postal Service asserts that the Agreement is functionally equivalent to the GEPS 3 baseline agreement, notwithstanding differences in two of the introductory paragraphs of the Agreement; revisions to several existing articles; and new, deleted, and renumbered articles. *Id.* at 3–7. The Postal Service states that these differences affect neither the fundamental service being offered under the Agreement nor the Agreement's fundamental structure. *Id.* at 7.

The Postal Service concludes that the Agreement is in compliance with the requirements of 39 U.S.C. 3633 and that the Agreement is functionally equivalent to the baseline agreement. *Id.* The Postal Service therefore requests that the Commission add the Agreement to the GEPS 3 product. *Id.*

IV. Commission Action

The Commission establishes Docket No. CP2013–72 for consideration of matters raised by the Notice. Interested persons may submit comments on whether the Postal Service's filings are consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and subpart B of 39 CFR part 3020. Comments are due no later than July 17, 2013. The public portions of the Postal Service's filing can be accessed via the Commission's Web site, *http://www.prc.gov.* Information concerning access to non-public material is located in 39 CFR part 3007.

The Commission appoints Pamela A. Thompson to serve as Public Representative in the above captioned proceeding.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2013–72 for consideration of the matters raised by the Postal Service's Notice.
2. Comments by interested persons in this proceeding are due no later than July 17, 2013.
3. Pursuant to 39 U.S.C. 505, the Commission appoints Pamela A. Thompson to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–16982 Filed 7–15–13; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES AND TIMES: July 31, 2013, at 12:30 p.m.

PLACE: Washington, DC, via Teleconference.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Wednesday, July 31, 2013 at 12:30 p.m.

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, July 9, 2013 (Notice).

[2] *See* Order No. 86, Docket No. CP2008–5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008.

[3] *See* Order No. 503, Docket Nos. MC2010–28 and CP2010–71, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2013–17083 Filed 7–12–13; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30567; File No. 812–14066]

ACS Wireless, Inc.; Notice of Application

June 25, 2013.

Correction

In notice document 2013–15658 beginning on page 39345 in the issue of Monday, July 1, 2013, make the following correction:

On page 39345, in the first column, the heading is corrected to read as set forth above.

[FR Doc. C1–2013–15658 Filed 7–15–13; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, July 18, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

institution and settlement of injunctive actions;

institution and settlement of administrative proceedings;

adjudicatory matters; and

other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: July 11, 2013.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2013–17100 Filed 7–12–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69958; File No. SR–Phlx–2013–71]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Section I Pricing for Select Symbols

July 10, 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 June 26, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to remove its Select Symbols,[3] along with pricing in Section I of the Pricing Schedule entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols.''

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on July 1, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate the current pricing in Section I of the Pricing Schedule which is applicable to Select Symbols. The Exchange would apply the pricing in Section II entitled ''Multiply Listed Options Fees''[4] to these Select Symbols in order to attract additional order flow to the Exchange.

Section I Select Symbols

Today, the Exchange applies the pricing in Section I to the following Select Symbols: Bank of America Corporation (''BAC''), iShares MSCI Emerging Markets Index (''EEM''), SPDR Gold Shares (''GLD''), iShares Russell 2000 Index (''IWM''), Microsoft Corporation (''MSFT''), PowerShares QQQ (''QQQ''), and Financial Select Sector SPDR (''XLF''). Specifically, the Exchange applies the following Simple Order and Complex Order Pricing:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Select Symbols are noted in Section I of the Pricing Schedule.

[4] This includes options overlying currencies, equities, ETFs, ETNS and indexes not listed on another exchange.

PART A—SIMPLE ORDER

	Customer	Specialist	Market maker	Firm	Broker-dealer	Professional
Rebate for Adding Liquidity	N/A	$0.20	$0.20	N/A	N/A	N/A
Fee for Adding Liquidity	$0.00	0.10	0.10	$0.45	$0.45	$0.45
Fee for Removing Liquidity	0.00	0.45	0.45	0.45	0.45	0.45

PART B—COMPLEX ORDER

	Customer	Specialist	Market maker	Firm	Broker-dealer	Professional
Fee for Adding Liquidity	$0.00	$0.10	$0.10	$0.10	$0.10	$0.10
Fee for Removing Liquidity	0.00	0.25	0.25	0.50	0.50	0.50

The Exchange proposes to eliminate this Section I pricing and instead apply the pricing which currently applies to all other Multiply Listed Options in Section II of the Pricing Schedule: [5]

Customer	Professional		Specialist and market maker		Broker-dealer		Firm		Floor
		Electronic	Floor	Electronic	Floor	Electronic	Floor	Electronic	
Options Transaction Charge (Penny Pilot)	$0.00	$0.30	$0.25	$0.22	$0.25	$0.45	$0.25	$0.45	$0.25
Options Transaction Charge (non-Penny Pilot)	0.00	0.30	0.25	0.23	0.25	0.60	0.25	0.50	0.25
Options Surcharge in MNX and NDX	N/A	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15
Options Surcharge in BKX	N/A	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10
Cabinet Options	0.00	N/A	0.10	N/A	0.10	N/A	0.10	N/A	0.10

The Select Symbols that are being eliminated in Section I are all Penny Pilot Options and would be subject to Section II Penny Pilot electronic Options Transaction Charges. With respect to Simple and Complex Orders, Customers [6] would continue to not be assessed any fees in the Select Symbols with this proposal.

A Professional [7] that currently pays a $0.45 per contract Simple Order Fee for Adding and Removing Liquidity, a $0.10 per contract Complex Order Fee for Adding Liquidity and a $0.50 per contract Complex Order Fee for Removing Liquidity would now be assessed a $0.30 per contract electronic Options Transaction Charge in Penny Pilot Options.

A Specialist [8] and Market Maker [9] that today receives a Simple Order Rebate for Adding Liquidity of $0.20 per contract and pays a Simple and Complex Order Fee for Adding Liquidity of $0.10 per contract, a $0.45 per contract Simple Order Fee for Removing Liquidity and a Complex Order Fee for Removing Liquidity of $0.25 per contract,[10] would now be assessed a $0.22 per contract electronic Options Transaction Charge in Penny Pilot Options. There are no rebates paid in Section II for Simple Orders.

A Firm [11] that currently pays a $0.45 per contract Simple Order Fee for Adding and Removing Liquidity, a $0.10 per contract Complex Order Fee for Adding Liquidity and a $0.50 per contract Complex Order Fee for Removing Liquidity would be now assessed a $0.45 per contract electronic Options Transaction Charge in Penny Pilot Options. In addition, Firm electronic Options Transaction Charges in Penny Pilot Options (and Non-Penny Pilot Options) are reduced to $0.17 per contract for a given month provided that a Firm has volume greater than 500,000 electronically-delivered contracts in a month.

[5] SPY has its own pricing in Section C, which will be renamed as new Section I. *See* Section C of the Pricing Schedule.

[6] The term ''Customer'' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Rule 1000(b)(14)).

[7] 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). *See* Rule 1000(b)(14).

[8] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[9] A Market Maker includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (see Rule 1014(b)(ii)(B)). Directed Participants are also Market Makers.

[10] Today, Complex Order Fees for Removing Liquidity, applicable to Specialists and Market Makers, are decreased by $0.02 per contract when the Specialist or Market Maker transacts against a Customer Order directed to that Specialist or Market Maker for execution.

[11] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

Finally, a Broker-Dealer [12] that currently pays a $0.45 per contract Simple Order Fee for Adding and Removing Liquidity, a $0.10 per contract Complex Order Fee for Adding Liquidity and a $0.50 per contract Complex Order Fee for Removing Liquidity would now be assessed a $0.45 per contract electronic Options Transaction Charge in Penny Pilot Options.[13]

With this proposal, the Monthly Market Maker Cap [14] on transaction fees that is currently applicable to Market Makers and Specialists transacting Multiply Listed Options is applicable to electronic transactions in the Section II symbols, except for QCC [15] Transaction Fees. The Monthly Market Maker Cap would now apply to the Select Symbols as part of Section II. As is the case today, the Monthly Firm Fee Cap [16] will continue to apply to the Select Symbols as part of Section II. Today, Payment for Order Flow (''PFOF'') [17] fees are collected on transactions in the Select Symbols, except when a Specialist or Market Maker is also assessed the Simple Order Fee for Removing Liquidity, in which case the PFOF fees will not apply. Section II symbols are subject to PFOF fees on electronic orders and, with this proposal, these Select Symbols.

Currently, the Cancellation Fee [18] for each cancelled electronically delivered Professional AON order applies to the Select Symbols. The Cancellation Fee does not apply for each cancelled electronically delivered Customer order in Select Symbols. With this proposal, the application of the Cancellation Fees to the Select Symbols would remain the same.

As noted above, transactions in the Select Symbols originating on the Exchange floor are subject to the Multiply Listed Options Fees in Section II. However, today if one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then Section I fees apply to the transactions which originated on the Exchange floor and contracts that are executed electronically on all sides of the transaction. With this proposal, Section II pricing would apply to these transactions.

Today, a non-Complex electronic auction includes the Quote Exhaust auction and, for purposes of these fees, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (''COLA''). Customer executions that occur as part of a Complex electronic auction are assessed $0.00 per contract. Customer executions that occur as part of a non-Complex electronic auction are assessed $0.00 per contract. Professional, Firm, Broker-Dealer, Specialist and Market Maker executions that occur as part of a Complex electronic auction are assessed the Fees for Removing Liquidity in Section I, Part B. Professional, Firm, Broker-Dealer, Specialist and Market Maker executions that occur as part of a non-Complex electronic auction are assessed the Fees for Removing Liquidity in Section I, Part A. However, during an opening auction a Specialist or Market Maker is assessed the Simple Order Fee for Adding Liquidity in Section I if contra to a Customer order. With this proposal, the Exchange would assess the Options Transaction Charges in Section II with respect to non-Complex electronic auctions, Complex electronic auctions and the opening process. With this proposal, the QCC Transaction fees and rebates, defined in Section II, are and will continue to be applicable to the Select Symbols as part of Section II.

The Exchange also proposes to remove the current reference to Section I in the Preface and instead renumber current Section C entitled ''Rebates and Fees for Adding Liquidity in SPY'' as new Section I. The Exchange proposes to remove references to the Select Symbols in the Customer Rebate Program along with Categories C [19] and D [20] of the Customer Rebate Program,

[12] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[13] All market participants, other than Customers, would continue to be assessed a $0.15 per contract Options Surcharge on options on the one-tenth value of the Nasdaq 100 Index traded under the symbol ''MNX'' and options on the Nasdaq 100 Index traded under the symbol ''NDX'' and a $0.10 per contract surcharge on options on PHLX/KBW Bank Index (''BKX''). Today, all Select Symbols transacted on the Exchange's trading floor are assessed the fees in Section II with respect to floor transactions.

[14] Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $550,000 for: (i) Electronic and floor Option Transaction Charges; (ii) Qualified Contingent Cross (''QCC'') Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest and reversal and conversion strategy executions (as defined in Section II) are excluded from the Monthly Market Maker Cap.

[15] A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer (NBBO) and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. *See* Rule 1080(o). *See also* Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (QCT) that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

[16] Firms are subject to a maximum fee of $75,000 (''Monthly Firm Fee Cap''). Firm Floor Option Transaction Charges and QCC Transaction Fees in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in Section II) are excluded from the Monthly Firm Fee Cap. Reversal and conversion strategy executions (as defined in Section II) are included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

[17] The PFOF program started on July 1, 2005 as a pilot and after a series of orders extending the pilot became effective on April 29, 2012. *See* Securities Exchange Act Release No. 52114 (July 22, 2005), 70 FR 44138 (August 1, 2005) (SR–Phlx–2005–44); 57851 (May 22, 2008), 73 FR 31177 (May 20, 2008) (SR–Phlx–2008–38); 55891 (June 11, 2007), 72 FR 333271 (June 15, 2007) (SR–Phlx–2007–39); 53754 (May 3, 2006), 71 FR 27301 (May 10, 2006) (SR–Phlx–2006–25); 53078 (January 9, 2006), 71 FR 2289 (January 13, 2006) (SR–Phlx–2005–88); 52568 (October 6, 2005), 70 FR 60120 (October 14, 2005) (SR–Phlx–2005–58); and 59841 (April 29, 2009), 74 FR 21035 (May 6, 2009) (SR–Phlx–2009–38).

[18] A Cancellation Fee of $1.10 per order is assessed for each cancelled electronically delivered All-or-None (AON) order submitted by a Professional in excess of the number of AON orders submitted by a Professional executed on the Exchange by a member organization in a given month. All AON orders submitted by a Professional from the same member organization that are executed in the same series on the same side of the market at the same price within a 300 second period will be aggregated and counted as one executed AON option order submitted by a Professional. A Cancellation Fee is not assessed in a month in which fewer than 500 electronically delivered AON orders submitted by a Professional are cancelled. A Cancellation Fee will not apply to pre-market cancellations or Complex Orders that are submitted electronically. A Cancellation Fee is assessed on AON orders submitted by a Professional.

[19] Category C Rebates are paid to members executing electronically-delivered Customer Complex Orders in Select Symbols in Section I symbols. Rebates are paid on Customer PIXL Complex Orders in Section I symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Complex Orders that are greater than 999 contracts. All Customer PIXL Complex Orders that are greater than 999 contracts are paid a rebate regardless of the contra-party to the transaction.

[20] Category D Rebates are paid to members executing electronically-delivered Customer Simple Orders in Select Symbols in Section I. Rebates are paid on PIXL Orders in Section I symbols that execute against non-Initiating Order interest. Rebates are paid on Customer PIXL Orders in Section I symbols that execute against non-

Continued

which relate to Simple and Complex Orders in Select Symbols. These Categories will no longer be relevant with this proposal. All Multiply Listed Options in Section II would qualify for either the Category A [21] or B [22] rebates. The Exchange also proposes to amend Sections II and IV [23] to remove references to Select Symbols and also pricing in PIXL [24] concerning transactions in Select Symbols, as that pricing is no longer relevant.

The Exchange believes that the proposed pricing will enable the Exchange to remain competitive.

Monthly Market Maker Cap

The Exchange also proposes to increase the $0.16 per contract fee that today is assessed to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order; and have reached the Monthly Market Maker Cap to $0.17 per contract. The Exchange is amending this fee to capture the cost to the Exchange of paying a Category B Customer Rebate.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [25] in general, and furthers the objectives of Section 6(b)(4) of the Act [26] in particular, in that it provides for an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Section I Select Symbols

The Exchange believes that it is reasonable to remove BAC, EEM, GLD, IWM, MSFT, QQQ, and XLF from the list of Select Symbols, eliminate the pricing in Section I and apply the pricing for Multiply Listed Options in Section II to the Select Symbols in order to attract additional order flow to the Exchange as result of the new pricing.

The Exchange believes that it is equitable and not unfairly discriminatory to eliminate the list of Select Symbols and Section I pricing because the Exchange would uniformly apply Section II pricing to all Multiply Listed Options, with the exception of SPY,[27] to all market participants.

Customers would not be assessed Section II Options Transaction Charges, including transaction fees related to electronic and non-electronic Complex auctions. Today, Customers are not assessed transaction fees in Section I. With this proposal, a Customer would pay a Cancellation Fee for cancelled orders. In addition, with this proposal, the Exchange would pay Customers that qualify for the Customer Rebate Program the Category A rebates instead of the Category D rebates they may qualify for today with respect to the Select Symbols. The ability to qualify for Category A rebates would result in increased rebates for Customers.[28]

A Professional would incur lower fees except for adding liquidity in Complex Order where the fee today is $0.10 per contract. Section II fees do not distinguish between adding and removing liquidity; the Select Symbols would be subject to the electronic Options Transaction Charges for Penny Pilot Options regardless of whether the market participant was adding or removing liquidity. The Exchange believes that it is equitable and not unfairly discriminatory to assess Professionals the same Options Transaction Charges for Select Symbols that are assessed today for all other Multiply Listed Options symbols, except SPY options.

Specialist and Market Maker fees would increase except with respect to removing liquidity, however Specialists and Market Makers would now be able to cap their fees because the Monthly Market Maker Cap is applicable to Section II symbols. Specialists and Market Makers would no longer be entitled to the $0.20 per contract Simple Order Rebate for Adding Liquidity. Specialists and Market Makers would also incur increased costs during the opening auction. Specialists and Market Makers would now be subject to PFOF fees for Simple Orders that remove liquidity. The Exchange believes that it is equitable and not unfairly discriminatory to assess the Section II Options Transaction Charges to Specialists and Market Makers because while certain fees will increase and the Exchange would no longer pay Simple Order rebates, Specialists and Market Makers will be able to cap fees. Also, Specialists and Market Makers will be assessed the same Options Transaction Charges for the Select Symbols that are assessed today for all other Multiply Listed Options symbols, except SPY options. In addition, PFOF fees will apply to Select Symbols similar to the manner in which they apply today to Section II symbols.

Firms would pay the same or lower fees with respect to removing liquidity, except where they have volume greater than 500,000 electronically-delivered contracts in a month, than the fee would be reduced.[29] A Firm would pay more to add liquidity in Complex Orders. Firms would continue to have the opportunity to cap their fees with the Monthly Firm Fee Cap which is applicable to Section II symbols as it was applicable to Section I Select Symbols. The Exchange believes that it is equitable and not unfairly discriminatory to assess Section II fees to Firms because they will continue to have the ability to cap fees and also have the ability to pay a reduced Options Transaction Charge when executing a certain amount of volume. Also, Firms will be assessed the same Options Transaction Charges for the Select Symbols that are assessed today for all other Multiply Listed Options symbols, except SPY options.

Broker-Dealers would pay the same or lower fees with respect to removing liquidity. A Broker-Dealer would pay more to add liquidity in Complex Orders. The Exchange believes that it is equitable and not unfairly discriminatory to assess Section II fees to Broker Dealers because they will be

Initiating Order interest, except in the case of Customer PIXL Order that are greater than 999 contracts. All Customer PIXL Orders that are greater than 999 contracts are paid a rebate regardless of the contra-party to the transaction.

[21] Category A Rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Orders that are greater than 999 contracts. All Customer PIXL Orders that are greater than 999 contracts will be paid a rebate regardless of the contra-party to the transaction.

[22] Category B Rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Complex Orders that are greater than 999 contracts. All Customer PIXL Complex Orders that are greater than 999 contracts will be paid a rebate regardless of the contra-party to the transaction.

[23] Today, the Exchange assesses PIXL Pricing based on whether the symbol is a Select Symbol in Section I or a Multiply Listed Options symbol subject to Section II pricing. *See* Section IV of the Pricing Schedule.

[24] PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXL[SM]). *See* Rule 1080(n).

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(4).

[27] SPY has its own pricing in Section C, which will be renamed as new Section I. *See* Section C of the Pricing Schedule.

[28] Simple Order Category A rebates range between $0.12 and $0.15 per contract and Category D rebates are $0.08 per contract, where applicable. Complex Order Category C rebates are $0.17 per contract. With this proposal, Customers transacting Select Symbols could qualify for Category B rebates, which are also $0.17 per contract where applicable.

[29] Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options will be reduced to $0.17 per contract for a given month provided that a Firm has volume greater than 500,000 electronically-delivered contracts in a month.

assessed the same Options Transaction Charges for the Select Symbols that are assessed today for all other Multiply Listed Options symbols, except SPY options.

Monthly Market Maker Cap

The Exchange's proposal to increase the $0.16 per contract fee that today is assessed to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap to $0.17 per contract is reasonable because today the Exchange pays a Customer rebate of $0.17 for Customer Complex Orders pursuant to Section B of the Pricing Schedule. The Exchange is amending this fee to capture the $0.17 per contract cost to the Exchange of paying an increased Category B Customer Rebate for transactions in Complex Orders. This amendment will allow the Exchange to continue to pay certain qualifying Complex Order Customer rebates pursuant to the Customer Rebate Program in Section B. This fee is only paid once the Monthly Market Maker Cap is exceeded and Specialists or Market Makers are not otherwise incurring fees and the Specialist or Market Maker is contra to a Customer order.

The Exchange's proposal to increase the $0.16 per contract fee that today is assessed to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap to $0.17 per contract is equitable and not unfairly discriminatory because all Specialists and Market Makers would be uniformly assessed the fee as long as they have reached the cap and are contra to an electronically-delivered Customer order.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that its proposal to eliminate the Section I pricing applicable to Select Symbols and instead assess BAC, EEM, GLD, IWM, MSFT, QQQ, and XLF the fees in Section II and subject these Select Symbols to other Section II pricing does not impose any undue burden on competition. In most cases, market participants will be subject to the same or better pricing. There will be no pricing differentials among market participants for adding versus removing liquidity. All of these Select Symbols are Penny Pilot Options and therefore would be subject a single electronic Options Transaction Charge applicable to Penny Pilot Options. The floor transaction fees remain unaffected because today Section II pricing applies to Select Symbols. Other than options on SPY, which are subject to different pricing, all Multiply Listed Options symbols would be subject to the pricing in Section II with this proposal.

With respect to increasing the $0.16 per contract fee that today is assessed to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap to $0.17 per contract the Exchange believes that this proposed amendment will also not impose an undue burden on competition. The Exchange will uniformly assess this fee to Specialists and Market Makers in limited circumstances.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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)(ii) of the Act.[30] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[30] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2013–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–71 and should be submitted on or before August 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–16935 Filed 7–15–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69961; File No. SR–CBOE–2013–054]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend Rule 6.42

July 10, 2013.

On May 13, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 6.42. The proposed rule change was published for comment in the **Federal Register** on May 30, 2013.[3] The Commission has not received comment letters on this proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is July 14, 2013. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, which relates to minimum quoting increments for complex orders.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates August 28, 2013, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CBOE–2013–054).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–16933 Filed 7–15–13; 8:45 am]

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[31] 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. 69629 (May 23, 2013), 78 FR 32496.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69956; File No. SR–CME–2013–09]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Interest Rate Swap Clearing Changes

July 10, 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 June 28, 2013, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A) 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 is filing proposed rules changes that are limited to its business as a derivatives clearing organization offering interest rate swap (''IRS'') clearing services. More specifically, the proposed rule changes that are the subject of this filing would facilitate the addition of new IRS products for clearing and would also include certain changes to its existing IRS clearing offering.

The text of the proposed rule changes is also available at the CME's Web site at *http://www.cmegroup.com,* at the principal office of CME, 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 and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission and currently offers clearing services for interest rate swaps (''IRS''). With this filing, CME proposes to accept the following swaps for clearing beginning July 1, 2013:

- Fixed-Floating IRS denominated in Hong Kong Dollar (''HKD''), New Zealand Dollar (''NZD'') and Singapore Dollar (''SGD'') with Termination Dates up to 15 years.

Additionally, CME will amend CME Rules 90002.F and 90102.E to add the following swap specifications to its existing offering of IRS:

- OIS swaps with Termination Dates up to 30 years;
- Variable notional amounts (amortizing, roller coaster and accreting) for fixed-floating and basis swaps;
- Swaps with straight and spread compounding; and
- New Zealand as an acceptable calendar adjustment for Business Day Conventions.

The changes to CME Rule 90002.F reflect the addition of variable notional amounts. The changes to CME Rule 90102.E reflect the addition of certain Floating Rate Options for HKD, NZD and SGD swaps and certain addition OIS rates. The Manual of Operations for CME Cleared Interest Rate Swaps (the ''IRS Manual'') is also being updated in connection with these proposed changes described in this filing.

The changes that are described in this filing are limited to CME's IRS clearing offering and do not materially impact CME's credit default swap clearing

[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).

business in any way. CME notes that it has also submitted the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC''), in CME Submission 13–164.

CME believes the proposed rule changes are consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act. The proposed rule changes involve enhancements to CME's interest rate swap product offering for investors, including new products for clearing, and as such are designed to promote the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts and transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and, in general, help to protect investors and the public interest. Furthermore, the proposed changes are limited to listing new IRS for clearing and making changes to CME's existing IRS clearing offering. IRS is under the exclusive jurisdiction of the CFTC. As such, the proposed CME changes are limited to CME's activities as a derivatives clearing organization clearing swaps that are not security-based swaps; CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest. In summary, the proposed CME 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. The changes are therefore consistent with the requirements of Section 17A of the Exchange and are properly filed under Section 19(b)(3)(A) and Rule 19b–4(f)(4)(ii) thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The rule changes simply add new types of interest rates swaps to the CME rulebook and make certain other additions to the existing swap certifications in the CME Rulebook.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

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) [5] of the Act and paragraph (f)(4)(ii) of Rule 19b–4 [6] thereunder and will become effective on 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–CME–2013–09 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–2013–09. 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 (*http://www.cmegroup.com/market-regulation/files/sec_19b-4_13–09.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–2013–09 and should be submitted on or before August 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–16932 Filed 7–15–13; 8:45 am]

BILLING CODE 8011–01–P

[5] *Supra* note 3.

[6] *Supra* note 4.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69963; File No. SR–NYSE–2013–49]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Several NYSE Rules To Reflect Changes to Rules and Adopt Guidance of the Financial Industry Regulatory Authority

July 10, 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 June 26, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4 (2013).

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 and adopt several NYSE rules [3] to reflect changes to rules of the Financial Industry Regulatory Authority (''FINRA''). Specifically, the Exchange proposes to: (1) Amend Rule 8210 to conform to changes recently adopted by FINRA for FINRA Rule 8210, which concerns the provision of information and testimony and inspection and copying of books and records; (2) adopt certain FINRA guidance on the Rule 8000–9000 Series; and (3) amend Rule 8320 with respect to the non-payment of fines. The text of the proposed rule changes 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments it received on the proposed rule changes. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (1) Amend Rule 8210 to conform it to changes recently adopted by FINRA for FINRA Rule 8210, which concerns the provision of information and testimony and inspection and copying of books and records; (2) adopt certain FINRA guidance on the Rule 8000–9000 Series; and (3) amend Rule 8320 with respect to the non-payment of fines.

Background

On July 30, 2007, the National Association of Securities Dealers, Inc. (''NASD''), NYSE, and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA, and entered into a plan to allocate to FINRA regulatory responsibility for common rules and common members (''17d–2 Agreement'').[4] In 2007, the parties also entered into a Regulatory Services Agreement (''RSA''), whereby FINRA was retained to perform certain regulatory services on behalf of NYSER for non-common rules. On June 14, 2010, the Exchange, NYSER, and FINRA amended the RSA and retained FINRA to perform the market surveillance and enforcement functions that had previously been performed by NYSER up to that point.[5] Accordingly, since June 14, 2010, FINRA has been performing all NYSE enforcement-related regulatory services on behalf of NYSER, including disciplinary proceedings relating to NYSE-only rules and against dual members and non-FINRA members. To facilitate FINRA's performance of these enforcement functions under the RSA and to further harmonize the rules of NYSE with those of FINRA, NYSE recently adopted the text of the FINRA Rule 8000–9000 Series, which set forth rules for conducting investigations and enforcement actions, with certain modifications.[6] The new rules were implemented on July 1, 2013.[7]

Proposed Rule Change

FINRA recently amended FINRA Rule 8210, effective February 25, 2013.[8] The Exchange proposes to amend the text of Rule 8210 to conform to FINRA Rule 8210. The Exchange's Rule 8210 became operative on July 1, 2013, which was the date that the Exchange had announced as the operative date of the Rule 8000–9000 Series.[9] The text of the rule is substantially the same as the text of FINRA's rule, except for technical and conforming amendments.[10]

Rule 8210 confers on Exchange staff the authority to compel a member organization or covered person to produce documents, provide testimony, or supply written responses or electronic data in connection with an investigation, complaint, examination, or adjudicatory proceeding. The proposed rule change would clarify the scope of the Exchange's authority under the rule to inspect and copy the books, records, and accounts of such member organizations or covered persons, specify the method of service for certain unregistered persons under the rule, and authorize service on attorneys who are representing clients.

Rule 8210 applies to all member organizations and covered persons over whom the Exchange has jurisdiction, including former covered persons subject to the Exchange's jurisdiction as described in Rule 8130. Rule 8210(c) provides that a member organization's or covered person's failure to provide information or testimony or to permit an inspection and copying of books, records, or accounts is a violation of the rule.

Information in a Member Organization's or Covered Person's Possession, Custody or Control

Rule 8210(a)(2) currently provides that Exchange staff shall have the right to inspect and copy the books, records, and accounts of all member organizations and covered persons with respect to any matter involved in an investigation, complaint, examination, or proceeding. The proposed rule change would clarify that the information that Exchange staff shall have the right to inspect and copy must be in the member organization's or covered person's ''possession, custody or control.'' This language parallels the Federal Rules of Civil Procedure regarding document requests and subpoenas for documents.[11]

Notice to Associated but Unregistered Persons

Rule 8210 addresses the legal concept of service of a written request by using the term ''notice'' of a request. Currently, Rule 8210(d) states that, with

[3] All references to rules herein are to NYSE rules, unless otherwise specified.

[4] *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (Aug. 1, 2007) (File No. 4–544) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The 17d–2 Agreement was entered into in accordance with the requirements of Rule 17d–2 of the Commission, which permits self-regulatory organizations to allocate regulatory responsibilities with respect to common members and common rules. *See* 17 CFR 240.17d–2 (2013).

[5] *See* Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729 (June 28, 2010) (SR–NYSE–2010–46).

[6] *See* Securities Exchange Act Release Nos. 68678 (Jan. 16, 2013), 78 FR 5213 (Jan. 24, 2013) (SR–NYSE–2013–02), and 69045 (Mar. 5, 2013), 78 FR 15394 (Mar. 11, 2013).

[7] *See* NYSE Information Memorandum 13–8 (May 24, 2013).

[8] *See* Securities Exchange Act Release No. 68386 (Dec. 7, 2012), 77 FR 74253 (Dec. 13, 2012) (SR–FINRA–2009–060) and FINRA Regulatory Notice 13–06. When the Exchange submitted the Notice to the Commission, FINRA had not yet announced the effective date of the amendments to FINRA Rule 8210.

[9] *See supra* note 7.

[10] The Exchange uses the terms *member organization* and *covered person* rather than *member* and *associated person,* which FINRA uses. The term *covered person* includes anyone subject to the Exchange's jurisdiction. *See* Notice, *supra* note 6, at 5219–5220. Also, unlike FINRA, the Exchange does not enforce Municipal Securities Rulemaking Board rules, so reference to those rules is not included in the Exchange's text.

[11] *See* Fed. R. Civ. P. 34.

respect to member organizations and covered persons, notice shall be deemed received by the member organization or covered person when a copy of the notice is mailed or otherwise transmitted to the last known relevant address of the member organization or covered person as reflected in the Central Registration Depository (''CRD''). The CRD system contains information concerning registered member organizations and certain covered persons,[12] but in most instances it does not contain information concerning unregistered persons who are or were associated with a member organization.[13]

Although not routine, some investigations require Exchange examiners or investigators to request information from persons currently or formerly associated with a member organization in an unregistered capacity.[14] The current rule is unclear as to what would constitute proper notice on such persons for whom information is not available in CRD. The proposed rule change would explicitly address the methods by which notice would be deemed received by persons currently or formerly associated with a member organization in an unregistered capacity.

With respect to unregistered persons currently associated with a member organization, the proposed rule change would provide that notice shall be deemed received by mailing or otherwise transmitting the notice to the last known business address of the member organization as reflected in CRD. In addition, the proposed rule change would retain the provision that if Exchange staff responsible for transmitting the notice has actual knowledge that the member organization's address provided through CRD is out of date or inaccurate, then a copy of the notice must be transmitted to both the address provided through CRD, as well as any more current address known to Exchange staff.

With respect to unregistered persons formerly associated with a member organization, the proposed rule change would provide that notice shall be deemed received upon personal service, which is described in Rule 9134(a)(1).[15] FINRA Rule 9134(a)(1) is based on traditional concepts for serving a summons under Rule 4 of the Federal Rules of Civil Procedure.[16]

Notice to Member Organizations and Covered Persons Represented by Counsel

The proposed rule change would amend Rule 8210(d) to explicitly address issues of service on member organizations or covered persons that are known to be represented by counsel. Currently, the rule does not explicitly permit Exchange staff to serve notice on a member organization's or covered person's counsel in situations in which Exchange staff knows that the member organization or covered person is represented by counsel regarding the matter in question. The proposed rule change would allow Exchange staff to recognize that counsel can act as an authorized agent on behalf of a member organization or covered person. It would provide that, if Exchange staff knows that a member organization or covered person is represented by counsel regarding the matter in question, then notice shall be provided to counsel rather than to the member organization or covered person. The proposed rule change would harmonize the Exchange's rule in this regard with Codes of Professional Conduct in many states regarding service on counsel.[17]

Supplementary Material

The proposed rule change would add supplementary material to Rule 8210. The supplementary material would state that Rule 8210 requires Exchange member organizations and covered persons to provide Exchange staff and adjudicators with requested books, records, and accounts. In specifying the books, records and accounts ''of such member organization or covered person,'' paragraph (a) of the rule refers to books, records, and accounts that the broker-dealer or its associated persons make or keep relating to its operation as a broker-dealer or relating to the person's association with the member. This includes but is not limited to records relating to an Exchange investigation of outside business activities, private securities transactions or possible violations of just and equitable principles of trade, as well as other Exchange rules and the federal securities laws. It does not ordinarily include books and records that are in the possession, custody or control of a member organization or covered person, but whose bona fide ownership is held by an independent third party and the records are unrelated to the business of the member organization. The rule requires, however, that an Exchange member organization or covered person make available its books, records, or accounts when the books, records, or accounts are in the possession of another person or entity, such as a professional service provider, but the Exchange member organization or covered person controls or has a right to demand them.

Adoption of FINRA Guidance

The Exchange has determined that all interpretive guidance issued by FINRA with respect to the Rule 8000–9000 Series for which the Exchange has adopted substantially the same rule text would be equally applicable in NYSE investigations and disciplinary proceedings as a stated policy and practice of the Exchange.[18] The Exchange notes that it has not adopted the text of certain FINRA rules, which

[12] Member organizations and registered persons will have an affirmative duty to update CRD with their current address for at least two years after they have had their registration terminated. *See infra* note 18.

[13] In some limited instances, CRD may contain information concerning unregistered persons who were required to submit information, including fingerprint information, to CRD in connection with their employment.

[14] Unregistered persons may include persons exempt from registration, *e.g.,* personnel performing the mechanical function of recording an order and passing it along the usual communication channels, telephoning reports of executions or reading quotations when the person handling the account is unavailable. *See* NYSE Interpretation Handbook, Rule 345(a)/01. For purposes of Rule 8210, unregistered persons associated with a member organization may also include direct owners and executive officers listed in Schedule A of Form BD of a member organization whose job functions do not otherwise require them to register; such persons would fall under the definition of *covered person. See* Rule 9120(g).

[15] Rule 9134(a)(1) provides that personal service may be accomplished by handing a copy of the papers to the person required to be served, leaving a copy at the person's office with an employee or other person in charge thereof, or leaving a copy at the person's dwelling or usual place of abode with a person of suitable age and discretion then residing therein.

[16] *See* Fed. R. Civ. P. 4.

[17] *See, e.g.,* American Bar Association model Rule of Professional Conduct 4.2 (''ABA Rule 4.2''). ABA Rule 4.2 provides: ''In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.'' *Id.* Many states have rules regarding communication with a person represented by counsel that are based on ABA Rule 4.2.

[18] *See, e.g.,* FINRA Rule 8210 Frequently Asked Questions, *available at http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p250124.pdf;* Notice to Members 99–77 (noting that requests for information and disciplinary complaints issued during the period of retained jurisdiction will be mailed to a person's last address in CRD, and thus there is an affirmative duty to update CRD with a current address for at least two years after a member organization or registered person has had its registration terminated); Notice to Members 04–19 (noting that a minor rule violation letter may be appropriate to address more than one violation in a single action, and in cases where two or more rule violations are disposed of in one letter, the maximum penalty will be $2,500); Regulatory and Compliance Alerts, Vol. 12, No. 4, Winter 1998 (allowing respondents to submit a ''Correction Action Statement'' and ''Mitigation Statement'' with an executed acceptance, waiver, and consent letter).

are marked ''Reserved'' in the Exchange's rulebook. The text of Rule 9217 and the Rule 9300 Series are not substantially the same as FINRA's counterpart rules because the Exchange has retained its own list of minor rule violations and its own appellate process. As such, FINRA guidance concerning such rules and ''Reserved'' rules would not be applicable. The Exchange believes that this policy and practice would help ensure that there is consistency in the application of substantially similar rules.

Amendment to Rule 8320

To facilitate the transition from the Exchange's former disciplinary rules to the new FINRA-based disciplinary rules, the Exchange amended Rule 309 to provide that any member, member organization or principal executive who fails to pay a fee or any other sums due to the Exchange, within 45 days after the same is payable, shall be reported to the Chief Financial Officer of the Exchange or designee who, after notice has been given to such member, member organization or principal executive of such arrearages, may suspend access to some or all of the facilities of the Exchange until payment is made. The rule provides an exception for failing to pay a fine levied in connection with a disciplinary action, which would be governed by Rule 8320. Rule 8320 permits summary suspensions for the non-payment of fines, monetary sanctions, and costs.

Rule 8320 cross-references to sanctions imposed under Rule 8310, which in turn references sanctions imposed under the Rule 9000 Series. The Exchange notes that if a disciplinary action was ongoing at the time that the Rule 9000 Series became effective on July 1, 2013, it would be concluded under Rule 476. To prevent any potential gap in the rules and clarify the transitional rules, the Exchange proposes to amend Rule 8320 to add a new paragraph (d) that would provide that the Exchange may exercise the authority set forth in Rule 8320 with respect to non-payment of a fine, monetary sanction, or cost assessed in a disciplinary action initiated under Rule 476 for which a decision was issued on or after July 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule changes further the objectives of Section 6(b)(7) of the Act,[21] in particular, in that it provides fair procedures for the disciplining of members [22] and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

The proposed change to Rule 8210 would provide greater harmonization between Exchange and FINRA rules of similar purpose, resulting in greater uniformity in investigative rules and less burdensome and more efficient regulatory compliance. As previously noted, the proposed rule text is substantially the same as FINRA's recently adopted rule text, which already has been approved by the Commission.[23] As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed change to Rule 8320 would prevent any potential gap in the rules concerning non-payment of fines, monetary sanctions, and costs and clarify the transition from the old to the new disciplinary rules. The Exchange believes that the proposed rule change will provide respondents with better notice of potential sanctions, thereby improving the fairness of its disciplinary proceedings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization among Exchange and FINRA rules of similar purpose for investigations, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory functions under the RSA. The proposed rule changes are also intended to provide greater clarity and notice to respondents during the transition from the old disciplinary rules to the new disciplinary rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, 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 and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [26] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[27] the Commission may 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 Exchange stated its belief that this proposal is non-controversial

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(7).

[22] The Exchange's equivalent to the term *member* in this context is *member organization.*

[23] *See supra* note 8.

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6) (2013). In addition, Rule 19b–4(f)(6) 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.

[26] 17 CFR 240.19b–4(f)(6) (2013).

[27] 17 CFR 240.19b–4(f)(6)(iii) (2013).

and will not significantly affect the protection of investors because the Exchange is not proposing any substantive changes and is merely amending its rule text to mirror FINRA's rules. Further, the Commission has previously considered the amendments to FINRA Rule 8210, which this proposed rule change mirrors, as well as comments responding to the amendments to FINRA Rule 8210.[28] Based on the Exchange's statements and the Commission's previous experiences with FINRA Rule 8210 amendments, the Commission believes that waiving the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby grants the Exchange's request and waives the 30-day operative delay.[29]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2013–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSE–2013–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2013–49 and should be submitted on or before August 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16936 Filed 7–15–13; 8:45 am]

BILLING CODE 8011–01–P

[28] *See* Securities Exchange Act Release No. 68386 (Dec. 7, 2012), 77 FR 74253 (Dec. 13, 2012) (SR–FINRA–2009–060). FINRA initially filed its proposed rule change to FINRA Rule 8210 with the Commission on September 10, 2009. The proposed rule change was published for comment in the **Federal Register** on October 22, 2009. *See* Exchange Act Release No. 60836 (Oct. 16, 2009), 74 FR 54614 (Oct. 22, 2009). The Commission received seven comment letters on the proposed rule change. *See* Securities Exchange Act Release No. 68386 (Dec. 7, 2012), 77 FR 74253 (Dec. 13, 2012) (SR–FINRA–2009–060). On December 22, 2009, FINRA filed a letter with the Commission responding to these comments, and on December 21, 2011, FINRA filed Amendment No. 1 with the Commission to further respond to the comments and to propose amendments in response. *See* letter from Stan Macel, Assistant General Counsel, Regulatory Policy and Oversight, FINRA, to Elizabeth M. Murphy, Secretary, SEC, dated December 22, 2009, *available at http://www.sec.gov/comments/sr-finra-2009-060/finra2009060.shtml.* On December 5, 2012, FINRA filed Amendment No. 2 with the Commission to modify a phrase that was included in Amendment No. 1. The Commission published notice of the filing on December 7, 2012 and solicited comments on Amendments Nos. 1 and 2. *See* Securities Exchange Act Release No. 68386 (Dec. 7, 2012), 77 FR 74253 (Dec. 13, 2012) (SR–FINRA–2009–060). The Commission did not receive comments in response to the amendments.

[29] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 17 CFR 200.30–3(a)(12) (2013).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69965; File No. SR–BOX–2013–36]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend BOX Rule 3120 (Position Limits) and BOX Rule 3130 (Exemptions from Position Limits)

July 11, 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 July 3, 2013, BOX Options Exchange LLC (''BOX'' or ''Exchange'') 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 BOX Rule 3120 (Position Limits) and BOX Rule 3130 (Exemptions from Position Limits). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 10, 2013 the Exchange began listing and trading options contracts overlying 1,000 SPDR® S&P 500® exchange-traded fund shares (''SPY''),[3] or (''Jumbo SPY Options'').[4] Whereas standard options contracts represent a deliverable of 100 shares of an underlying security, this product represents 1,000 SPY shares. Except for the difference in the number of deliverable shares, Jumbo SPY Options have the same terms and contract characteristics as regular-sized options contracts (''standard options''), including exercise style. Accordingly, the Commission noted in the approval order that the Exchange's rules which apply to the trading of standard options would also apply to Jumbo SPY Options as well.[5] The Exchange proposes to amend the BOX Rules to clarify that position limits and the equity hedge exemption will apply to Jumbo SPY Options.

Position Limits

Pursuant to proposed Interpretive Material to Rule 3120 (IM–3120–4), positions in Jumbo SPY Options, as detailed in Rule 5050(e), shall be aggregated with positions in Mini SPY options and standard SPY options, with each Jumbo SPY Option counting as ten standard SPY option contracts or 100 Mini SPY option contracts. While there are no position limit requirements for Jumbo SPY, Mini SPY or standard SPY options,[6] the Exchange believes this aggregation is appropriate due to the position limit reporting rules that continue to apply to all Participants.[7]

Further, hedge exemptions will apply pursuant to Rule 3130(b), which the Exchange proposes to revise to provide that 1000 (as opposed to 100) shares of the underlying security is the appropriate hedge for Jumbo Options and to make clear that the hedge exemptions apply to the position limits set forth in IM–3120–4.[8] The Exchange notes that this filing is similar to proposals filed by BOX as part of the launch of ''Mini Options,'' which are non-standard options contracts overlying 10 shares of a security.[9]

Quarterly Options

The Exchange also proposes to clarify that Jumbo SPY Options are eligible for inclusion in the Quarterly Options Series (''QOS'') Program.[10] The Program allows BOX to list and trade QOS, which expire at the close of business on the last business day of a calendar quarter. Under the Program, BOX may select up to five (5) currently listed exchange traded fund (''ETF'') or index option classes on which QOS may be opened. The Exchange may list series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the next calendar year.[11]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[12] in general, and Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. By submitting this proposal the Exchange is eliminating any potential confusion regarding Jumbo SPY Options, a new product listed and traded on the Exchange. The Exchange believes that the proposal will help avoid investor confusion by clarifying how the Exchange's position limit rules will apply to Jumbo SPY Options, Mini SPY Options and standard SPY options. Finally, the Exchange believes that it is appropriate to clarify that Jumbo SPY Options are eligible for the Quarterly Options Series Program. Doing so provides investors and other market participants with a more accurate understanding of the Exchange's rules regarding Jumbo SPY Options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that investors would benefit from the introduction and availability of Jumbo SPY Options by making options on large blocks of the SPY ETF more available as an investing tool, particularly for institutional investors. Trading in Jumbo SPY Options is entirely voluntary and Participants can determine if they would like to trade in this new product.

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 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[14] and Rule 19b–4(f)(6) thereunder.[15]

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

[3] ''SPDR®,'' ''Standard & Poor's®,'' ''S&P®,'' ''S&P 500®,'' and ''Standard & Poor's 500'' are registered trademarks of Standard & Poor's Financial Services LLC. The SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

[4] *See* Securities Exchange Act Release No. 34–69511 (May 3, 2013), 78 FR 27271 (May 9, 2013) (Order Approving SR–BOX–2013–06).

[5] *Id.*

[6] Position limits have been eliminated for options overlying SPY on a pilot basis. *See* Securities Exchange Act Release No. 34–67936 (September 27, 2012), 77 FR 60491 (October 3, 2012) (SR–BOX–2012–013).

[7] *See* BOX Rule 3150(b).

[8] Exchange Rule 3140 (Exercise Limits) refers to exercise limits that correspond to aggregate positions as described in Rule 3120 (Position Limits). Today, the position limits established in a given option under Rule 3120 is also the exercise limit for such option. Thus, although the proposed rule change would not amend the text of Rule 3140 (Exercise Limits) itself, the proposed change to add IM–3120–4 would have a corresponding effect on the exercise limits.

[9] *See* Securities Exchange Act Release No. 34–68771 (January 30, 2013), 78 FR 8208 (February 5, 2013) (Notice of Filing and Immediate Effectiveness of SR–BOX–2013–07).

[10] *See* Interpretive Material 4 to BOX Rule 5050.

[11] *See* BOX Rule 5050(e) which provides that the Exchange may list Jumbo SPY Options on all expirations applicable to standard SPY options.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 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 Exchange has fulfilled this requirement.

designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[16] Trading in Jumbo SPY Options has already commenced and waiver of the operative delay will allow the Exchange to immediately implement its proposal. For these reasons, the Commission designates the proposed rule change as 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–BOX–2013–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–BOX–2013–36.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You shouldsubmit only information that you wish to make available publicly. All submissions should refer to File Number *SR–BOX–2013–36* and should be submitted on or before August 6, 2013

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–17013 Filed 7–15–13; 8:45 am]

BILLING CODE 8011–01–P

[16] 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).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69957; File No. SR–CME–2013–10]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Change to Interest Rate Swap Margin Calculation Parameters

July 10, 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 June 28, 2013, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A) 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.

[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).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed change is below. Italicized text indicates additions; bracketed text indicates deletions.

* * * * *

TO: Clearing Member Firms; Back Office Managers

FROM: CME Clearing

DATE: July__, 2013

ADVISORY #: 13–XXX

SUBJECT: Update to Interest Rate Swap Margin Parameters

Please be advised that beginning 7/15/2013, CME Clearing will utilize a revised set of parameters for the margining of CME cleared Interest Rate Swap Products.

The current margin model utilizes 1,260 business days (scenarios).

The IRS margin model will change parameters through an extended look back of margins beyond 1,260 scenarios. The change, pending regulatory review, will preserve key historical dates from the 2008 financial crisis.

If you have questions, please email the Risk Research team at QRT@cmegroup.com or call 312–338–2069.

* * * * *

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 and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission and currently offers clearing services for interest rate swaps

(''IRS''). With this filing, CME proposes to issue a Clearing Advisory Notice announcing a change to CME's current Interest Rate Swap margin calculation parameters effective July 15, 2013.

The proposed CME Clearing Advisory Notice would inform clearing members and market participants that CME Clearing would, beginning on July 15, 2013, make a change in CME's Interest Rate Swap Margin Calculation Parameters. The change would peg the current look-back period to September 1, 2008. The current look-back period employs a five year methodology. By pegging the look back methodology to September 1, 2008, rather than maintaining the current five year look back, a number of scenarios stemming from the 2008 financial crisis will be maintained. These scenarios would have otherwise rolled off under the current five year methodology. Thus, after the changes are employed, the look back methodology would now include each new business day as a new scenario on a rolling basis.

The changes that are described in this filing are limited to CME's IRS clearing offering and do not materially impact CME's credit default swap clearing business in any way. CME notes that it has also submitted the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC''), in CME Submission 13–263.

CME believes the proposed rule changes are consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act. The proposed rule changes involve enhancements to CME's interest rate swap product offering for investors, and as such are designed to promote the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts and transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and, in general, help to protect investors and the public interest. Furthermore, the proposed changes are limited in their effect to CME's existing IRS clearing offering. IRS is under the exclusive jurisdiction of the CFTC. As such, the proposed CME changes are limited to CME's activities as a derivatives clearing organization clearing swaps that are not security-based swaps; CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest. In summary, the proposed CME 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. The changes are therefore consistent with the requirements of Section 17A of the Exchange and are properly filed under Section 19(b)(3)(A) and Rule 19b–4(f)(4)(ii) thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The rule changes simply announce one technical enhancement to CME's current IRS clearing offering, that is, a change to CME's current IRS margin calculation parameters.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

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) [5] of the Act and paragraph (f)(4)(ii) of Rule 19b–4 [6] thereunder and will become effective on 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–CME–2013–10 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–2013–10. 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 (*http://www.cmegroup.com/market-regulation/files/sec_19b-4_13-10.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–2013–10 and should be submitted on or before August 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–16934 Filed 7–15–13; 8:45 am]

BILLING CODE 8011–01–P

[5] *Supra* note 3.

[6] *Supra* note 4.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69863; File No. SR–BOX–2013–32]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BOX Rule 7130 (Execution and Price/Time Priority) To Adjust the NBBO Exposure Period

June 26, 2013.

Correction

In notice document 2013–15780 beginning on page 39805 in the issue of Tuesday, July 2, 2013, make the following correction:

On page 39805, in the first column, the heading is corrected to read as set forth above.

[FR Doc. C1–2013–15780 Filed 7–15–13; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69966; File No. SR–FINRA–2013–028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Revise the Series 55 Examination Program

July 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''SEA'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. FINRA has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule'' under Section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by 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

FINRA is filing revisions to the content outline and selection specifications for the Equity Trader (Series 55) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules and regulations covered by the examination and to reflect the functions currently performed by an Equity Trader. FINRA is not proposing any textual changes to the By-Laws, Schedules to the By-Laws or Rules of FINRA.

The revised content outline is attached.[6] The Series 55 selection specifications have been submitted to the Commission under separate cover with a request for confidential treatment pursuant to SEA Rule 24b–2.[7]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

1. Purpose

Section 15A(g)(3) of the Act [8] authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. In accordance with that provision, FINRA has developed examinations that are designed to establish that persons associated with FINRA members have attained specified levels of competence and knowledge, consistent with applicable registration requirements under FINRA rules. FINRA periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

Pursuant to NASD Rule 1032(f) (Limited Representative—Equity Trader), each associated person of a member who is included within the definition of representative in NASD Rule 1031(b) (Definition of Representative) is required to register with FINRA as an Equity Trader if, with respect to transactions in equity, preferred or convertible debt securities effected otherwise than on a securities exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis or the direct supervision of such activities. There is an exception from the Equity Trader requirement for any associated person of a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by, or is under common control with the member. The Series 55 examination qualifies an individual to function as an Equity Trader. Before registration as an Equity Trader may become effective, the individual must be registered as either a General Securities Representative (Series 7) or Corporate Securities Representative (Series 62).

In concert with a committee of industry representatives, FINRA recently undertook a review of the Series 55 examination program. As a result of this review, FINRA is proposing to make revisions to the content outline to reflect changes to the laws, rules and regulations covered by the examination and to reflect the functions currently performed by an Equity Trader.

Current Outline

The current content outline is divided into four critical sections. The following are the four sections and the number of questions associated with each of the sections, denoted 1 through 4:

1: NASDAQ and Over-The-Counter Markets, 42 questions;

2: Display, Execution and Trading Systems, 12 questions;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] FINRA also is proposing corresponding revisions to the Series 55 question bank. Based on instruction from SEC staff, FINRA is submitting this filing for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder, and is not filing the question bank for review. *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000. The question bank is available for SEC review.

[6] The Commission notes that the content outline is attached to the filing, not to this Notice and that the content outline, in effect, constitutes the text of the proposed rule change.

[7] 17 CFR 240.24b–2.

[8] 15 U.S.C. 78*o*–3(g)(3).

3: Trade Reporting Requirements, 22 questions; and

4: General Industry Standards, 24 questions.

Each section also includes the applicable laws, rules and regulations associated with that section.

Proposed Revisions

FINRA is proposing to divide the content outline into three major job functions that are performed by an Equity Trader. The following are the three major job functions, denoted Function 1 through Function 3, and the number of questions associated with each of the functions:

Function 1: Trading, 45 questions;

Function 2: Order Handling, 36 questions; and

Function 3: Record Keeping and Regulatory Reporting, 19 questions.

Each function contains sections that describe the areas of knowledge required to perform that function, and each of these areas of knowledge contains subsections that list the laws, rules and regulations related to that particular area of knowledge.

As noted above, FINRA also is proposing to revise the content outline to reflect changes to the laws, rules and regulations covered by the examination. Among other revisions, FINRA is proposing to revise the content outline to reflect the adoption of rules in the consolidated FINRA rulebook (*e.g.,* NASD IM–2110–2 (Trading Ahead of Customer Limit Order) and NASD Rule 2111 (Trading Ahead of Customer Market Orders) were consolidated as FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders)).[9]

FINRA is proposing similar changes to the Series 55 selection specifications and question bank. The number of questions on the Series 55 examination will remain at 100 multiple-choice questions,[10] and candidates will continue to have three hours to complete the examination. Currently, a score of 70 percent is required to pass the examination. A score of 67 percent will be required to pass the revised examination.

Availability of Content Outlines

The current Series 55 content outline is available on FINRA's Web site, at *www.finra.org/brokerqualifications/exams.* The revised Series 55 content outline will replace the current content outline on FINRA's Web site.

FINRA is filing the proposed rule change for immediate effectiveness. FINRA proposes to implement the revised Series 55 examination program on August 12, 2013. FINRA will announce the proposed rule change and the implementation date in a *Regulatory Notice.*

2. Statutory Basis

FINRA believes that the proposed revisions to the Series 55 examination program are consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(g)(3) of the Act,[12] which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. FINRA believes that the proposed revisions will further these purposes by updating the examination program to reflect changes to the laws, rules and regulations covered by the examination and to reflect the functions currently performed by an Equity Trader.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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. The updated examination will be more topical by focusing on the functions currently performed by Equity Traders, and the knowledge—including the most recent related laws, rules and regulations—required to perform the functions. Therefore, the proposed revisions potentially would reduce the training and compliance burden on firms that employ Equity Traders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and paragraph (f)(1) of Rule 19b–4 thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–FINRA–2013–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–FINRA–2013–028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written

[9] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process). *See also* Rule Conversion Chart, available at *http://www.finra.org/Industry/Regulation/FINRARules/p085560.*

[10] Consistent with FINRA's practice of including ''pre-test'' questions on certain qualification examinations, which is designed to ensure that new examination questions meet acceptable testing standards prior to use for scoring purposes, the examination includes 10 additional, unidentified pre-test questions that do not contribute towards the candidate's score. Therefore, the examination actually consists of 110 questions, 100 of which are scored. The 10 pre-test questions are randomly distributed throughout the examination.

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78*o*–3(g)(3).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(1).

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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2013–028 and should be submitted on or before August 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–17014 Filed 7–15–13; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before September 16, 2013.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Carol Fendler, Supervisor System Accountant, Office of Investment, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Supervisor System Accountant, 202–205–7559 *carol.fendler@sba.gov,* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

Title: ''Stockholders Confirmation (Corporation) Ownership Confirmation (Partnership)''.

Abstract: Forms 1405 and 1405A are used by Small Business Administration (SBA) examiners as part of their examination of licensed small business investment companies (SBICs). This information collection provides independent third party confirmation of an SBIC's representations concerning its owners, and helps SBA to evaluate the SBIC's compliance with applicable laws and regulations concerning capital requirements.

Form Number's: 1405, 1405 A.

Annual Responses: 500.

Annual Burden: 500.

Curtis Rich,

Management Analyst.

[FR Doc. 2013–16994 Filed 7–15–13; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60 Day Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before September 16, 2013.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Eric Wall, Financial Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Eric Wall, Financial Analyst, 202–619–1625 *eric.wall@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

Title: ''Gulf Opportunity Pilot Loan Program (GO Loan Pilot)''

Abstract: Since 2005 SBA has been opening the Gulf Opportunity Pilot Loan Program, which provides financing to small businesses in communities located to or re-locating in the parishes/counties that were Presidential declared disaster area as a results of Hurricanes Katrina or Rita plus any parishes/counties contiguous to these parishes. This information is collected from those parishes. This information is collected from those lenders and small business owners who participate or seek to participate in the program and is used for portfolio risk management loan monitoring and lender oversight.

Description of Respondents: Small Businesses devastated by Hurricanes Katrina and Rita.

Form Numbers: 2276, 2281, 2282.

Annual Responses: 540.

Annual Burden: 308.

Curtis Rich,

Management Analyst.

[FR Doc. 2013–17003 Filed 7–15–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before September 16, 2013.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Eric Wall, Financial Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Eric Wall, Financial Analyst, 202–619–1625 *eric.wall@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

Title: ''Secondary Participants Guaranty Agreement''.

Abstract: Small Business Administration collects this information from lenders who participate in the secondary market program. The information is used to facilitate and administer secondary market transactions in accordance with 15 U.S.C. 634(f)3 and to monitor the program for compliance with 15 U.S.C. 639(h).

Form Numbers: 1086.
Annual Responses: 625.
Annual Burden: 42,500.

Curtis Rich,
Management Analyst.

[FR Doc. 2013–17002 Filed 7–15–13; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 8382]

Additional Designation of Aluminat, Pars Amayesh Sanaat Kish, Parviz Khaki, Pishro Systems Research Company, and Taghtiran Kashan Company Pursuant to Executive Order 13382

AGENCY: Department of State.

ACTION: Designation of Four Iranian Entities and One Individual Pursuant to Executive Order (E.O.) 13382.

SUMMARY: Pursuant to the authority in section 1(ii) of Executive Order 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'', the State Department, in consultation with the Secretary of the Treasury and the Attorney General, has determined that Aluminat, Pars Amayesh Sanaat Kish, Parviz Khaki, Pishro Systems Research Company, and Taghtiran Kashan Company have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern.

DATES: The designation by the Acting Under Secretary of State for Arms Control and International Security of the entity identified in this notice pursuant to Executive Order 13382 is effective on TBD, 2013.

FOR FURTHER INFORMATION CONTACT: Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–5193.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 CFR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 30, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery, including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

Information on the additional designees is as follows:

Aluminat

AKA: Aluminat Production and Industrial Company
Address: Unit 38, 5th Floor, No. 9, Golfam Avenue, Africa Avenue, Tehran, Iran
Address: Factory—Kilometer 13, Arak Road, Parcham Street, Arak, Iran

PARS Amayesh Sanaat Kish

AKA: PASK
AKA: Vacuumkaran
AKA: Vacuum Karan
AKA: Vacuum Karan Co.
Address: 3rd Floor, No. 6, East 2nd, North Kheradmand, Karimkhan Street, Tehran, Iran

Parviz Khaki

AKA: Martin
DOB: 26 August 1968
POB: Tehran, Iran

Pishro Systems Research Company

AKA: Pishro Company
AKA: Advanced Systems Research Company
AKA: ASRC
AKA: Center for Advanced Systems Research
AKA: CRAS
Address: Tehran, Iran

Taghtiran Kashan Company

AKA: Taghtiran Kashan Company
AKA: Taghtiran P.J.S.
Address: Flat 2, No. 3, 2nd Street, Azad-Abadi Avenue, Tehran, Iran 14316
Address: KM 44 Kashan-Delijan Road, P.O. Box Kashan 87135/1987, Iran

Dated: May 7, 2013.

Rose Gottemoeller,
Acting Under Secretary for Arms Control and International Security, Department of State.

[FR Doc. 2013–16993 Filed 7–15–13; 8:45 am]

BILLING CODE 4710–00–P

DEPARTMENT OF STATE

[Public Notice 8381]

Bureau of International Security and Nonproliferation: Report to Congress Pursuant to Section 1245(e) of the National Defense Authorization Act for Fiscal Year 2013 (FY13 NDAA)

AGENCY: Department of State.

ACTION: Notice of Report.

FOR FURTHER INFORMATION CONTACT: On general issues: Office of Counterproliferation Initiatives, Department of State, Telephone: (202) 647–5193.

Report (July 1, 2013)

Section 1245(e) of the FY13 NDAA, known as the Iran Freedom and Counter-Proliferation Act of 2012, as delegated by the President, requires that the Secretary of State, in consultation with the Secretary of the Treasury, determine (1) Whether Iran is (A) using any of the materials described in subsection (d) of Section 1245 of the FY13 NDAA as a medium for barter, swap, or any other exchange or transaction; or (B) listing any of such materials as assets of the Government of Iran for purposes of the national balance

sheet of Iran; (2) which sectors of the economy of Iran are controlled directly or indirectly by Iran's Islamic Revolutionary Guard Corps (IRGC); and (3) which of the materials described in subsection (d) are used in connection with the nuclear, military, or ballistic missile programs of Iran. Materials described in subsection (d) of Section 1245 are graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes. We anticipate that regulations implementing Section 1245 will include 31 materials under this definition.

Following a review of the available information, and in consultation with the Department of the Treasury and the Intelligence Community, the Under Secretary of State for Political Affairs has determined, pursuant to further delegated authority, that Iran is not using the materials described in the FY13 NDAA Section 1245(d) as a medium for barter, swap, or any other exchange or transaction, or listing any such materials as assets of the Government of Iran for purposes of the national balance sheet of Iran, as specified in Section 1245(e)(1)(B).

Following a review of the available information, and in consultation with the Department of the Treasury and the Intelligence Community, the Under Secretary of State for Political Affairs has determined, pursuant to further delegated authority, that the IRGC exercises indirect control over Iran's energy sector.

Following a review of the available information, and in consultation with the Department of the Treasury and the Intelligence Community, the Under Secretary of State for Political Affairs has determined, pursuant to further delegated authority, that of the 31 materials expected to be included within the scope of subsection (d), certain types of the following materials are used in connection with the nuclear, military, or ballistic missile programs of Iran: aluminum; beryllium; boron; cobalt; copper; copper infiltrated tungsten; copper-beryllium; graphite; hastelloy; inconel; magnesium; molybdenum; nickel; niobium; silver infiltrated tungsten; steels (including, but not limited to, maraging steels and stainless steels); titanium; titanium diboride; tungsten; tungsten carbide; and zirconium.

Dated: July 1, 2013.

Thomas M. Countryman,

Assistant Secretary of State for International Security and Nonproliferation.

[FR Doc. 2013–17001 Filed 7–15–13; 8:45 am]

BILLING CODE 4710–00–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA- 2013–0123]

Qualification of Drivers; Application for Exemptions; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces that 27 individuals have applied for a medical exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). In accordance with the statutory requirements concerning applications for exemptions, FMCSA requests public comments on these requests. The statute and implementing regulations concerning exemptions require that exemptions must provide an equivalent or greater level of safety than if they were not granted. If the Agency determines the exemptions would satisfy the statutory requirements and decides to grant theses requests after reviewing the public comments submitted in response to this notice, the exemptions would enable 27 individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before August 15, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2013–0123 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Federal Motor Carrier Safety Administration has authority to grant exemptions from many of the Federal Motor Carrier Safety Regulations (FMCSRs) under 49 U.S.C. 31315 and 31136(e), as amended by Section 4007 of the Transportation Equity Act for the 21st Century (TEA- 21) (Pub. L. 105–178, June 9, 1998, 112 Stat. 107, 401). FMCSA has published in 49 CFR part 381, subpart C final rules implementing the statutory changes in its exemption procedures made by section 4007, 69 FR 51589 (August 20, 2004).[1] Under the rules in part 381, subpart C, FMCSA must publish a notice of each exemption request in the **Federal Register**. The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted and any research reports, technical papers and other publications

[1] This action adopted as final rules the interim final rules issued by FMCSA's predecessor in 1998 (63 FR 67600 (Dec. 8, 2008)), and adopted by FMCSA in 2001 [66 FR 49867 (Oct. 1, 2001)].

referenced in the application. The Agency must also provide an opportunity to submit public comment on the applications for exemption.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved without the exemption. The decision of the Agency must be published in the **Federal Register**. If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed.

The current provisions of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person

> First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11). This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

FMCSA also issues instructions for completing the medical examination report and includes advisory criteria on the report itself to provide guidance for medical examiners in applying the hearing standard. See 49 CFR 391.43(f). The current advisory criteria for the hearing standard include a reference to a report entitled ''Hearing Disorders and Commercial Motor Vehicle Drivers'' prepared for the Federal Highway Administration, FMCSA's predecessor, in 1993.[2]

FMCSA Requests Comments on the Exemption Applications

FMCSA requests comments from all interested parties on whether a driver who cannot meet the hearing standard should be permitted to operate a CMV in interstate commerce. Further, the Agency asks for comments on whether a driver who cannot meet the hearing standard should be limited to operating only certain types of vehicles in interstate commerce, for example, vehicles without air brakes. The statute and implementing regulations concerning exemptions require that the Agency request public comments on all applications for exemptions. The Agency is also required to make a determination that an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be *achieved absent such exemption before granting any such requests. 49 U.S.C.*

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0123'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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 this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0123'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Information on Individual Applicants

James Allen

Mr. Allen holds a driver's license from Vermont.

Johsua Arango

Mr. Arango holds a driver's license from Florida.

Michael Beebe

Mr. Beebe holds a driver's license from New Jersey.

Mark Canoyer

Mr. Canoyer holds a driver's license from Minnesota.

Barry Crisman

Mr. Crisman holds a driver's license from California.

Robert Douglas

Mr. Douglas holds a driver's license from California.

William Faulk

Mr. Faulk holds a driver's license from Alabama.

Sue H. Gregory

Ms. Gregory holds a driver's license from Utah.

Gregory Hill

Mr. Hill holds a driver's license from Mississippi.

Ronald Jardine

Mr. Jardine holds a driver's license from New Jersey.

Michael Jenkins

Mr. Jenkins holds a driver's license from Virginia.

Roman Landa

Mr. Landa holds a driver's license from California.

Roy Lloyd, Sr.

Mr. Lloyd holds a driver's license from Virginia.

Aminder Malhi

Mr. Malhi holds a driver's license from California.

Mark Martin

Mr. Martin holds a driver's license from Michigan.

Joshua Moothart

Mr. Moothart holds a driver's license from Oregon.

Albert Nicholson

Mr. Nicholson holds a driver's license from New Mexico.

[2] This report is available on the FMCSA Web site at *http://www.fmcsa.dot.gov/facts-research/research-technology/publications/medreport_archives.htm.*

Darren Nordquist

Mr. Nordquist holds a driver's license from Wisconsin.

Ray Norris

Mr. Norris holds a driver's license from Texas.

Gregorio Perez

Mr. Perez holds a driver's license from Virginia.

Johnny Pierson

Mr. Pierson holds a driver's license from Alabama.

Ryan Pope

Mr. Pope holds a driver's license from California.

Thomas Potterfield

Mr. Potterfield holds a driver's license from South Carolina.

Ralph Reno

Mr. Reno holds a driver's license from Pennsylvania.

Ronald Rutter

Mr. Rutter holds a driver's license from Arizona.

James Weir

Mr. Weir holds a driver's license from Washington.

Billy White

Mr. White holds a driver's license from Texas.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business August 15, 2013. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: June 12, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–17047 Filed 7–15–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Deepwater Port License: Amendment of the Neptune LNG LLC Deepwater Port License and Temporary Suspension of Operations at the Neptune LNG Deepwater Port

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Agency Action.

SUMMARY: Pursuant to Section 1503(b)(2) of the Deepwater Port Act of 1974, as amended (Act), the Secretary of Transportation may, on petition of the licensee, amend a Deepwater port license issued under the Act. For purposes of this notice, the Maritime Administration (MarAd) provides public notice of its decision to approve the request of Neptune LNG LLC (Neptune) for a temporary five-year suspension of port operations at the Neptune Deepwater Port by amending the Neptune Deepwater Port License.

ADDRESSES: The Docket Management Facility maintains the public docket for this project. The docket may be viewed electronically at *http://www.regulations.gov* under docket number USCG–2005–22611, or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: If you have questions about the Neptune Deepwater Port License Amendment and suspension of port operations, please contact Ms. Tracey Ford, Acting Office Director, Office of Deepwater Ports and Offshore Activities at (202) 366–0321 or *Tracey.Ford@dot.gov.* If you have questions on viewing the Docket, contact Ms. Barbara Hairston, Program Manager, Docket Operations at (202) 493–3024 or *Barbara.Hairston@dot.gov.*

SUPPLEMENTARY INFORMATION: On May 24, 2012, MarAd received a written request from Neptune for authorization to temporarily suspend operations at the Neptune Deepwater Port, located approximately 22 miles northeast of Boston, Massachusetts and 7 miles south-southeast of Gloucester, Massachusetts. In the request, Neptune indicated that recent conditions within the Northeast region's natural gas market had significantly impacted the Neptune Port's operational status and its ability to receive a consistent supply of natural gas imports. As a result, the Neptune Port has remained inactive over the past several years and will likely remain inactive for the foreseeable future. For these reasons, Neptune requested MarAd's authorization to suspend port operations for a period of five years.

After conducting a thorough evaluation and consultation with various Federal agencies, MarAd accepted Neptune's request and authorized amendment of the Neptune Deepwater Port License including a five-year temporary suspension of port operations. The amendment is applicable to Articles 2 and 6 of the License. All other terms, conditions and obligations of the License will remain current and in effect during and after the suspension period. The suspension period became effect on the date of the final executed License amendment, June 26, 2013, and will extend for a period of five years, to be measured in calendar days.

In order to resume operations prior to expiration of the five-year suspension period, Neptune must petition MarAd for approval to resume port operations. The petition must be submitted at least six months prior to the proposed re-start date, and certify that Neptune is in receipt of all applicable Federal and State permits, approvals and authorizations. Should Neptune request an extension of the suspension period, such request must be submitted to MarAd no less than one hundred eighty (180) calendar days prior to the expiration date of the suspension period. Thereafter, MarAd will evaluate, in consultation with the relevant Federal agencies, the appropriateness of such an extension. The final determination on an extension will be rendered by the Maritime Administrator or a designee acting on behalf of the Maritime Administrator.

Additional information pertaining to this public notice may be found in the public docket regarding the Neptune Deepwater Port License online at *www.regulations.gov*, under docket number USCG–2005–22611 (*see* **ADDRESSES**).

Authority: 49 CFR 1.93.

By Order of the Deputy Maritime Administrator.

Dated: July 11, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–17052 Filed 7–15–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. USCG–2013–0363]

Deepwater Port License Application: Liberty Natural Gas LLC, Port Ambrose Deepwater Port

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of intent; notice of public meeting; request for comments; correction.

SUMMARY: The Maritime Administration (MarAd) published a Notice of Intent, Notice of Public Meeting, and Request for Comments regarding the Port Ambrose Deepwater Port License Application in the June 24, 2013, **Federal Register**. Shortly thereafter, on July 9, 2013, a correction was published in the **Federal Register**. In that correction, MarAd extended the closing date for receipt of materials in response to the request for comments to July 23, 2013. This notice corrects that publication and extends the closing date for receipt of materials in response to the request for comments to August 22, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Roddy Bachman, U.S. Coast Guard, telephone: 202–372–1451, email: Roddy.C.Bachman@*uscg.mil,* or Ms. Tracey Ford, Maritime Administration, telephone: 202–366–0321, email: *Tracey.Ford@dot.gov.* For questions regarding viewing the Docket, call Ms. Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

Correction

In the **Federal Register** of June 24, 2013, in FR Doc. 2013–0363, on page 37878, in the second column, under the section captioned **DATES** in the last sentence of the second paragraph replace ''July 14, 2013'' with ''August 22, 2013'' so that the sentence reads: ''Additionally, materials submitted in response to the request for comments on the license application must reach the Docket Management Facility as detailed below, by August 22, 2013.''

Dated: July 10, 2013.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Assistant Secretary, Maritime Administration.

[FR Doc. 2013–17051 Filed 7–15–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Report by the President's Working Group on Financial Markets on the Long-Term Availability and Affordability of Insurance for Terrorism Risk

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice; Request for comments.

SUMMARY: The Terrorism Risk Insurance Act of 2002 (TRIA),[1] as amended by Section 5(c) of the Terrorism Risk Insurance Program Reauthorization Act of 2007,[2] requires the President's Working Group on Financial Markets (President's Working Group) to perform an ongoing analysis of, and to submit a report to Congress [3] on, the long-term availability and affordability of insurance for terrorism risk. The Secretary of the Treasury, or his designee, chairs the President's Working Group. The Department of the Treasury (Treasury) issues this notice seeking public comment to assist the President's Working Group in its report.

DATES: Comments must be in writing and received by September 16, 2013. Early submissions are encouraged.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov,* or by mail (if hard copy, preferably an original and two copies) to the Federal Insurance Office, Attention: Kevin Meehan, Room 1319 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''President's Working Group on Financial Markets: Terrorism Risk Insurance Analysis.'' Please include your name, group affiliation, address, email address and telephone number(s) in your comment. Where appropriate, a comment should include a short Executive Summary (no more than five single-spaced pages).

In general, comments received will be posted on *http://www.regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Kevin Meehan, Policy Advisor, Federal Insurance Office, 202–622–7009 (not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

TRIA was enacted to address disruptions in the market for insurance for terrorism risk, to help ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events. Title I of TRIA creates the Terrorism Risk Insurance Program (Program) that provides shared public and private compensation for privately insured commercial property and casualty losses resulting from certified acts of terrorism. Pursuant to TRIA, the Secretary of the Treasury administers the Program. The Federal Insurance Office assists the Secretary in administering the Program, as authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act.[4] The Program is scheduled to expire on December 31, 2014.

TRIA was originally set to terminate on December 31, 2005. The Terrorism Risk Insurance Extension Act of 2005 [5] extended the Program for two additional years, with expiration set for December 31, 2007. Section 108(e) of TRIA, as amended by the Terrorism Risk Insurance Extension Act of 2005, required the President's Working Group to issue a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives about the long-term availability and affordability of terrorism risk, including group life coverage and coverage for nuclear, biological, chemical, and radiological events.[6] The President's Working Group issued its report in September 2006.[7]

[1] Pub. L. 107–297, 116 Stat. 2322, 15 U.S.C. 6701 note.

[2] Pub. L. 110–160, 121 Stat. 1839, 1842.

[3] The report is to be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

[4] 31 U.S.C. 313(c)(1)(D).

[5] Public Law 109–144, 119 Stat. 2660.

[6] The President's Working Group is composed of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission (or their respective designees). The Secretary of the Treasury, or his designee, is the Chairman of the President's Working Group. Exec. Order 12,631, 53 FR 9421 (Mar. 18, 1988).

[7] President's Working Group, Terrorism Risk Insurance (2006), available at *http://*

The Terrorism Risk Insurance Program Reauthorization Act of 2007,[8] in relevant part, further extended the Program through December 31, 2014, and amended section 108 of TRIA to require an ongoing analysis regarding the long-term availability and affordability of insurance for terrorism risk. The President's Working Group subsequently submitted a report updating its analysis in 2010[9] and is required to submit another report by September 30, 2013. The analysis performed by the President's Working Group is to be done in consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policy holders.[10] Treasury seeks comment from these and any other interested parties to assist the President's Working Group in drafting the forthcoming report.

II. General Solicitation for Comments

Treasury solicits comments on behalf of the President's Working Group, including information in support of such comments where appropriate and available, regarding the long-term availability and affordability of insurance for terrorism risk since 2010, when the President's Working Group issued its last report. Identify and explain any and all factors relating to the availability and affordability of terrorism insurance, and particularly how these factors have affected the availability and affordability of terrorism insurance since 2010.

III. Solicitation for Specific Comments

TRIA Termination Considerations

(1) Describe and explain in detail any and all possible ramifications from the termination of the Program on December 31, 2014, including any available evidence to support the predicted result, regarding:

(a) The availability and affordability of insurance for terrorism risk in the United States generally;

(b) The availability and affordability of insurance for terrorism risk in the United States specifically by line of business; geographic location, including the rating tiers defined by the Insurance Services Office, Inc.; and other relevant characteristics; and

(c) Additional specific effects on commerce in the United States.

(2) If the Program were to continue beyond December 31, 2014, describe and explain in detail any revisions or modifications to the Program that would promote the availability and affordability of terrorism insurance, including any accompanying challenges that might arise from any proposed revisions or modifications to the Program. All views regarding the appropriate role of the federal government in supporting the availability and affordability of insurance for terrorism risk are welcome.

Insurance Market Considerations

(3) Describe and explain the ability of the insurance industry to model, quantify, and underwrite terrorism risk, and the resulting impact of such analysis on the availability and affordability of terrorism insurance, including an examination of the price (by line of business, location of risk, and other relevant characteristics) and coverage options for terrorism insurance.

(4) Describe and explain, with supporting information where available, any additional insurance market considerations that could impact the long-term availability and affordability of terrorism insurance (*e.g.* implications for coverage of insurance for nuclear, biological, chemical, and radiological acts of terrorism; cyber acts of terrorism; and terrorism in workers' compensation policies).

(5) Explain and describe in general the demand (or ''take-up'') of terrorism insurance and provide specific data and information, where available, regarding the take-up rate by line of business, location of the risk, and other relevant characteristics.

Reinsurance Considerations

(6) Describe and explain in detail the long-term availability and affordability of private reinsurance for terrorism risk. Analyze, with supporting information, the impact of the Program, and any changes to the Program, on the private reinsurance market for terrorism risk, including any accompanying challenges that might arise from revisions or modifications to the Program.

Additional Consideration

(8) Describe and explain any other developments, considerations, or market issues that might affect the long-term availability and affordability of terrorism risk insurance.

IV. Further Consultation

In addition to the consultation facilitated through this request for comment, the President's Working Group may continue to consult with interested parties through meetings, public discussions, or further written comment.

Dated: July 10, 2013.

Michael T. McRaith,

Director, Federal Insurance Office.

[FR Doc. 2013–16977 Filed 7–15–13; 8:45 am]

BILLING CODE 4810–25–P

www.treasury.gov/resource-center/fin-mkts/Documents/report.pdf.

[8] Public Law 110–160, 121 Stat. 1839.

[9] President's Working Group, Market Conditions for Terrorism Risk Insurance (2010), available at *http://www.treasury.gov/resource-center/fin-mkts/Documents/PWG%20Report%20Final%20January%2013.pdf.*

[10] Public Law 109–144, 119 Stat. 2662 (adding subsection (e) to section 108 of TRIA).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury 's Office of Foreign Assets Control (''OFAC'') is publishing the names of nine individuals and 22 entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the nine individuals and 22 entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on July 9, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their

businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On July 9, 2013, the Director of OFAC designated the following nine individuals and 22 entities whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals:

1. CEBALLOS BUENO, Johanna Patricia; DOB 08 May 1985; POB Bogota, Colombia; Cedula No. 53176500 (Colombia) (individual) [SDNTK] (Linked To: C.I. DEL ISTMO S.A.S.; Linked To: G&G INTERNACIONAL S.A.S.; Linked To: INDUITEX LTDA.; Linked To: SBT S.A.; Linked To: PROMESAS DEL FUTBOL COLOMBIANO S.A.).

2. GARZON ACOSTA, Miguel Arcangel; DOB 08 Jan 1949; POB Bogota, Colombia; Cedula No. 19081777 (Colombia) (individual) [SDNTK] (Linked To: C.I. DEL ISTMO S.A.S.; Linked To: SBT S.A.; Linked To: G&G INTERNACIONAL S.A.S.; Linked To: PROMESAS DEL FUTBOL COLOMBIANO S.A.).

3. GRIMBERG DE GUBEREK, Sara; DOB 14 Sep 1938; POB Cartagena, Colombia; Cedula No. 20222497 (Colombia) (individual) [SDNTK] (Linked To: ISSA EMPRESA UNIPERSONAL; Linked To: INVERSIONES GILFE S.A.; Linked To: INDUITEX LTDA.; Linked To: SBT S.A.; Linked To: G&G INTERNACIONAL S.A.S.; Linked To: FUNDACION ISSARA; Linked To: COMERCIALIZADORA INTERNACIONAL ANDINA LIMITADA; Linked To: COMPANIA REAL DE PANAMA S.A.; Linked To: BRACRO S.A.).

4. GUBEREK GRIMBERG, Henry (a.k.a. GUBEREX GRIMBERG, Henry), Bogota, Colombia; Rosh HaAyin, Israel; DOB 06 Apr 1958; POB Bogota, Colombia; citizen Colombia; alt. citizen Israel; Cedula No. 79150656 (Colombia); Passport AG578034 (Colombia); alt. Passport 11328034 (Israel); National ID No. 313850281 (Israel) (individual) [SDNTK] (Linked To: C.I. DEL ISTMO S.A.S.; Linked To: INDUITEX LTDA.; Linked To: I&S HOLDING COMPANY, S.A.; Linked To: ORBITAL HORIZONS CORP.; Linked To: COMERCIALIZADORA INTERNACIONAL ANDINA LIMITADA; Linked To: IMPAN–COL, S.A.; Linked To: T.F.M.C. THE FOOD MANAGEMENT CORPORATION LTD; Linked To: PROMESAS DEL FUTBOL COLOMBIANO S.A.).

5. GUBEREK GRIMBERG, Felipe, Panama; Safed, Israel; DOB 26 Jun 1968; POB Bogota, Colombia; Cedula No. 80414317 (Colombia); alt. Cedula No. E–8–83638 (Panama); National ID No. 326930153 (Israel) (individual) [SDNTK] (Linked To: I&S HOLDING COMPANY, S.A.; Linked To: INDUITEX LTDA.; Linked To: INVERSIONES GILFE S.A.; Linked To: ORBITAL HORIZONS CORP.; Linked To: FUNDACION ISSARA; Linked To: COMERCIALIZADORA INTERNACIONAL ANDINA LIMITADA; Linked To: GUBEREK GRIMBERG E HIJOS Y CIA. S. EN C.; Linked To: CONSTRUCTORA NACIONAL DE PANAMA S.A.; Linked To: AVANTI JOYEROS E.U.; Linked To: COMPANIA REAL DE PANAMA S.A.; Linked To: COLOMBO PERUANA DE TEJIDOS S.A.).

6. GUBEREK GRIMBERG, Arieh, Bogota, Colombia; DOB 17 Sep 1959; POB Bogota, Colombia; Cedula No. 79149680 (Colombia) (individual) [SDNTK] (Linked To: SBT S.A.; Linked To: PROMESAS DEL FUTBOL COLOMBIANO S.A.; Linked To: COMERCIALIZADORA INTERNACIONAL ANDINA LIMITADA; Linked To: COLOMBO PERUANA DE TEJIDOS S.A.; Linked To: COMPANIA REAL DE PANAMA S.A.; Linked To: GUBEREK GRIMBERG E HIJOS Y CIA. S. EN C.).

7. GUBEREK RAVINOVICZ, Isaac Perez (a.k.a. GUBEREK RABINOVICH, Isaac); DOB 21 Mar 1936; POB Bogota, Colombia; citizen Colombia; Cedula No. 2918329 (Colombia); Passport AM354606 (Colombia) (individual) [SDNTK] (Linked To: C.I. DEL ISTMO S.A.S.; Linked To: I&S HOLDING COMPANY, S.A.; Linked To: INDUITEX LTDA.; Linked To: CHAPS INVESTMENT INC.; Linked To: SBT S.A.; Linked To: ISSA EMPRESA UNIPERSONAL; Linked To: INVERSIONES GILFE S.A.; Linked To: INVERSORA PANACOL S.A.; Linked To: ORBITAL HORIZONS CORP.; Linked To: FUNDACION ISSARA; Linked To: G&G INTERNACIONAL S.A.S.; Linked To: COMERCIALIZADORA INTERNACIONAL ANDINA LIMITADA; Linked To: IMPAN–COL, S.A.; Linked To: COLOMBO PERUANA DE TEJIDOS S.A.; Linked To: C.I. CAFFEE VALORES S.A.; Linked To: PROMESAS DEL FUTBOL COLOMBIANO S.A.).

8. GUBEREK REYES, David Felipe; DOB 01 Oct 1983; POB Bogota, Colombia; Cedula No. 80196313 (Colombia) (individual) [SDNTK] (Linked To: INVERSIONES GILFE S.A.; Linked To: SBT S.A.; Linked To: G&G INTERNACIONAL S.A.S.; Linked To: PROMESAS DEL FUTBOL COLOMBIANO S.A.).

9. TOVAR ZULETA, Jorge Eduardo; DOB 09 Oct 1964; POB Cali, Colombia; Cedula No. 79324921 (Colombia) (individual) [SDNTK] (Linked To: INDUITEX LTDA.; Linked To: SBT S.A.).

Entities:

1. AVANTI JOYEROS E.U. (f.k.a. ''ORLY OVADIA DE GUBEREK EMPRESA UNIPERSONAL''), Calle 17 No. 68D–52, Bogota, Colombia; Matricula Mercantil No 745957 (Colombia) [SDNTK].

2. BRACRO S.A., Panama City, Panama; RUC # 990805–1–534158 (Panama) [SDNTK].

3. C.I. CAFFEE VALORES S.A., Via Espana y Calle Elvira Mendez, Edificio Bank Boston, Piso 2, Panama City, Panama; Public Registration Number 467323, Doc. 694710 (Panama) [SDNTK].

4. C.I. DEL ISTMO S.A.S. (f.k.a. C.I. DEL ISTMO S.A.; f.k.a. COMERCIALIZADORA INTERNACIONAL DEL ITSMO S.A.), Calle 100 No. 17A–36, Ofc. 705, Bogota, Colombia; NIT # 9000144704 (Colombia); Matricula Mercantil No 1461858 (Colombia) [SDNTK].

5. CHAPS INVESTMENT INC., Panama City, Panama; RUC # 63315–21–354702 (Panama) [SDNTK].

6. COLOMBO PERUANA DE TEJIDOS S.A. (a.k.a. COPETE S.A.), Calle 23A No. 69B–19, Bogota, Colombia; NIT # 8001711408 (Colombia); Matricula Mercantil No 513540 (Colombia) [SDNTK].

7. COMERCIALIZADORA INTERNACIONAL ANDINA LIMITADA (a.k.a. COINTERANDINA), Calle 14 No. 64–56, Bogota, Colombia; NIT # 8605112278 (Colombia); Matricula Mercantil No 183816 (Colombia) [SDNTK].

8. COMPANIA REAL DE PANAMA S.A., Panama City, Panama; RUC # 347674–1–417135 (Panama) [SDNTK].

9. CONSTRUCTORA NACIONAL DE PANAMA S.A., Panama City, Panama; RUC # 107196–1–379500 (Panama) [SDNTK].

10. FUNDACION ISSARA, Avenida Samuel Lewis y Calle Santa Rita, Edificio Plaza Obarrio, Piso 3, Oficina 308, Panama City, Panama; RUC # 1333398–1–28957 (Panama) [SDNTK].

11. G&G INTERNACIONAL S.A.S. (a.k.a. G Y G INTERNACIONAL S.A.S.; a.k.a. SEBASTIANO), Calle 100 No. 17A–36, Ofc. 705, Bogota, Colombia; NIT # 9002981691 (Colombia); Matricula Mercantil No 1910782 (Colombia); alt. Matricula Mercantil No 1237153 (Colombia); alt. Matricula Mercantil No 1730043 (Colombia); alt. Matricula Mercantil No 1816081 (Colombia) [SDNTK].

12. GUBEREK GRIMBERG E HIJOS Y CIA. S. EN C., Bogota, Colombia; NIT # 8000609604 (Colombia) [SDNTK].

13. I&S HOLDING COMPANY, S.A. (a.k.a. I AND S HOLDING COMPANY, S.A.), Panama; RUC # 1199542–1–581763 (Panama) [SDNTK].

14. IMPAN–COL, S.A., Panama; RUC # 3058–123–47645 (Panama) [SDNTK].

15. INDUITEX LTDA., Avenida Libertadores, Bodega E–2, Zona Franca, Cucuta, Colombia; NIT # 9001451701 (Colombia) [SDNTK].

16. INVERSIONES GILFE S.A., AK 15 No. 93–60, LC 121, Bogota, Colombia; NIT # 8301317025 (Colombia); Matricula Mercantil No 1326707 (Colombia) [SDNTK].

17. INVERSORA PANACOL S.A., Panama City, Panama; RUC # 720126–1–472906 (Panama) [SDNTK].

18. ISSA EMPRESA UNIPERSONAL (a.k.a. ISSA E.U.; f.k.a. SARA GRIMBERG DE GUBEREK EMPRESA UNIPERSONAL), Calle 17 No. 68D–52, Bogota, Colombia; NIT # 8300486885 (Colombia); Matricula Mercantil No 745969 (Colombia) [SDNTK].

19. ORBITAL HORIZONS CORP., Panama; RUC # 1196790–1–581234 (Panama) [SDNTK].

20. PROMESAS DEL FUTBOL COLOMBIANO S.A. (a.k.a. PROFUTCOL S.A.), Calle 83 No. 108–15, Bogota, Colombia; Celta Trade Park, Lote 41 Bodega 10, Km. 7 Autopista Bogota-Medellin, Funza, Cundinamarca, Colombia; NIT # 9002835705 (Colombia); Matricula Mercantil No 1886854 (Colombia) [SDNTK].

21. SBT S.A., Calle 100 No. 17A–36 Oficina 803, Bogota, Colombia; Celta Trade Park, Lote 41 Bodega 10, Km. 7 Autopista Bogota-Medellin, Funza, Cundinamarca, Colombia; Web site *www.sebastianomoda.com;* NIT # 8300350034 (Colombia); Matricula Mercantil No 816477 (Colombia) [SDNTK].

22. T.F.M.C. THE FOOD MANAGEMENT CORPORATION LTD, 3 Ha'avoda Street, Rosh HaAyin 48017, Israel; Commercial Registry Number 513174466 (Israel) [SDNTK].

Dated: July 9, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–16976 Filed 7–15–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments regulations governing practice before the Internal Revenue.

DATES: Written comments should be received on or before September 16, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Regulations Governing Practice Before the Internal Revenue Service.

OMB Number: 1545–1726.

Regulation Project Number: REG–111835–00.

Abstract: These regulations affect individuals who are eligible to practice before the Internal Revenue Service. These regulations also authorize the Director of Practice to act upon applications for enrollment to practice before the Internal Revenue Service. The Director of Practice will use certain information to ensure that: (1) Enrolled agents properly complete continuing education requirements to obtain renewal; (2) practitioners properly obtain consent of taxpayers before representing conflicting interests; (3) practitioners do not use e-commerce to make misleading solicitations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 56,000.

Estimated Time per Respondent: 53 minutes.

Estimated Total Annual Burden Hours: 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: July 10, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16916 Filed 7–15–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–ND

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–ND, Return for Nuclear Decommissioning Funds and Certain Related Persons.

DATES: Written comments should be received on or before September 16, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Return for Nuclear Decommissioning Funds and Certain Related Persons.

OMB Number: 1545–0954.

Form Number: 1120–ND.

Abstract: A nuclear utility files Form 1120–ND to report the income and taxes of a fund set up by the public utility to provide cash to decommission the nuclear power plant. The IRS uses Form 1120–ND to determine if the fund income taxes are correctly computed and if an entity related to the fund or the nuclear utility must pay taxes on self-dealing, as required by Internal Revenue Code section 4951.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondents: 32 hours, 35 minutes.

Estimated Total Annual Burden Hours: 3,259.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 10, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16915 Filed 7–15–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee July 23 and 24, 2013, Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee July 23 and 24, 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 July 23 and 24, 2013.

Dates: July 23 and 24, 2013.

Times:

July 23—9:15 a.m. to 4:15 p.m.

July 24—9:15 a.m. to 11:45 a.m.

Location: Conference Room A, United States Mint, 801 9th Street NW., Washington, DC 20220.

Subject: Review and discussion of candidate designs for the 2014 Civil Rights Act of 1964 Commemorative Coin Program; the 16th Street Baptist Church Bombing Victims Congressional Gold Medal; the 2014 National Baseball Hall of Fame Commemorative Coin Program; the 2014 Native American $1 Coin Program; the Code Talkers Recognition Congressional Medals for the Pueblo of Acoma (New Mexico), Hopi Tribe (Arizona), Oneida Nation (Wisconsin), Ponca Tribe (Oklahoma), Tonto Apache Tribe (Arizona), and White Mountain Apache Tribe (Arizona); and review and consideration of the FY2013 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: July 10, 2013.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2013–16981 Filed 7–15–13; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0588]

Agency Information Collection (Special Notice) Activities Under OMB Review

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 15, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0588'' in any correspondence.

For Further Information or a Copy of the Submission Contact: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–7492 or email: *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0588.''

SUPPLEMENTARY INFORMATION:

Title: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.211–74, Special Notice (previously 852.210–74).

OMB Control Number: 2900–0588.

Type of Review: Revision of a currently approved collection.

Abstract: VAAR provision 852.211–74, Special Notice, is used only in VA's telephone system acquisition solicitations and requires the contractor, after award of the contract, to submit descriptive literature on the equipment stating the equipment meets specification requirements of the solicitation.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 15, 2013, at page 22367.

Affected Public: Business or other for profit and Not-for-profit institutions.

Estimated Annual Burden: 875 hours.

Estimated Average Burden Per Respondent: 5 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 175.

Dated: July 11, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–17023 Filed 7–15–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0585]

Agency Information Collection (Brand Name or Equal) Activities Under OMB Review

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Acquisition and Logistics, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 15, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0585'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492, or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0585.''

SUPPLEMENTARY INFORMATION: *Title:* Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–77, Brand Name or Equal (was 852.210–77).

OMB Control Number: 2900–0585.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR clause 852.211–77 advises bidders or offerors who are proposing to offer an item that is alleged to be equal to the brand name item stated in the bid, that it is the bidder's or offeror's responsibility to show that the item offered is in fact, equal to the brand name item. This evidence may be in the form of descriptive literature or material, such as cuts, illustrations, drawings, or other information. While submission of the information is voluntary, failure to provide the information may result in rejection of the firm's bid or offer if the Government cannot otherwise determine that the item offered is equal. The contracting officer will use the information to evaluate whether or not the item offered meets the specification requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on April 11, 2013, at pages 21711–21712.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: 1,666 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Dated: July 11, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–17006 Filed 7–15–13; 8:45 am]

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Part II

Department of Homeland Security

Coast Guard

33 CFR Parts 154, 155, and 156

46 CFR Parts 35 and 39

Marine Vapor Control Systems; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 154, 155, and 156

46 CFR Parts 35 and 39

[USCG–1999–5150]

RIN 1625–AB37

Marine Vapor Control Systems

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising existing safety regulations for facility and vessel vapor control systems (VCSs) to promote maritime safety and marine environmental protection. The revisions promote safe VCS operation in an expanded range of activities now subject to current Federal and State environmental requirements, reflect industry advances in VCS technology, and codify the standards for the design and operation of a VCS at tank barge cleaning facilities. They increase operational safety by regulating the design, installation, and use of VCSs, but they do not require anyone to install or use VCSs.

DATES: This final rule is effective August 15, 2013, except as additional collection of information requirements that appear in several regulations added or revised by this rule and which have not yet been approved by the Office of Management and Budget (OMB) may not be enforced by the Coast Guard pending OMB approval which, if granted, will be noted by the Coast Guard in a subsequent **Federal Register** document. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 15, 2013.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–5150 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov*, inserting USCG–1999–5150 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Jodi Min, Office of Design and Engineering Standards, U.S. Coast Guard; telephone 202–372–1418, email *Jodi.J.Min@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

API American Petroleum Institute
ASTM ASTM International
CAA 90 U.S. Clean Air Act Amendments of 1990
CE Certifying entity
CFR Code of Federal Regulations
COTP Captain of the Port
CTAC Chemical Transportation Advisory Committee
DHS Department of Homeland Security
EPA U.S. Environmental Protection Agency
IED Inerting, enriching, or diluting
MOCC Minimum oxygen concentration for combustion
MSC Coast Guard Marine Safety Center
NEPA National Environmental Policy Act of 1969
NFPA National Fire Protection Association
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
PIC Person-in-charge
SBA Small Business Administration
TBCF Tank barge cleaning facility
UL Underwriters Laboratories, Inc.
USCG United States Coast Guard
VCS Vapor control system
VOC Volatile organic compound

II. Regulatory History, Basis, and Purpose

The Coast Guard published a notice of proposed rulemaking (NPRM) on this subject in the **Federal Register**, 75 FR 65152 (Oct. 21, 2010). The legal basis for this final rule is 42 U.S.C. 7511b(f)(2), 33 U.S.C. 1231, and 46 U.S.C. 3703. Under 42 U.S.C. 7511b(f)(2), enacted as part of the Clean Air Act Amendments of 1990 (CAA 90), the Secretary of the Department in which the Coast Guard is operating must regulate the safety of equipment and operations used to control vapor emissions. Under 33 U.S.C. 1231, the Secretary may issue regulations to implement port and waterways safety requirements, among which are the requirements in 33 U.S.C. 1225 to act as necessary to prevent damage to land and structures on or along U.S. navigable waters and to protect these navigable waters and their resources. Under 46 U.S.C. 3703, the Secretary must regulate vessels and their liquid bulk dangerous cargo operations to protect life, property, and the marine environment against the risk of casualty or accident involving those operations. The Secretary of Homeland Security has delegated this authority under these statutes to the Coast Guard. Department of Homeland Security Delegation No. 0170.1(70), (86), and (92.b).

The purpose of this rule is to revise our marine vapor control system (VCS) regulations to promote safe VCS operation in an expanded range of activities now subject to current Federal and State environmental requirements, to reflect industry advancements in VCS technology, and to codify the standards for the design and operation of a VCS at tank barge cleaning facilities (TBCFs). These revisions are intended to increase operational safety and marine environmental protection by regulating the design, installation, and use of VCSs, but they do not require anyone to install or use VCSs.

III. Background

This final rule amends 1990 Coast Guard regulations for the safety of facilities and vessels that voluntarily engage in vapor control activities, or that do so in compliance with regulatory requirements imposed by the Federal Government or by the States. The Coast Guard regulations themselves do not require any facility or vessel to control vapor or be equipped with a VCS, nor do they require a vessel to take away vapor from facilities.

During marine tank vessel loading and other operations, the liquid loaded into a cargo tank displaces vapors within the tank. Vapors are also generated because of vapor growth from liquid evaporation. The emitted vapors of certain cargoes contain volatile organic compounds (VOCs) and other air pollutants. CAA 90 requires that these vapors be controlled in air quality non-attainment areas. Under CAA 90, the U.S. Environmental Protection Agency (EPA) issues national standards for control of VOCs and other air pollutants emitted during marine tank vessel operations. 40 CFR 63.560–

63.568. CAA 90 also authorizes Federal and State regulations to set vapor emission standards and to require that marine terminals and tank vessels be equipped with VCSs. These systems are used to collect and process VOCs and other air pollutants emitted during loading and other operations of marine tank vessels.

Today, VCS design and technology are more advanced than they were in 1990, and VCSs control more types of vapor than the crude oil, gasoline blend, or benzene vapors to which they were limited in 1990, and the EPA and States now permit or require the control of vapor emissions from many other cargoes. See current EPA regulations in 40 CFR subpart Y, 40 CFR 63.560–63.568. In addition, EPA regulations now require marine tank vessels operating at major terminals that control VOC vapors to be vapor-tight and equipped with vapor collection systems. 40 CFR 63.562.

Current Coast Guard practice is to accommodate these design and technology improvements by using the exemption and equivalency determination provisions of 33 CFR 154.108 and 46 CFR 30.15–1 to approve individual applications by VCS owners or designers who can show that their improvements provide a level of safety at least equivalent to that provided by our regulations. Reliance on individual exemptions or equivalency determinations involves extra risk for VCS owners and designers, and extra review time for the Coast Guard. This rulemaking will reduce the need for individual exemptions and equivalency determinations, and therefore reduce Coast Guard administrative work, by updating our regulations to reflect more recent VCS design and technology. This is consistent with the principles of retrospective review outlined in section 6 of Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 18, 2011).

For cargo types and tank barge cleaning facility VCS applications that have emerged since 1990, we have provided safety guidance in the form of Navigation and Vessel Inspection Circular 1–96 (included in our docket), developed in close consultation with the Chemical Transportation Advisory Committee (CTAC), a Coast Guard advisory committee that operates under the Federal Advisory Committee Act, 5 U.S.C. Appendix 2. However, safety guidance is not legally binding on industry, and reliance on exemption and equivalency reviews involves extra risk for VCS owners and designers and extra review time for the Coast Guard. Therefore, our goal has been to update our regulations to apply in a wider range of circumstances, and at the same time to eliminate a risk for industry and an administrative burden for ourselves. Our new regulations:

- Reflect the expanded number and scope of Federal and State regulations for VCSs since 1990;
- Reflect advances in VCS technology and operational practices since 1990, particularly in vapor-balancing operations, cargo line clearing operations, and multi-breasted tandem barge-loading operations;
- Incorporate safety guidance and reflect VCS regulatory exemptions and equivalency approvals;
- Provide new regulations for cargoes and operations, such as TBCFs, that have become subject to Federal or State regulatory expansion since 1990;
- Provide for periodic operational reviews to ensure that VCSs are properly maintained and operated after they are certified;
- Provide an alternate test program for analyzers and pressure sensors, in addition to existing 24-hour pre-transfer/cleaning instrument testing requirements, to provide greater regulatory flexibility;
- Require certifying entities (CEs) to be operated by currently licensed professional engineers to ensure that certification is conducted by properly qualified professionals, and clarify the role of the CE in VCS design, installation, and hazard reviews;
- Remove 33 CFR Part 154, Appendix B, which provides specifications for flame arresters and requires flame arresters to meet third-party standards, because of apparent lack of public demand for these devices;
- Attempt to achieve greater clarity through the use of tabular presentation;
- Update industry standards that are incorporated by reference into our regulatory requirements;
- Phase in requirements for existing VCSs to moderate the economic impact of new requirements for those VCSs;
- Make conforming changes in regulations other than 33 CFR Part 154, Subpart E and 46 CFR Part 39; and
- Make nonsubstantive changes in the wording or style of existing regulations, either to improve their clarity or to align them with current Federal regulatory style guidance.

IV. Discussion of Comments and Changes

Except as noted in the following discussion, we are adopting as final all the changes we proposed in our 2010 NPRM.

We received comments on our NPRM from 15 individuals or entities. One commenter submitted two separate comments. We heard from one person whose affiliation was not disclosed, five engineering firms, seven companies that operate equipment or facilities that would be regulated under the proposed rule, and two industry associations. Overall, the comments were of very high quality and specificity, and on engineering questions especially, they were very detailed and difficult to summarize for purposes of this discussion. However, in most cases the comments provided valuable information that resulted in our revising regulatory text to take that information into account. In many cases, commenters offered to provide more information about their concerns and we followed up with them in telephone conversations. Where those follow-ups led to modifications of the regulatory text, we mention this in Table 1 of this preamble.

Table 1 sets out all the substantive changes we have made in this final rule to the NPRM's proposed regulatory text and indicates whether a change was made in response to a public comment. It excludes minor non-substantive changes we made, on our own, to clarify some of the NPRM's wording. Where we received a comment on the NPRM regulatory text, Table 1 indicates what each commenter had to say about that section or topic. Commenter numbers (''Commenter 4,'' ''Commenter 5,'' etc.) refer to the docket number assigned to a set of comments by the *regulations.gov* staff; comments from ''Commenter 4,'' for example, can be found in *regulations.gov* as docket number USCG–1999–5150–0004.[1] When we made a substantive change on our own and without the prompting of a public comment, an ''n/a'' (not applicable) appears in the ''Comment'' column.

[1] The first commenter is ''Commenter 3,'' docket numbers USCG–1999–5150–001 and –002 having been assigned to the NPRM and supporting analysis. Commenter 3 and Commenter 9 are the same person.

TABLE 1—DISCUSSION OF COMMENTS AND CHANGES

Topic	Comment	Coast Guard response or action
General	Commenters 4, 5, 6, 10, and 12 expressed general satisfaction with our proposals.	We acknowledge this comment.
More information	Commenters 5, 7, 10, 11, 12, 13, and 18 asked to obtain or provide additional detailed information about technical aspects of the NPRM.	In many cases, we followed up with these commenters, and this table indicates where the follow-up contact had a bearing on this final rule. The docket contains memoranda of two such follow-ups.
Phasing-in and grandfathering	Commenters 7, 10, and 12 approved of our phasing in new requirements and asked us to clarify whether existing exemption and equivalency approvals will continue in force.	We confirm that existing VCS exemptions, equivalencies, clarifications, and exceptions will continue to be honored.
Tank barge cleaning facilities (TBCFs)	Commenters 11, 12, and 13 asked us to recognize factors that are unique to TBCFs.	We agree and reviewed the NPRM with this in mind. We have made some adjustments in our TBCF requirements as a result.
Costs	Commenter 5 asked us to recognize that engineering costs during dry runs and witnessed wet loads should take into account the time spent waiting for items to be corrected and for the vessel to dock and prepare for loading.	We have adjusted the cost estimates for certifications and recertifications to reflect labor necessary for dry runs and the witnessing of wet loads.
33 CFR part 154 (references in the ''Topic'' column are to sections as they appeared in the NPRM, and brackets are used to identify where the provision appears in this final rule)		
106(d)(6)	n/a	We substituted the latest available (2007) reapproval of ASTM International (ASTM) 1273–91 for the 1996 reapproval.
106(g)(2), (g)(3).	Commenter 4 asked why we incorporate two older versions of the same standard in 33 CFR.	We substituted the latest available (2011) edition for the 2002 edition in 154.106(g)(3). The incorporation of an older edition of the standard in 154.106(g)(2) is beyond the scope of this rulemaking.
310(b)(1)(ii)	Commenter 5 said we should clarify our use of ''balances'' in this paragraph.	We changed ''balances vapor'' to ''balances or transfers vapor'' to cover 154.2000(d) and (e).
500	Commenters 12, 13, and 18 asked us to revise the substance of this section.	As noted in the NPRM, the changes in this section were intended only to conform its style to current requirements for incorporation by reference. Substantive changes are beyond the scope of this rulemaking, but the commenters' suggestions are noted for possible regulatory action in the future.
740(i)	n/a	We substituted the text ''33 CFR 154 2020 through 2025'' for ''33 CFR 154.2023,'' because all those new sections are derived from existing 154.804, not just 154.2023.
2000(b)	Commenters 4, 5, 7, and 8 asked for clarification of this paragraph. One of Commenter 5's questions required follow-up.	We agree that this language requires clarification and have revised it accordingly. After following up with Commenter 5, who said that recertification is necessary only every 5 years, not 3, we clarified that he referred to operational reviews, and because we agree with the comment in that context, we have amended 154.2021(a) accordingly. We also added a sentence to confirm the ongoing validity of existing certifications, approvals of alternatives, and grants of exemption, in accordance with whatever terms they impose.
2000(e)	Commenter 5 pointed out that transfer of vapors from a facility to a marine vessel that is not offloading is difficult unless the vessel is under a hard vacuum or is a pressure vessel.	We acknowledge this and, although no change in the wording of this paragraph is needed, this is a factor we would take into account in reviewing requests for approval.
2001—Diluting	Commenter 5 said the diluting gas must also be non-reactive.	We agree and revised this definition accordingly.

TABLE 1—DISCUSSION OF COMMENTS AND CHANGES—Continued

Topic	Comment	Coast Guard response or action
2001—Existing VCS	Commenter 7 said the definition should apply not only to a complete VCS, but to a portion of a VCS.	We infer that this commenter's concern is with a marine vapor collection system connecting to a facility's main VCS. However, when a system is certified, it is certified as a VCS, not a portion of VCS. A vapor collection system with a facility main vapor processing unit is still a VCS, except that the portion after the connection point is not required to be certified. To address this concern, we added ''a marine vapor collection system'' in addition to ''a marine VCS'' in 154.2111(a). We also revised this definition to clarify that it applies to existing TBCF VCSs.
2001—Facility main VCS	Commenter 8 said we should replace ''refinery'' with ''facility'' to show the definition is not limited to refineries.	We agree and revised this definition accordingly.
2001—Flame arrester	Commenter 4 said this definition should include Factory Mutual Research-approved arresters, which we have previously accepted on an exemption basis.	The Factory Mutual Research test procedure has been approved under specific circumstances and on an exemption basis, but as a regulatory standard it would not be adequate by itself because it lacks significant details that are covered by the ASTM and Underwriters Laboratories (UL) standards.
2001—Inerted [now ''Inert condition or inerted''].	Commenter 14 said we should change this to ''inert condition'' which more clearly separates the term from the operation of inerting.	We agree and revised this definition accordingly.
2001—Inerting or padding or purging [now ''Inerting,'' ''Padding,'' and ''Purging''].	Commenters 4 and 14 said this definition needs revision. Purging usually means reducing hydrocarbon or other vapor concentrations by introducing air or inert gas, not lowering oxygen content by introducing an inert gas.	We agree and replaced this definition with separate and revised definitions for inerting, padding, and purging.
2001—Line clearing or pigging [now ''Line clearing'' and ''Pigging''].	Commenter 14 said we should break this into separate definitions because some lines are cleared without the use of pigs.	We agree and replaced this with separate definitions.
2001—Padded or partially inerted [now ''Padding'' and ''Partially inerted''].	Commenter 14 said we should break this into separate definitions; they are not interchangeable.	We agree and replaced this with separate definitions.
2010(g)	Commenter 15 said that because it typically takes about a year to be certified as a professional engineer, compliance with this paragraph should have a 1-year phase-in; and asked us to clarify that a CE can meet this requirement if the person-in-charge (PIC) is a licensed professional engineer in any one U.S. state or territory, and need not be licensed in all states where the CE does business.	We agree and revised this provision accordingly.
2011	Commenter 10 asked whether a class society can be a CE if it otherwise complies with this section.	Yes. A class society can be a CE provided that it meets the CE qualifications of 154.2010 and is accepted by the Commandant per 154.2011.
2011(e)	Commenter 9 said this should be modified to prevent a CE from recertifying or performing operational reviews on systems where the CE had operational or design input. Without referring to this section, Commenter 17 asked us to clarify whether a CE that was responsible for the VCS design may recertify a unit or perform an operational review after its initial certification.	We agree with Commenter 9 and added new paragraph 154.2011(f) and redesignated subsequent paragraphs accordingly. The clarification that Commenter 17 sought is provided by this paragraph (e), which makes it clear that a CE that was responsible for designing a VCS may not recertify or perform operational reviews on that VCS.
2011(e)(1)	Commenter 4 said that prohibiting a CE from ''performing calculations'' is overly broad and restrictive.	We followed up with this commenter and confirmed that by revising this paragraph to specify ''system design calculations,'' we would meet his concern.
2011(f)	n/a	We added text per comment on 154.2011(e).

TABLE 1—DISCUSSION OF COMMENTS AND CHANGES—Continued

Topic	Comment	Coast Guard response or action
2020(b)	Commenter 10 asked us to confirm that we will continue to recognize existing approvals and that recertification will be required only for VCSs that entered operation after July 23, 1990, and then only if the VCS meets one of the five subparagraphs.	We confirm.
2020(b)(1)	Commenter 16 said TBCFs should undergo a single review, not a separate review for each vapor the TBCF controls.	The TBCF should be reviewed for each new chemical it handles and can, at its option, either recertify all its chemicals at one time or recertify only for the new chemical.
2020(b)(4)	Commenters 13 and 18 said that ''multi-breasted loading'' is not a barge industry term.	We acknowledge that several terms are used within the industry, but our 154.2001 definition of ''multi-breasted loading'' is sufficiently comprehensive to embrace all of the suggested terms.
2020(b)(5), (d)(5)	n/a	Changed references to cargo line clearance systems so that they clarify their applicability only to those systems that use pigging.
2020(c)	Commenter 11 said this should not apply to TBCFs because the TBCF only extracts liquid and vapors *from* the vessel and transfers nothing *to* the vessel; Commenters 13 and 18 proposed revisions for the paragraph to clarify this.	Commenter 11 correctly infers that the paragraph does not apply to TBCFs, and we revised the paragraph in line with the suggestions made by Commenters 13 and 18.
2020(d)	Commenter 4 asked us to revise this paragraph's reference to suggested guidance.	We revised this paragraph by restating information that appears as a ''Note'' to existing 154.804(d).
2020(e)(4)	n/a	We added this paragraph to emphasize that this section supplements and does not negate the recordkeeping requirements of 154.740.
2021	Commenter 4 agrees we should require regular operational reviews.	We acknowledge this comment.
2021(a)	Commenters 4, 5, 7, 8, 11, 12, 13, 16, and 18 asked us to lengthen the interval between required operational reviews from 3 years to 5 years due to cost. Some of these commenters said operational reviews should only be needed when major changes are made.	We do not agree that operational reviews are needed only after major changes. Major changes should be the subject of a VCS recertification. Periodic operational review is routine. We are lengthening the interval between operational reviews to 5 years, as requested, and also in response to the comment on 154.2000(b).
2022 [now 2022 through 2024]	Commenter 4 pointed out several areas where the proposed section failed to clarify adequately between requirements for certification, recertification, and operational review.	We followed up with Commenter 4 and have extensively revised these provisions in line with his comments. We have simplified language and divided NPRM 154.2022 into separate final rule sections 154.2022 through 154.2024, each of which covers certification, recertification, or operational review. The following chart shows where provisions of 154.2022, as it appeared in the NPRM, have been placed in this final rule.

NPRM section 154.2022	Final rule
(a)(1)	2022(a)
(a)(2)	2022(d)
(a)(3)	2022(b)
(a)(4)	2022(c)
(a)(5)	2023
(a)(6)	2022(d), 2023
(a)(7)	2022(e)
(a)(8)	2022(f)
(a)(9)	2022(g)
(b) introduction	2024
(b)(1)	2024(a)
(b)(2)	2024(e)
(b)(3)	2024(g)
(c) introduction	2022(d)
(c)(1)	2022(d)(2)
(c)(2)	2022(d)(6)

NPRM section 154.2022	Final rule
(c)(3)	2022(d)(7)
(c)(4)	2022(d)(8)
(c)(5)	2022(d)(10)
(c)(6)	2022(d)(10)
(c)(7)	2022(d)(1)
(c)(8)	2022(d)(4)
(c)(9)	2022(h)
(c)(10)	2022(d)(13)
(d)(1)	2022(c)(1)
(d)(2)	2022(c)(2)
(d)(3)	2022(c)(3)
(d)(4)	2022(c)(4)
(d)(5)	2022(c)(5)
(e) introduction	2022(d), 2023
(e)(1)	2022(d)(5)
(e)(2)	2022(d)(9)
(e)(3)	2022(d)(12)
(e)(4)	2022(d)(11)
(e)(5)	2022(d)(3)
(e)(6)	2022(d)(14)
(e)(7)	2022(g), 2023
(f)(1)	2022(e)(1)
(f)(2)	2022(e)(2)
(f)(3)	2022(e)(3)
(f)(4)	2022(e)(4)

Topic	Comment	Coast Guard response or action
2022(a)(5) [now 2023(b)]	n/a	We added the last two sentences to provide better guidance for the recertification of older VCSs.
2022(b) [now 2024]	Commenters 3, 4, and 14 asked us to add additional factors for operational review.	We agree and added new 154.2024(b) through (d) and 154.2024(f). In NPRM section 154.2024(b)(2), now 154.2024(e), we added marking and labeling as items to be verified.
2022(d)(2) [now (c)(2)]	Commenter 4 asked why we would require the maximum vacuum to be maintained during testing of the vacuum breaker.	We revised the paragraph to clarify that the goal of the vacuum breaker testing is to ensure that the maximum vacuum cannot be exceeded instead of maintaining the maximum vacuum at one level.
2022(e) [now(d) and, for added cargoes, 2023]	Commenter 16 said TBCFs should undergo a single review, not a separate review for each vapor the TBCF controls.	The TBCF should be reviewed for each new chemical it handles and can, at its option, either recertify all its chemicals at one time or recertify only for the new chemical.
2022(e)(3) [now (d)(12]	Commenter 4 asked us to clarify this provision	After a follow-up with this commenter, we clarified this provision.
[NEW 2022(i)]	n/a	We added this paragraph to ensure the VCS training program is reviewed for compliance with 154.2030 and 154.2031. This change responds to Commenter 4's comment on 154.2030 and 154.2031.
2023 [now 2025]	n/a	We redesignated this section in light of the subdivision of NPRM section 154.2022 into three sections.
2030, 2031	Commenter 4 asked if the CE is supposed to check the facility's compliance with section 2030. Commenter 10 asked if a facility can self-certify compliance or must it show other documentation that training requirements have been met. Commenter 11 said section 2030 should not apply to TBCFs. Commenter 12 said that facilities should document the training of their PICs and that, because of fragmentation in the TBCF industry, it may make sense to develop a standardized training program.	In response to these comments, we added 154.2022(i) to require a CE to review the facility's VCS training program for compliance with sections 154.2030 and 154.2031. We also added 154.2030(c) to specify that facility personnel must meet the designation and qualification requirements of 154.710, and that training documentation must be maintained at the facility in accordance to 154.740(b). We added language to these sections to clarify that 154.2030 is for transfer facilities and 154.2031 is for TBCFs. At this time, we have no plan to develop a standardized training program. Instead, we will rely on industry to develop its own training programs that comply with our regulatory requirements.
2100(f)	Commenter 4 said this requirement is essential.	We acknowledge this comment.

Topic	Comment	Coast Guard response or action
2100(h)(2)	Commenter 14 said we should add ''must be fitted'' to improve clarity.	We agree and revised this provision accordingly.
2100(k)	n/a	We added ''equipment'' to this paragraph and specified valves, flanges, and fittings to ensure that the ''suitability'' requirement extends to equipment that is needed for proper functioning of the VCS but that may not be considered a VCS ''component.''
2101(a)(6)	Commenter 4 said we should allow a valve to be fire safe in accordance with American Petroleum Institute (API) 607, which is more rigorous than 46 CFR 56.20–15 and more familiar to industry.	46 CFR 56.20–15 was amended in 2008 to incorporate API 607 by reference.
2101(e)	Commenters 4 and 14 said that additional safeguards are needed.	We agree and revised this paragraph to make it clear that it prohibits contact with metal either on the facility or on the vessel, and that the purpose of the prohibition is to prevent unintentional electrical bypassing.
2101(g)	Commenters 5, 13, and 18 expressed concerns about the installation, inspection, and testing of insulating flanges and hoses.	We added language to this paragraph to address the commenters' concerns.
2101(h)	Commenter 4 said we should change ''mechanism'' to ''means'' so as not to preclude use of a shutdown based on negative differential pressure across the detonation arrester (currently used by most facilities).	We agree and revised the provision accordingly.
[NEW 2101(i)]	n/a	We added this paragraph to make it clear that electrical bonding must comply with 46 CFR 35.35–5.
2102 introductory paragraph	Commenter 4 said we should clarify by inserting ''and not loading cargo on the vessel'' after ''while inerting the cargo tanks''.	We agree and revised this provision accordingly. We also added ''padding or purging'' after ''inerting'' to reflect the separation of these three definitions in section 2001.
2102(a)	Commenter 4 asked if this requirement is necessary, because he has not seen a barge with a 120-volt system.	We think it is necessary because 46 CFR 39.2009(a)(1)(iii) allows a tank barge to have a liquid overfill protection system that receives power from a facility and is fitted with a shore tie cable and a 120-volt, 20-ampere explosion-proof plug.
2102(a)(2)	n/a	We corrected erroneous references in the NPRM to the relevant sections of the incorporated industry standard.
2102(b)	Commenter 5 asked us to review this provision with respect to grounding of the shielded wire in the overfill system.	We reviewed this provision in light of the comment but concluded no changes are needed. However, we revised 46 CFR 35.35–5 to address vessel/shore electrical bonding cable or wire.
2103(a)	Commenter 3 said we should rewrite this provision to take variability of vapor pressure into account, and Commenter 5 said we should substitute his recommended formula for our formula, which is too complicated and inaccurate for estimating vapor growth.	We revised this provision in accordance with the suggestions of Commenter 3. Commenter 5's formula is valid but, we think, more complicated than ours, which is more generally adaptable for VCS design.
2103(f)	Commenter 4 said that if this paragraph requires cargo loading to be shutdown on high-high pressure, while allowing the VCS to continue to receive vapors, it is a good change. Commenter 5 raised concerns about accidents that could result from activation of a shutdown system.	Commenter 4 correctly interpreted this paragraph. The equipment and procedures we require should not result in the type of shutdown that concerns Commenter 5. Paragraph (d) of this section requires activating an alarm meeting 154.2100(e), which requires audible and visible alarm. Paragraph (f) of 154.2100 requires only activating the emergency liquid cargo shutdown system required by 154.550, which is for liquid loading.
2103(j)(1)	Commenter 3 said we should revise this provision to account for pressure changes at different altitudes.	We agree and revised this provision accordingly.
2103(k)	Commenter 14 said we should define ''extensive length'' more clearly.	We cannot provide a clearer and more specific definition that would be workable, but we added a reference to undersea piping as an example of extensive length.

Topic	Comment	Coast Guard response or action
2103(n), introductory paragraph	n/a	We expanded the reference to ''inerting,'' in accordance with the commenter-suggested change in section 2001 definitions.
2103(n)(3)	Commenter 5 said we should revise this provision so that the placement of the pressure sensors always allows for sensing the pressure.	We agree and revised the provision accordingly.
2104	n/a	We changed references in this section from cargo line clearance to pigging, in accordance with the commenter-suggested change in section 2001 definitions. We also specified that the compressed gas we refer to is inert, and redesignated paragraphs.
2104(c) [now (a)(3)]	Commenter 5 said we should require the automatic shutoff valve to close within 2 seconds because the marine vessel can be overpressurized in 4 seconds while pigging.	We revised this provision to specify that it refers to a fast-action automatic shutoff valve like a solenoid valve. We think specifying 2 seconds would be too restrictive.
2104(d) [now (a)(4)]	Commenter 5 said a valve position sensor on the manual cargo bloc valve or the automatic cargo block valve would serve the same purpose as the interlock we proposed.	We agree, but an interlock is still needed for the valve position sensor.
2104(e) [now (a)(5)]	Commenter 5 said the means to detect the pig arrival must be an automatic detection device as well as specifically trained personnel to operate a manual quick closing valve.	We agree and revised this provision accordingly. Personnel training is covered in sections 154.2030(a)(6) and 154.2150(j)(2).
[NEW 2104(b)]	n/a	We added this provision to take account of those cargo lines that are cleared without pigging, in response to commenter-suggested change in section 2001 definitions.
2105(a)(1), (b)(1), (f)(1)	Commenter 5 said a 6-meter requirement would require nearly all gas injecting facilities to rework vapor piping and perhaps the detonation arrester size.	We disagree with this comment for 154.2105(a)(1). The 6-meter requirement is not new—see current 154.820(a)(2). New 154.2105(a)(1) combines current 154.820(a)(1), 154.820(a)(2), and 154.820(a)(3), and new 154.2105(a)(1) and 154.2105(a)(2) allow for installation of a detonation arrester as an alternative, as recommended by CTAC. We agree with this comment for 154.2105(b)(1), which requires meeting 154.2105(a)(1) and having a detonation arrester installed. We revised 154.2105(b)(1) and 154.2105(f)(1) to allow the oxygen analyzer to be located 4 meters downstream of the detonation arrester.
2105(a)(2), (b)(1), (c)(1), (d)(1), (e), (f)(1), (g)(1), (h)(1).	Commenter 4 said we should base distance on a number of diameters of the vapor line instead of a fixed 18 meters. Commenters 11, 13, and 18 also suggested alternatives to the 18 meter distance, for example requiring items to be placed as close as practicable, as is common industry practice.	Most dock detonation arrester distance exemption requests approved have been for 18 meters or less. The 18 meters distance is less restrictive than Commenter 4's proposed alternative. An alternative ''place items as close as practicable'' standard would be too subjective to provide good guidance and would be hard to enforce. We have clarified these provisions by specifying that the vapor piping between the facility vapor connection and the dock detonation arrester must be protected from any possible internal and external ignition source.
2105(d)(2)	Commenter 18 said this provision is too restrictive and not always effective.	We disagree. New 154.2105(d)(2) is the same requirement imposed by current 154.820(d)(2), and CTAC recommended against any relaxation of that requirement.
2105(f), (g), (h)	Commenter 5 said that for inerted, partially inerted, or combination cargoes, we should require the facility to use the lowest minimum oxygen concentration for combustion (MOCC) of all cargoes being transferred.	Section 154.2105(f) allows an inerting, enriching, or diluting system meeting 154.2107 as an option. Sections 154.2107(k)(3), 154.2107(n), and 154.2107(o)(1) already specify the use of either the cargo's MOCC or the enriching gas's MOCC, whichever is lower. Alternatively, the mixture's MOCC may be used.
2105(h)	Commenter 3 asked if (h)(3) is an alternative only to (h)(2) or to (h)(1) and (h)(2) combined.	The former. We inserted ''either'' and combined 154.2105(h)(2) and 154.2105(h)(3) to make this clearer.

Topic	Comment	Coast Guard response or action
2105(j)(2) [now (j)(2) and (j)(3)]	Commenter 5 said we should insert ''end-of-line'' before ''flame arrester,'' because an in-line flame arrester may not be effective.	We agree and revised 154.2105(j)(2) and new 154.2105(j)(3) accordingly.
2105(j)(2)(i) [now (j)(3)(i)]	Commenter 4 said that a flame arrester meeting ASTM F–1273 does not need a proving device, and Commenter 5 proposed revisions to this provision.	We agree and split 154.2105(j)(2) into 154.2105(j)(2) and 154.2105(j)(3) and revised this paragraph accordingly.
2105(j)(2)(ii) [now (j)(3)(ii)]	Commenter 5 proposed a revision to this paragraph.	We agree and revised this paragraph accordingly.
former 2106(a)	Commenters 3, 4, and 14 raised questions about the meaning of this provision.	We removed this paragraph as it appeared in the NPRM because it was confusing. As we think was clear from the NPRM's 154.2106(b) [now 154.2106(a)], the questions raised by these comments should be answered by guidelines outlined in the arrester manufacturer's Coast Guard acceptance letter.
2106(c) [now (b)]	Commenters 3 and 14 asked if the reference is to components upstream of the detonation arresters, downstream, or both.	This paragraph is intended to apply on either side of the detonation arrester, because there may be a potential ignition source on either side; we revised it to make that clearer.
2107	Commenter 13 said we should apply gas inerting and enriching requirements only to loading facilities and not to TBCFs.	CTAC recommended no relaxation of this general requirement, which is taken from NVIC 1–96. We acknowledge that under some conditions and with suitable alternative arrangements (see 154.107 and 154.108 with respect to alternatives and exemptions), it may not be necessary to apply it to all TBCFs.
2107(a)	Commenter 5 proposed a clarifying revision	We agree and changed ''vapor collection line'' to ''vapor collection system'' and specified ''two system volume exchanges'' accordingly.
2107(b)	Commenters 4, 5, 13, and 18 suggested various alternatives for the 22 meter provision of this paragraph, with Commenter 4 suggesting a specific pipe-diameter standard, and Commenter 18 saying we need to provide flexibility for existing methods of operation like systems equipped with detonation arresters at the facility vapor connection and vapor destruction unit.	With respect to Commenter 18, we think the regulations as drafted provide the necessary flexibility. The gas injection point should be after the dock detonation arrester, and this paragraph provides that while also allowing the use of 154.2105(a), which requires an analyzer at 6 meters from the facility vapor connection, as an exception. With respect to these comments in general, this provision is in line with currently approved exemptions and is less restrictive than the pipe-diameter standard suggested by Commenter 4. We have clarified these provisions by specifying that the vapor piping between the facility vapor connection and the dock detonation arrester must be protected from any possible internal and external ignition source.
2107(b)	n/a	In addition to the changes made in this paragraph to respond to Commenters 4, 5, 13, and 18, we have also clarified the location of the gas injection and mixing arrangement relative to the vapor processing unit or the vapor-moving device, as recommended by CTAC in 1997 to maintain a minimum size of non-flammable vapor slug in the vapor piping (to prevent a flashback from an ignition source). The minimum piping distance is also approximately the difference between the maximum piping length of the arrangement from the facility vapor connection as required by this paragraph and the minimum distance of a vapor destruction unit from any tank vessel berth as required by 154.2109(c).
2107(c)(2)	Commenter 4 proposed clarifying what must be ''downstream.''.	We agree and revised the provision accordingly.

Topic	Comment	Coast Guard response or action
2107(d)	Commenter 18 said we should add calorimeters as approved devices.	In general, a calorimeter is a device used to measures heat, while what we want analyzed is oxygen or hydrocarbon concentrations. A facility wishing to use a calorimeter can submit an alternative or exemption request with information for review.
2107(d)(2), (d)(4), (d)(6)	Commenters 4 and 14 asked us to define what we mean by ''majority pair''.	The ''majority pair'' requirement is from NVIC 1–96, Enclosure (1), Part A. Sec 9, and we have used ''voting system'' language from a draft of that NVIC to revise our text for clarity.
2107(h)(3), (i)(3), (j)(2), (k)(2)(ii), (l)(3), (m)(4)	Commenter 4 said the vapor moving device should not be shut down for high-high oxygen or low-low hydrocarbons, and Commenters 5 and 14 proposed revisions to these paragraphs.	We agree with the changes offered by Commenters 5 and 14 and deleted ''shut down any vapor moving device'' accordingly. With respect to Commenter 4, a vapor mover is considered an ignition source, but it can continue to operate so that multi-dock operations will not be disrupted and so that the vapor mover can help draw more inerting, enriching, or diluting (IED) gas into the VCS.
2107(o)	Commenter 4 proposed allowing an alternative for simultaneously controlling inert and non-inert vapors, where the inerted vapor stream is lowered by 1% from normal levels.	We followed up with Commenter 4 on this and learned of his interest in a specific vapor, for which an exemption could be the appropriate solution. In general, the more conservative approach of this provision is appropriate.
2109(b)(2)(i)	Commenter 4 said that if this requires quick closing valves at the vapor destruction device or where the VCS connects to a facility's main VCS to close on any dock shutdown, it is not necessary.	In light of this comment, we revised this provision to clarify that it applies only when a condition is detected that requires the closing of the quick-closing stop valves, and not under other VCS shutdown conditions like overpressurization.
2109(b)(2)(iv)	Commenter 4 said that quick closing valves should be fire resistant.	We agree and accordingly specified that the valve must also be a Category A valve as defined in 46 CFR 56.20–15.
2109(b)(3)(i)	Commenter 4 said we should substitute ''accepted'' for ''approved''.	We agree and revised the provision accordingly.
2110(a)(1)	Commenter 4 asked if the tank high level alarm system and overfill control system are required to have independent level sensing systems.	We have revised the provision to clarify that these should be independent, like other alarm and shutdown systems.
2110(a)(2)	Commenter 4 said we should base distance on a number of diameters of the vapor line (e.g. 40 pipe diameters) instead of setting it at 18 meters, and Commenters 11, 13, and 18 proposed other alternatives to the 18-meter distance, for example, requiring items to be placed as close as practicable, as is common industry practice. Commenter 7 asked if this paragraph merely repeats 2105(a)(2).	The 18-meter or less distance has been approved for most dock detonation arrester distance exemption requests, and 18 meters is less restrictive than Commenter 4's proposed alternative. An alternative ''place items as close as practicable'' standard would be too subjective to provide good guidance and would be hard to enforce. We clarified these provisions by specifying that the vapor piping between the facility vapor connection and the dock detonation arrester must be protected from any possible internal and external ignition source. The two provisions are not duplicative; see the different introductory language in 154.2105(a) and 154.2110(a)(2).
2110(a)(4)	Commenter 4 said that there is no need for an oxygen analyzer for vapor balancing of inert cargo systems when loading a vessel.	We agree and revised this provision so that inert cargo systems can comply with either 154.2105(a)(1) or 154.2110(a)(2).
2110(b)(1)	Commenter 4 said we should change ''mechanism'' to ''means,'' so as not to preclude use of a shutdown based on negative differential pressure across the detonation arrester (currently used by most facilities).	We agree and revised the provision accordingly.
2111(a), introductory paragraph	n/a	We added ''a marine vapor collection system'' in response to the comment on 154.2001's definition of ''existing VCS.''

Topic	Comment	Coast Guard response or action
2111(a)(2)	Commenter 4 said that if this requires quick closing valves at the vapor destruction device or where the VCS connects to a facility's main VCS to close on any dock shutdown, it is not necessary.	We agree with this comment and revised this provision by substitute ''a VCS shutdown condition occurs'' for ''vapor back flow to the marine vapor line is detected'' and split 154.(a)(2) into 154.(a)(2) and 154.(a)(2)(i)–(iii).
2111(a)(3)	Commenter 4 said we should change ''mechanism'' to ''means,'' so as not to preclude use of a shutdown based on negative differential pressure across the detonation arrester (currently used by most facilities).	We agree and revised the provision accordingly.
2111(c) [now 2111(d)]	Commenter 5 asked if this provision would require a facility to get an exemption if it wanted to pass vapors to the dock flare from a truck or railcar loading, and used the flare antiflashback burner part of the marine VCS.	We do not think an exemption would be necessary. After contacting the commenter and discussing this provision with him, we clarified it by adding a new paragraph 154.2111(d) to allow for sharing a marine vapor destruction unit as an exception to 154.2111(c).
2111(d)	n/a	We added new paragraph 154.2111(d) in response to Commenter 5's comment on 154.2111(c).
2112(a)	Commenter 5 said that after loading is complete, the system that controlled polymerizing vapors must purge/clean the VCS, including hoses or vapor arms, with at least two system-volumes of non-reactive gas or air. This should be a standard procedure for all cargoes so that the VCS is left in a safe condition for any potential maintenance or incompatible cargoes.	We agree with this comment. However, this is an operational requirement. Incompatible cargoes are addressed in 154.2150(p). For maintenance and other concerns, we added a new 154.2150(q) so that after each transfer operation, the VCS piping and equipment must be purged with at least two system volume exchanges of non-reactive gas or air so the VCS is left in a safe condition.
2112(a)(3)	Commenter 4 said we should also require the differential pressure instrument to alarm on high differential pressure across the detonation arrester, to warn of polymerization.	We agree and revised the provision accordingly.
2113	Commenter 18 provided circumstances under which special requirements for alkylene oxides are not needed.	We agree that special requirements are not needed for pressure cargoes and added language in the introductory paragraph to make that clear.
2113(b) [now 2113(a)(2)]	Commenter 13 said that this requirement is unnecessary for safety and will likely have the effect of shutting down some facilities and forcing others to perform expensive retrofits.	We revised this section to exclude pressure cargoes. In addition, instead of complying with what was (in the NPRM) 154.2113(b) and is now 154.2113(a)(2), a facility can comply with what was (in the NPRM) 154.2113(c) and is now 154.2113(b).
2113(c) [now 2113(b)]	Commenter 5 said that in addition to the CE, a marine chemist or properly trained third-party surveyor should be allowed to determine if the VCS has been adequately cleaned. Commenter 13 said that this requirement is unnecessary for safety and will likely have the effect of shutting down some facilities and forcing others to perform expensive retrofits.	We agree with Commenter 5 and have revised this provision accordingly. With respect to Commenter 18, we have revised this section to exclude pressure cargoes. In addition, instead of complying with what was (in the NPRM) 154.2113(b) and is now 154.2113(a)(2), a facility can comply with what was (in the NPRM) 154.2113(c) and is now 154.2113(b).
2150(c)	Commenter 7 said we should clarify that the required system testing does not extend to shutdown of operating systems that may be serving other portions of the facility.	The point made by Commenter 7 is in line with the guidance we currently provide to CEs. We do not agree and the regulatory text does not need to be changed in this respect because we are not changing that guidance.
2150(c)(1)	Commenter 14 said we had misstated where exceptions to this paragraph are provided. Commenter 7 said electronic testing should be permitted for complying with this paragraph.	We agree with Commenter 14 and revised this provision accordingly. Commenter 7 already uses electronic testing under existing exemptions that remain in place; it is appropriate for the unique characteristics of Commenter 7's VCS but would not be appropriate for VCSs in general.

Topic	Comment	Coast Guard response or action
2150(c)(4)	Commenter 4 said that if this requires testing of the flammability analyzer required by 154.2105(j)(2)(i), the combustible gas indicator used for this application does not usually have the means to check with a sample gas and does not need calibration as often as an oxygen or hydrocarbon analyzer. Commenter 5 said that to properly calibrate an analyzer, a ''zero gas'' must be used in addition to a span gas.	After following up with Commenter 4, we agree with his point and with Commenter 5's point, and we revised 154.2150(c)(4) and 154.2150(c)(5) accordingly.
2150(c)(5)	n/a	We revised this paragraph per the comment on section 154.2150(c)(4).
2150(c)(6)	Commenters 4 and 5 said that this provision is impracticable. Commenter 7 said we should modify it so that checking requires only visual checking, not an operational check of the relief devices, which should be allowed annually, consistent with present practice.	We agree in part with Commenters 4 and 5 and revised this provision to clarify our intent, which is not to conduct technical capacity or lift pressure testing of the valves, but rather to make sure the valve travel is not constrained and that the flame arrester is not damaged. Under an existing exemption suiting the unique characteristics of Commenter 7's VCS, visual-only testing is permitted, but it would be inappropriate for VCSs in general.
2150(f)	Commenter 14 asked us to clarify whether this applies upstream or downstream of the facility vapor connection.	It applies downstream and we clarified this provision accordingly. Note that 154.2103(h) requires pressure sensors to be located in the vapor line between the facility vapor connection and any isolation valve.
2150(g)	Commenters 13 and 18 said many facilities lack the ability to make an accurate determination of liquid cargo transfer rates and that therefore we should require instrumentation.	We agree in part but do not think it is necessary to require instrumentation in this provision. Existing regulations (154.525, 156.120(aa)) require monitoring devices under certain conditions and verification that the initial loading rate and the maximum transfer rate are determined, and provide adequate control of the problem cited by these commenters.
2150(i)	Commenters 13 and 18 said we should clarify what is meant by ''gas''.	We agree with these commenters and revised this provision to clarify that a compressed inert gas such as nitrogen can be used to clear cargo lines if a pigging system that meets 154.2104 is provided.
2150(j)	n/a	We revised this paragraph to take account of those cargo lines that are cleared without pigging, in response to commenter-suggested change in 154.2001 definitions.
[New 2150(q)]	n/a	To address the comment on 154.2112(a), we added this new paragraph. After each transfer operation, the VCS piping and equipment must be purged with at least two-system volume exchanges of non-reactive gas or air so the VCS is left with a safe condition.
2150(q) [now 2150 (r)]	n/a	We added ''or 156.170(i),'' to take account of this rule's addition of that alternative to 156.170(g).
2180(b)(4)	Commenter 3 said we should revise this to refer to placement at ''or near'' the sampling probe.	We agree and revised the provision accordingly.
2180(c), (d)	Commenter 4 asked what ''safety system function tested'' means.	The relevant tests are in 154.2181. We revised these paragraphs to make that clearer.
2180(e)(3), (e)(4)	Commenter 4 asked us to clarify these standards.	We agree and revised these provisions accordingly.
2180(g)	n/a	We inserted ''zero gas'' in light of the comment on 154.2150(c)(4).
2181(b), (c), (d), (e)	Commenter 7 said that annual calibration should be sufficient.	We disagree. This section and 154.2180 provide a compliance alternative to the 24-hour pre-transfer or pre-tank cleaning testing of 154.2150 and 154.2250. Also, 156.170(g)(4) requires analyzers to be calibrated either within the previous 2 weeks or within 24 hours prior to operation when the VCS is operated less frequently than once a week.

Topic	Comment	Coast Guard response or action
2181(d)(4)(i)	Commenter 4 said that most existing systems inject the span gas at the analyzer box and do not use sample tubing, and asked if those systems would need to be modified.	We revised this provision to make it clear that we do not intend for those systems to need modification.
2200	Commenter 4 said that because proposed 154.6001(f)(3) references the requirement of proposed 46 CFR 39.2009 to have a connection with the facility for the overfill control system, 154.2200 should require the facility to be able to accept the barge connection if they are using liquid displacement.	After following up with Commenter 4, we agree and added new 154.2200(b) accordingly.
2200(b)	n/a	We added this paragraph in response to the comment we received on 154.2200 and on 46 CFR 39.6001(f)(3).
2200(c) [now (d)]	Commenter 13 said we should eliminate gas inerting and enriching requirements for TBCFs.	We disagree. These IED requirements are from NVIC 1–96 and are based on recommended safety standards developed by CTAC in 1994 and 1995. In 1998, CTAC reviewed NVIC 1–96 and did not recommend eliminating the IED requirement for TBCFs.
2203(c), (d)	Commenter 4 asked why we would require correcting for a pressure drop from the cargo tank to the pressure sensor at the gas injection point, when it is more conservative not to correct and correction could allow for a higher alarm set point than 80% of the relief valve set point and a higher shutdown set point than 90% of the relief valve set point.	We agree and modified 154.2203(d) to clarify that the remotely operated shutoff valve required by 154.2203(c) must be closed when the pressure at the fluid injection connection reaches a corresponding 90% of the lowest setting of any pressure relief valve on the barge.
2203(g)	Commenter 18 said that tank barges do not need individual cargo tank pressure sensors because one sensor can detect pressure throughout the barge via the common vapor system.	We agree and modified this provision to allow for the use of a common vapor sensor as an alternative.
2204	Commenter 18 said we should remove the distance requirement or allow existing facilities to maintain current locations as long as the detonation arrester is located as close as practicable to the facility connection.	Most dock detonation arrester distance exemption requests approved have been for 18 meters or less. An alternative ''place items as close as practicable'' standard would be too subjective to provide good guidance and would be hard to enforce. We have clarified this section by specifying that the vapor piping between the facility vapor connection and the dock detonation arrester must be protected from any possible internal and external ignition source.
2204(a)(2), (b)(2), (d)(2)	Commenter 13 said we should eliminate gas inerting and enriching requirements for TBCFs.	We disagree for the reasons given in our discussion of the commenter's remarks on 154.2200(c).
2250(c)(1)	Commenter 4 asked us to clarify our wording about exemptions.	We agree and revised the provision accordingly.
2250(c)(4), (f)	Commenter 13 said we should eliminate gas inerting and enriching requirements for TBCFs.	We disagree for the reasons given in our discussion of the commenter's remarks on 154.2200(c). However, we revised 154.2250(c)(4) per the comment on 154.2250(c)(5).
2250(c)(5)	Commenter 4 said that if this requires testing of the flammability analyzer required by 154.2105(j)(2)(i), the combustible gas indicator used for this application does not usually have the means to check with a sample gas and does not need calibration as often as an oxygen or hydrocarbon analyzer. Commenter 13 said we should eliminate gas inerting and enriching requirements for TBCFs.	After following up with Commenter 4, we agree with his point and revised 154.2250(c)(4) and 154.2250(c)(5) accordingly, as we did in 154.2150(c)(4) and 154.2150(c)(5). With respect to Commenter 13's comment, we disagree for the reasons given in our discussion of the commenter's remarks on 154.2200(c).
2250(c)(6)	Commenter 5 said that this provision is impracticable.	We agree in part with Commenter 5 and revised this provision to clarify our intent, which is not to conduct technical capacity or lift pressure testing of the valves, but rather to make sure the valve travel is not constrained and that the flame arrester is not damaged.

Topic	Comment	Coast Guard response or action
2250(d)(5)	Commenter 4 asked us to clarify this provision so that the gas-freeing rate may not exceed the maximum allowable rate during—but not before—operations.	We agree and revised the provision accordingly.
2250(e)	Commenter 12 said that annual inspection of detonation arresters may be difficult for some facilities, and asked us to specify whether compliance documentation is required.	Exemptions may be available to facility operators for whom annual inspection is difficult. We revised 154.2250(e) so that it is worded like 154.2150(q) [now 154.2150(r)] and makes clear how documentation requirements are established.
33 CFR part 156		
170(g)(3)	n/a	We added two more references that need updating to the amendatory instruction for this paragraph.
170(g)(4)	n/a	We updated the reference to 46 CFR 39.40–3(a) so that it now refers to 46 CFR 39.4003.
170(i)	Commenter 8 said that approval by the local Captain of the Port (COTP) is adequate and less burdensome than approval by the Commandant.	You may propose alternative arrangements under 156.107, but generally the Commandant and not the COTP will have the necessary expertise.
46 CFR part 35		
35.35–4	n/a	We added this section per the discussion of the comments on 35.35–5.
35.35–5	Commenter 5 said the shielded wire in the overfill system of 33 CFR 154.2102(b) is attached to a ground connection pin which is grounded by the facility but should not be grounded to the marine vessel; this would then comply with the proposed requirement in 46 CFR 35.35–5 for not grounding the marine vessel to the dock. Commenter 11 said the prohibition against using external bonding cables or straps to achieve electrical bonding is unnecessary, and the rule should allow barge-to-dock cable bonding as is the current and safe industry practice. Commenter 13 said we should continue allowing the use of bonding cables between a barge and a dock. Commenter 18 asked us to clarify that this section does not apply to ship-to-barge and barge-to-barge transfers.	We agree with these commenters and added new 35.35–4 and rewrote this section. Together, the two sections take into account all of these commenters' remarks.
46 CFR part 39		
1005(h)(1)	n/a	In line with the comment on 33 CFR 154.106(g)(3), we revised this paragraph to incorporate the latest available (2011) edition of the National Fire Protection Association's National Electric Code (NFPA 70).
1013(b)	Commenter 4 said our proposed language could be interpreted as requiring the vessel VCS to have been operational by July 23, 1990.	We agree and revised this provision so that it applies only to VCSs that began operating on or after that date.
1017	Commenter 4 said the Coast Guard Marine Safety Center (MSC) may not be able to review all the vessels that conduct multi-breasted loading operations or gas-freeing or cleaning operations between the publication of the final rule and its effective date.	Vessels currently conducting multi-breasted loading operations are already approved by MSC and Commandant (CG–ENG–5) and will not need reapproval. Section 39.1001(a)(2) allows a tank barge conducting gas-freeing or cleaning operations to comply at the time of its next inspection but no later than 5 years after the effective date.
1017(b)(1), (b)(2)	n/a	We revised these paragraphs per the comment on section 39.1017(c).
1017(c)	Commenter 18 said existing VCSs should not be required to apply for new approval when the final rule takes effect.	We agree and revised 39.1017(b)(1) and 39.1017(b)(2) to exclude those already approved by the MSC.
2001(m)	Commenter 4 pointed out a miscited reference	We agree and changed the citation at the end of the provision.

Topic	Comment	Coast Guard response or action
2007(b)(4)	Commenter 4 said we should continue to require checking, or testing, but not inspection.	We agree and changed "be inspected" to "be verified."
2009(a)(1)(iii)(B)	n/a	In line with the comment on 33 CFR 154.106(g)(3), we revised this paragraph to reference provisions in the latest available (2011) edition of NFPA 70.
2009(a)(2)(ii), (a)(2)(iii)	Commenters 13 and 18 said this is unattainable because accurate flow rate instrumentation is not available on unmanned barges and some facilities do not have calibrated instrument flow rates available for use during their cargo transfer to vessels.	We disagree. This is not a new requirement but is the same as appears in 46 CFR 39.20–9(b)(2). Barges and facilities have successfully complied with this requirement since 1990. However, we did correct an erroneous reference in 39.2009(a)(2)(iii): the alarm and shutdown system needs to be activated on the cargo discharging vessel, not the cargo receiving vessel.
2009(b)	Commenter 4 pointed out a miscited reference	We agree and corrected the citation at the end of this provision.
2011(d)	Commenter 4 asked what methods are approved by the Coast Guard for calculating vapor growth.	We revised this provision to identify where guidance is available for free and to specify that, alternatively, submitters may calculate the vapor growth rate using any recognized standard and following good engineering practice.
2013, introductory paragraph	Commenter 4 asked why we would require the pressure sensor to be located as close as practicable to the vessel vapor connection, when it is more accurate to have the sensor located closer to the tanks.	We do not disagree that the pressure sensing devices could be located at the cargo tanks. However, to prevent over-pressurization of cargo tanks, current prevention guidance includes submittal of pressure drop calculations from the cargo tank to the vapor connection. Pressure drop calculations coupled with the location of the pressure sensing device should be provided such that the operator is made aware of the actual tank pressure and can ensure the safety of the system. With sensors located at the vapor connection additional calculations would not be necessary.
2014(b)	Commenter 18 said that annual inspection is not needed for pressure valves; they are already checked frequently and the test lever is sufficient for determining proper operation.	We disagree. This requirement was recommended by CTAC. Pressure-vacuum valves used with polymerizing cargoes are subject to polymer buildup on the internal structure of the valve which would reduce the flow capacity of the valve. This could cause a potentially dangerous situation should the tank be overpressurized and the valve not be able to handle the required flow rate due to polymer buildup. Annual inspections are already conducted by many operators.
2015	Commenters 13 and 18 asked us to clarify whether multiple pressure indicating devices will be required on tank barges to deal with the multiple cargo tank valves that control cargo transfer on unmanned tank barges.	Multiple devices are not required. We have revised the section to clarify that a pressure sensing device, not a pressure indicator, is required. A sensor takes the measurement, whereas the indicator provides a visual indication of what that measurement is. Therefore, the indicator should be located at the location from which the cargo can be controlled. For a vessel that does not have a pump room, this would typically be where the cargo pump shutdown controls are located. We have refrained from mandating a specific location because barges come in a wide variety of designs and the current language provides discretion for the vessel owner or operator to place the pressure indicating device in the most practical location.
3001(g)	Commenters 13 and 18 asked us to include a requirement for accurate flow rate instrumentation to be provided at facilities and on manned tank vessels.	The industry standard incorporated by reference in this provision provides the requirement.

Topic	Comment	Coast Guard response or action
Subpart 5000	Commenter 4 said it was not clear how to deal with the extra pressure drop from multi-breasted vapor control. The transfer procedures should have the means to determine the additional pressure drop from the inboard vessel's vapor header.	We currently require calculations for multi-breasted loading that take the additional pressure drop into consideration, and the calculations must be approved by the MSC. We added a new 39.5001(e) to clarify these requirements.
5001(a)	Commenters 13 and 18 objected to the proposed language requiring both barges engaged in two barge doubled-up loading to be owned and operated by the same entity, saying this is not relevant to safe tank barge loading or safe use of marine VCSs.	The proposed language was recommended by CTAC. We acknowledge that some barges can be owned by one company and operated by another company, and have changed ''and'' to ''or'' in this provision. Most of the barges currently approved for this operation are owned and operated by the same company. Several are owned by one company but operated by another company. There are specific calculation, equipment, and operational requirements for this operation.
5001(b)	Commenters 13 and 18 said that a hose length limitation in 39.5001(b)(3) is not needed and that hoses longer than 25 feet present little additional risk.	The 25-foot length is standard and, for safety, these hoses should be as short as possible. However, we revised 39.5001(b)(3) to permit use of longer hoses with MSC approval, and we made other (non-substantive) changes in 39.5001(b).
[New 5001(e)]		We added new 39.5001(e) in response to Commenter 4's comment on subpart 39.5000.
5001(e) [now (f)]	Commenters 13 and 18 said that requiring compliance with additional COTP conditions and requiring identification and certification of facilities at which doubled-up cargo transfer loading operations will be conducted is unnecessary, and also that if additional safety precautions are needed, they should be specified in the initial documents.	Both of these requirements are standard conditions of our current dual barge loading exemption approval letters, and align with CTAC recommendations. We agree that the identification of specific facilities is not necessary and have revised this paragraph to delete that proposed requirement.
6001(c)	Commenters 13 and 18 said that complying with the proposed labeling requirement will be costly and difficult, and that it is not needed because stripping lines already are identified in easily accessible barge piping diagrams.	We disagree. The labeling requirement for individual stripping lines comes from NVIC 1–96, is based on CTAC recommendations, and is important for safety reasons because it prevents confusion with cargo lines. Facilities can use stencils and spread-paint the lines.
6001(f)(1)	Commenter 4 asked for clarification of this provision.	We have revised this provision to explain that ''flanged flexible hoses'' are ''flexible hoses flanged to a connection.'' This is provided as an alternative to a fixed vapor header or fixed liquid cargo header.
6001(f)(3)	Commenter 4 made an observation with respect to the joint interpretation of this provision and 39.2009.	We followed up with Commenter 4. Because this paragraph requires overfill protection according to 39.2009, we added new 33 CFR 154.2200(b) to address his comments.
6003(a)	Commenter 4 said this sounds like an operational requirement because it does not make sense for a cargo tank venting system's design pressure to be less than that of cargo tank.	We followed up with Commenter 4. We have revised this paragraph to clarify that this is an operational requirement and that it does not require a cargo tank venting system's design pressure to be less than that of cargo tank.
6003(b)	Commenter 18 said that tank barges do not need individual cargo tank pressure sensors because one sensor can detect pressure throughout the barge via the common vapor system.	We agree and revised this provision as we did for 39.2015. We also specified the relevant paragraphs of the referenced section in 33 CFR, and changed the wording of the required label to avoid confusion between sensors and indicators.

V. Incorporation by Reference

The Director of the Federal Register has approved the material in 33 CFR 154.106 and 46 CFR 39.1005 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in those sections.

VI. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563

(''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order (E.O.) 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that E.O.

A final Regulatory Analysis and Regulatory Flexibility Analysis is available in the docket as indicated under **ADDRESSES**. A summary of the Regulatory Analysis follows:

The final rule revises the existing regulations (33 CFR parts 154, 155, and 156, 46 CFR parts 35 and 39) regarding the safety of facility and vessel VCSs. The final rule amends the regulations to make VCS requirements more compatible with other Federal and State environmental requirements and reflect industry advances in VCS technology, and codifies the voluntary standards for VCSs at TBCFs. The final rule increases the safety of operations by regulating the design, installation, and use of VCSs, but will not require anyone to install or use VCSs.

The final rule provides additional requirements for VCS equipment, compliance documentation, training, and operations. In general, the final rule:

- Adds new requirements for certifications, recertifications, periodic operational reviews, and approval processes for certain operations concerning VCSs to promote maritime safety and marine environmental protection. These various requirements mainly affect facilities with VCSs, including TBCFs;
- Requires new training or amends training requirements to improve safety. These training requirements affect facilities with VCSs (including TBCFs) and tank barge owners and operators;
- Permits pigging; however, there will be some requirements to receive Coast Guard permission to do so;
- Provides foreign-flagged tank barges some flexibility for certification procedures;
- Adds new requirements for certain equipment on U.S.-flagged tank barges and at TBCFs and other facilities with VCSs to improve safety and environmental protection; and
- Removes certain requirements in order to offer cost savings. This change mainly impacts facilities with VCSs.

The final rule is necessary to reflect the expansion of Federal and State regulations for VCSs since the current regulations were adopted in 1990, and to reflect technological advances over that period. Without revisions to these regulations by the Coast Guard, market failures persist in creating situations of uncompensated risk. In the case of this final rule, the uncompensated risks accrue to the public, maritime commerce, and mariners in the form of safety and environmental hazards and potential losses to equipment and cargo as well as the opportunity cost resulting from equipment, parts of facilities, or vessels being temporarily out of operation due to accidents.

The Regulatory Analysis provides an evaluation of the economic impacts associated with this final rule. Table 2 below provides a summary of the final rule's costs and benefits.

TABLE 2—SUMMARY OF THE FINAL RULE'S IMPACTS

Category	Summary
Applicability	Owners of U.S.-flagged tank barges and foreign-flagged tank barges as defined by 46 CFR Subchapter D; CEs for VCSs; TBCFs.
Affected Population	280 facilities with VCSs, 24 CEs, 15 TBCFs, 216 U.S.-flagged tank barge owners, and owners of 338 foreign-flagged tank barges.
10-Year Costs (7% discount rate)	$6.86 million.
10-Year Quantified Benefits and Cost Savings (7% discount rate).	Benefits: $2.79 million. Additional Cost Savings: $5.956 million (regulated public). Additional Cost Savings: $0.164 million (Government). Total Benefits and Other Savings: $8.914 million.
10-year Net Benefits of Final Rule (7% discount rate).	$8.914—$6.86 = $2.054 million.
Unquantified Benefits	* Update industry practices. * Aid to quality control. * Preclusion of diminution of safety. * Provide for an opportunity for more competition.

The costs, quantified benefits, and cost savings are the totals for the 10-year period of analysis. These costs include industry costs plus the Government's costs.

Table 3 shows the changes in costs, benefits, and additional cost savings from the NPRM to the Final Rule. As can be seen, costs have been reduced, benefits increased and cost savings increased as a result of the changes delineated in Table 1. Few comments questioned cost estimates from the NPRM, and thus the original regulatory assessment is largely retained.

TABLE 3—COMPARISON OF FINAL RULE AND NPRM IMPACTS (7% DISCOUNT RATE)

	Cost	Benefits	Additional cost savings
NPRM	$8,822,113	$1,944,359	$5,228,965
Final Rule	6,864,404	2,791,303	6,120,064

The final rule amends several existing regulations and these amendments permit cost savings to the regulated public. Cost savings would result from the removal of the requirement on standards for flame arresters (33 CFR part 154, Appendix B). Additionally, the various changes preclude the need for the regulated public to continue to file exemption requests, which saves administrative labor and research. The final rule removes the requirement for a separate overfill control panel on the dock (33 CFR 154.2102, 46 CFR 39.2009). The provisions include an alternative test program for compliance with the VCS analyzer and pressure sensor safety testing requirements. The final rule allows an alternative method of compliance with testing and inspection requirements of 33 CFR 156.170. The final rule's changes on enrichment requirements would benefit the regulated public by necessitating the use of less enriching gas. As well, the Coast Guard estimates the final rule would benefit the public by preventing marine casualties.

Affected Population

Based on Coast Guard data, we estimate that this final rule affects 280 facilities with VCSs, 24 CEs, 15 TBCFs, 216 U.S.-flagged tank barge owners, and owners of 338 foreign-flagged tank barges.

Costs

The final rule requires several actions by affected parties. These actions include training, periodic operational reviews, and recertifications. Over a 10-year period of analysis, we estimate the total present value cost of the final rule to be $6.86 million at a 7 percent discount rate, and $8.08 million at a 3 percent discount rate. Over the same 10-year period of analysis, we estimate the annualized cost of the final rule to be $977,000 (rounded to nearest thousand) at 7 percent and $947,000 (rounded) at 3 percent. The following table presents, by year, the costs of the final rule.

TABLE 4—ESTIMATED COSTS OF FINAL RULE

Year	Discounted 7%	Discounted 3%	Undiscounted
1	$2,219,312	$2,305,498	$2,374,663
2	657,334	709,380	752,581
3	614,330	688,718	752,581
4	574,141	668,659	752,581
5	548,859	664,039	769,803
6	512,952	644,698	769,803
7	479,394	625,920	769,803
8	448,032	607,689	769,803
9	418,722	589,990	769,803
10	391,329	572,806	769,803
Total	6,864,404	8,077,397	9,251,224
Annualized	977,337	946,917	925,122

We estimate the requirements for facilities as the primary cost driver throughout the 10-year period of analysis. The requirements for facilities range from certifications, recertifications, and periodic operational reviews. Table 5 shows a summary of annualized costs by requirement category.

TABLE 5—SUMMARY OF THE ANNUALIZED COSTS OF THE FINAL RULE

[$]

Category	Annualized *	
	7%	3%
Facility Costs	$751,190	$ 738,358
TBCF Costs	110,926	103,646
Tank Barge Costs	111,390	101,524
Government Costs	3,831	3,389
Total	977,337	946,917

* Rounded to the nearest dollar.

The final rule's changes that require the regulated public to follow operational changes such as certifications, recertifications, and periodic operational reviews comprise approximately 58 percent of the costs throughout the 10-year period of analysis. The final rule's changes to require training, including amendments to PIC training, amount to 20 percent of the total costs. Table 6 presents a summary of the costs by requirement as a percentage of the total annualized costs of the final rule.

TABLE 6—SUMMARY OF COSTS BY REQUIREMENT OF THE FINAL RULE

[As a percentage of annualized cost]

Requirements	Annualized cost (percent)
Operations Cost	58
Protection Equipment	10
Training including PIC	20
Misc other including government and pigging	12
Total (rounded to the nearest one)	100

Benefits

The final rule amends existing regulations regarding VCSs in marine activities. We are issuing these amendments to existing standards to reflect technological improvements and to promote maritime safety and marine environmental protection. The final rule offers provisions for more practicable and efficient management of hazardous materials, and contains some provisions that offer facilities the opportunity to reduce maintenance costs.

The final rule provides several benefits. Benefits of the final rule include (1) Energy savings which would accrue from the use of less enriching gas, (2) avoided costs associated with the elimination of existing standards on liquid seal and (3) prevented casualties. Other benefits that USCG describes qualitatively include operational efficiency and enhanced safety. USCG estimates the 10-year quantified benefits to be at least $2.79 million (7 percent discount rate).

In addition to these benefits, we estimate that the final rule will result in additional cost savings to the regulated public and the Government. These cost savings derive from tasks which would no longer have to be performed due to the final rule's changes and changes to various operational requirements which result in less resources being used. For regulated entities, the cost savings over

a 10-year period are estimated to be $5.96 million (7 percent discount rate) and Government cost savings are estimated to be $164,000 (7 percent discount rate, rounded to the nearest thousand).

See the final Regulatory Analysis available in the docket for a detailed analysis of the costs and benefits of this rulemaking.

The Coast Guard considered the following alternatives when developing the final rule:

1. Take no action.
2. Adopt all CTAC recommendations.
3. Issue a new policy letter or NVIC.
4. Require annual certifications.
5. Develop a different timetable for small entities.
6. Provide an exemption for small entities (from the rule or any part thereof).

Alternatives 1 and 2 are not preferred because they do not offer solutions to issues identified earlier in the preamble. They also do not allow for cost savings opportunities that arise from changes in the final rule. Alternative 3 communicates information to the regulated public, and although it would potentially increase public safety, it would not allow for cost savings opportunities outlined in the final rule, nor would it update the regulatory text. As such, it offers no assurance of compliance and no enforcement mechanism. Alternative 4 is feasible but costly. It is not anticipated to increase benefits or to increase cost savings despite its higher cost. Alternative 5 offers all benefits and cost savings of the final rule, albeit at a later date. Because of the benefits and cost savings, a delay serves no useful purpose to the regulated public. For some regulated entities such as facilities and tank barge owners, the final rule offers a delayed effective date and some provisions do not accrue costs immediately; also, other provisions do not apply unless specific changes to VCSs warrant them (e.g., recertifications). Alternative 6 is feasible. The Coast Guard notes that many final provisions do not apply to some small entities since they are either already in compliance or will benefit from the changes in the final rule. The final changes are low in cost on the individual level and have a low implementation burden. An exemption would preclude small entities from pursuing cost savings that would be provided by the final rule. A small business exemption would cause both costs and benefits as well as cost savings to decline in total for the regulated public. These small entities face many of the same environmental and safety hazards other business entities face; and these final requirements would address these hazards. Without them, there would be an uncompensated risk to small entities and their employees. Because this is a safety regulation and because of the continued safety hazards, such an alternative represents a disproportionate tolerance of risks to safety, and the Coast Guard could not pursue this option.

B. Small Entities

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

A combined final Regulatory Analysis and Regulatory Flexibility Analysis discussing the impact of this final rule on small entities is available in the docket as indicated in the **ADDRESSES** section of this preamble.

Based on our analysis, we estimate that small entities affected by this final rule are primarily small businesses consisting of CEs, owners and operators of TBCFs, tank barges, and facilities with VCSs. We did not find data to suggest small not-for-profit organizations or small government entities will be directly affected by this final rule. In addition, CEs will incur no additional costs due to this final rule because no additional tasks or equipment are required of them; therefore, they are not analyzed further. We evaluated the impact on small entities for each segment of industry that incur additional costs, since this final rule requires different provisions for owners and operators of TBCFs, tank barges, and facilities with VCSs.

Based on our assessment, 54 percent of tank barge owners affected by this final rule will be considered small by Small Business Administration (SBA) size standards. We estimate 100 percent of these small entities will incur cost impacts that are 1 percent or less than their annual revenues during the highest cost year (implementation year), as well as annually.

We estimate 15 percent of facilities with VCSs will be considered small by SBA size standards. We estimate that almost 86 percent of these small entities will incur annual cost impacts that are 1 percent or less than their annual revenues during the highest cost year (implementation year), as well as annually. Another 14 percent will have cost impacts between 1 to 3 percent of their annual revenue.

We estimate that all of the TBCFs are considered small by SBA size standards. We estimate 60 percent of these TBCFs will incur cost impacts that are potentially greater than 3 percent of their annual revenues during the highest cost year (implementation year). It should be noted that the final rule will codify existing voluntary standards for TBCFs. Consequently, we anticipate the cost impacts to TBCFs may be overestimates.

Consequently, we believe there will be no significant economic impacts for CEs, facilities with VCSs, and owners/operators of tank barges. However, there may be economic impacts for some TBCFs.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this final rule so that they could better evaluate its effects on them and participate in the rulemaking. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Ms. Sara Ju at the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this final rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This final rule requires an amendment to an existing collection of information (1625–0060) as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for

reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Vapor Control Systems for Facilities and Tank Vessels.

OMB Control Number: 1625–0060.

Summary of the Collection of Information: This collection of information ensures industry compliance with safety standards for VCSs. The final rule requires recordkeeping and reporting on the design and use of VCSs. The final rule contains collection of information requirements which include: Certifications, recertifications, periodic operational reviews, approval requests, reviews of operating manuals, failure analyses, operational review letters, and relabeling. The collection of information will aid the Coast Guard and industry in assuring safe practices associated with VCSs.

Need for Information: The Coast Guard needs this information to ensure industry use of VCS requirements are compatible with new Federal and State environmental requirements, to reflect industry advances in VCS technology, and to ensure the safe design and operation of a VCS at a TBCF.

Final Use of Information: The Coast Guard will use this information to determine whether an entity meets the statutory requirements.

Description of the Respondents: The respondents are owners/operators of TBCFs, facilities, and tank vessels with vapor control systems. Reporting and recordkeeping requirements will be completed by facility and vessel owners/operators, PICs, engineers, maintenance workers, and operations managers of affected tank barges, TBCFs, facilities, and CEs.

Number of Respondents: The burden change of this collection of information includes certifications, recertifications, approval requests, reviewing operating manuals, preparing operational review letters, and relabeling. This collection of information applies to various owners and operators of tank barges, facilities, TBCFs, and CEs. We estimate the total number of respondents is 535.

Frequency of Responses: This final rule will vary the number of responses each year by requirement. Some actions are one time only and others are required more frequently.

Burden of Response: This collection of information applies to CEs, tank barge owners/operators and owners/operators of facilities with VCSs. The Coast Guard estimates the total number of respondents is 535. The burden of response varies by collection of information requirement.

Estimate of Total Annual Burden: The total annual burden is estimated to increase as a result of the final rule by 8,041 hours from the previously approved 2,789 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this final rule to OMB for its review of the collection of information.

You are not required to respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard can enforce the collection of information requirements in this final rule, OMB must approve the action.

E. Federalism

A rule has implications for federalism under E.O. 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. In our NPRM, found at 75 FR 65152, we previously stated that this rule had no implications for federalism. We have re-evaluated this rule under E.O. 13132 and under the authorities granted to the Coast Guard to promulgate regulations concerning marine vapor control systems and now conclude that certain provisions of these regulations do have implications for federalism. Our analysis follows.

For those regulations promulgated under the authority of 46 U.S.C. 3306, there are no implications for federalism. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels) are within the fields foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).) Under 46 U.S.C. 3703, Congress directed the Secretary to prescribe equipment regulations for tank vessels necessary to protect against hazards to life, property, and the marine environment, as well as to navigation and vessel safety. Provisions of these regulations, promulgated under the authority of 46 U.S.C. 3703, increase operational safety and the protection of the marine environment by setting the standards for the use, design, and installation of vapor control systems on inspected vessels. Because States may not promulgate rules within this category, there are no implications for federalism under Executive Order 13132.

For those regulations promulgated under the authority of 42 U.S.C. 7511b(f)(2), these provisions do have implications for federalism. It is clear that Congress intended these regulations to have limited preemptive effect over state or local law based on the language found in 42 U.S.C. 7511b(f)(2). In this section, Congress mandated the Coast Guard to issue regulations to ''ensure the safety of the equipment and operations which are to control emissions from the loading and unloading of tank vessels, under section 3703 of title 46 and section 1225 of title 33.'' Congress further explained that any standards for the emission of VOCs established by a ''State or political subdivision regarding emissions from the loading and unloading of tank vessels shall be consistent with the regulations regarding safety of the Department in which the Coast Guard is operating.'' In choosing this language, and specifically including section 1225 of title 33, Congress expressly intended Coast Guard regulations to preempt State or local laws or regulations regarding emission control equipment and procedures for waterfront facilities transferring oil or hazardous materials, but only in so far as a State or local law or regulation conflicts with the federal regulation.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any 1 year. Though this final rule will not result in such an expenditure, we do discuss the effects of this final rule elsewhere in this preamble.

G. Taking of Private Property

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

H. Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

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

J. Tribal Governments

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

K. Energy Effects

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

L. Technical Standards

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

This final rule uses voluntary consensus standards from the following organizations: American Petroleum Institute, American National Standards Institute, ASTM, International Electrotechnical Commission, National Electrical Manufacturers Association, National Fire Protection Association, Oil Companies International Marine Forum, and Underwriters Laboratories, Inc. This final rule also uses technical standards other than voluntary consensus standards from the International Maritime Organization. The sections that reference these standards and the locations of these standards are listed in 33 CFR 154.106 and 46 CFR 39.1005.

M. Environment

We have analyzed this final 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 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This final rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(d) of the Instruction and under section 6(a) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48244, July 23, 2002). This final rule involves regulations concerning vessel operation safety standards and safety equipment. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 154

Alaska, Fire prevention, Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 39

Cargo vessels, Fire prevention, Hazardous materials transportation, Incorporation by reference, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 154, 155, and 156, and 46 CFR parts 35 and 39 as follows:

Title 33

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

■ 1. The authority citation for part 154 is revised to read as follows:

Authority: 33 U.S.C. 1225, 1231, 1321(j)(1)(C), (j)(5), (j)(6), and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; Department of Homeland Security Delegation No. 0170.1. Subpart F is also issued under 33 U.S.C. 2735. Vapor control recovery provisions of Subpart P are also issued under 42 U.S.C. 7511b(f)(2).

■ 2. Revise § 154.106 to read as follows:

§ 154.106 Incorporation by reference.

(a) Certain material is incorporated by reference (IBR) into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126, telephone 202–372–1418 and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Also, it is available from the sources indicated in this section.

(b) American National Standards Institute (ANSI), 25 West 43rd Street, 4th floor, New York, NY 10036.

(1) ANSI B16.5, Steel Pipe Flanges and Flanged Fittings, 1988, IBR approved for §§ 154.500(d), 154.2100(b), 154.2101(d), 154.2202(d), and Appendix A, 7.3 to part 154.

(2) ANSI B16.24, Bronze Pipe Flanges and Flange Fittings Class 150 and 300, 1979, IBR approved for §§ 154.500(d) and 154.2100(b).

(3) ANSI B31.3, Chemical Plant and Petroleum Refinery Piping, 1987 (including B31.3a–1988, B31.3b–1988, and B31.3c–1989 addenda), IBR

approved for §§ 154.510(a) and 154.2100(b).

(c) American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20005.

(1) API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Non-refrigerated and Refrigerated), Third Edition, January 1982 (reaffirmed December 1987)(''API 2000''), IBR approved for §§ 154.2103(j) and 154.2203(e), (k), and (l).

(2) API Recommended Practice 550, Manual on Installation of Refinery Instruments and Control Systems, Part II—Process Stream Analyzers, Section 1—Oxygen Analyzers, Fourth Edition, February 1985 (''API 550''), IBR approved for § 154.2107(f).

(d) American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016.

(1) ASME B16.34 -2004, Valves—Flanged, Threaded, and Welding End, issued September 2, 2005, IBR approved for § 154.2100(b).

(2) [Reserved]

(e) ASTM International (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(1) ASTM F631–93, Standard Guide for Collecting Skimmer Performance Data in Controlled Environments (''ASTM F631''), IBR approved for Appendix C, 6.3 to part 154.

(2) ASTM F715–95, Standard Test Methods for Coated Fabrics Used for Oil Spill Control and Storage (''ASTM F715''), IBR approved for Appendix C, 2.3.1 to part 154.

(3) ASTM F722–82 (Reapproved 2008), Standard Specification for Welded Joints for Shipboard Piping Systems (''ASTM F722''), approved November 1, 2008, IBR approved for Appendix A, 8.4, 8.6 to part 154.

(4) ASTM F1122–87 (Reapproved 1992), Standard Specification for Quick Disconnect Couplings (''ASTM F1122''), IBR approved for § 154.500(d).

(5) ASTM F1155–98, Standard Practice for Selection and Application of Piping System Materials (''ASTM F1155''), IBR approved for Appendix A, 7.1, 8.4 to part 154.

(6) ASTM F1273–91 (Reapproved 2007) Standard Specification for Tank Vent Flame Arresters (''ASTM F1273''), approved December 1, 2007, IBR approved for §§ 154.2001 and 154.2105(j).

(f) International Electrotechnical Commission (IEC), Bureau Central de la Commission Electrotechnique Internationale, 3, rue de Varembé, P.O. Box 131, CH—1211 Geneva 20, Switzerland.

(1) IEC 60309–1 Plugs, Socket-Outlets and Couplers for Industrial Purposes—Part 1: General Requirements, Edition 4.2 2012–06, IBR approved for § 154.2102(b).

(2) IEC 60309–2 Plugs, Socket-Outlets and Couplers for Industrial Purposes—Part 2: Dimensional Interchangeability Requirements for Pin and Contact-tube Accessories, Edition 4.2 2012–05, IBR approved for § 154.2102(b).

(g) National Electrical Manufacturers Association (NEMA), 1300 North 17th Street, Suite 1752, Rosslyn, VA 22209.

(1) ANSI NEMA WD–6—Wiring Devices, Dimensional Requirements, 1988 (''NEMA WD–6''), IBR approved for § 154.2102(a).

(2) [Reserved]

(h) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169–7471.

(1) NFPA 51B, Standard for Fire Prevention in Use of Cutting and Welding Processes, 1994, IBR approved for § 154.735(l).

(2) NFPA 70, National Electrical Code, 1987 (''NFPA 70 (1987)''), IBR approved for § 154.735(q).

(3) NFPA 70, National Electrical Code, 2011 (''NFPA 70 (2011)''), IBR approved for §§ 154.2100(c) and 154.2102(a).

(i) Oil Companies International Marine Forum (OCIMF), 29 Queen Anne's Gate, London, SW1H 9BU, England.

(1) International Safety Guide for Oil Tankers and Terminals, Fifth Ed., 2006 (''ISGOTT''), IBR approved for §§ 154.735(s), 154.2101(g), and 154.2203(m).

(2) [Reserved]

(j) Underwriters Laboratories, Inc. (UL), 333 Pfingsten Road, Northbrook, IL 60062.

(1) UL 525 Standard for Flame Arresters, 8th Edition, May 9, 2008, IBR approved for §§ 154.2001 and 154.2105(j).

(2) [Reserved]

■ 3. In § 154.310, revise paragraph (b) to read as follows:

§ 154.310 Operations manual: Contents.

* * * * *

(b)(1) The operations manual must contain a description of the facility's vapor control system (VCS), if the facility—

(i) Collects vapor emitted from vessel cargo tanks for recovery, destruction, or dispersion; or

(ii) Balances or transfers vapor to or from vessel cargo tanks.

(2) The VCS description required by paragraph (b)(1) of this section must include a line diagram or simplified piping and instrumentation diagram (P&ID) of the facility's VCS piping, including the location of each valve, control device, pressure-vacuum relief valve, pressure indicator, flame arrester, and detonation arrester;

(3) The VCS description required by paragraph (b)(1) of this section must describe the design and operation of its—

(i) Vapor line connection;

(ii) Startup and shutdown procedures;

(iii) Steady-state operating procedures;

(iv) Provisions for dealing with pyrophoric sulfide (for facilities which handle inerted vapors of cargoes containing sulfur);

(v) Alarms and shutdown devices; and

(vi) Pre-transfer equipment inspection requirements.

(4) The VCS description required by paragraph (b)(1) of this section must include all test procedures and a checklist for use during the testing of the VCS required by 33 CFR 156.170(g). The test procedures must specify—

(i) All tests required for initial certification under 33 CFR 154.2022(d);

(ii) All components that are to be tested; and

(iii) Procedures for testing each component.

(5) The VCS description required by paragraph (b)(1) of this section must include—

(i) A list of all cargoes the VCS is approved to control; and

(ii) Copies of any Coast Guard letters exempting the VCS from regulatory requirements.

(6) The VCS description required by paragraph (b)(1) of this section must include detailed operating instructions for a cargo line clearance system as described in 33 CFR 154.2104, if such a system is used by a facility;

(7) The VCS description required by paragraph (b)(1) of this section must include the following for a tank barge cleaning facility:

(i) A physical description of the facility and facility plan showing mooring areas, locations where cleaning operations are conducted, control stations, and locations of safety equipment;

(ii) The sizes, types, and number of tank barges from which the facility can conduct cleaning operations simultaneously; and

(iii) The minimum number of persons required to be on duty during cleaning operations and the duties of each.

* * * * *

■ 4. Revise § 154.500 to read as follows:

§ 154.500 Hose assemblies.

Each hose assembly used for transferring oil or hazardous material must meet the following requirements:

(a) The minimum design burst pressure for each hose assembly must be at least four times the sum of the pressure of the relief valve setting (or four times the maximum pump pressure when no relief valve is installed) plus the static head pressure of the transfer system, at the point where the hose is installed.

(b) The maximum allowable working pressure (MAWP) for each hose assembly must be more than the sum of the pressure of the relief valve setting (or the maximum pump pressure when no relief valve is installed) plus the static head pressure of the transfer system, at the point where the hose is installed.

(c) Each nonmetallic hose must be usable for oil or hazardous material service.

(d) Each hose assembly must either have—

(1) Full threaded connections;

(2) Flanges that meet ANSI B16.5 or ANSI B16.24 (both incorporated by reference, see 33 CFR 154.106); or

(3) Quick-disconnect couplings that meet ASTM F1122 (incorporated by reference, see 33 CFR 154.106).

(e) Each hose must be marked with one of the following:

(1) The name of each product for which the hose may be used; or

(2) For oil products, the words ''OIL SERVICE''; or

(3) For hazardous materials, the words ''HAZMAT SERVICE—SEE LIST'' followed immediately by a letter, number or other symbol that corresponds to a list or chart contained in the facility's operations manual or the vessel's transfer procedure documents which identifies the products that may be transferred through a hose bearing that symbol.

(f) Each hose also must be marked with the following, except that the information required by paragraphs (f)(2) and (3) of this section need not be marked on the hose if it is recorded in the hose records of the vessel or facility, and the hose is marked to identify it with that information:

(1) Maximum allowable working pressure;

(2) Date of manufacture; and

(3) Date of the latest test required by 33 CFR 156.170.

(g) The hose burst pressure and the pressure used for the test required by 33 CFR 156.170 must not be marked on the hose and must be recorded elsewhere at the facility as described in paragraph (f) of this section.

(h) Each hose used to transfer fuel to a vessel that has a fill pipe for which containment cannot practically be provided must be equipped with an automatic back pressure shutoff nozzle.

■ 5. In § 154.735—

■ a. In paragraph (q), remove the term ''NFPA 70'' and add, in its place, the words ''NFPA 70 (1987) (incorporated by reference, see 33 CFR 154.106)''; and

■ b. Revise paragraph (s) to read as follows:

§ 154.735 Safety requirements.

* * * * *

(s) Tank-cleaning or gas-freeing operations conducted by the facility on vessels carrying oil residues or mixtures must be conducted in accordance with sections 11.3 and 11.4 of OCIMF ISGOTT (incorporated by reference, see 33 CFR 154.106), except that—

(1) Prohibitions in ISGOTT against the use of recirculated wash water do not apply if the wash water is first processed to remove product residues;

(2) The provisions in ISGOTT section 11.3.6.10 that removal of sludge, scale, and sediment do not apply if personnel use breathing apparatuses which protect them from the tank atmosphere; and

(3) Upon the request of the facility owner or operator in accordance with 33 CFR 154.107, the COTP may approve the use of alternate standards to ISGOTT if the COTP determines that the alternative standards provide an equal level of protection to the ISGOTT standards.

* * * * *

§ 154.740 [Amended]

■ 6. In § 154.740—

■ a. In paragraph (g), remove the words ''subpart E'' and replace them with the words ''subpart P''; and

■ b. In paragraph (i), remove the words ''§ 154.804 of this part'' and add, in their place, the citation ''33 CFR 154.2020 through 154.2025''.

Subpart E [Removed]

■ 7. Remove subpart E, consisting of §§ 154.800 through 154.850.

Subparts J through O [Reserved]

■ 8. Add reserved subparts J through O.

■ 9. Add subpart P to read as follows:

Subpart P—Marine Vapor Control Systems

General

Sec.

154.2000 Applicability.
154.2001 Definitions.

Certifying Entities

154.2010 Qualifications for acceptance as a certifying entity.
154.2011 Application for acceptance as a certifying entity.

Certification, Recertification, and Operational Review

154.2020 Certification and recertification—owner/operator responsibilities.
154.2021 Operational review—owner/operator responsibilities.
154.2022 Certification, recertification, or operational review—certifying entity responsibilities, generally.
154.2023 *Recertification—certifying entity responsibilities, generally.*
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Personnel

154.2030 Transfer facilities.
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Transfer Facilities—VCS Design and Installation

154.2100 Vapor control system, general.
154.2101 Requirements for facility vapor connections.
154.2102 Facility requirements for vessel liquid overfill protection.
154.2103 Facility requirements for vessel vapor overpressure and vacuum protection.
154.2104 Pigging system.
154.2105 Fire, explosion, and detonation protection.
154.2106 Detonation arresters installation.
154.2107 Inerting, enriching, and diluting systems.
154.2108 Vapor-moving devices.
154.2109 Vapor recovery and vapor destruction units.
154.2110 Vapor balancing requirements.
154.2111 Vapor control system connected to a facility's main vapor control system.
154.2112 Vapors with potential to polymerize or freeze—Special requirements.
154.2113 Alkylene oxides—Special requirements.

Transfer Facilities—Operations

154.2150 General requirements.

Alternative Analyzer and Pressure Sensor Reliability Testing

154.2180 Alternative testing program—Generally.
154.2181 Alternative testing program—Test requirements.

Tank Barge Cleaning Facilities—VCS Design and Installation

154.2200 Applicable transfer facility design and installation requirements.
154.2201 Vapor control system—General requirements.
154.2202 Vapor line connections.
154.2203 Facility requirements for barge vapor overpressure and vacuum protection.
154.2204 Fire, explosion, and detonation protection.

Tank Barge Cleaning Facilities—Operations

154.2250 General requirements.

General

§ 154.2000 Applicability.

(a) Except as specified by paragraphs (b) through (g) of this section, this subpart applies to—

(1) Each facility that controls vapors emitted to or from vessel cargo tanks;

(2) A vessel, other than a tank vessel, that has a vapor processing unit located onboard for recovery, destruction, or dispersion of vapors from a tank vessel's cargo tanks;

(3) Certifying entities that review, inspect, test, and certificate facility vapor control systems (VCSs); or

(4) A facility VCS that receives cargo vapor from a vessel when the VCS is connected to a facility's main VCS that serves plant processing areas, such as tank storage areas or tank truck or railcar loading areas, unrelated to tank vessel operations. The requirements of this subpart apply between the vessel vapor connection and the point where the VCS connects to the facility's main VCS.

(b) Each facility VCS that began operating on or after July 23, 1990, and that is certified as in compliance with 33 CFR part 154, subpart E on August 15, 2013, or each existing tank barge cleaning facility VCS that meets the safety Standards of Navigation and Vessel Inspection Circular No. 1–96, must comply with 33 CFR part 154, subpart P by August 15, 2016. Certifications, approvals of alternatives, and grants of exemption in effect on August 15, 2013, remain in effect after that date and as specified in the certification, approval, or grant.

(c) A facility with a Coast Guard-approved VCS operating prior to July 23, 1990, must comply with 33 CFR 154.2150 but otherwise need not comply with this subpart so long as it does not have any design or configuration alterations after its approval and receives cargo vapor only from the specific vessels for which it was originally approved.

(d) A facility that uses a vapor balancing system to transfer vapor from a railcar or a tank truck to a vessel cargo tank while offloading the vessel must obtain approval in writing from the Commandant and make that approval available for Coast Guard inspection upon request.

(e) A facility that transfers vapor from a facility tank to a cargo tank of a vessel which is not offloading cargo must obtain approval in writing from the Commandant and make that approval available for Coast Guard inspection upon request.

(f) A tank vessel that has a permanent or portable vapor processing unit located onboard must comply with applicable requirements of this subpart and 46 CFR part 39.

(g) This subpart does not apply to the collection of vapors of liquefied flammable gases as defined in 46 CFR 30.10–39.

(h) This subpart does not require a facility or a vessel to control vapor, or a vessel to take away vapor from facilities; however, if a facility operates a VCS to control vapor to or from vessels, the facility must comply with the requirements of this subpart.

(i) In this subpart, regulatory measurements, whether in the metric or English system, are sometimes followed by approximate equivalent measurements in parentheses, which are given solely for the reader's convenience. Regulatory compliance with the regulatory measurement is required.

§ 154.2001 Definitions.

As used in this subpart only:

Ambient temperature means the temperature of the environment in which an experiment is conducted or in which any physical or chemical event occurs.

Barge cargo connection means the point in a barge's cargo system where it connects with the hose assembly or loading arm used for cargo transfer.

Barge vapor connection means the point in a barge's piping system where it connects to a vapor collection hose or arm. This may be the same as the barge's cargo connection as it controls vapors during barge cargo tank-cleaning operations.

Base loading means a method of inerting, enriching, or diluting such that sufficient inerting, enriching, or diluting gas, for the worst concentration of vapor coming from the vessel, is injected into the vapor line during the entire loading operation so that the vapor mixture is inerted, enriched, or diluted at the maximum loading rate. For inerting and enriching systems, ''worst concentration'' means the vapor stream contains no cargo vapor. For a diluting system, ''worst concentration'' means the vapor stream is saturated with cargo vapor.

Captain of the Port (COTP) means the Coast Guard Captain of the Port as defined in 33 CFR 154.105.

Certifying entity means an individual or organization accepted by the Commandant to review plans, data, and calculations for vapor control system designs and to conduct inspections and observe tests of vapor control system installations.

Cleaning operation means any stripping, gas-freeing, or tank-washing operation of a barge's cargo tanks conducted at a cleaning facility.

Combustible liquid means any liquid that has a flashpoint above 80 °F (as determined from an open-cup tester, as used to test burning oils) and includes Grade D and Grade E combustible liquids defined in 46 CFR 30.10–15.

Commandant means Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126.

Detonation arrester means a device that is acceptable to the Commandant and includes a detonation arrester that is designed, built, and tested in accordance with Appendix A of this part or by another method acceptable to the Commandant for arresting flames and detonations.

Diluting means introducing a non-flammable, non-combustible, and non-reactive gas with the objective of reducing the hydrocarbon content of a vapor mixture to below the lower flammable limit so that it will not burn.

Drip leg means a section of piping that extends below piping grade to collect liquid passing through the vapor line and that has a diameter no more than the diameter of the pipe in which it is installed.

Elevated temperature means the temperature that exceeds 70 percent of the auto-ignition temperature, in degrees Celsius, of the vapors being collected.

Enriching means introducing a flammable gas with the objective of raising the hydrocarbon content of a vapor mixture above the upper flammable limit so that it will not burn.

Existing vapor control system means a vapor control system that satisfies the requirements of 33 CFR part 154, subpart E as certified by a certifying entity, or a tank barge cleaning facility vapor control system that meets the safety Standards of Navigation and Vessel Inspection Circular No. 1–96 as certified by a certifying entity or approved by the U.S. Coast Guard, and that began operating prior to August 15, 2013.

Facility main vapor control system means a vapor control system that primarily serves facility processing areas unrelated to tank vessel operations, such as the plant process, tank storage areas, or tank truck or railcar loading areas.

Facility operations manual means the manual required by 33 CFR 154.300, the contents of which are described in 33 CFR 154.310.

Facility vapor connection means the point in a facility's vapor collection system where it connects to a vapor collection hose or the base of a vapor

collection arm and is located at the dock as close as possible to the tank vessel to minimize the length of the flexible vapor collection hose, thus reducing the hazards associated with the hose.

Fail-safe means a piece of equipment or instrument that is designed such that if any element should fail, it would go to a safe condition.

Fixed stripping line means a pipe extending to the low point of each cargo tank, welded through the deck and terminating above the deck with a valve plugged at the open end.

Flame arrester means a device that is designed, built, and tested in accordance with ASTM F 1273 or UL 525 (both incorporated by reference, see 33 CFR 154.106) for use in end-of-line applications for arresting flames.

Flame screen means a fitted single screen of corrosion-resistant wire of at least 30-by-30 mesh, or two fitted screens, both of corrosion-resistant wire, of at least 20-by-20 mesh, spaced apart not fewer than 12.7 millimeters (0.5 inch) or more than 38.1 millimeters (1.5 inches).

Flammable liquid means any liquid that gives off flammable vapors (as determined by flashpoint from an open-cup tester, as used to test burning oils) at or below a temperature of 80°F, and includes Grades A, B, and C flammable liquids defined in 46 CFR 30.10–22.

Fluid displacement system means a system that removes vapors from a barge's cargo tanks during gas freeing through the addition of an inert gas or other medium into the cargo tank.

Fluid injection connection means the point in a fluid displacement system at which the fixed piping or hose that supplies the inert gas or other medium connects to a barge's cargo tanks or fixed piping system.

Gas freeing means the removal of vapors from a tank barge.

Grade A, B, C, D, or E means any Grade A, B, or C flammable liquid defined in 46 CFR 30.10–22 or any Grade D or E combustible liquid defined in 46 CFR 30.10–15.

High flash point cargoes means Grade E cargoes and cargoes having a closed-cup flash point higher than 60°C (140°F), carried at a temperature no higher than 5°C (9°F) below their flash points.

Inert condition or i*nerted* means the oxygen content of the vapor space in a tank vessel's cargo tank is reduced to 60 percent or less by volume of the vapor's minimum oxygen concentration for combustion, or to 8 percent by volume or less for the vapor of crude oil, gasoline blends, or benzene, by addition of an inert gas, in accordance with the inert gas requirements of 46 CFR 32.53 or 46 CFR 153.500.

Inerting means introducing an inert gas into a tank and/or piping system to lower the oxygen content of a vapor mixture.

Line clearing means the transfer of residual cargo from a cargo loading line toward a cargo tank by using compressed inert gas.

Liquid knockout vessel means a device, other than a drip leg, used to separate liquid from vapor.

Maximum allowable gas-freeing rate means the maximum volumetric rate at which a barge may be gas-freed during cleaning operations.

Maximum allowable stripping rate means the maximum volumetric rate at which a barge may be stripped during cleaning operations prior to the opening of any hatch and/or fitting in the cargo tank being stripped.

Maximum allowable transfer rate means the maximum volumetric rate at which a vessel may receive cargo or ballast.

Minimum oxygen concentration for combustion or *MOCC* means the lowest level of oxygen in a vapor or a vapor mixture that will support combustion.

Multi-breasted barge-loading operations are those in which barges load side by side with the outboard barge's vapor collection system connected to a facility vapor connection through the inboard barge, as opposed to single-breasted operations involving a single barge, and may also be known as ''two barge, double-up'' loading operations.

Multiple facility vapor collection system junction means the point in the vapor collection system where two or more branch lines originating from separate facility vapor connections are connected.

New vapor control system means a vapor control system that is not an existing vapor control system.

Padding means introducing into a tank and associated piping system with an inert gas or liquid which separates the cargo from air, and maintaining the condition.

Partially inerted means the oxygen content of the vapor space in a tank is reduced to below what is normally present in the atmosphere by the addition of an inert gas such as nitrogen or carbon dioxide, but not to the concentration that meets the definition of ''inert condition or inerted'' in this section.

Pig means any device designed to maintain a tight seal within a cargo line while being propelled by compressed inert gas towards a cargo tank, for the purpose of transferring residual cargo from the cargo loading line to the cargo tank.

Pigging means the transfer of residual cargo from a cargo loading line by using compressed inert gas to propel a ''pig'' through the line toward a cargo tank.

Pre-transfer conference means the conference required by 33 CFR 156.120(w).

Purging means introducing an inert gas into a tank and/or piping system to further reduce the existing hydrocarbon and/or oxygen content to a level below which combustion cannot be supported if air is subsequently introduced into the tank or piping system.

Stripping means the removal, to the maximum extent practicable, of cargo residue remaining in the barge's cargo tanks and associated fixed piping system after cargo transfer or during cleaning operations.

Tank barge cleaning facility or *TBCF* means a facility used or capable of being used to conduct cleaning operations on a tank barge.

Transfer facility means a facility as defined in 33 CFR 154.105, excluding tank barge cleaning or stripping facilities.

Vacuum displacement system means a system that removes vapors from a barge's cargo tanks during gas freeing by sweeping air through the cargo tank hatch openings.

Vapor balancing means the transfer of vapor displaced by incoming cargo from the tank of a vessel or facility receiving cargo into a tank of the vessel or facility delivering cargo via facility vapor collection system.

Vapor collection system means an arrangement of piping and hoses used to collect vapor emitted to or from a vessel's cargo tanks and to transport the vapor to a vapor processing unit or a tank.

Vapor control system or *VCS* means an arrangement of piping and equipment used to control vapor emissions collected to or from a vessel and includes the vapor collection system and the vapor processing unit or a tank.

Vapor destruction unit means a vapor processing unit that destroys cargo vapor by a thermal destruction method.

Vapor dispersion unit means a vapor processing unit that releases cargo vapor into the atmosphere through a venting system not located on the tank vessel.

Vapor processing unit means the components of a vapor control system that recover, destroy, or disperse vapor collected from a vessel.

Vapor recovery unit means a vapor processing unit that recovers cargo vapor by nondestructive means.

Vessel vapor connection means the point in a vessel's fixed vapor collection system where it connects to a vapor collection hose or arm.

Certifying Entities

§ 154.2010 Qualifications for acceptance as a certifying entity.

To qualify for acceptance as a vapor control system (VCS) certifying entity, the entity must demonstrate to the satisfaction of the Commandant that it possesses the following minimum qualifications:

(a) The ability to review and evaluate design drawings and failure analyses for compliance to this subpart;

(b) The knowledge of the applicable regulations of this subpart, including the standards incorporated by reference;

(c) The ability to monitor and evaluate test procedures and results for compliance with the operational requirements of this subpart;

(d) The ability to perform inspections and observe tests of bulk liquid cargo-handling systems;

(e) The applicant must not be controlled by an owner or operator of a vessel or facility engaged in controlling vapor emissions;

(f) The applicant must not be dependent upon Coast Guard acceptance under this section to remain in business; and

(g) The person in charge of VCS certification must be a licensed professional engineer in a U.S. State or territory by August 15, 2014.

§ 154.2011 Application for acceptance as a certifying entity.

(a) An applicant seeking Coast Guard acceptance as a certifying entity of vapor control systems (VCSs) must submit a signed, written application to the Commandant containing the information described in paragraph (b) of this section. The applicant's signature certifies that the information in the application is true and that the applicant is not dependent upon Coast Guard acceptance under this section to remain in business and constitutes consent for the Coast Guard to verify any information contained in the application, through personal examination of persons named in the application, or otherwise. If an applicant knowingly and willfully provides any false statement or misrepresentation, or conceals a material fact in the application, the application may be denied or terminated, and the applicant may be subject to prosecution under the provisions of 18 U.S.C. 1001.

(b) An application must include the following general information:

(1) The name and address of the applicant, including subsidiaries and divisions if applicable;

(2) A description of the experience and qualifications of any person who would review or test systems on behalf of the applicant, showing that the person is familiar with or otherwise qualified to implement Coast Guard VCS regulations; and

(3) A letter from a facility owner or operator stating his or her intent to use the services of the applicant to certify VCS installations.

(c) The Commandant reviews each application and either issues a letter of acceptance as a certifying entity to the applicant, or notifies the applicant that it is not accepted, and maintains a list of currently accepted certifying entities that is available to the public at *http://homeport.uscg.mil*.

(d) The acceptance of a certifying entity may be terminated by the Commandant for failure to review, inspect, or test a system properly in accordance with this subpart.

(e) A certifying entity may not certify a facility VCS if that certifying entity was involved in the design or installation of the system. ''Design or installation'' includes, but is not limited to—

(1) Performing system design calculations;

(2) Providing chemical data;

(3) Developing plans, specifications, and drawings;

(4) Conducting failure analysis; and

(5) Installing systems or components.

(f) A certifying entity may not recertify a VCS design, configuration, or operational change if it was involved in that change, and may not conduct an operational review of a VCS if it has been involved in the design, installation, or operation of the VCS.

(g) A certifying entity may not conduct the failure analysis of a facility VCS it is certifying. The certifying entity may only point out shortcomings shown by the failure analysis and may not propose changes to correct the shortcomings.

(h) A certifying entity may not certify the VCS of any vessel or facility owner or operator that owns or has a controlling interest in the certifying entity.

Certification, Recertification, and Operational Review

§ 154.2020 Certification and recertification—owner/operator responsibilities.

(a) Prior to operating, a new vapor control system (VCS) installation must be certified under 33 CFR 154.2023 by a certifying entity as meeting the requirements of this subpart.

(b) A certified VCS or a Coast Guard-approved VCS that was operating prior to July 23, 1990 must be recertified by a certifying entity under 33 CFR 154.2023 before it can—

(1) Control vapors other than those for which it was originally certified;

(2) Receive vapors from vessels other than those for which it was approved, if the VCS was in operation prior to July 23, 1990;

(3) Operate under any changed design or configuration;

(4) Operate as part of multi-breasted barge-loading operations, if the VCS was not originally approved or certified for such operations; or

(5) Be connected to a tank vessel if a pigging system is used to clear cargo in the cargo line back to the tank vessel.

(c) For a transfer facility, prior to operating a VCS to control vapor from a tank vessel during cargo loading line pigging to clear cargo in the cargo loading line back to the tank vessel, the cargo loading line pigging system must be reviewed by a certifying entity as meeting the requirements of 33 CFR 154.2104.

(d) To apply for certification, the owner or operator of a facility VCS must submit plans, calculations, specifications, and other related information, including a qualitative failure analysis, to the certifying entity. Suggested, but not mandatory, guidance for preparing a qualitative failure analysis can be found in the American Institute of Chemical Engineers publication ''Guidelines for Hazard Evaluation Procedures,'' and in Military Standard MIL–STD–882B for a quantitative failure analysis. For assistance in locating those publications, contact the Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126, telephone 202–372–1418 or via email at *Hazmatstandards@uscg.mil*. The analysis must demonstrate that—

(1) The VCS can operate continuously and safely while controlling cargo vapors to or from tankships or tank barges over the full range of transfer rates expected at the facility;

(2) The VCS has the proper alarms and automatic shutdown systems required by this subpart to prevent an unsafe operation;

(3) The VCS has sufficient automatic or passive devices to minimize damage to personnel, property, and the environment if an accident were to occur;

(4) If a quantitative failure analysis is also conducted, the level of safety

attained is at least one order of magnitude greater than that calculated for operating without a VCS; and

(5) If a facility uses a cargo line pigging system to clear cargo in the cargo line back to the tank vessel with the VCS connected, the qualitative failure analysis must demonstrate that the cargo line pigging system has at least the same levels of safety required by paragraphs (d)(1), (2), and (3) of this section to prevent overpressure of the vessel's cargo tanks and account for the probability that the pig is destroyed during line-pigging operations.

(e) The VCS owner or operator must maintain at the facility—

(1) A copy of VCS design documentation, including plans, drawings, calculations, and specifications for the VCS;

(2) The facility operations manual, including the list of cargoes that the facility is approved to vapor control;

(3) Any certification or recertification letter issued under 33 CFR 154.2023; and

(4) Other records as required by 33 CFR 154.740.

§ 154.2021 Operational review—owner/operator responsibilities.

(a) Each facility vapor control system (VCS) must undergo an operational review by a certifying entity within five years of its initial certification or last operational review, to ensure its proper operation and maintenance.

(b) The VCS owner or operator must coordinate with the certifying entity and provide the entity with all necessary documentation and records to conduct the operational review.

(c) The VCS owner or operator must notify the Captain of the Port (COTP) of a scheduled operational review. The COTP, at his or her discretion, may observe the operational review.

(d) The VCS owner or operator must maintain, at the facility, the latest operational review letter issued under 33 CFR 154.2023.

§ 154.2022 Certification, recertification, or operational review—certifying entity responsibilities, generally.

Before the initial certification of a facility vapor control system (VCS), the certifying entity must perform each of the tasks specified in this section.

(a) Review all VCS design documentation, including plans, drawings, calculations, specifications, and failure analysis, to ensure that the VCS design meets the requirements of this subpart.

(b) Conduct an initial onsite inspection to ensure that the VCS installation conforms to the VCS plans, drawings, and specifications reviewed.

(c) Conduct onsite reviews and observe tests to ensure the VCS's proper operation in accordance with its design and compliance with applicable regulations and the facility's operations manual and to ensure that—

(1) Each alarm and shutdown shown on the piping and instrumentation diagrams (P&IDs) and reviewed in the hazard analysis as part of the system responds properly, through simulation of emergency conditions to activate the alarm or shutdown;

(2) Maximum vacuum cannot be exceeded at the maximum operating conditions of any vapor-moving device, through testing of the vacuum breaker;

(3) VCS shutdown occurs correctly, through the startup of the VCS and tripping of each shutdown loop while the VCS is not connected to a vessel;

(4) VCS startup, normal operation, and shutdown occur properly, through observing the relevant portions of a test loading or unloading of one vessel, or a test cleaning of one tank barge at a tank barge cleaning facility; and that

(5) The automatic liquid block valve successfully stops flow of liquid to the vessel during a system shutdown, through observing the relevant portions of a test loading or test cargo tank cleaning.

(d) Review, for each cargo vapor the VCS will control, the cargo's chemical data and the VCS design to ensure that—

(1) Each vapor-controlled chemical is either specified in writing by the Commandant or listed in 46 CFR 30.25–1, 46 CFR 151.05, or Table 1 or Table 2 of 46 CFR 153;

(2) Each chemical's maximum experimental safe gap, minimum oxygen concentration for combustion (MOCC), and upper and lower limits of flammability have been correctly determined (this may but need not be in compliance with Coast Guard guidance available at *http://homeport.uscg.mil*);

(3) Vapor properties and characteristics are addressed, including freezing point, polymerization potential, solubility, and cargo compatibility;

(4) The flash point for any cargo with a closed-cup flash point of 60°C (140°F) or higher is properly determined;

(5) The cargo's vapor growth rate has been correctly determined and the VCS complies with 33 CFR 154.2103(a) and (b) or 33 CFR 154.2203(a) or (b);

(6) Each detonation arrester used in the VCS is correct for each chemical's maximum experimental safe gap;

(7) Setpoints for each oxygen analyzer used in the VCS are correct for each chemical's MOCC;

(8) Setpoints for each oxygen or hydrocarbon analyzer used in the VCS are correct for each chemical's upper or lower flammability limit;

(9) The inerting, enriching, or dilution system used is adequate;

(10) Each vapor-controlled chemical is compatible with all VCS components and with other chemicals and with inerting, enriching, or diluting gases added to the VCS per 46 CFR part 150, Table I and Table II;

(11) The VCS's mechanical equipment and system are suitable;

(12) The VCS's vapor recovery or destruction unit has adequate capacity and is safe for each chemical;

(13) Any calculation to determine the duration of purging required by 33 CFR 154.2150(p) is correct; and that

(14) The VCS's failure analysis addresses any hazards presented with each chemical.

(e) Review the VCS prior to certifying it to control vapors from barge cargo tanks during multi-breasted barge loading operations, to confirm that—

(1) The overfill control system required by 33 CFR 154.2102 will process a liquid overfill condition within any one cargo tank on each barge;

(2) If multi-breasted loading is conducted using more than one liquid transfer hose from the shore facility, the facility is capable of activating the emergency shutdown system required by 33 CFR 154.550, and can automatically stop the cargo flow to each transfer hose simultaneously, in the event an upset condition occurs that closes the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a);

(3) The facility operations manual has been modified to include the procedures for multi-breasted barge-loading operations; and

(4) The facility operations manual describes how to make proper connections, on the facility side, between the alarm and shutdown systems of the VCS and of each barge being loaded.

(f) Review a cargo line pigging system that will be used to clear cargo in the cargo line back to a tank vessel for compliance with 33 CFR 154.2104.

(g) Review the facility operations manual for compliance with 33 CFR 154.310(b).

(h) Review any test program used for instrument testing and calibration for compliance with 33 CFR 154.2180 and 33 CFR 154.2181.

(i) Review the facility's VCS training program for compliance with 33 CFR 154.2030 and 154.2031.

§ 154.2023 Recertification—certifying entity responsibilities, generally.

(a) Before the recertification of a facility vapor control system (VCS) the certifying entity must perform the reviews specified in 33 CFR 154.2022, except paragraphs (a) through (c).

(b) The certifying entity must review, inspect, and observe tests of a facility VCS's design or configuration alteration before recertifying a VCS that was certified or approved for operation prior to July 23, 1990, to ensure that the altered system complies with applicable regulations. In general, the certifying entity should perform the review, inspection, and observe tests as specified in 33 CFR 154.2022(a) through (c). However, depending on the extent of the alteration, the review, inspection, or test observing may not need to be as comprehensive as those for an initial certification.

§ 154.2024 Operational review—certifying entity responsibilities, generally.

In conducting an operational review the certifying entity must ensure that the vapor control system (VCS) is properly operating and maintained by performing the tasks specified in this section.

(a) Ensure the completeness, currency, and accuracy of the facility operations manual, training plans, and VCS test procedures.

(b) Confirm through training records that the current listed available facility persons in charge have been trained in compliance with 33 CFR 154.2030 or 154.2031.

(c) Confirm that recordkeeping and testing and inspection comply with 33 CFR 154.740 and 156.170.

(d) Verify that there has been no change to the VCS equipment or instrumentation since the last certification, recertification, or operational review to ensure that the certification letter is current.

(e) Verify proper marking, labeling, maintenance, and operation of VCS components, through visual inspection.

(f) Confirm that the originally certified liquid cargo transfer rate can still be attained in compliance with 33 CFR 154.2103 and 154.2107.

(g) Ensure that cargo transfer or tank-cleaning barge operational procedures are properly followed and the VCS operates properly, through observation of the initial stages of transfer or cleaning, including 24-hour pre-transfer tests required by 33 CFR 154.2150(b) or 33 CFR 154.2250(b), the pre-transfer conference, and initial system startup procedures.

§ 154.2025 Certification, recertification, or operational review—certifying entity documentation.

(a) If the certifying entity is satisfied that the facility's vapor control system (VCS) has successfully undergone the reviews, inspections, and tests required by 33 CFR 154.2022(a) for certification or recertification, and that the VCS will operate properly and safely, the certifying entity must certify or recertify the VCS by issuing a certification letter to the facility owner or operator, and by sending copies of the letter to the Captain of the Port (COTP) and the Commandant. The certification letter must refer by date to the certifying entity's letter of acceptance issued under 33 CFR 154.2011(c), and must—

(1) State that the facility complies with applicable regulations and with its operations manual, and list any exemptions to the applicable regulations that have been approved by the Coast Guard;

(2) Report on all reviews, inspections, and tests undergone by the VCS in accordance with 33 CFR 154.2022(a);

(3) List all plans and drawings that were reviewed by the certifying entity;

(4) State if the VCS may control vapors from tank barges that are required to have a shore-side, explosion-proof receptacle or an overfill control system required by 33 CFR 154.2102(a) and (b); and

(5) List all cargoes that the certifying entity approves for control by the VCS.

(b) If the certifying entity is satisfied that the facility's VCS has successfully undergone the operational review required by 33 CFR 154.2022(b), the certifying entity must issue an operational review letter to the facility owner or operator, and send copies of the letter to the COTP and the Commandant. The operational review letter must—

(1) List each item reviewed and inspected;

(2) Describe the transfer or cleaning operation observed; and

(3) Summarize the review's results.

Personnel

§ 154.2030 Transfer facilities.

(a) Personnel in charge of a transfer operation using a vapor control system (VCS) must have completed a training program covering the particular VCS installed at the facility. As part of the training program, personnel must be able to demonstrate, through drills and display of practical knowledge, the proper VCS operational procedures for normal and emergency conditions. The training program must cover the following subjects:

(1) Purpose of the VCS;

(2) Principles of the VCS;

(3) Components of the VCS;

(4) Hazards associated with the VCS;

(5) Coast Guard regulations in this subpart;

(6) Operating procedures, including:

(i) Transfer, testing, and inspection requirements;

(ii) Pre-transfer procedures;

(iii) Chemicals approved for collection;

(iv) Material safety data sheet review;

(v) Connection procedures;

(vi) Startup procedures;

(vii) Normal operating conditions and how to handle deviations from normal conditions;

(viii) Normal shutdown procedures; and

(ix) Operating procedures for cargo line clearing if a cargo line clearance system is installed in accordance with 33 CFR 154.2104; and

(7) Emergency procedures.

(b) Personnel overseeing VCS maintenance must be familiar with—

(1) Inspection of detonation arresters; and

(2) Procedures for equipment and instrumentation testing required by 33 CFR 156.170(g).

(c) Facility personnel in charge of a transfer operation using a VCS must be designated and qualified in compliance with 33 CFR 154.710 and the facility must maintain the training documentation required by 33 CFR 154.740(b).

§ 154.2031 Tank barge cleaning facilities.

(a) In addition to complying with 33 CFR 154.2030, a tank barge cleaning facility (TBCF) person-in-charge (PIC) of a barge cargo tank-cleaning operation that uses a vapor control system (VCS) must complete a training program covering the particular systems installed at the facility and on the barge. As part of the training program, personnel must be able to demonstrate, through drills and practical knowledge, the proper VCS operation procedures for normal and emergency conditions. The training program must—

(1) Satisfy the requirements of 33 CFR 154.2030(a)(1) through (7), except (a)(6)(i), (ii), and (ix), and 33 CFR 154.2030(b) and cover—

(i) Purpose, principles, components, and hazards associated with stripping and gas-freeing;

(ii) Special hazards associated with the accumulation and discharge of static electricity; and

(iii) Operating procedures, including cleaning, testing, and inspection requirements; pre-cleaning procedures; and safeguards to prevent static electricity discharge.

(b) In addition to the requirements contained in 33 CFR 154.710, no person may serve, and the facility operator may not use the services of anyone, as a facility PIC of a cleaning operation unless the person has been properly trained and certified by the facility with a minimum of 60 hours of experience in cleaning operations.

Transfer Facilities—VCS Design and Installation

§ 154.2100 Vapor control system, general.

(a) Vapor control system (VCS) design and installation must eliminate potential overpressure and vacuum hazards, overfill hazards, sources of ignition, and mechanical damage to the maximum practicable extent. Each remaining hazard source that is not eliminated must be specifically addressed in the protection system design and system operational requirements.

(b) Vapor collection system pipe and fitting components must be in accordance with ANSI B31.3 (incorporated by reference, see 33 CFR 154.106) with a maximum allowable working pressure (MAWP) of at least 150 pounds per square inch gauge (psig). Valves must be in accordance with ASME B16.34, 150 pound class (incorporated by reference, see 33 CFR 154.106). Flanges must be in accordance with ANSI B16.5 or ANSI B16.24, 150 pound class (both incorporated by reference, see 33 CFR 154.106). The following components and their associated equipment do not have a minimum specified MAWP, but must be constructed to acceptable engineering standards and have the appropriate mechanical strength to serve the intended purpose: knockout drums, liquid seals, blowers/compressors, flare stacks/incinerators, and other vapor processing units.

(c) All VCS electrical equipment must comply with NFPA 70 (2011) (incorporated by reference, see 33 CFR 154.106).

(d) Any pressure, flow, or concentration indication required by this part must provide a remote indicator on the facility where the cargo transfer system and VCS are controlled, unless the local indicator is clearly visible and readable from the operator's normal position at the control stations.

(e) Any condition requiring an alarm as specified in this part must activate an audible and visible alarm where the cargo transfer and VCSs are controlled.

(f) For a VCS installed after August 15, 2013, an alarm or shutdown must be activated if electrical continuity of an alarm or shutdown sensor required by this subpart is lost.

(g) The VCS piping surface temperature must not exceed 177°C (350 °F) or 70 percent of the auto-ignition temperature in degrees Celsius of the vapors being transferred, whichever is lower, during normal operations. This must be achieved by either separating or insulating the entire VCS from external heat sources.

(h) The VCS must be equipped with a mechanism to eliminate any liquid condensate from the vapor collection system that carries over from the vessel or condenses as a result of an enrichment process.

(1) If a liquid knockout vessel is installed to eliminate any liquid condensate, it must have—

(i) A mechanism to indicate the level of liquid in the device;

(ii) A high liquid level sensor that activates an alarm, meeting the requirements of paragraph (e) of this section;

(iii) A high-high liquid level sensor that closes the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a), and shuts down any vapor-moving devices before carrying liquid over from the vessel to the vapor-moving device. One sensor with two stages may accomplish both this requirement and the requirement of paragraph (h)(1)(ii) of this section; and

(2) If a drip leg is used to eliminate any liquid condensate, it must be fitted with a mechanism to remove liquid from the low point.

(i) Vapor collection piping must be electrically grounded and must be electrically continuous.

(j) If the facility handles inerted vapors of cargoes containing sulfur, the facility must control heating from pyrophoric iron sulfide deposits in the vapor collection line.

(k) All VCS equipment and components, including piping, hoses, valves, flanges, fittings, and gaskets, must be suitable for use with the vapor in the VCS.

§ 154.2101 Requirements for facility vapor connections.

(a) A remotely operated cargo vapor shutoff valve must be installed in the vapor collection line between the facility vapor connection and the nearest point where any inerting, enriching, or diluting gas is introduced into the vapor collection line, or where a detonation arrester is fitted. The valve must—

(1) Close within 30 seconds after detection of a shutdown condition of any component required by this subpart;

(2) Close automatically if the control signal or electrical power to the system is interrupted;

(3) Activate an alarm meeting 33 CFR 154.2100(e) when a signal to shut down is received from a component;

(4) Be capable of manual operation or manual activation;

(5) Have a local valve position indicator, or be designed so that the valve position can be readily determined from the valve handle or valve stem position; and

(6) If the valve seat is fitted with resilient material, be a Category A valve as defined by 46 CFR 56.20–15 and not allow appreciable leakage when the resilient material is damaged or destroyed.

(b) Except when a vapor collection arm is used, the first 1 meter (3.3 feet) of vapor piping downstream of the facility vapor connection must be—

(1) Painted in the sequence of red/yellow/red. The width of the red bands must be 0.1 meter (0.33 foot) and the width of the middle yellow band must be 0.8 meter (2.64 feet); and

(2) Labeled with the word ''VAPOR'' painted in black letters at least 50.8 millimeters (2 inches) high.

(c) Each facility vapor connection flange face must have a permanent stud projecting outward that is 12.7 millimeters (0.5 inch) in diameter and is at least 25.4 millimeters (1 inch) long. The stud must be located at the top of the flange face, midway between boltholes, and in line with the bolthole pattern.

(d) Each hose that transfers vapors must—

(1) Have a design burst pressure of at least 25 pounds per square inch gauge (psig);

(2) Have a maximum allowable working pressure no less than 5 psig;

(3) Be capable of withstanding at least a 2 pounds per square inch (psi) vacuum without collapsing or constricting;

(4) Be electrically continuous with a maximum resistance of 10,000 ohms;

(5) Have flanges with—

(i) A bolthole arrangement complying with the requirements for 150 pound class flanges, ANSI B16.5 (incorporated by reference, see 33 CFR 154.106); and

(ii) One or more 15.9 millimeter (0.625 inch) diameter holes in the flange face, located midway between boltholes, and in line with the bolthole pattern;

(6) Be resistant to abrasion and kinking;

(7) Be compatible with vapors being controlled; and

(8) Have the last 1 meter (3.3 feet) of each end of the vapor hose marked in accordance with paragraph (b) of this section.

(e) Vapor hoses must be adequately supported to prevent kinking, collapse,

or contact with any metal of the vessel or facility to prevent unintentional electrical bypassing of the insulating flange or the single length of non-conducting hose required by paragraph (g) of this section.

(f) Fixed vapor collection arms must—

(1) Meet the requirements of paragraphs (d)(1) through (5) of this section; and

(2) Have the last 1 meter (3.3 feet) of the arm marked in accordance with paragraph (b) of this section.

(g) The facility vapor connection must be electrically insulated from the vessel vapor connection in accordance with OCIMF ISGOTT section 17.5 (incorporated by reference, see 33 CFR 154.106). In order to prevent electrical arcing during connection and disconnection of the transfer hose/arm, the transfer hose/arm must be fitted with an insulating flange or a single length of non-conducting hose to ensure electrical discontinuity between the vessel and facility. The insulating flange/hose should be inserted at the jetty end and must not be electrically bypassed. The installation, inspection, and testing of the insulating flange/hose must be in accordance with 46 CFR 35.35–4. For each vapor hose, only one insulting flange or non-conductive hose must be provided. See 46 CFR 35.35–4.

(h) A vapor collection system, fitted with a gas injection system that operates at a positive gauge pressure at the facility vapor connection, must be fitted with a means to prevent backflow of vapor to the vessel's vapor collection system during loading.

(i) Electrical bonding between vessel and shore must be in accordance with 46 CFR 35.35–.5.

§ 154.2102 Facility requirements for vessel liquid overfill protection.

This section does not apply to facilities collecting vapors emitted from vessel cargo tanks while inerting, padding, or purging the cargo tanks with an inert gas and not loading cargo into the cargo tank.

(a) Each facility that receives cargo vapor from a tank barge that is fitted with overfill protection, in accordance with 46 CFR 39.2009(a)(1)(iii), must provide a 120-volt, 20-amp explosion-proof receptacle for the overfill protection system that meets—

(1) ANSI NEMA WD–6 (incorporated by reference, see 33 CFR 154.106);

(2) NFPA 70 (2011), Articles 406.9 and 501.145 (incorporated by reference, see 33 CFR 154.106); and

(3) 46 CFR 111.105–9.

(b) Each facility that receives cargo vapor from a tank barge that is fitted with an intrinsically safe cargo tank level sensor system complying with 46 CFR 39.2009(a)(2), as a means of overfill protection, must have an overfill control system on the dock capable of powering and receiving an alarm and shutdown signal from the cargo tank level sensor system that—

(1) Closes the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) and activates the emergency shutdown system required by 33 CFR 154.550 when—

(i) A tank overfill signal is received from the barge; or

(ii) Electrical continuity of the cargo tank level sensor system is interrupted;

(2) Activates an audible and visible alarm that warns barge and facility personnel when a tank overfill signal, or an optional high-level signal corresponding to a liquid level lower than the tank overfill sensor setting, is received from the barge;

(3) Has a mechanism to test the alarms and automatic shutdown systems electrically and mechanically before operating the vapor control system (VCS);

(4) Has suitable means, such as approved intrinsic safety barriers able to accept passive devices, so that the overfill and optional alarm circuits on the barge side of the overfill control system, including cabling, normally closed switches, and pin and sleeve connectors, are intrinsically safe;

(5) Is labeled at the dock with the maximum allowable inductance (in millihenrys) and capacitance (in microfarads) to be connected to the facility overfill protection system as specified by the equipment manufacturer; and

(6) Has a female connecting plug for the tank barge level sensor system with a five-wire, 16-ampere connector body meeting IEC 60309–1 and IEC 60309–2 (both incorporated by reference, see 33 CFR 154.106), that is—

(i) Configured with pins S2 (N) and R1 (L3) for the tank overfill sensor circuit, pin G connected to the cabling shield, and pins N (L2) and T3 (L1) reserved for an optional high-level alarm connection;

(ii) Labeled ''Connector for Barge Overfill Control System''; and

(iii) Connected to the overfill control system by a shielded flexible cable.

154.2103 Facility requirements for vessel vapor overpressure and vacuum protection.

In this section, the requirements of having a flame arrester or a flame screen at the opening of a pressure relief valve or a vacuum relief valve apply only to facilities collecting vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) A facility's vapor control system (VCS) must have the capacity for collecting cargo vapor at a rate of not less than the facility's maximum liquid transfer rate for cargoes that are vapor controlled plus the vapor growth for the cargoes and any inerting, diluting, or enriching gas that may be added to the system. Vapor growth must be considered as 25 percent of the cargo's saturated vapor pressure in pounds per square inch absolute (psia) at 115 °F, divided by 12.5 psia (the vapor pressure of gasoline at 115 °F), times the facility's maximum liquid transfer rate, unless there is experimental data for actual vapor growth for turbulent transferring under the most severe conditions for vapor growth. If the cargo is transferred at temperatures above 115 °F, the cargo's true vapor pressure (in psia) at the transferring temperature must be used when determining the vapor growth.

(b) A facility VCS must be designed to prevent the pressure in a vessel's cargo tanks from going below 80 percent of the highest setting of any of the vessel's vacuum relief valves or exceeding 80 percent of the lowest setting of any of the vessel's pressure relief valves for a non-inerted tank vessel. A facility VCS also must be designed to prevent the pressure in a vessel's cargo tanks from going below 0.2 pounds per square inch gauge (psig) or exceeding 80 percent of the lowest setting of any of the vessel's pressure relief valves for an inerted tank vessel. The system must sustain the pressure in the vessel's cargo tanks within this range at any cargo transfer rate less than or equal to the maximum transfer rate determined at the pre-transfer conference.

(c) The pressure measured at the facility vapor connection must be corrected for pressure drops across the vessel's vapor collection system, vapor collection hose or arm, and vapor line up to the location of the pressure sensor.

(d) The facility vapor connection must have a pressure-sensing device that meets the installation requirements of paragraph (h) of this section, which activates an alarm that meets 33 CFR 154.2100(e) when the pressure at the facility vapor connection exceeds either—

(1) The pressure corresponding to the upper pressure determined in paragraph (b) of this section; or

(2) A lower pressure agreed upon at the pre-transfer conference.

(e) If a facility draws vapor from a vessel with a vapor-moving device, the facility vapor connection must have a pressure-sensing device, which activates an alarm meeting 33 CFR 154.2100(e)

when the pressure at the facility vapor connection falls below either—

(1) The pressure corresponding to the lower pressure determined in paragraph (b) of this section; or

(2) A higher pressure agreed upon at the pre-transfer conference.

(f) The facility vapor connection must have a pressure-sensing device, independent of the device used to activate the alarm required by paragraph (d) of this section, meeting the installation requirements of paragraph (h) of this section, which activates the emergency shutdown system required by 33 CFR 154.550 when the pressure at the facility vapor connection exceeds the lower of the following:

(1) A pressure corresponding to 90 percent of the vessel's lowest pressure relief valve setting, corrected for pressure drops across the vessel's vapor collection system, the vapor collection hose or arm, and any vapor line up to the point where the pressure sensor is located;

(2) A pressure corresponding to 90 percent of the setting of the pressure relief valve at the facility vapor connection, if the facility vapor connection is installed with a pressure relief valve; or

(3) A lower pressure than the pressure in paragraphs (f)(1) and (f)(2) of this section that is agreed upon at the pre-transfer conference.

(g) If a facility draws vapors from a vessel with a vapor-moving device, the facility vapor connection must have a pressure-sensing device, independent of the device used to activate the alarm required by paragraph (e) of this section, which closes the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) when the vacuum at the facility vapor connection is more than the higher (lesser vacuum) of the following:

(1) A vacuum corresponding to 90 percent of the vessel's highest vacuum relief valve setting;

(2) A vacuum corresponding to 90 percent of the setting of the vacuum relief valve at the facility vapor connection, if the facility vapor connection is installed with a vacuum relief valve; or

(3) A lesser vacuum than the vacuum in paragraphs (g)(1) and (g)(2) of this section that is agreed upon at the pre-transfer conference.

(h) The pressure-sensing devices required by paragraphs (d) and (f) of this section must be located in the vapor collection line between the facility vapor connection and the following:

(1) Any isolation valve, unless an interlock is provided that prevents operation of the system when the isolation valve is closed; and

(2) Any components that could plug and cause a blockage in the vapor line.

(i) A pressure-indicating device must be provided that displays the pressure in the vapor collection line between the facility vapor connection and any isolation valve or any devices which could cause a blockage in the vapor line.

(j) If a facility draws vapor from the vessel with a vapor-moving device capable of drawing more than 1 pound per square inch (psi) vacuum, a vacuum relief valve must be installed in the vapor collection line between the vapor-moving device and the facility vapor connection, which—

(1) Relieves at a predetermined pressure such that the pressure at the facility vapor connection is maintained at −1.0 psig (1.0 psig vacuum) or less vacuum;

(2) Has a relieving capacity equal to or greater than the capacity of the vapor-moving device;

(3) Has a flame arrester or flame screen fitted at the vacuum relief opening; and

(4) Has been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000 (incorporated by reference, see 33 CFR 154.106) with a flame arrester or flame screen fitted.

(k) When a facility collects cargo vapor through an extensive length of vapor piping, such as an undersea pipeline from a vessel moored offshore, before reaching the first pressure sensor and vacuum relief valve, the vacuum relief valve may be set at a vacuum greater than 1 psi vacuum, provided the pressure controls take into account the pressure drop across the vessel's vapor collection system, any vapor collection hoses, and the vapor piping as a function of the actual transfer rate.

(l) If the pressure in the vapor collection system can exceed 1.5 psig during a malfunction of a pressure regulator or control valve in an inerting, enriching, or diluting system, a pressure relief valve must—

(1) Be located between where the inerting, enriching, or diluting gas is introduced into the vapor collection system and the facility vapor connection;

(2) Relieve at the higher of the following two pressures:

(i) A pressure such that the pressure at the facility vapor connection does not exceed 1.5 psig; or

(ii) The lowest pressure relief valve setting of vessels that control vapors at the facility;

(3) Have a relieving capacity equal to or greater than the maximum capacity of the facility inerting, enriching, or diluting gas source flowing through the failed pressure regulator or control valve, taking into account the pressure drops across any flame arrester or discharge piping fitted at the relief valve's discharge;

(4) Have a flame arrester or flame screen fitted at the discharge opening, if the design does not secure a minimum vapor discharge velocity of 30 meters (98.4 feet) per second; and

(5) Have been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000.

(m) The relieving capacity test required by paragraph (l)(5) of this section must be carried out with a flame screen fitted at the discharge opening if—

(1) The design of the pressure relief valve does not secure a minimum vapor discharge velocity of 30 meters (98.4 feet) per second; and

(2) The discharge is not fitted with a flame arrester.

(n) A facility that collects vapors emitted from vessel cargo tanks while inerting, padding, or purging cargo tanks must—

(1) Provide a pressure-sensing device that activates an alarm meeting 33 CFR 154.2100(e) when the pressure of the inerting, padding, or purging gas exceeds either the pressure corresponding to the higher pressure determined in paragraph (b) of this section or a lower pressure agreed upon at the pre-transfer conference;

(2) Provide a pressure-sensing device, independent of the device required by paragraph (n)(1) of this section, which automatically stops the flow of inerting, padding, or purging gas to the vessel when the pressure of the inerting, padding, or purging gas exceeds 90 percent of the lowest setting of any pressure relief valve on the vessel; and

(3) Locate the pressure-sensing devices required by paragraphs (n)(1) and (n)(2) of this section in the inerting, padding, or purging gas piping downstream of any devices in the gas piping that could potentially isolate the vessel from the sensing devices.

§ 154.2104 Pigging system.

(a) If a pigging system is used to clear cargo in the cargo lines to the tank vessel while the vessel is connected to the facility vapor control system (VCS), the pigging system must be designed with the following safety features:

(1) A bypass loop installed in the main liquid cargo line that contains the pig-receiving device, through which all the liquid flow is channeled during pigging operations. The pig must act as a seal to separate the vessel from the compressed inert gas that is used to

propel it as the pig travels from the pig launcher to the pig-receiving device;

(2) A mechanism for restricting liquid and gas flow so that the vessel, personnel, and environment are not endangered. The compressed inert gas flow capacity that this mechanism secures must not be more than 95 percent of the combined capacity of all vessel and facility VCS relief valves located upstream of the facility's remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a);

(3) A fast-action automatic shutoff valve such as a solenoid valve, which closes on a high-pressure signal from the pressure sensor required by 33 CFR 154.2103(f), located in the liquid bypass loop downstream of the pig-receiving device;

(4) An interlock with the main cargo line manual block valve so that line-clearing operations cannot begin unless the main cargo line manual block valve is closed; and

(5) An automatic means to detect arrival of the pig at the pig-receiving device.

(b) If a cargo line clearance system without using pigging is used to clear cargo in the cargo lines to the tank vessel while the vessel is connected to the facility VCS, the cargo line clearance system must be approved by the Commandant.

§ 154.2105 Fire, explosion, and detonation protection.

This section applies only to facilities that control vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) A vapor control system (VCS) with a single facility vapor connection that receives inerted cargo vapor from a vessel and processes it with a vapor recovery unit must—

(1) Be capable of inerting the vapor collection line in accordance with 33 CFR 154.2107(a) before receiving the vessel's vapor and have at least one oxygen analyzer, which satisfies the requirements of 33 CFR 154.2107(f)(1) and (2), (g), and (h)(2) and (3), sampling the vapor concentration continuously at a point as close as practicable to the facility vapor connection. The total pipe length between the analyzer and the facility vapor connection must not exceed 6 meters (19.7 feet); or

(2) Have a detonation arrester located as close as practicable to the facility vapor connection. The total pipe length between the detonation arrester and the facility vapor connection must not exceed 18 meters (59.1 feet) and the vapor piping between the detonation arrester and the facility vapor connection must be protected from any potential internal or external ignition source.

(b) A VCS with a single facility vapor connection that receives only inerted cargo vapor from a vessel and processes it with a vapor destruction unit must—

(1) Satisfy the requirements of paragraph (a)(1) of this section and have a detonation arrester located as close as practicable to the facility vapor connection. The oxygen analyzer required by paragraph (a)(1) can be located 4 meters (13.1 feet) downstream of the detonation arrester. The total pipe length between the detonation arrester and the facility vapor connection must not exceed 18 meters (59.1 feet) and the vapor piping between the detonation arrester and the facility vapor connection must be protected from any potential internal or external ignition source; or

(2) Have an inerting system that meets the requirements of 33 CFR 154.2107.

(c) A VCS with a single facility vapor connection that receives vapor from a vessel with cargo tanks that are not inerted or are partially inerted, and processes it with a vapor recovery unit must—

(1) Have a detonation arrester located as close as practicable to the facility vapor connection. The total pipe length between the detonation arrester and the facility vapor connection must not exceed 18 meters (59.1 feet) and the vapor piping between the detonation arrester and the facility vapor connection must be protected from any potential internal or external ignition source; or

(2) Have an inerting, enriching, or diluting system that meets the requirements of 33 CFR 154.2107.

(d) A VCS with a single facility vapor connection that receives vapor from a vessel with cargo tanks that are not inerted or are partially inerted, and processes the vapor with a vapor destruction unit must—

(1) Have a detonation arrester located as close as practicable to the facility vapor connection. The total pipe length between the detonation arrester and the facility vapor connection must not exceed 18 meters (59.1 feet) and the vapor piping between the detonation arrester and the facility vapor connection must be protected from any potential internal or external ignition source; and

(2) Have an inerting, enriching, or diluting system that satisfies the requirements of 33 CFR 154.2107.

(e) A VCS with multiple facility vapor connections that receives vapor from vessels with cargo tanks that carry inerted, partially inerted, non-inerted, or combinations of inerted, partially inerted, and non-inerted cargoes, and processes them with a vapor recovery unit, must have a detonation arrester located as close as practicable to each facility vapor connection. The total pipe length between the detonation arrester and each facility vapor connection must not exceed 18 meters (59.1 feet) and the vapor piping between the detonation arrester and the facility vapor connection must be protected from any potential internal or external ignition source.

(f) A VCS with multiple facility vapor connections that receives only inerted cargo vapor from vessels and processes it with a vapor destruction unit must—

(1) Satisfy the requirements of paragraph (a)(1) of this section for each facility vapor connection and have a detonation arrester located as close as practicable to each facility vapor connection. The oxygen analyzer required by paragraph (a)(1) can be located 4 meters (13.1 feet) downstream of the detonation arrester. The total pipe length between the detonation arrester and each facility vapor connection must not exceed 18 meters (59.1 feet) and the vapor piping between the detonation arrester and the facility vapor connection must be protected from any potential internal or external ignition source; or

(2) Have an inerting, enriching, or diluting system that meets the requirements of 33 CFR 154.2107.

(g) A VCS with multiple facility vapor connections that receives vapor from vessels with non-inerted or partially inerted cargoes, and processes the vapor with a vapor destruction unit must—

(1) Have a detonation arrester located as close as practicable to each facility vapor connection. The total pipe length between the detonation arrester and each facility vapor connection must not exceed 18 meters (59.1 feet) and the vapor piping between the detonation arrester and the facility vapor connection must be protected from any potential internal or external ignition source; and

(2) Have an inerting, enriching, or diluting system that meets the requirements of 33 CFR 154.2107.

(h) A VCS with multiple facility vapor connections that simultaneously receives vapor from vessels with inerted, partially inerted, and non-inerted cargoes, and processes the vapor with a vapor destruction unit must—

(1) Have a detonation arrester located as close as practicable to each facility vapor connection. The total pipe length between the detonation arrester and each facility vapor connection must not exceed 18 meters (59.1 feet) and the vapor piping between the detonation

arrester and the facility vapor connection must be protected from any potential internal or external ignition source; and

(2) Have either an inerting, enriching, or diluting system that meets the requirements of 33 CFR 154.2107, or a base loading system that meets the requirements of 33 CFR 154.2107(m).

(i) A VCS that uses a vapor balancing system in which cargo vapor from a vessel or facility storage tank is transferred through the facility vapor collection system to facility storage tanks or a vessel must meet the requirements of 33 CFR 154.2110.

(j) Each outlet of a VCS that vents to the atmosphere, except for a discharge vent from a vapor destruction unit or relief valve installed to comply with 33 CFR 154.2103(j) and (k) or 33 CFR 154.2203(e), (k), and (l), must have one of the following located at the outlet:

(1) A detonation arrester;

(2) An end-of-line flame arrester that meets ASTM F 1273 (incorporated by reference, see 33 CFR 154.106); or

(3) An end-of-line flame arrester that meets UL 525 (incorporated by reference, see 33 CFR 154.106) if—

(i) The discharge vent stream's total flammable concentration is proven to be less than 50 percent of the lower flammable limit, or the stream's oxygen concentration is proven to be less than 70 percent by volume of the MOCC, at all times by an outlet concentration analyzer for carbon beds, proof of correct operating temperature for refrigeration systems, or proof of scrubbing medium flow for scrubbers; and

(ii) The proving devices in paragraph (j)(2)(i) of this section close the remotely operated cargo vapor shutoff valve required in 33 CFR 154.2101(a) and close the automatic liquid cargo loading valve if operating outside the conditions necessary to maintain the discharge vent non-combustible.

§ 154.2106 Detonation arresters installation.

This section applies only to facilities collecting vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) Detonation arresters must be installed in accordance with the guidelines outlined in the arrester manufacturer's acceptance letter provided by the Coast Guard.

(b) On either side of a detonation arrester, line size expansions must be in a straight pipe run and must be no closer than 120 times the pipe's diameter from the detonation arrester unless the manufacturer has test data to show the expansion can be closer.

§ 154.2107 Inerting, enriching, and diluting systems.

This section applies only to facilities that control vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) Before receiving cargo vapor, a vapor control system (VCS) that uses a gas for inerting, enriching, or diluting must be capable of inerting, enriching, or diluting the vapor collection system, at a minimum of two system volume exchanges of inerting, enriching, or diluting gas, downstream of the injection point.

(b) A VCS that uses an inerting, enriching, or diluting system must be equipped, except as permitted by 33 CFR 154.2105(a), with a gas injection and mixing arrangement located as close as practicable to the facility vapor connection and no closer than 10 meters (32.8 feet) upstream from the vapor processing unit or the vapor-moving device that is not protected by a detonation arrester required by 33 CFR 154.2108(b). The total pipe length between the arrangement and the facility vapor connection must not exceed 22 meters (72.2 feet). The arrangement must be such that it provides complete mixing of the gases within 20 pipe diameters of the injection point. The vapor piping between the arrangement and the facility vapor connection must be protected from any potential internal or external ignition source.

(c) A VCS that uses an inerting or enriching system may not be operated at a vacuum after the injection point unless—

(1) There are no vacuum relief valves or other devices that could allow air into the vapor collection system downstream of the injection point, and pipe connections are flanged, threaded, or welded so no air can leak into the VCS; or

(2) An additional analyzer is used to monitor the vapor concentration downstream of such device and a mechanism is provided to inject additional inerting or enriching gas.

(d) A VCS that uses analyzers to control the amount of inerting, enriching, or diluting gas injected into the vapor collection line must be equipped with at least two analyzers. The analyzers must be connected so that—

(1) When two oxygen analyzers are used, the higher oxygen concentration reading controls the inerting or enriching system and activates the alarm and automatic shutdown system required by paragraph (h), (j), or (k)(2) of this section;

(2) When voting systems using more than two oxygen analyzers are used, the majority pair controls the inerting or enriching system and activates the alarm and automatic shutdown system required by paragraph (h), (j), or (k)(2) of this section;

(3) When two hydrocarbon analyzers are used, the lower hydrocarbon concentration reading controls the enriching system and activates the alarm and automatic shutdown system required by paragraph (i) of this section;

(4) When voting systems using more than two hydrocarbon analyzers are used, the majority pair controls the enriching system and activates the alarm and automatic shutdown system required by paragraph (i) of this section;

(5) When two hydrocarbon analyzers are used, the higher hydrocarbon concentration reading controls the diluting system and activates the alarm and automatic shutdown system required by paragraph (l) of this section; and

(6) When voting systems using more than two hydrocarbon analyzers are used, the majority pair controls the diluting system and activates the alarm and automatic shutdown system required by paragraph (l) of this section.

(e) A VCS that uses volumetric measurements to control the amount of inerting, enriching, or diluting gas injected into the vapor collection line must be equipped, except as permitted by paragraph (m) of this section, with at least one analyzer to activate the alarms and automatic shutdown systems required by this section.

(f) Each oxygen or hydrocarbon analyzer required by this section must—

(1) Be installed in accordance with API 550 (incorporated by reference, see 33 CFR 154.106);

(2) Have a system response time of not more than one minute from sample input to 95 percent of final stable value as tested per 33 CFR 154.2180 and 33 CFR 154.2181; and

(3) Continuously sample the vapor concentration not more than 30 pipe diameters from the gas injection point.

(g) A VCS must not use oxygen analyzers that operate at elevated temperatures (i.e., zirconia oxide or thermomagnetic).

(h) An inerting system must—

(1) Supply sufficient inert gas to the vapor stream to ensure that the oxygen concentration downstream of the injection point is maintained at or below 60 percent by volume of the minimum oxygen concentration for combustion (MOCC) for the specific combination of cargo vapors and inert gas being processed, which may be determined by using Coast Guard

guidance available at *http://homeport.uscg.mil*;

(2) Activate an alarm that satisfies the requirements of 33 CFR 154.2100(e) when the oxygen concentration in the vapor collection line exceeds 60 percent by volume of the MOCC for the specific combination of cargo vapors and inert gas being processed, which may be determined by using Coast Guard guidance available at *http://homeport.uscg.mil*;

(3) Close the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) when the oxygen concentration in the vapor collection line exceeds 70 percent by volume of the MOCC for the specific combination of cargo vapors and inert gas being processed, which may be determined by using Coast Guard VCS guidance available at *http://homeport.uscg.mil*;

(4) Have a detonation arrester and a mechanism to prevent the backflow of flammable vapors installed between the combustion device and the inert gas injection point, if a combustion device is used to produce the inert gas; and

(5) Have an alarm value in paragraph (h)(2) of this section that is at least one percentage point less than the shutdown value in paragraph (h)(3) of this section. If the analyzers used to measure oxygen concentrations cannot accurately differentiate between the alarm value and the shutoff value, the alarm value must be lowered until the analyzers become operable.

(i) An enriching system must—

(1) Supply sufficient compatible hydrocarbon vapor to the vapor stream to make sure that the total flammable concentration downstream of the injection point is maintained either at or above 170 percent by volume of the upper flammable limit or above the upper flammable limit plus 10 percentage points, whichever is lower;

(2) Activate an alarm that satisfies the requirements of 33 CFR 154.2100(e) when the total flammable concentration in the vapor collection line either falls below 170 percent by volume of the upper flammable limit or below the upper flammable limit plus 10 percentage points, whichever is lower;

(3) Close the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) when the total flammable concentration in the vapor collection line either falls below 150 percent by volume of the upper flammable limit or below the upper flammable limit plus 7.5 percentage points, whichever is lower; and

(4) Have an upper flammable limit listed in paragraphs (i)(1), (i)(2), and (i)(3) of this section which is either the cargo's upper flammable limit or the enriching gas's upper flammable limit, whichever is higher. Alternatively, the mixture's upper flammable limit, which may be determined by using methods found in Coast Guard guidance available at *http://homeport.uscg.mil*, may be used.

(j) Oxygen analyzers may be used instead of hydrocarbon analyzers in a VCS using an enriching system that receives cargo vapor only from a vessel with non-inerted cargo tanks, providing that the analyzers—

(1) Activate an alarm satisfying the requirements of 33 CFR 154.2100(e) when the oxygen concentration in the vapor collection line exceeds a level corresponding to either a total flammable concentration of 170 percent by volume of the upper flammable limit or the upper flammable limit plus 10 percentage points, whichever yields a higher oxygen concentration;

(2) Close the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) when the oxygen concentration in the vapor collection line exceeds a level corresponding to either a total flammable concentration of 150 percent by volume of the upper flammable limit or the upper flammable limit plus 7.5 percentage points, whichever yields a higher oxygen concentration;

(3) Have an alarm value in paragraph (j)(1) of this section that is at least one percentage point less than the shutdown value in paragraph (j)(2) of this section. If the oxygen analyzers used to measure oxygen concentrations cannot accurately differentiate between the alarm value and the shutdown value, the alarm value must be lowered until the analyzers become operable; and

(4) Have an upper flammable limit listed in paragraphs (j)(1) and (j)(2) of this section which is either the cargo's upper flammable limit or the enriching gas's upper flammable limit, whichever is higher. Alternatively, the mixture's upper flammable limit, which may be determined by using methods found in Coast Guard VCS guidance available at *http://homeport.uscg.mil*, may be used.

(k) An enriching system may be used in a VCS that receives inerted cargo vapor from a vessel if—

(1) Hydrocarbon analyzers are used to comply with paragraphs (i)(2) and (i)(3) of this section; or

(2) Oxygen analyzers are used, in which case the analyzers must—

(i) Activate an alarm meeting 33 CFR 154.2100(e) when the oxygen concentration in the vapor collection line exceeds 60 percent by volume of the MOCC for the specific combination of cargo vapors and gases; and

(ii) Close the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) when the oxygen concentration exceeds 70 percent by volume of the MOCC for the specific combination of cargo vapors and gases; and

(3) The MOCC in paragraphs (k)(2)(i) and (k)(2)(ii) of this section is either the cargo's MOCC or the enriching gas's MOCC, whichever is lower. Alternatively, the mixture's MOCC, which may be determined using Coast Guard VCS guidance available at *http://homeport.uscg.mil*, may be used.

(l) An air dilution system must—

(1) Supply a sufficient amount of additional air to the vapor stream to keep the total flammable concentration downstream of the injection point below 30 percent by volume of the lower flammable limit;

(2) Activate an alarm that satisfies the requirements of 33 CFR 154.2100(e) when the total flammable concentration in the vapor collection line exceeds 30 percent by volume of the lower flammable limit; and

(3) Close the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) when the total flammable concentration in the vapor collection line exceeds 50 percent by volume of the lower flammable limit.

(m) An enriching system may use a base loading method to control the amount of enriching gas in a vapor collection system if—

(1) The flow rate of enriching gas is determined by assuming the vapor entering the facility vapor connection consists of 100 percent air;

(2) Two independent devices are used to verify the correct enriching gas volumetric flow rate. One of the two devices must be a flow meter;

(3) One of the devices activates an alarm that satisfies the requirements of 33 CFR 154.2100(e) when the amount of enriching gas added results in a total flammable concentration in the vapor collection line either below 170 percent by volume of the upper flammable limit or below the upper flammable limit plus 10 percentage points, whichever is lower;

(4) The second device activates closure of the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) when the amount of enriching gas added results in a total flammable concentration in the vapor collection line either below 150 percent by volume of the upper flammable limit or below the upper flammable limit plus 7.5 percentage points, whichever is lower; and

(5) The upper flammable limit in paragraphs (m)(3) and (4) of this section

is either the cargo's upper flammable limit or the enriching gas's upper flammable limit, whichever is higher. Alternatively, the mixture's upper flammable limit, which may be determined using Coast Guard guidance available at *http://homeport.uscg.mil*, may be used.

(n) For controlling vapors of different cargoes at multiple berths while using enriching gas, the highest upper flammable limit or the lowest MOCC of the cargo or enriching gas, whichever is applicable, is used to determine the analyzer alarm and shutdown setpoints. Alternatively, the mixture's upper flammable limit or MOCC, which may be determined by using Coast Guard guidance available at *http://homeport.uscg.mil*, may be used.

(o) For controlling vapors of inert and non-inert cargoes at multiple berths while using enriching gas—

(1) The lowest MOCC of the cargo or enriching gas is used to determine the analyzer alarm and shutdown setpoints at all berths. Alternatively, the mixture's MOCC, which may be determined using Coast Guard guidance available at *http://homeport.uscg.mil*, may be used; or

(2) A base loading method meeting the requirements of paragraph (m) of this section is used for all berths.

§ 154.2108 Vapor-moving devices.

(a) Paragraphs (b) and (e) of this section apply only to facilities collecting vapors of flammable, combustible, or non-high flash point liquid cargoes.

(b) Each inlet and outlet to a vapor-moving device that handles vapor that has not been inerted, enriched, or diluted in accordance with 33 CFR 154.2107 must be fitted with a detonation arrester; however, the outlet detonation arrester may be omitted if the vapor-moving device is within 50 times the pipe's diameter of the detonation arrester required by 33 CFR 154.2109(a).

(c) If the vapor is handled by a reciprocating or screw-type compressor in the vapor collection system, the compressor must be installed with indicators and audible and visible alarms to warn against the following conditions:

(1) Excessive gas temperature at the compressor outlet;

(2) Excessive cooling water temperature;

(3) Excessive vibration;

(4) Low lube oil level;

(5) Low lube oil pressure; and

(6) Excessive shaft bearing temperature.

(d) If the vapor is handled by a liquid ring-type compressor in the vapor collection system, it must be installed with indicators and audible and visible alarms to warn against the following conditions:

(1) Low level of liquid sealing medium;

(2) Lack of flow of the liquid sealing medium;

(3) Excessive temperature of the liquid sealing medium;

(4) Low lube oil level;

(5) Low lube oil pressure, if pressurized lubricating system; and

(6) Excessive shaft bearing temperature.

(e) If the vapor is handled by a centrifugal compressor, fan, or lobe blower in the vapor collection system, construction of the blades or housing must be one of the following:

(1) Blades or housing of nonmetallic construction;

(2) Blades and housing of nonferrous material;

(3) Blades and housing of corrosion resistant steel;

(4) Ferrous blades and housing with one-half inch or more design tip clearance;

(5) Nonferrous blades and ferrous housing with one-half inch or more design tip clearance; or

(6) Blades of aluminum or magnesium alloy and a ferrous housing with a nonferrous insert sleeve at the periphery of the impeller.

§ 154.2109 Vapor recovery and vapor destruction units.

Paragraphs (a), (b), and (e) of this section apply only to facilities collecting vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) The inlet to a vapor recovery unit that receives vapor that has not been inerted, enriched, or diluted in accordance with 33 CFR 154.2107 must be fitted with a detonation arrester.

(b) The inlet to a vapor destruction unit must—

(1) Have a liquid seal that meets the requirements of paragraph (e) of this section, except as specified by paragraph (b)(3) of this section; and

(2) Have two quick-closing stop valves installed in the vapor line. One of them must be installed upstream of the detonation arrester required by paragraph (c)(2) of this section. The quick-closing stop valves must—

(i) Close within 30 seconds after detection of a condition that requires the closing of these two quick-closing stop valves by a control component required by this subpart for a vapor control system (VCS) with a vapor destruction unit;

(ii) Close automatically if the control signal is lost;

(iii) Have a local valve position indicator or be designed so that the valve position is readily determined from the valve handle or valve stem position; and

(iv) If the valve seat is fitted with resilient material, be a Category A valve as defined by 46 CFR 56.20–15 and not allow appreciable leakage when the resilient material is damaged or destroyed; and

(3) Instead of a liquid seal as required by paragraph (b)(1) of this section, have the following:

(i) An anti-flashback burner accepted by the Commandant and installed at each burner within the vapor destruction unit; and

(ii) A differential pressure sensor that activates the quick-closing stop valves as required by paragraph (b)(2) of this section upon sensing a reverse flow condition.

(c) A vapor destruction unit must—

(1) Not be within 30 meters (98.8 feet) of any tank vessel berth or mooring at the facility;

(2) Have a detonation arrester fitted in the inlet vapor line; and

(3) Activate an alarm that satisfies the requirements of 33 CFR 154.2100(e) and shut down when a flame is detected on the detonation arrester.

(d) When a vapor destruction unit shuts down or has a flame-out condition, the vapor destruction unit control system must—

(1) Activate and close the quick-closing stop valves required by paragraph (b)(2) of this section;

(2) Close the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a); and

(3) Automatically shut down any vapor-moving devices installed in the VCS.

(e) If a liquid seal is installed at the inlet to a vapor destruction unit, then—

(1) The liquid used in the liquid seal must be compatible with the vapors being controlled;

(2) For partially or totally soluble cargoes that can polymerize in solution, there must be an adequate amount of inhibitor in the liquid seal;

(3) The liquid seal must be compatible with the design of the VCS and must not contribute to the flammability of the vapor stream; and

(4) The liquid seal must have a low-level alarm and a low-low level shutdown.

§ 154.2110 Vapor balancing requirements.

Paragraphs (a)(2) and (4), (b), and (c) of this section apply only to facilities transferring vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) A vapor control system (VCS) that uses a vapor balancing system in which cargo vapor is transferred from a vessel cargo tank or facility storage tank through the facility vapor collection system to a facility storage tank or vessel cargo tank must—

(1) Have facility storage tank high-level alarm systems and facility storage tank overfill control systems, independent of the high-level alarm system, arranged to prevent the cargo from entering the vapor return line;

(2) Have a detonation arrester located within the storage tank containment area and a detonation arrester located as close as practicable to the facility vapor connection. The total pipe length between the detonation arrester and the facility vapor connection must not exceed 18 meters (59.1 feet) and the vapor piping between the detonation arrester and the facility vapor connection must be protected from any potential internal or external ignition source;

(3) Meet the overpressure and over-vacuum protection requirements of 33 CFR 154.2103; and

(4) As an alternative to paragraph (a)(2) of this section, inert cargo systems can meet the requirements of 33 CFR 2105(a)(1).

(b) A vapor balancing system, while in operation to transfer vapor to or from a vessel cargo tank and connected by way of the facility storage tank vent to a facility's main VCS with a vapor destruction unit, must have—

(1) A means to prevent backflow of vapor from the facility's main VCS to the marine vapor line; and

(2) Two fail-safe, quick-closing valves installed in the marine vapor line at the facility storage tank that automatically close when—

(i) Flame is detected on the facility storage tank; or

(ii) The temperature of the facility storage tank's vapor space reaches 177°C (350 °F) or 70 percent of the vapor's auto-ignition temperature in degrees Celsius, whichever is lower.

(c) Transferring vapor from a non-inerted facility storage tank to a vessel cargo tank that is required to be inerted in accordance with 46 CFR 32.53, 153.500, or Table 151.05, is prohibited.

(d) A vapor balancing system that transfers vapor to a vessel cargo tank must not use a vapor-moving device to assist vapor transfer or inject inerting, enriching, or diluting gas into the vapor line without approval from the Commandant.

§ 154.2111 Vapor control system connected to a facility's main vapor control system.

(a) When a marine vapor control system (VCS), or a marine vapor collection system, is connected to a facility's main VCS serving other facility processing areas that are not related to tank vessel operations, the marine vapor line, before the point where the marine VCS connects to the facility's main VCS, must be fitted with—

(1) A detonation arrester, unless both the marine VCS and the facility's main VCS only control vapors of cargoes that are non-flammable, non-combustible, or that have high flashpoints;

(2) Two fail-safe, quick closing valves, one on each side of any detonation arrester required by paragraph (a)(1) of this section, which automatically close when—

(i) A flame is detected on the detonation arrester;

(ii) The facility's marine VCS is not in operation; or

(iii) Vapor back flow to the marine vapor line is detected; and

(3) A means to prevent backflow of vapors to the marine vapor line.

(b) Vapors from facility processing areas unrelated to tank vessel operations must not enter the vapor line of a marine VCS before the devices required by paragraph (a) of this section.

(c) Except as specified by paragraph (d) of this section, a facility that wants to connect a facility vapor line, which collects vapor from other facility processing areas that are not related to tank vessel operations, to a marine VCS before the devices required by 33 CFR 154.2109(b)(1) and (2) and (c)(2), must receive approval in writing from the Commandant.

(d) A facility may connect a facility vapor line, which collects vapor from other facility processing areas that are not related to tank vessel operations, to a marine vapor line downstream of the devices required by 33 CFR 154.2109(b)(1) and (2) and (c)(2) to share the marine vapor destruction unit.

§ 154.2112 Vapors with potential to polymerize or freeze—special requirements.

(a) A vapor control system (VCS) that controls vapors with the potential to polymerize at a normal ambient condition must—

(1) Be designed to prevent condensation of monomer vapor. Methods such as heat tracing and insulation are permitted if they do not result in an increased risk of polymerization;

(2) Be designed so that polymerization can be detected. Any points suspected of being sites for potential polymerization buildup must be equipped with inspection openings; and

(3) Include devices to measure the pressure drop across detonation arresters due to polymerization. The devices should activate an alarm on high pressure drop to warm of polymerization. Any device used for this purpose, including differential pressure monitors, must not have the capability of transmitting a detonation across the detonation arrester.

(b) A VCS that controls cargo vapors that potentially freeze at ambient temperature must have a design that prevents the freezing of vapors or condensate at ambient temperature or that detects and removes the liquid condensate and solids to prevent accumulation.

§ 154.2113 Alkylene oxides—special requirements.

A vapor control system (VCS) that controls vapors of an alkylene oxide, except for carriage under 46 CFR part 151 (listed in Table 151.05 with ''Pressure'' entry in the ''Cargo identification, Pressure, b'' column), must comply with paragraphs (a) and (b) of this section.

(a)(1) The VCS's equipment, hoses, piping, and all piping components, including valves, flanges, and fittings, must be of a type and constructed out of materials suitable for use with alkylene oxide;

(2) The VCS used for collecting an alkylene oxide vapor must not be used for collecting other vapors and must be separated from any other VCS, except as specified by paragraph (b) of this section; and

(b) The VCS must be adequately cleaned in accordance with 33 CFR 154.2150(p) and either recertified by a certifying entity or approved by a marine chemist if—

(1) The VCS is used to control other vapors; or

(2) The VCS is returned to alkylene oxide service after being used to control other cargo vapors.

Transfer Facilities—Operations

§ 154.2150 General requirements.

(a) No transfer operation using a vapor control system (VCS) may be conducted unless the facility operator has a copy of the facility operations manual, with the VCS addendum, marked by the local Coast Guard Captain of the Port (COTP) as required by 33 CFR 154.325(d).

(b) Personnel in charge of a facility must ensure that—

(1) The facility controls vapor only from cargoes that are properly authorized for vapor control in the facility's certification letter;

(2) The facility transfers vapor only to or from a vessel that has its certificate of inspection or certificate of compliance endorsed in accordance with 46 CFR 39.1013 or 46 CFR 39.1015 for each cargo intended for transfer; and

(3) If the vessel tanks to be vapor controlled contain vapor from previous cargo transfers other than the cargo or cargoes intended for transfer, the facility and vessel must be authorized to control the additional vapor from the previous cargo transfers. Any oxygen or hydrocarbon analyzer alarm and shutdown setpoints must be set to accommodate all of the cargo vapors.

(c) The facility personnel in charge must ensure that safety system testing is conducted as follows:

(1) Pressure sensors, alarms, and automatic shutdown systems required by 33 CFR 154.2103, 154.2107, and 154.2110, except as exempted by paragraph (c)(2) or specified by paragraph (c)(3) of this section, must be tested by applying altering test pressures at the sensors not more than 24 hours before each transfer;

(2) The pressure sensors required by 33 CFR 154.2103 may meet the requirements of the test program contained in 33 CFR 154.2180 and 33 CFR 154.2181 instead of the current program, which mandates tests within 24 hours before each transfer as required by paragraph (c)(1) of this section;

(3) Visible and audible alarm indicators must be tested not more than 24 hours before each transfer;

(4) The analyzers, except for flammability analyzers, required by 33 CFR 154.2105, 154.2107, and 154.2110, except as exempted by paragraph (c)(5) of this section, must be checked for calibration response by using a zero gas and a span gas not more than 24 hours before each transfer;

(5) The analyzers required by 33 CFR 154.2105, 154.2107, and 154.2110 may be checked for calibration response by use of a zero gas and a span gas as defined by the test program contained in 33 CFR 154.2180 and 33 CFR 154.2181, and comply with the minimum requirements as defined in 33 CFR 154.2180 and 33 CFR 154.2181, instead of the test required by paragraph (c)(4) of this section; and

(6) The vacuum and pressure relief valves required by 33 CFR 154.2103 must be manually checked per manufacturers' instructions to verify that the valves unseat easily and then reset to the closed position without constraint. Any required flame screens or flame arresters must also be visually checked to ensure that they are not damaged.

(d) The proper position of all valves in the vapor line between the vessel's tanks and the facility vapor collection system must be verified before the start of the transfer operation.

(e) A tank barge overfill control system that meets the requirements of 46 CFR 39.2009(a)(2) must—

(1) Not be connected to an overfill sensor circuit that exceeds the system's rated inductance and capacitance; and

(2) Be tested for proper operation after connection is made with the vessel by simulating liquid high level and overfill at each tank.

(f) When receiving vapor from a vessel with cargo tanks that are required to be inerted in accordance with 46 CFR 32.53, 46 CFR 153.500, or 46 CFR Table 151.05, the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) must not be opened until the pressure at the facility vapor connection, downstream of the facility vapor connection, exceeds 0.2 pounds per square inch gauge (psig).

(g) The initial cargo transfer rate must not exceed the rate agreed upon at the pre-transfer conference and 46 CFR 39.3001(g).

(h) The cargo transfer rate must not exceed the maximum allowable transfer rate as determined by the lesser of the following:

(1) A transfer rate corresponding to the maximum vapor processing rate for the VCS, as specified in the facility operations manual; or

(2) The vessel's maximum transfer rate in accordance with 46 CFR 39.3001(d).

(i) While transferring cargo to a vessel connected to a VCS, compressed air or gas may be used to clear cargo hoses and loading arms, but must not be used to clear cargo lines. However, compressed inert gas such as nitrogen can be used to clear cargo lines if a pigging system that meets 33 CFR 154.2104 is provided.

(j) If a pigging system is used to clear cargo lines to the tank vessel while the vessel is connected to the facility VCS, the following operational requirements apply:

(1) The VCS must be in operation, with all of the high-pressure alarms and shutdowns required by 33 CFR 154.2103 active, before and during pigging operations;

(2) Personnel performing the pigging operation must be adequately trained on the specific pigging system being used. Accurate written procedures that address event sequence, equipment, safety precautions, and overpressurization hazards must be made available to all personnel involved in the pigging operations;

(3) Pigging procedures must be reviewed by both the vessel and facility personnel in charge as part of the pre-transfer conference. Topics of discussion during the pre-transfer conference must include, but need not be limited to—

(i) Event sequence;

(ii) Equipment;

(iii) Safety precautions;

(iv) Overpressurization hazards;

(v) Personnel roles;

(vi) Gas volumetric flow rates;

(vii) Gas pressures;

(viii) Volume of residual cargo in the line;

(ix) Amount of ullage space that is available for line displacement and connections;

(x) Valve alignment;

(xi) Units of measure;

(xii) Terminology; and

(xiii) Anticipated duration of the evolution;

(4) The pig must be inspected to ensure that it is of sufficient durability and condition; be of an appropriate size, type, and construction for the intended operation; and be inspected for defects before each use and replaced if necessary;

(5) Personnel performing pigging operations must monitor pig movement at all times. The facility and vessel manifold valves must be closed immediately after the pig reaches the pig-receiving device; and

(6) If the pigging system contains pressure-sensing, relieving, or alarming components in addition to those required by 33 CFR 154.2103, the components must be periodically tested in accordance with paragraphs (c) and (q) of this section.

(k) If one or more analyzers required by 33 CFR 154.2107(d) or (e) or 154.2110 become inoperable during a transfer operation, the operation may continue, provided that at least one analyzer remains operational; however, no further transfer operations may start until all inoperable analyzers are replaced or repaired.

(l) Whenever a condition results in a shutdown of the VCS, the emergency shutdown system required by 33 CFR 154.550 must be automatically activated to terminate cargo loading into tanks which are being vapor controlled.

(m) If it is suspected that a flare in the VCS has had a flashback, or if a flame is detected on a detonation arrester required by 33 CFR 154.2109(c)(2), the transfer operation must stop and cannot restart until that detonation arrester and any quick-closing stop valves downstream of the detonation arrester are inspected and found to be in satisfactory condition.

(n) Before each transfer operation, the freezing point of each cargo must be determined. If there is a possibility that the ambient air temperature during transfer operations will be at or below the freezing point of the cargo, adequate precautions must be taken to prevent freezing of vapor or condensate, or to detect and remove the frozen liquid and condensation to prevent accumulation.

(o) Before each transfer operation, the cargo vapor must be evaluated to determine its potential to polymerize, and adequate precautions must be taken to prevent and detect polymerization of the cargo vapors.

(p) Mixing of incompatible vapors is prohibited. The VCS piping, equipment, hoses, valves, and arresters must be purged between vapor control operations that involve incompatible chemical vapors in accordance with the following:

(1) Chemical compatibility must be determined by using the procedures contained in 46 CFR part 150;

(2) Purge gas must be an inert gas, air, or enriching gas, and must be adequate to reduce the level of residual vapor to a level at which reaction with the subsequent vapor cannot occur; and

(3) The required duration of purge time must be calculated and approved by the certifying entity during the certification or recertification.

(q) After each transfer operation, the VCS piping, equipment, hoses, valves, and arresters must be purged with at least two-system volume exchanges of non-reactive gas or air so the VCS is left with a safe condition.

(r) VCS equipment and instrumentation must be tested in compliance with 33 CFR 156.170(g) or (i), with the COTP or designated representative invited to observe these tests. The test procedure and a checklist must be approved by the certifying entity during the initial certification of the system and incorporated into the facility operations manual.

(s) A transfer operation that includes collection of vapor emitted to or from a vessel's cargo tanks must meet the transfer requirements of 33 CFR 156.120(aa), and a declaration of inspection meeting the requirements of 33 CFR 156.150 must be completed before each transfer.

Alternative Analyzer and Pressure Sensor Reliability Testing

§ 154.2180 Alternative testing program—generally.

(a) As an alternative to complying with the vapor control system (VCS) analyzer and pressure sensor safety testing requirements provided by 33 CFR 154.2150(c) and 33 CFR 154.2250(c), the facility person in charge may administer a reliability assurance test program in accordance with this section and 33 CFR 154.2181.

(b) As used in this section—

(1) *Calibration drift* or *CD* means the difference in the analyzer output readings from the established reference value after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place;

(2) *Calibration error* or *CE* means the difference between the gas concentration exhibited by the gas analyzer and the known concentration of the cylinder gas;

(3) *Response time* or *RT* means the time interval between the start of a step change in the system input (e.g., change of calibration gas) and the time when the data recording system displays 95 percent of the final stable value; and

(4) *Sampling system bias* or *SSB* means the difference between the gas concentrations indicated by the measurement system when a known cylinder gas is introduced at or near the sampling probe and when the same gas is introduced directly to the analyzer.

(c) All analyzers used in a VCS must be tested for safety system functions, CE, CD, RT, and SSB, in accordance with 33 CFR 154.2181.

(d) All pressure sensors/switches used in a VCS must be tested for safety system functions, CE and CD, in accordance with 33 CFR 154.2181.

(e) The facility person in charge must ensure the following:

(1) Calibration of instrumentation using standard procedures provided by the manufacturer or service provider;

(2) Monitoring of all interlocks, alarms, and recording devices for proper operation while instrumentation is being calibrated;

(3) Use of a certified gas standard that is within plus or minus two (2) percent of its certified concentration to calibrate the analyzers; and

(4) Use of a certified secondary standard that is standardized against a primary standard to calibrate the pressure sensors/switches.

(f) Upon failing any test under 33 CFR 154.2181, the facility person in charge must ensure that all monthly and quarterly tests, including CE, CD, RT, and SSB, are conducted; and until all quarterly tests are completed, the person in charge must ensure that the vapor control alarms and automatic shutdown system are tested no more than 24 hours prior to any transfer or tank barge cleaning operation.

(g) Analyzers required by 33 CFR 154.2105(a) and (j) and 154.2107(d) and (e) must be checked for calibration using a zero gas and a span gas.

(h) The facility operator must maintain and make available upon the request of the Commandant and the certifying entity that certifies the VCS the following reliability assurance test program documents for two years:

(1) All test procedures;

(2) The dates of all tests, type of tests made, and who conducted the tests;

(3) Results of the tests, including the ''as found'' and ''as left'' conditions; and

(4) A record of the date and time of repairs made.

§ 154.2181 Alternative testing program—test requirements.

(a) The safety system function test required by 33 CFR 154.2180 must be performed once every two weeks and test for the proper operation and interaction of the analyzer or pressure sensor/switch with shutdown interlocks, and audible and visible alarm devices.

(b) The calibration error (CE) test required by 33 CFR 154.2180 must be performed once every month and documented as shown in Forms 154.2181(b)(2) and 154.2181(b)(3) of this section, to document the accuracy and linearity of the monitoring equipment for the entire measurement range.

(1) The CE test must expose the measurement system, including all monitoring components (e.g., sample lines, filters, scrubbers, conditioners, and as much of the probe as practicable), to the calibration gases, introduced through an injection port located so as to allow a check of the entire measurement system when calibration gases are introduced;

(2) The CE test must check the calibrated range of each analyzer using a lower (zero) and upper (span) reference gas standard. Three measurements must be taken against each standard and recorded as shown in Form 154.2181(b)(2) of this section, with the average of the three values in each case then used to calculate the CE according to this equation (where CE = percentage calibration error based upon span of the instrument, R = reference value of zero or high-level calibration gas introduced into the monitoring system, A = actual monitoring system response to the calibration gas, and S = span of the instrument):

$$CE = \frac{|R - A|}{S} \times 100$$

Form 154.2181(b)(2): Calibration error determination.

	Calibration value	Monitor response	Difference	
			Zero	Span
1-Zero				
1-Span				
2-Zero				
2-Span				
3-Zero				
3-Span				
Mean Difference =				
Calibration Error =			%	%

(3) The CE test must check each pressure sensor/switch for upscale (activate) and downscale (deactivate) hysteresis around the sensor/switch set pressure. The calibration error must be calculated and recorded as shown in Form 154.2181(b)(3) of this section. Test the pressure sensor/switch three times and record the desired setting and the as-found set pressure. Calculate and record the difference of the two settings. Calculate the error percentage using this equation (where CE = percentage calibration error based upon span of the instrument, R = reference setting of the instrument, A = actual response as recorded on the test instrument, and S = span of the instrument):

$$CE = \frac{|R - A|}{S} \times 100$$

Record sensor ''as-left'' setting only if an adjustment is made.

Form 154.2181(b)(3): Switch calibration error.

QUALITY ASSURANCE DATA SHEET
SWITCH DATA RECORD

DATE. _____ F.I. NO. _____

MANUFACTURER _____

MODEL NO._____ SERIAL NO. _____

SERVICE _____

CR = CLOSES ON RISE OR = OPENS ON RISE
CF = CLOSES ON FALL OF = OPENS ON FALL

TEST EQUIPMENT	MODEL NO.	SERIAL NO.

FUNCTION	DESIRED	AS FOUND	DIFFERENCE	ERROR %	AS LEFT
Test #1 Set					
Reset					
Test #2 Set					
Reset					
Test #3 Set					
Reset					

SPEC NO. _____	TEST PERFORMED BY: _____
DATE: _____	ACCEPTED BY: _____

REMARKS:
_____
_____
_____
_____
_____
_____

(c) The calibration drift (CD) test required by 33 CFR 154.2180 must be performed once every quarter and documented as shown in Form 154.2181(c)(3) of this section, to verify

the ability of the instrument to conform to the established calibration.

(1) The CD measurement must be conducted once daily for 7 consecutive days without making any adjustments to the instruments.

(2) Conduct the CD test at zero level (between 0 and 20 percent of the instrument span) and at high level (between 75 and 95 percent of the instrument span).

(3) Calculate and record the CD for 7 consecutive days using the equations in paragraphs (b)(2) and (3) of this section and Form 154.2181(c)(3) of this section.

Form 154.2181(c)(3): Calibration drift determination.

Day	Day/time	Reference value (RV)	Monitor value	Difference	Percent of RV
Low-Level:					
High-Level:					

(d) The response time (RT) test required by 33 CFR 154.2180 must be performed once every quarter and documented as shown in Form 154.2181(d) of this section, to determine the RT which is the largest average response time in the upscale or downscale direction.

(1) For systems that normally operate below 20 percent of calibrated range, only a span (upscale) test is required.

(2) Record the span (upscale) value, zero (downscale) cylinder gas value, and stable, initial process-measured variable value.

(3) Determine the step change, which is equal to the average difference between the initial process-measured variable value and the average final stable cylinder gas-measured value.

(4) To determine both upscale and downscale step change intervals—

(i) Inject span (or zero) cylinder gas into the sample system as close to the sample probe as possible. Existing systems that inject the gas at the analyzer box do not need to be modified. However, the gas transit time between the analyzer box and the sample probe must be taken into account;

(ii) Allow the analyzer to stabilize and record the stabilized value. A stable reading is achieved when the concentration reading deviates less than 6 percent from the measured average concentration in 6 minutes or if it deviates less than 2 percent of the monitor's span value in 1 minute;

(iii) Stop the span (or zero) gas flow, allow the monitor to stabilize back to the measured variable value, and record the stabilized value; and

(iv) Repeat this procedure a total of three times and subtract the average final monitor reading from the average starting monitor value to determine the average upscale (or downscale) step change.

(5) Determine the response time, which is equal to the elapsed time at which 95 percent of the step change occurred.

(i) To find this value, take 5 percent of the average step change value and subtract the result from the cylinder gas analyzed value as shown in the following equation:

$$95\% \text{ step change value} = \text{cylinder gas value} - (0.05 \times \text{avg. step change})$$

(ii) Inject span (or zero) cylinder gas into the sample system as close to the sample probe as possible, and measure the time it takes to reach the 95 percent step change value.

(iii) Repeat the previous step (paragraph (d)(5)(ii) of this section) a total of three times each with span and zero cylinder gas to determine average upscale and downscale response times.

(iv) Compare the response times achieved for the upscale and downscale tests. The longer of these two times equals the response time for the analyzer.

Form 154.2181(d): Response time.

Date of test _____
Component/system ID#: _____
Analyzer type _____
Serial Number _____
High-level gas concentration: ___ ppm / %
Zero-level gas concentration: ___ ppm / %
Analyzer span setting: ___ ppm / %
Upscale:
Stable starting monitor value: ____, ____, ____;
Avg. ____ ppm / %
Stable ending monitor reading: ____, ____, ____;
Avg. ____ ppm / %
Step change interval: ____ ppm; 95%
Step change value: ____ ppm / %
Elapsed time: ___, ____, ____; Avg. _____ seconds
Downscale:
Stable starting monitor value: ____, ____, ____;
Avg. ____ ppm / %
Stable ending monitor reading: ____, ____, ____;
Avg. ____ ppm / %
Step change interval: ____ ppm; 95%
Step change value: ____ ppm / %
Elapsed time: ____, ____, ____;
Avg. ____ seconds

System response time = ___ seconds

(e) The sample system bias (SSB) test required by 33 CFR 154.2180 must be performed once every quarter and documented, to establish that the system has no additional influence on the measurement being made by the analyzer.

(1) Conduct a close CE test in accordance with paragraph (b) of this section, by injecting calibration gas as close as possible to the analyzer, eliminating as much of the sample system components as possible, while still simulating the normal source operating conditions.

(2) If system integrity is maintained, and it has not become contaminated, the difference between the close and standard CE tests should be the same.

(f) For CE and CD tests, analyzers and pressure sensors must meet the following minimum compliance requirements:

(1) Oxygen analyzers must not deviate from the reference value of the zero- or high-level calibration gas by more than 0.5 percent of full scale;

(2) Total hydrocarbon analyzers must not deviate from the reference value of the zero- or high-level calibration gas by more than 1 percent of full scale; and

(3) Pressure sensors/switches must not deviate from the reference value of the zero- or high-level calibration gas by more than 1.5 percent of full range.

(g) For RT tests, each oxygen or hydrocarbon analyzer must respond, in less than 1 minute, to 95 percent of the final stable value of a test span gas.

(h) For SSB tests, the analyzer system bias must be less than 5 percent of the average difference between the standard CE test and the close CE test, divided by the individual analyzer span.

Tank Barge Cleaning Facilities—VCS Design and Installation

§ 154.2200 Applicable transfer facility design and installation requirements.

A tank barge cleaning facility's (TBCF's) vapor control system (VCS) must meet the following design and installation requirements of this subpart for a transfer facility's VCS:

(a) 33 CFR 154.2100(b), (c), (f), (g), (i), (j), and (k): general design and installation requirements;

(b) 33 CFR 154.2102: facility requirements for vessel liquid overfill protection, if a TBCF receives vapor from a tank barge that is required by 46 CFR 39.6001(f)(3) to be equipped with a liquid overfill protection arrangement and meet 46 CFR 39.2009;

(c) 33 CFR 154.2106: detonation arrester installation;

(d) 33 CFR 154.2107: inerting, enriching, and diluting systems;

(e) 33 CFR 154.2108: vapor-moving devices;

(f) 33 CFR 154.2109: vapor recovery and vapor destruction units;

(g) 33 CFR 154.2111: VCS connected to a facility's main VCS;

(h) 33 CFR 154.2112: special requirements for vapors with the potential to polymerize or freeze; and

(i) 33 CFR 154.2113: special requirements for alkylene oxides.

§ 154.2201 Vapor control system—general requirements.

(a) Vapor control system (VCS) design and installation must eliminate potential overpressure and vacuum hazards, sources of ignition, and mechanical damage to the maximum practicable extent. Each remaining hazard source that is not eliminated must be specifically addressed in the protection system design and system operational requirements.

(b) Any pressure, flow, or concentration indication required by this part must provide a remote indicator on the facility where the VCS is controlled, unless the local indicator is clearly visible and readable from the operator's normal position at the VCS control station.

(c) Any condition requiring an alarm as specified in this part must activate an audible and visible alarm where the VCS is controlled.

(d) A mechanism must be developed and used to eliminate any liquid from the VCS.

(e) A liquid knockout vessel must be installed between the facility vapor connection and any vapor-moving device in systems that have the potential for two-phase (vapor/liquid) flow from the barge or the potential for liquid condensate to form as a result of the enrichment process. The liquid knockout vessel must have—

(1) A means to indicate the level of liquid in the device;

(2) A high liquid level sensor that activates an alarm that satisfies the requirements of 33 CFR 154.2100(e); and

(3) A high-high liquid level sensor that closes the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) and shuts down any vapor-moving device before liquid is carried over to the vapor-moving device. One sensor with two stages may be used to meet this requirement as well as paragraph (e)(2) of this section.

§ 154.2202 Vapor line connections.

(a) 33 CFR 154.2101(a), (e), and (g) apply to a tank barge cleaning facility's (TBCF's) vapor control system (VCS).

(b) The remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) must be located upstream of the liquid knockout vessel required by 33 CFR 154.2201(e).

(c) A fluid displacement system must have a remotely operated shutoff valve installed in the fluid injection supply line between the point where the inert gas or other medium is generated and the fluid injection connection. The valve must comply with 33 CFR 154.2101(a)(1) through (6).

(d) Each hose used for transferring vapors must—

(1) Have a design burst pressure of at least 25 pounds per square inch gauge (psig);

(2) Have a maximum allowable working pressure (MAWP) no less than 5 psig;

(3) Be capable of withstanding at least the maximum vacuum rating of the vapor-moving device without collapsing or constricting;

(4) Be electrically continuous, with a maximum resistance of 10,000 ohms;

(5) Have flanges with a bolthole arrangement complying with the requirements for Class 150 ANSI B16.5 flanges (incorporated by reference, see 33 CFR 154.106);

(6) Be abrasion and kinking resistant; and

(7) Be compatible with vapors being transferred.

(e) Fixed vapor collection arms must meet the requirements of paragraph (d) of this section.

§ 154.2203 Facility requirements for barge vapor overpressure and vacuum protection.

In this section, the requirements of having a flame arrester or a flame screen at the opening of a pressure relief valve or a vacuum relief valve apply only to facilities collecting vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) A facility vapor collection system must have a capacity for collecting cleaning facility vapors at a rate of no less than 1.1 times the facility's maximum allowable gas-freeing rate, plus any inerting, diluting, or enriching gas that may be added to the system.

(b) A facility vapor control system (VCS) must be designed to prevent the pressure in a vessel's cargo tanks from going below 80 percent of the highest setting of any of the barge's vacuum relief valves or exceeding 80 percent of the lowest setting of any of the barge's pressure relief valves. The VCS must be capable of maintaining the pressure in the barge's cargo tanks within this range at any gas-freeing rate less than or equal to the maximum gas-freeing rate determined by the requirements in 46 CFR 39.6007(c).

(c) A fluid displacement system must provide a pressure-sensing device that activates an alarm that satisfies the requirements of 33 CFR 154.2100(e) when the pressure at the fluid injection connection exceeds either the pressure corresponding to the upper pressure determined in paragraph (b) of this section or a lower pressure agreed upon by the facility and barge persons in charge. The pressure-sensing device must be located in the fluid displacement system's piping downstream of any devices that could potentially isolate the barge's vapor collection system from the pressure-sensing device. The pressure measured by the sensing device must be corrected for pressure drops across any barge piping, hoses, or arms that are used to inject the fluid.

(d) A fluid displacement system must provide a pressure-sensing device that is independent of the device required by paragraph (c) of this section. This pressure-sensing device must activate the fluid displacement system emergency shutdown and close the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a). It must also close the remotely operated shutoff valve required by 33 CFR 154.2202(c) when the pressure at the fluid injection connection reaches a corresponding 90 percent of the lowest setting of any pressure relief valve on the barge. The pressure-sensing device must be located in the fluid displacement system's piping downstream of any device that could potentially isolate the barge's VCS from the pressure-sensing device. The pressure measured by the sensing device must be corrected for pressure drops across any barge piping, hoses, or arms that are used to inject the fluid.

(e) If a vapor-moving device capable of drawing more than 0.5 pounds per square inch gauge (psig) vacuum is used to draw vapor, air, inert gas, or other medium from the barge, a vacuum relief valve must be installed on the facility's fixed vapor collection system piping between the facility vapor connection and the vapor-moving device. The vacuum relief valve must—

(1) Relieve at a pressure such that the pressure at the facility vapor connection is maintained at or above 14.2 pounds per square inch absolute (psia) (-0.5 psig);

(2) Have a relieving capacity equal to or greater than the maximum capacity of the vapor-moving device;

(3) Have a flame arrester or flame screen fitted at the vacuum relief opening;

(4) Have been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000 (incorporated by

reference, see 33 CFR 154.106), with a flame arrester or flame screen fitted; and

(5) Be constructed of materials compatible with the vapors being gas-freed.

(f) The vacuum relief valve requirements of paragraph (e) of this section may include a valve to isolate it from the facility vapor collection piping, provided—

(1) The isolation valve must be interlocked with any vapor-moving device such that the vapor-moving device cannot activate unless the isolation valve is in the full open position (i.e., the vacuum relief valve is not isolated); and

(2) The isolation valve can only be closed after the facility person in charge has acknowledged that the hatch opening required by 33 CFR 154.2250(i) is open and secured.

(g) If a vapor-moving device capable of drawing more than 0.5 psig vacuum is used to draw vapor, air, inert gas, or other medium from the barge, the facility must install portable, intrinsically safe, pressure-sensing devices on any cargo tank, or on the common vapor header, at the connection required by 46 CFR 39.6003(b) before any cleaning operation begins on the tank. A pressure-sensing device must be provided that—

(1) Activates an alarm that satisfies 33 CFR 154.2100(e) when the pressure in the cargo tank being cleaned falls below 80 percent of the highest setting of any of the barge's vacuum relief valves, or a higher pressure agreed upon by the facility and barge persons in charge; and

(2) Activates the emergency shutdown system for the vapor-moving device and closes the remotely operated cargo vapor shutoff valve described in 33 CFR 154.2101(a) when the pressure in the cargo tank being cleaned falls below 90 percent of the highest setting of any of the barge's vacuum relief valves, or a higher pressure agreed upon by the facility and barge persons in charge. This pressure-sensing device must be independent of the device used to activate an alarm required by paragraph (g)(1) of this section.

(h) The pressure-sensing devices required by paragraph (g) of this section must—

(1) Have suitable means, such as approved intrinsic safety barriers that are able to accept passive devices, so that the under-pressure alarm circuits of the barge side of the under-pressure control system, including cabling, normally closed switches, and pin and sleeve connectors, are intrinsically safe;

(2) Be connected to the under-pressure alarm system by a four-wire, 16-ampere shielded flexible cable; and

(3) Have cable shielding grounded to the under-pressure alarm system.

(i) A pressure-indicating device must be provided within 6 meters (19.7 feet) of the facility vapor connection which displays the pressure in the vapor collection line upstream of any isolation valve and any devices, such as strainers, that could cause a blockage in the vapor line.

(j) A fluid displacement system must include a pressure-indicating device that displays the pressure in the fluid displacement system injection line. This device must be within 6 meters (19.7 feet) of the fluid injection connection.

(k) If a fluid displacement system used to inject inert gas or another medium into the cargo tank of a barge being gas-freed is capable of producing a pressure greater than 2 psig, a pressure relief valve must be installed in the fluid displacement system injection line between the fluid injection source and the fluid injection connection that—

(1) Relieves at a predetermined pressure such that the pressure in the fluid displacement system at the fluid injection connection does not exceed 1.5 psig;

(2) Has a relieving capacity equal to or greater than the maximum volumetric flow capacity of the fluid displacement system;

(3) Has a flame screen or flame arrester fitted at the relief opening; and

(4) Has been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000, when fitted with a flame screen or flame arrester.

(l) When using the fluid displacement system, if the pressure in the facility's fixed vapor collection system can exceed 2 psig during a malfunction in an inerting, enriching, or diluting system, a pressure relief valve must—

(1) Be installed between the point where inerting, enriching, or diluting gas is added to the facility's fixed vapor collection system piping and the facility vapor connection;

(2) Relieve at a predetermined pressure such that the pressure at the facility vapor connection does not exceed 1.5 psig;

(3) Have a relieving capacity equal to or greater than the maximum capacity of the facility's inerting, enriching, or diluting gas source;

(4) Have a flame screen or flame arrester fitted at the relief opening;

(5) Have been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000, when fitted with a flame screen or flame arrester; and

(6) Be constructed of materials compatible with the vapors being gas-freed.

(m) For fluid displacement systems, the fluid injection connection must be electrically insulated from the fluid injection source in accordance with OCIMF ISGOTT section 17.5 (incorporated by reference, see 33 CFR 154.106).

(n) If the pressure relief valve is not designed with a minimum vapor discharge velocity of 30 meters (98.4 feet) per second, the relieving capacity test required by paragraphs (k)(4) and (l)(5) of this section must be carried out with a flame screen or flame arrester fitted at the discharge opening.

(o) A pressure indicating device must be provided by the facility for installation at the connection required by 46 CFR 39.6003(b).

§ 154.2204 Fire, explosion, and detonation protection.

This section applies to tank barge cleaning facilities (TBCFs) collecting vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) A vapor control system (VCS) with a single facility vapor connection that processes vapor with a vapor recovery unit must—

(1) Have a detonation arrester located as close as practicable to the facility vapor connection. The total pipe length between the detonation arrester and the facility vapor connection must not exceed 18 meters (59.1 feet) and the vapor piping between the detonation arrester and the facility vapor connection must be protected from any potential internal or external ignition source; or

(2) Have an inerting, enriching, or diluting system that meets the requirements of 33 CFR 154.2107.

(b) A VCS with a single facility vapor connection that processes vapor with a vapor destruction unit must—

(1) Have a detonation arrester located as close as practicable to the facility vapor connection. The total pipe length between the detonation arrester and the facility vapor connection must not exceed 18 meters (59.1 feet) and the vapor piping between the detonation arrester and the facility vapor connection must be protected from any potential internal or external ignition source; and

(2) Have an inerting, enriching, or diluting system that meets the requirements of 33 CFR 154.2107.

(c) A VCS with multiple facility vapor connections that processes vapor with a vapor recovery unit must have a detonation arrester located as close as practicable to each facility vapor

connection. The total pipe length between the detonation arrester and each facility vapor connection must not exceed 18 meters (59.1 feet) and the vapor piping between the detonation arrester and the facility vapor connection must be protected from any potential internal or external ignition source.

(d) A VCS with multiple facility vapor connections that processes vapor with a vapor destruction unit must—

(1) Have a detonation arrester located as close as practicable to each facility vapor connection. The total pipe length between the detonation arrester and each facility vapor connection must not exceed 18 meters (59.1 feet) and the vapor piping between the detonation arrester and the facility vapor connection must be protected from any potential internal or external ignition source; and

(2) Have an inerting, enriching, or diluting system that meets the requirements of 33 CFR 154.2107.

(e) 33 CFR 154.2105(j) applies to a TBCF's VCS.

Tank Barge Cleaning Facilities—Operations

§ 154.2250 General requirements.

(a) No tank barge cleaning operation using a vapor control system (VCS) may be conducted unless the facility operator has a copy of the facility operations manual, with the VCS addendum, marked by the local Coast Guard Captain of the Port (COTP) as required by 33 CFR 154.325(d).

(b) The facility person in charge must ensure that a facility can receive vapors only from a barge with a VCS that has been approved by the Coast Guard Marine Safety Center as meeting the requirements of 46 CFR 39.6000.

(c) The facility person in charge must ensure that safety system tests are conducted as follows:

(1) Pressure sensors, alarms, and automatic shutdown systems required by 33 CFR 154.2203, except as exempted by paragraph (c)(2) or as specified by paragraph (c)(3) of this section, must be tested by applying altering test pressures at the sensors not more than 24 hours before each cleaning operation;

(2) The pressure sensors required by 33 CFR 154.2203 may meet the test program in accordance with 33 CFR 154.2180 and 33 CFR 154.2181 instead of the test within 24 hours before each cleaning operation as required by paragraph (c)(1) of this section;

(3) Visible and audible alarm indicators must be tested not more than 24 hours before each cleaning operation;

(4) The analyzers, except for flammability analyzers, required by 33 CFR 154.2105(j) and 154.2107, except as exempted by paragraph (c)(5) of this section, must be checked for calibration response by use of a zero gas and a span gas not more than 24 hours before each cleaning operation;

(5) The analyzers required by 33 CFR 154.2105(j) and 154.2107 may be checked for calibration response by use of a zero gas and a span gas as defined by the test program contained in 33 CFR 154.2180 and 33 CFR 154.2181, and comply with the minimum requirements as defined in 33 CFR 154.2180 and 33 CFR 154.2181, instead of as provided by paragraph (c)(4) of this section; and

(6) The vacuum and pressure relief valves required by 33 CFR 154.2203 must be manually checked per manufacturers' instructions to verify that the valves unseat easily and then reset to the closed position without constraint. Any required flame screens or flame arresters must also be visually checked to ensure that they are not damaged.

(d) The facility person in charge must verify the following before beginning cleaning operations:

(1) Each valve in the vapor collection system between the barge's cargo tank and the facility vapor collection system is correctly positioned to allow the collection of vapors;

(2) A vapor collection hose or arm is connected to the barge's vapor collection system;

(3) The electrical insulating devices required by 33 CFR 154.2101(g) and 154.2203(m) are installed;

(4) The maximum allowable gas-freeing rate as determined by the lesser of the following:

(i) A gas-freeing rate corresponding to the maximum vapor processing rate for the tank barge cleaning facility's (TBCF's) VCS, as specified in the facility operations manual; or

(ii) The barge's maximum gas-freeing rate determined in accordance with 46 CFR 39.6007(c);

(5) The gas-freeing rate will not exceed the maximum allowable gas-freeing rate as determined in paragraph (d)(4) of this section;

(6) The maximum allowable stripping rate is determined and does not exceed the volumetric capacity of the barge's vacuum relief valve at the valve's setpoint for the cargo tank being stripped;

(7) The barge's maximum and minimum operating pressures;

(8) Each vapor collection hose has no unrepaired or loose covers, kinks, bulges, soft spots, or any other defects that would permit the discharge of vapor through the hose material; and no external gouges, cuts, or slashes that penetrate the first layer of hose reinforcement;

(9) The freezing point of each cargo. If there is a possibility that the ambient air temperature during cleaning operations will be at or below the freezing point of the cargo, adequate precautions have been taken to prevent freezing of vapor or condensate, or to detect and remove the frozen liquid and condensate to prevent accumulation; and

(10) The cargo vapor is evaluated for the potential to polymerize, and adequate precautions have been taken to prevent and detect polymerization of the cargo vapors.

(e) VCS equipment and instrumentation must be tested in compliance with 33 CFR 156.170(g) or (i), with the COTP or designated representative invited to observe these tests. The test procedure and a checklist must be approved by the certifying entity during the initial certification of the system and incorporated into the facility operations manual.

(f) If one or more analyzers required by 33 CFR 154.2107(d) or (e) become inoperable during gas-freeing operations, the operation may continue, provided that at least one analyzer remains operational; however, no further gas-freeing operations may be started until all inoperable analyzers are repaired or replaced.

(g) Whenever a condition results in a shutdown of the VCS, the cleaning operations must be immediately terminated. The operation may not resume until the cause of the shutdown has been investigated and corrective action taken.

(h) If it is suspected that a flare in the VCS has had a flashback, or if a flame is detected on a detonation arrester required by 33 CFR 154.2109(c)(2), the cleaning operation must be stopped and may not resume until the detonation arrester and any quick-closing stop valves downstream of the detonation arrester have been inspected and found to be in satisfactory condition.

(i) If a vacuum displacement system is used for gas-freeing, the facility person in charge of the cleaning operation must verify the following items:

(1) The minimum amount of open area for air flow on the barge has been determined so that the pressure in the cargo tank cannot be less than 14.5 pounds per square inch absolute (psia) (−0.2 pounds per square inch gauge (psig)) at the maximum flow capacity of the vapor-moving device;

(2) Any hatch or fitting providing the minimum open area has been secured open so that accidental closure is not possible; and

(3) The hatch and/or fitting must be opened before the pressure in the cargo tank falls below 10 percent of the highest setting of any of the barge's vacuum relief valves.

(j) 33 CFR 154.2150(p) and (q) apply to a TBCF's VCS.

Appendix A to part 154 [Amended]

■ 10. In Appendix A, 7.3, after the words ''ANSI B16.5'', add the words ''(incorporated by reference, see 33 CFR 154.106)''.

Appendix B to part 154 [Removed and Reserved]

■ 11. Remove and reserve Appendix B to part 154.

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

■ 12. The authority citation for part 155 is revised to read as follows:

Authority: 33 U.S.C. 1225, 1231, 1321(j), 1903(b); 46 U.S.C. 3703; E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1. Section 155.490 also issued under section 4110(b) of Pub. L. 101–380.

§ 155.750 [Amended]

■ 13. In § 155.750—

■ a. In paragraph (d)(3), remove the citation ''46 CFR 39.30–1(d)(1) through (d)(3)'' and add, in its place, the citation ''46 CFR 39.3001(d)(1) through (3)'';

■ b. In paragraph (d)(4), remove the citation ''46 CFR 39.30–1(h)'' and add, in its place, the citation ''46 CFR 39.3001(g)''; and

■ c. In paragraph (d)(5), remove the citation ''46 CFR 39.30–1(b)'' and add, in its place, the citation ''46 CFR 39.3001(c)''.

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

■ 14. The authority citation for part 156 is revised to read as follows:

Authority: 33 U.S.C. 1225, 1231, 1321(j); 46 U.S.C. 3703, 3703a, 3715; E.O. 11735, 3 CFR 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1.

■ 15. In § 156.120—

■ a. Revise paragraph (aa) introductory text;

■ b. In paragraph (aa)(4), remove the word ''loading'' and add, in its place, the word ''transfer'';

■ c. In paragraph (aa)(7) introductory text, after the words ''the transfer operation'', add the words ''or in accordance with 33 CFR 154.2150(b)'';

■ d. In paragraph (aa)(7)(ii), remove the words ''§ 154.820(a), § 154.824(d) and (e) of this chapter'' and add, in their place, the words ''33 CFR 154.2105(a) and (j) and 154.2107(d) and (e)'';

■ e. Revise paragraph (aa)(9); and

■ f. Add paragraphs (aa)(10) through (12).

The revisions and additions read as follows:

§ 156.120 Requirements for transfer.

* * * * *

(aa) A transfer operation which includes collection of vapor emitted to or from a vessel's cargo tanks through a vapor control system (VCS) not located on the vessel must have the following verified by the person in charge:

* * * * *

(9) The oxygen content in the vapor space of each of the vessel's cargo tanks connected to the vapor collection system, if inerted, is—

(i) At or below 60 percent by volume of the cargo's minimum oxygen concentration for combustion; or

(ii) At or below 8 percent by volume, at the start of cargo transfer, for vapor of crude oil, gasoline blends, or benzene;

(10) The freezing point of each cargo has been determined. If there is a possibility that the ambient air temperature during transfer operations will be at or below the freezing point of the cargo, adequate precautions have been taken to prevent freezing of vapor or condensate, or to detect and remove the liquid condensate and solids to prevent accumulation;

(11) If the cargo has the potential to polymerize, adequate precautions have been taken to prevent and detect polymerization of the cargo vapors; and

(12) The VCS has been cleaned, in accordance with 33 CFR 154.2150(p), between transfers of incompatible cargoes.

* * * * *

■ 16. In § 156.170—

■ a. In paragraph (g) introductory text, after the words ''collects vapor emitted'', add the words ''to or'';

■ b. In paragraph (g)(3), remove the words ''§ 154.820, § 154.826(a), and § 154.828(a) of this chapter or 46 CFR 39.40–3(d), and each flame arrester required by § 154.826(a), § 154.828(a) and (c) of this chapter'' and add, in their place, the words ''33 CFR 154.2105, 154.2108(b), 154.2109, 154.2110, 154.2111, and 154.2204, or 46 CFR 39.4003, and each flame arrester required by 33 CFR 154.2103, 154.2105(j), and 154.2203'';

■ c. In paragraph (g)(4) introductory text, remove the words ''§ 154.820(a) and § 154.824(d) and (e) of this chapter or 46 CFR 39.40–3(a)'' and add, in their place, the words ''33 CFR 154.2105(a) and (j), 154.2107(d) and (e), and 154.2110 or 46 CFR 39.4003''; and

■ d. Add paragraph (i) to read as follows:

§ 156.170 Equipment tests and inspections.

* * * * *

(i) Notwithstanding the general provisions of 33 CFR 156.107(a) relating to the authority of the Captain of the Port to approve alternatives, the owner or operator may request the written approval of the Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, for alternative methods of compliance to the testing and inspection requirements of paragraph (g)(3) of this section. The Commandant (CG–ENG) will grant that written approval upon determination that the alternative methods provide an equivalent level of safety and protection from fire, explosion, and detonation. Criteria to consider when evaluating requests for alternative methods may include, but are not limited to: operating and inspection history, type of equipment, new technology, and site-specific conditions that support the requested alternative.

* * * * *

Title 46—Shipping

PART 35—OPERATIONS

■ 17. The authority citation for part 35 is revised to read as follows:

Authority: 33 U.S.C. 1225, 1231, 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 18. Add § 35.35–4 to read as follows:

§ 35.35–4 Insulating flange joint or nonconductive hose—TB/ALL.

(a) A vessel's cargo hose string or vapor recovery hose must use an insulating flange or one continuous length of nonconductive hose between the vessel and the shore transfer facility. For each vapor recovery hose or cargo hose string, only one insulating flange or non-conductive hose must be provided. See 33 CFR 154.2101(g).

(b) The insulating flange must be inserted at the jetty end and take all reasonable measures to ensure the connection will not be disturbed. The hose must be suspended to ensure the hose-to-hose connection flanges do not rest on the jetty deck or other structure that may render the insulating flange

ineffective or short circuited by contact with external metal or through the hose handling equipment.

(c) The insulating flange must be inspected and tested at least annually, or more frequently if necessary due to deterioration caused by environmental exposure, usage, and damage from handling. After installation, the insulation reading between the metal pipe on the shore side of the flange and the end of the hose or metal arm when freely suspended must not be less than 1,000 ohms. A suitable DC insulation tester must be used.

■ 19. Revise § 35.35–5 to read as follows:

§ 35.35–5 Electrical bonding—TB/ALL.

The use of a vessel/shore bonding cable or wire is permissible only if operationally necessary and only in compliance with the requirements of paragraphs (a) and (b) of this section.

(a) A switch on the jetty that is in series with the bonding cable must be provided. The switch must be listed or certified by a Coast Guard accepted independent laboratory and approved for use in a Class I Zone 1 or Class I, Division 1 location, and the appropriate Gas Group of the cargo authorized for the vessel.

(b) The connection point for the bonding cable system must be at least 20 feet from the cargo manifold area, the cargo hose string, or the vapor recovery connection. The switch must be in the off position before connecting or disconnecting the bonding cable. The bonding cable must be attached before the cargo hoses or arms, or the vapor recovery connections are connected. The bonding cable must be removed only after the cargo hoses or arms, or the vapor recovery connections have been disconnected.

■ 20. In § 35.35–20—

■ a. In paragraph (m) introductory text, after the words ''collection of cargo vapor'', add the words ''to or'';

■ b. In paragraph (m)(1), after the words ''vapor to flow to'', add the words ''or from''; and

■ c. Revise paragraph (m)(9) to read as follows:

§ 35.35–20 Inspection before transfer of cargo—TB/ALL.

* * * * *

(m) * * *

(9) The oxygen content in the vapor space of each of the vessel's inerted cargo tanks connected to the vapor collection system is—

(i) At or below 60 percent by volume of the cargo's minimum oxygen concentration for combustion at the start of cargo transfer; or

(ii) At or below 8 percent by volume, at the start of cargo transfer, for vapor of crude oil, gasoline blends, or benzene.

■ 21. In § 35.35–30—

■ a. In paragraph (c) introductory text, after the words ''collection of cargo vapor'', add the words ''to or'';

■ b. In paragraph (c)(1), after the words ''vapor to flow to'', add the words ''or from''; and

■ c. Revise paragraph (c)(8) to read as follows:

§ 35.35–30 ''Decaration of Inspection'' for tank vessels—-TB/ALL.

* * * * *

(c) * * *

(8) Has the oxygen content in the vapor space of each of the vessel's inerted cargo tanks connected to the vapor collection system been verified to be—

(i) At or below 60 percent by volume, at the start of cargo transfer, of the cargo's minimum oxygen concentration for combustion; or

(ii) At or below 8 percent by volume, at the start of cargo transfer, for vapor of crude oil, gasoline blends, or benzene.

■ 22. Revise part 39 to read as follows:

PART 39—VAPOR CONTROL SYSTEMS

Subpart 39.1000—General

Sec.
39.1001 Applicability—TB/ALL.
39.1003 Definitions—TB/ALL.
39.1005 Incorporation by reference—TB/ALL.
39.1009 Additional tank vessel vapor processing unit requirements—TB/ALL.
39.1011 Personnel training requirements—TB/ALL.
39.1013 U.S.-flagged tank vessel certification procedures for vapor control system designs—TB/ALL.
39.1015 Foreign-flagged tank vessel certification procedures for vapor control system designs—TB/ALL.
39.1017 Additional certification procedures for a tank barge vapor collection system design—B/ALL.

Subpart 39.2000—Equipment and Installation

39.2001 Vapor collection system—TB/ALL.
39.2003 Cargo gauging system—TB/ALL.
39.2007 Tankship liquid overfill protection—T/ALL.
39.2009 Tank barge liquid overfill protection—B/ALL.
39.2011 Vapor overpressure and vacuum protection—TB/ALL.
39.2013 High and low vapor pressure protection for tankships—T/ALL.
39.2014 Polymerizing cargoes safety—TB/ALL.
39.2015 Tank barge pressure-vacuum indicating devices—B/ALL.

Subpart 39.3000—Vapor Collection Operations During Cargo Transfer

39.3001 Operational requirements for vapor control systems during cargo transfer—TB/ALL.

Subpart 39.4000—Vessel-to-Vessel Transfers Using Vapor Balancing

39.4001 General requirements for vapor balancing—TB/ALL.
39.4003 Design and equipment for vapor balancing—TB/ALL.
39.4005 Operational requirements for vapor balancing—TB/ALL.

Subpart 39.5000—Multi-breasted Loading Using a Single Facility Vapor Connection

39.5001 General requirements for multi-breasted loading—B/CLBR.
39.5003 Additional requirements for multi-breasted loading using inboard barge vapor collection system—B/CLBR.
39.5005 Additional requirements for multi-breasted loading using a ''dummy'' vapor header—B/CLBR.

Subpart 39.6000—Tank Barge Cleaning Operations with Vapor Collection

39.6001 Design and equipment of vapor collection and stripping systems—B/ALL.
39.6003 Overpressure and underpressure protection during stripping and gas-freeing operations—B/ALL.
39.6005 Inspection prior to conducting gas-freeing operations—B/ALL.
39.6007 Operational requirements for tank barge cleaning—B/ALL.
39.6009 Barge person in charge: Designation and qualifications—B/ALL.

Authority: 33 U.S.C. 1225, 1231; 42 U.S.C. 7511b(f)(2); 46 U.S.C. 3306, 3703, 3715(b); E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

Subpart 39.1000—General

§ 39.1001 Applicability—TB/ALL.

(a) This part applies to tank vessels that use a vapor control system (VCS) to collect vapors emitted to or from a vessel's cargo tanks while operating in the navigable waters of the United States, except—

(1) Tank vessels with an operating vapor collection system approved by the Coast Guard prior to July 23, 1990, for the collection and transfer of cargo vapor to specific facilities. Such tank vessels are only subject to 46 CFR 39.1013, 39.3001, and 39.4005; and

(2) A tank barge that collects vapors emitted from its cargo tanks during gas-freeing or cleaning operations at a cleaning facility. This type of tank barge is only subject to 46 CFR part 39, subparts 39.1000 and 39.6000, and must comply with requirements of these two subparts at the time of its next inspection for certification required by 46 CFR 31.10–15, but no later than August 15, 2018.

(b) This part does not apply to the collection of vapors of liquefied flammable gases as defined in 46 CFR 30.10–39.

(c) In this part, regulatory measurements, whether in the metric or English system, are sometimes followed by approximate equivalent measurements in parentheses, which are given solely for the reader's convenience. Regulatory compliance with the regulatory measurement is required.

§ 39.1003 Definitions—TB/ALL.

As used in this part only:

Barge vapor connection means the point in a barge's piping system where it connects to a vapor collection hose or arm. This may be the same as the barge's cargo connection while controlling vapors during tank barge cargo tank-cleaning operations.

Cargo deck area means that part of the weather deck that is directly over the cargo tanks.

Cargo tank venting system means the venting system required by 46 CFR 32.55.

Certifying entity means a certifying entity accepted by the Coast Guard as such pursuant to 33 CFR part 154, subpart P.

Cleaning facility means a facility used or capable of being used to conduct cleaning operations on a tank barge.

Cleaning operation means any stripping, gas-freeing, or tank-washing operation of a barge's cargo tanks conducted at a cleaning facility.

Commandant means the Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126.

Facility vapor connection means the point in a facility's fixed vapor collection system where the system connects with the vapor collection hose or the base of the vapor collection arm.

Fixed stripping line means a pipe extending to the low point of each cargo tank, which is welded through the deck and terminated above deck with a valve, and plugged at the open end.

Flammable liquid means a liquid as defined in 46 CFR 30.10–22.

Fluid displacement system means a system that removes vapors from a barge's cargo tanks during gas freeing through the addition of an inert gas or other medium into the cargo tank.

Fluid injection connection means the point in a fluid displacement system at which the fixed piping or hose that supplies the inert gas or other medium connects to a barge's cargo tanks or fixed piping system.

Gas freeing means the removal of vapors from a tank barge.

Independent as applied to two systems means that one system will operate when there is a failure of any part of the other system.

Inerted means the oxygen content of the vapor space in a cargo tank is reduced in accordance with the inert gas requirements of 46 CFR 32.53 or 33 CFR 153.500. If a cargo vapor in a cargo tank that is connected to the vapor collection system is defined as inerted at the start of cargo transfer, the oxygen content in the vapor space of the cargo tank must not exceed 60 percent by volume of the cargo's minimum oxygen concentration for combustion, or 8 percent by volume for vapor of crude oil, gasoline blends, or benzene.

Marine Safety Center (MSC) means the Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd Street SW., Stop 7102, Washington, DC 20593–7102.

Maximum allowable gas-freeing rate means the maximum volumetric rate at which a barge may be gas-freed during cleaning operations.

Maximum allowable stripping rate means the maximum volumetric rate at which a barge may be stripped during cleaning operations prior to the opening of any hatch and/or fitting on the cargo tank being stripped.

Maximum allowable transfer rate means the maximum volumetric rate at which a vessel may receive cargo or ballast.

Minimum oxygen concentration for combustion (MOCC) means the lowest level of oxygen in a vapor or vapor mixture that will support combustion.

New vapor collection system means a vapor collection system that is not an existing vapor collection system.

Service vessel means a vessel that transports bulk liquid cargo between a facility and another vessel.

Set pressure means the pressure at which the pressure or vacuum valve begins to open and the flow starts through the valve.

Stripping means the removal, to the maximum extent practicable, of cargo residue remaining in the barge's cargo tanks and associated fixed piping system after cargo transfer or during cleaning operations.

Vacuum displacement system means a system that removes vapors from a barge's cargo tanks during gas-freeing by sweeping air through the cargo tank hatch openings.

Vapor balancing means the transfer of vapor displaced by incoming cargo from the tank of a vessel or facility receiving cargo into a tank of the vessel or facility delivering cargo via a vapor collection system.

Vapor collection system means an arrangement of piping and hoses used to collect vapor emitted to or from a vessel's cargo tanks and to transport the vapor to a vapor processing unit or a tank.

Vapor control system (VCS) means an arrangement of piping and equipment used to control vapor emissions collected to or from a vessel. It includes the vapor collection system and vapor processing unit or a tank.

Vapor processing unit means the components of a VCS that recover, destroy, or disperse vapor collected from a vessel.

Vessel-to-vessel transfer (direct or through a shore loop) means either—

(1) The transfer of a bulk liquid cargo from a tank vessel to a service vessel; or

(2) The transfer of a bulk liquid cargo from a service vessel to another vessel in order to load the receiving vessel to a deeper draft.

Vessel vapor connection means the point in a vessel's fixed vapor collection system where the system connects with the vapor collection hose or arm.

§ 39.1005 Incorporation by reference—TB/ALL.

(a) Certain material is incorporated by reference (IBR) into this part with the approval of the Director of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Coast Guard, Office of Design and Engineering Standards (CG–ENG) 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126, telephone 202–372–1418 and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Also, it is available from the sources indicated in this section.

(b) American National Standards Institute (ANSI), 25 West 43rd Street, 4th floor, New York, NY 10036.

(1) ANSI B16.5, Steel Pipe Flanges and Flanged Fittings, 1981, IBR approved for §§ 39.2001(i) and 39.6001(k).

(2) [Reserved]

(c) American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20005.

(1) API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Non-refrigerated and

Refrigerated), Third Edition, January 1982 (reaffirmed December 1987)(''API 2000''), IBR approved for § 39.2011(b).

(2) [Reserved]

(d) ASTM International (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(1) ASTM F1122–87 (Reapproved1992)—Standard Specification for Quick Disconnect Couplings (''ASTM F1122''), IBR approved for § 39.2001(k).

(2) ASTM F1271—Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications (''ASTM F1271''), December 29, 1989, IBR approved for § 39.2009(a).

(e) International Electrotechnical Commission (IEC), Bureau Central de la Commission Electrotechnique Internationale, 3, rue de Varembé, P.O. Box 131, CH—1211 Geneva 20, Switzerland.

(1) IEC 60309–1 Plugs, Socket-Outlets and Couplers for Industrial Purposes—Part 1: General Requirements, Edition 4.2 2012–06, IBR approved for § 39.2009(a).

(2) IEC 60309–2 Plugs, Socket-Outlets and Couplers for Industrial Purposes—Part 2: Dimensional Interchangeability Requirements for Pin and Contact-tube Accessories, Edition 4.2 2012–05, IBR approved for § 39.2009(a).

(f) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, United Kingdom.

(1) International Convention for the Safety of Life at Sea, Consolidated Text of the 1974 SOLAS Convention, the 1978 SOLAS Protocol, the 1981 and 1983 SOLAS Amendments (1986) (''SOLAS''), IBR approved for § 39.2001(e).

(2) [Reserved]

(g) National Electrical Manufacturers Association (NEMA), 1300 North 17th Street, Suite 1752, Rosslyn, VA 22209.

(1) ANSI NEMA WD–6—Wiring Devices, Dimensional Requirements, 1988 (''NEMA WD–6''), IBR approved for § 39.2009(a)

(2) [Reserved]

(h) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169–7471.

(1) NFPA 70—National Electrical Code, 2011, IBR approved for § 39.2009(a).

(2) [Reserved]

(i) Oil Companies International Marine Forum (OCIMF), 29 Queen Anne's Gate, London SWIH 9BU, England.

(1) International Safety Guide for Oil Tankers and Terminals, Fifth Edition, 2006 (''ISGOTT''), IBR approved for §§ 39.3001(g), 39.5001(c), 39.6001(g), and 39.6005(a).

(2) [Reserved]

§ 39.1009 Additional tank vessel vapor processing unit requirements—TB/ALL.

(a) Vapor piping, fitting, valves, flanges, and pressure vessels comprising the construction and installation of a permanent or portable vapor processing unit onboard a tank vessel must meet the marine engineering requirements of 46 CFR chapter I, subchapter F.

(b) Electrical equipment comprising the construction and installation of a permanent or portable vapor processing unit onboard a tank vessel must meet the electrical engineering requirements of 46 CFR chapter I, subchapter J.

(c) In addition to complying with the rules of this part, tank vessels with a permanent or portable vapor processing unit must comply with applicable requirements of 33 CFR part 154, subpart P.

(d) When differences between the requirements for vessels contained in 46 CFR chapter I, subchapters F and J and requirements for facilities contained in 33 CFR part 154, subpart P need to be resolved, the requirements of 46 CFR chapter I, subchapters F and J apply, unless specifically authorized by the Marine Safety Center.

§ 39.1011 Personnel training requirements—TB/ALL.

Personnel responsible for operating the vapor control system (VCS) must complete a training program prior to the operation of the system installed onboard the tank vessel. As part of the training program, personnel must be able to demonstrate, through drills and practical knowledge, the proper VCS operation procedures for normal and emergency conditions. The training program must cover the following subjects:

(a) Purpose of a VCS;

(b) Principles of the VCS;

(c) Components of the VCS;

(d) Hazards associated with the VCS;

(e) Coast Guard regulations in this part;

(f) Vapor control operation procedures during cargo transfer or tank barge cleaning, including:

(1) Testing and inspection requirements;

(2) Pre-transfer or pre-cleaning procedures;

(3) Connection sequence;

(4) Startup procedures; and

(5) Normal operations; and

(g) Emergency procedures.

§ 39.1013 U.S.-flagged tank vessel certification procedures for vapor control system designs—TB/ALL.

(a) For an existing Coast Guard-approved vapor control system (VCS) that has been operating before July 23, 1990, the tank vessel owner or operator must submit detailed engineering drawings, calculations, and specifications to the Marine Safety Center (MSC) for review and approval before modifying the system or transferring vapor to a facility that was not approved by the Coast Guard for that kind of vapor transfer.

(b) For a Coast Guard-approved vessel VCS that began operating on or after July 23, 1990, the tank vessel owner or operator must submit plans, calculations, and specifications to the MSC for review and approval before modifying the system.

(c) A tank vessel owner or operator must submit plans, calculations, and specifications for a new tank vessel VCS to the MSC for review and approval before installing the system. A permanent or portable vapor processing unit onboard a tank vessel will be reviewed, together with the tank vessel, as a complete and integrated system.

(d) Once the plan review and inspection of the tank vessel VCS satisfy the requirements of this part, the Officer in Charge, Marine Inspection (OCMI) will endorse the Certificate of Inspection for the U.S.-flagged tank vessel.

§ 39.1015 Foreign-flagged tank vessel certification procedures for vapor control system designs—TB/ALL.

As an alternative to meeting the requirements in 33 CFR 39.1013(a), (b), and (c), the owner or operator of a foreign-flagged tank vessel may submit certification by the classification society that classifies vessels under their foreign flags to the Marine Safety Center. Upon receipt of the certification stating that the vapor control system (VCS) meets the requirements of this part, the Officer in Charge, Marine Inspection (OCMI) will endorse the vessel's Certificate of Compliance for foreign-flagged tank vessels.

§ 39.1017 Additional certification procedures for a tank barge vapor collection system design—B/ALL.

(a) For a tank barge vapor collection system intended for operation in multi-breasted loading using a single facility vapor connection, the tank barge owner or operator must submit plans, calculations, and specifications to the Marine Safety Center (MSC) for review and approval before beginning a multi-breasted loading operation.

(b) For a tank barge intended for collecting vapors emitted from its cargo tanks during gas-freeing or cleaning operations at a cleaning facility, the barge owner or operator must submit the following items to the MSC for review and approval:

(1) Stripping system plans and specifications, except those approved by the MSC on or before the August 15, 2013; and

(2) Stripping and/or gas-freeing rate calculations, except those approved by the MSC on or before the August 15, 2013.

(c) Once the vapor collection system satisfies the requirements of this part, the Officer in Charge, Marine Inspection (OCMI) will endorse the Certificate of Inspection that the tank barge is acceptable for collecting vapors during cleaning operations.

Subpart 39.2000—Equipment and Installation

§ 39.2001 Vapor collection system—TB/ALL.

(a) Vapor collection piping must be fixed piping and the vessel's vapor connection must be located as close as practicable to the loading manifold, except—

(1) As allowed by the Commandant; and

(2) A vessel certificated to carry cargo listed in 46 CFR, part 151, Table 151.05 or part 153, Table 1 may use flexible hoses no longer than three meters (9.84 feet) for interconnection between fixed piping onboard the vessel to preserve segregation of cargo systems. These flexible hoses must also meet the requirements in paragraph (i) of this section, excluding paragraph (i)(5), and meet the following additional requirements:

(i) The installation of flexible hoses must include an isolation valve mounted on the tank side of the connection; and

(ii) Hose connections permitted under paragraph (a)(2) of this section are exempt from the requirements of paragraph (h) of this section.

(b) When collecting incompatible vapors simultaneously, vapors must be kept separate throughout the entire vapor collection system.

(c) Vapor collection piping must be electrically bonded to the hull and must be electrically continuous.

(d) The vapor collection system must have a mechanism to eliminate liquid condensation, such as draining and collecting liquid from each low point in the line.

(e) For a tankship that has an inert gas system, a mechanism must be in place to isolate the inert gas supply from the vapor control system (VCS). The inert gas main isolation valve required by chapter II–2, Regulation 62.10.8 of SOLAS (incorporated by reference, see 46 CFR 39.1005), may be used to satisfy this requirement.

(f) The vapor collection system must not interfere with the proper operation of the cargo tank venting system.

(g) The tank vessel owner or operator must install an isolation valve capable of manual operation. It must be located at the vessel vapor connection and must clearly show whether the valve is in the open or closed position via an indicator, valve handle, or valve stem.

(h) The last 1.0 meter (3.3 feet) of vapor piping upstream of the vessel vapor connection and each end of a vapor hose must be—

(1) Painted in the sequence of red/yellow/red. The width of the red bands must be 0.1 meter (0.33 foot) and the width of the middle yellow band must be 0.8 meter (2.64 feet); and

(2) Labeled with the word ''VAPOR'' painted in black letters at least 50.8 millimeters (2 inches) high.

(i) Hoses that transfer vapors must meet the following requirements:

(1) Have a design burst pressure of at least 25 pounds per square inch gauge (psig);

(2) Have a maximum allowable working pressure no less than 5 psig;

(3) Be capable of withstanding at least a 2.0 pounds per square inch (psi) vacuum without collapsing or constricting;

(4) Be electrically continuous with a maximum resistance of 10,000 ohms;

(5) Have flanges with—

(i) A bolthole arrangement complying with the requirements for 150 pound class ANSI B16.5 flanges (incorporated by reference, see 46 CFR 39.1005); and

(ii) One or more 15.9 millimeter (0.625 inch) diameter hole(s) located midway between boltholes and in line with the bolthole pattern; and

(6) Be abrasion and kinking resistant.

(j) Each vessel vapor connection flange face must have a permanent stud projecting outward that has a 12.7 millimeter (0.5 inch) diameter and is at least 25.4 millimeters (1 inch) long. It must be located at the top of the flange face, midway between boltholes, and in line with the bolthole pattern.

(k) Quick disconnect couplings (QDCs) may be used instead of flanges at the flexible hose connection and fixed piping on tankships provided they meet ASTM F1122 (incorporated by reference, see 46 CFR 39.1005) and are designed as ''Standard Class QDC.''

(l) Hose saddles that provide adequate support to prevent kinking or collapse of hoses must accompany vapor hose handling equipment.

(m) For cargoes that have toxic properties, listed in 46 CFR Table 151.05 with the ''Special requirements'' column referring to 46 CFR 151.50–5, an overfill alarm and shutdown system that meet the requirements of 46 CFR 39.2007(a), 39.2009(a), or 39.2009(b) must be used for primary overfill protection. If the vessel is also equipped with spill valves or rupture disks, their setpoints must be set higher than the vessel's pressure relief valve setting as required by 46 CFR 39.2009(a)(3).

§ 39.2003 Cargo gauging system—TB/ALL.

(a) A cargo tank of the tank vessel connected to a vapor collection system must be equipped with a permanent or portable cargo gauging device that—

(1) Is a closed type as defined in 46 CFR 151.15.10(c) that does not require opening the tank to the atmosphere during cargo transfer;

(2) Allows the operator to determine the level of liquid in the tank for the full range of liquid levels in the tank;

(3) Has an indicator for the level of liquid in the tank that is located where cargo transfer is controlled; and

(4) If portable, is installed on the tank during the entire transfer operation.

(b) Each cargo tank of a tank barge must have a high-level indicating device, unless the barge complies with 46 CFR 39.2009(a). The high-level indicating device must—

(1) Indicate visually the level of liquid in the cargo tank when the liquid level is within a range of 1 meter (3.28 feet) of the top of the tank;

(2) Show a permanent mark to indicate the maximum liquid level permitted under 46 CFR 39.3001(e) at even keel conditions; and

(3) Be visible from all cargo control areas.

§ 39.2007 Tankship liquid overfill protection—T/ALL.

(a) Each cargo tank of a tankship must be equipped with an intrinsically safe high-level alarm and a tank overfill alarm.

(b) If installed after July 23, 1990, the high-level alarm and tank overfill alarm required by paragraph (a) of this section must—

(1) Be independent of each other;

(2) Activate an alarm in the event of loss of power to the alarm system;

(3) Activate an alarm during the failure of electrical circuitry to the tank level sensor; and

(4) Be able to be verified at the tank for proper operation prior to each transfer. This procedure may be achieved with the use of an electronic

self-testing feature that monitors the condition of the alarm circuitry and sensor.

(c) The high-level alarm required by paragraph (a) of this section must—

(1) Activate an alarm once the cargo level reaches 95 percent of the tank capacity or higher, but before the tank overfill alarm;

(2) Be identified with the legend ''High-level Alarm'' in black letters at least 50.8 millimeters (2 inches) high on a white background; and

(3) Activate a visible and audible alarm so that it can be seen and heard on the vessel where cargo transfer is controlled.

(d) The tank overfill alarm required by paragraph (a) of this section must—

(1) Be independent of the cargo gauging system;

(2) Be identified with the legend ''TANK OVERFILL ALARM'' in black letters at least 50.8 millimeters (2 inches) high on a white background;

(3) Activate a visible and audible alarm so that it can be seen and heard on the vessel where cargo transfer is controlled and in the cargo deck area; and

(4) Activate an alarm early enough to allow the person in charge of transfer operations to stop the cargo transfer before the tank overflows.

(e) If a spill valve is installed on a cargo tank fitted with a vapor collection system, it must meet the requirements of 46 CFR 39.2009(c).

(f) If a rupture disk is installed on a cargo tank fitted with a vapor collection system, it must meet the requirements of 46 CFR 39.2009(d).

§ 39.2009 Tank barge liquid overfill protection—B/ALL.

(a) Each cargo tank of a tank barge must have one of the following liquid overfill protection arrangements:

(1) A system meeting the requirements of 46 CFR 39.2007 that—

(i) Includes a self-contained power supply;

(ii) Is powered by generators on the barge; or

(iii) Receives power from a facility and is fitted with a shore tie cable and a 120-volt, 20-ampere explosion-proof plug that meets—

(A) ANSI NEMA WD–6 (incorporated by reference, see 46 CFR 39.1005);

(B) NFPA 70, Articles 406.9 and 501–145 (incorporated by reference, see 46 CFR 39.1005); and

(C) 46 CFR 111.105–9;

(2) An intrinsically safe overfill control system that—

(i) Is independent of the cargo-gauging device required by 46 CFR 39.2003(a);

(ii) Activates an alarm and automatic shutdown system at the facility overfill control panel 60 seconds before the tank is 100 percent liquid-full during a facility-to-vessel cargo transfer;

(iii) Activates an alarm and automatic shutdown system on the vessel discharging cargo 60 seconds before the tank is 100 percent liquid-full during a vessel-to-vessel cargo transfer;

(iv) Can be inspected at the tank for proper operation prior to each loading;

(v) Consists of components that, individually or in series, will not generate or store a total of more than 1.2 volts (V), 0.1 amperes (A), 25 megawatts (MW), or 20 microJoules (μJ);

(vi) Has at least one tank overfill sensor switch per cargo tank that is designed to activate an alarm when its normally closed contacts are open;

(vii) Has all tank overfill sensor switches connected in series;

(viii) Has interconnecting cabling that meets 46 CFR 111.105–11(b) and (d), and 46 CFR 111.105–17(a); and

(ix) Has a male plug with a five-wire, 16–A connector body meeting IEC 60309–1 and IEC 60309–2 (both incorporated by reference, see 46 CFR 39.1005), that is—

(A) Configured with pins S2 and R1 for the tank overfill sensor circuit, pin G connected to the cabling shield, and pins N and T3 reserved for an optional high-level alarm circuit meeting the requirements of this paragraph; and

(B) Labeled ''Connector for Barge Overflow Control System'' and labeled with the total inductance and capacitance of the connected switches and cabling;

(3) A spill valve that meets ASTM F1271 requirements (incorporated by reference, see 46 CFR 39.1005), and—

(i) Relieves at a predetermined pressure higher than the pressure at which the pressure relief valves meeting the requirements of 46 CFR 39.2011 operate;

(ii) Limits the maximum pressure at the top of the cargo tank during liquid overfill to not more than the maximum design working pressure for the tank when at the maximum loading rate for the tank; and

(iii) Has a means to prevent opening due to cargo sloshing while the vessel is in ocean or coastwise service; or

(4) A rupture disk arrangement that meets paragraphs (a)(3)(i), (ii), and (iii) of this section and is approved by the Commandant.

(b) A tank barge authorized to carry a cargo having toxic properties, meaning they are listed in 46 CFR Table 151.05 with the ''Special requirements'' column referring to 46 CFR 151.50–5, must comply with the requirements of 46 CFR 39.2001(m).

§ 39.2011 Vapor overpressure and vacuum protection—TB/ALL.

(a) The cargo tank venting system required by 46 CFR 32.55 must—

(1) Be capable of discharging cargo vapor at the maximum transfer rate plus the vapor growth for the cargo such that the pressure in the vapor space of each tank connected to the vapor control system (VCS) does not exceed—

(i) The maximum design working pressure for the tank; or

(ii) If a spill valve or rupture disk is fitted, the pressure at which the device operates;

(2) Relieve at a pressure corresponding to a pressure in the cargo tank vapor space not less than 1.0 pounds per square inch gauge (psig);

(3) Prevent a vacuum, which generates in any tank connected to the vapor collection system during the withdrawal of cargo or vapor at maximum rates, in a cargo tank vapor space from exceeding the maximum design vacuum; and

(4) Not relieve at a vacuum corresponding to a vacuum in the cargo tank vapor space between 14.7 pounds per square inch absolute (psia) (0 psig) and 14.2 psia (−0.5 psig).

(b) Each pressure-vacuum relief valve must—

(1) Be of a type approved under 46 CFR 162.017, for the pressure and vacuum relief setting desired;

(2) Be tested for venting capacity in accordance with paragraph 1.5.1.3 of API 2000 (incorporated by reference, see 46 CFR 39.1005). The test must be carried out with a flame screen fitted at the vacuum relief opening and at the discharge opening if the pressure-vacuum relief valve is not designed to ensure a minimum vapor discharge velocity of 30 meters (98.4 feet) per second; and

(3) If installed after July 23, 1991, have a mechanism to check that it operates freely and does not remain in the open position.

(c) A liquid filled pressure-vacuum breaker may be used for vapor overpressure and vacuum protection if the vessel owner or operator obtains the prior written approval of the Commandant.

(d) Vapor growth must be calculated following the Marine Safety Center guidelines available in Coast Guard VCS guidance at *http://homeport.uscg.mil,* or as specifically approved in writing by the Commandant after consultation with the Marine Safety Center.

§ 39.2013 High and low vapor pressure protection for tankships—T/ALL.

Each tankship with a vapor collection system must be fitted with a pressure-

sensing device, located as close as practicable to the vessel vapor connection, that measures the pressure in the main vapor collection line, which—

(a) Has a pressure indicator located on the tankship where the cargo transfer is controlled; and

(b) Has a high-pressure and a low-pressure alarm that—

(1) Gives an audible and a visible warning on the vessel where the cargo transfer is controlled;

(2) Activates an alarm when the pressure-sensing device measures a high pressure of not more than 90 percent of the lowest pressure relief valve setting in the cargo tank venting system; and

(3) Activates an alarm when the pressure-sensing device measures a low pressure of not less than 0.144 pounds per square inch gauge (psig) for an inerted tankship, or the lowest vacuum relief valve setting in the cargo tank venting system for a non-inerted tankship.

§ 39.2014 Polymerizing cargoes safety—TB/ALL.

(a) Common vapor headers for polymerizing cargoes must be constructed with adequate means to permit internal examination of vent headers.

(b) Vapor piping systems and pressure-vacuum valves that are used for polymerizing cargoes must be inspected internally at least annually.

(c) Pressure-vacuum valves and spill valves which are used for polymerizing cargoes must be tested for proper movement prior to each transfer.

§ 39.2015 Tank barge pressure-vacuum indicating device—B/ALL.

A fixed pressure-sensing device must be installed as close as practicable to the vessel vapor connection on a tank barge with a vapor collection system. The pressure-sensing device must measure the pressure vacuum in the main vapor collection line and have a pressure indicator located where the cargo transfer is controlled.

Subpart 39.3000—Vapor Collection Operations During Cargo Transfer

§ 39.3001 Operational requirements for vapor control systems during cargo transfer—TB/ALL.

(a) Vapor from a tank vessel may not be transferred to a facility in the United States, or vapor from a facility storage tank may not be transferred to a tank vessel, unless the facility's marine vapor control system (VCS) is certified by a certifying entity as meeting the requirements of 33 CFR part 154, subpart P and the facility's facility operations manual is marked by the local Coast Guard Captain of the Port (COTP) as required by 33 CFR 154.325(d).

(b) Vapor from a tank vessel may not be transferred to a vessel that does not have its certificate of inspection or certificate of compliance endorsed as meeting the requirements of this part and for controlling vapor of the cargo being transferred.

(c) For each cargo transferred using a vapor collection system, the pressure drop through the vapor collection system from the most remote cargo tank to the vessel vapor connection, including vapor hoses if used by the vessel, must be—

(1) Calculated at the maximum transfer rate and at lesser transfer rates;

(2) Calculated using a density estimate for the cargo vapor and air mixture, or vapor and inert gas mixture, based on a partial pressure (partial molar volumes) method for the mixture, assuming ideal gas law conditions;

(3) Calculated using a vapor growth rate as stated in 46 CFR 39.2011(d) for the cargo being transferred; and

(4) Included in the vessel's transfer procedures as a table or graph, showing the liquid transfer rate versus the pressure drop.

(d) The rate of cargo transfer must not exceed the maximum allowable transfer rate as determined by the lesser of the following:

(1) Eighty percent of the total venting capacity of the pressure relief valves in the cargo tank venting system when relieving at the set pressure.

(2) The total vacuum relieving capacity of the vacuum relief valves in the cargo tank venting system when relieving at the set pressure.

(3) For a given pressure at the facility vapor connection, or if vessel-to-vessel transfer at the vapor connection of the service vessel, then the rate based on pressure drop calculations at which the pressure in any cargo tank connected to the vapor collection system exceeds 80 percent of the setting of any pressure relief valve in the cargo tank venting system.

(e) Cargo tanks must not be filled higher than—

(1) 98.5 percent of the cargo tank volume; or

(2) The level at which an overfill alarm complying with 46 CFR 39.2007 or 39.2009(a)(2) is set.

(f) A cargo tank should remain sealed from the atmosphere during cargo transfer operations. The cargo tank may only be opened temporarily for gauging or sampling while the tank vessel is connected to a VCS as long as the following conditions are met:

(1) The cargo tank is not being filled or no vapor is being transferred into the cargo tank;

(2) For cargo loading, any pressure in the cargo tank vapor space is first reduced to atmospheric pressure by the VCS, except when the tank is inerted;

(3) The cargo is not required to be closed or restricted gauged by 46 CFR part 151, Table 151.05 or part 153, Table 1; and

(4) For static accumulating cargo, all metallic equipment used in sampling or gauging must be electrically bonded to the vessel and remain bonded to the vessel until it is removed from the tank, and if the tank is not inerted, 30 minutes must have elapsed after any cargo transfer to the tank is stopped, before the equipment is put into the tank.

(g) For static accumulating cargo, the initial transfer rate must be controlled in accordance with OCIMF ISGOTT Section 11.1.7 (incorporated by reference, see 46 CFR 39.1005), in order to minimize the development of a static electrical charge.

(h) If cargo vapor is collected by a facility that requires the vapor from the vessel to be inerted in accordance with 33 CFR 154.2105, the oxygen content in the vapor space of each cargo tank connected to the vapor collection system must not exceed 60 percent by volume of the cargo's minimum oxygen concentration for combustion (MOCC), or 8 percent by volume for vapor of crude oil, gasoline blends, or benzene, at the start of cargo transfer. The oxygen content of each tank, or each area of a tank formed by each partial bulkhead, must be measured at a point 1.0 meter (3.28 feet) below the tank top and at a point equal to one-half of the ullage.

(i) If the vessel is equipped with an inert gas system, the isolation valve required by 46 CFR 39.2001(e) must remain closed during vapor transfer.

(j) Unless equipped with an automatic self-test and circuit-monitoring feature, each high-level alarm and tank overfill alarm on a cargo tank being loaded, required by 46 CFR 39.2007 or 39.2009, must be tested at the tank for proper operation within 24 hours prior to the start of cargo transfer.

Subpart 39.4000—Vessel-to-Vessel Transfers Using Vapor Balancing

§ 39.4001 General requirements for vapor balancing—TB/ALL.

(a) Vessels using vapor balancing while conducting a vessel-to-vessel transfer operation, directly or through a shore loop, must meet the requirements of this subpart in addition to the requirements of 46 CFR part 39,

subparts 39.1000, 39.2000, and 39.3000. Arrangements other than vapor balancing used to control vapor emissions during a vessel-to-vessel transfer operation must receive approval from the Commandant.

(b) A vapor balancing operation must receive approval from the Commandant to use a compressor or blower to assist vapor transfer.

(c) Vapor balancing is prohibited when the cargo tanks on a vessel discharging cargo are inerted and the cargo tanks on a vessel receiving cargo are not inerted.

(d) A vessel that intends to collect vapors (during a vessel-to-vessel transfer operation) from cargoes not previously approved must receive specific approval from the Commandant before beginning transfer operations.

§ 39.4003 Design and equipment for vapor balancing—TB/ALL.

(a) During transfer operations, if the cargo tanks are inerted on a vessel discharging cargo to a receiving vessel with inerted cargo tanks, the service vessel must—

(1) Inert the vapor transfer hose prior to transferring cargo vapor; and

(2) Have an oxygen analyzer with a sensor or sampling connection fitted within 3 meters (9.74 feet) of the vessel vapor connection that—

(i) Activates a visible and an audible alarm on the service vessel where cargo transfer is controlled when the oxygen content in the vapor collection system exceeds 60 percent by volume of the cargo's minimum oxygen concentration for combustion (MOCC), or 8 percent by volume for vapor of crude oil, gasoline blends, or benzene;

(ii) Has an oxygen concentration indicator located on the service vessel where the cargo transfer is controlled; and

(iii) Has a connection for injecting a span gas of known concentration for calibration and testing of the oxygen analyzer.

(b) If the cargo tanks are not inerted on a vessel discharging cargo during transfer operations, and the cargo is flammable or combustible, the vapor collection line on the service vessel must be fitted with a detonation arrester that meets the requirements of 33 CFR 154.2106, and be located within 3 meters (9.74 feet) of the vessel vapor connection.

(c) An electrical insulating flange or one length of non-conductive hose must be provided between the vessel vapor connection on each vessel operating a vessel-to-vessel cargo transfer.

§ 39.4005 Operational requirements for vapor balancing—TB/ALL.

(a) During a vessel-to-vessel transfer operation, each cargo tank being loaded must be connected by the vapor collection system to a cargo tank that is being discharged.

(b) If the cargo tanks on both the vessel discharging cargo and the vessel receiving cargo are inerted, the following requirements must be met:

(1) Each tank on a vessel receiving cargo, which is connected to the vapor collection system, must be tested prior to cargo transfer to ensure that the oxygen content in the vapor space does not exceed 60 percent by volume of the cargo's minimum oxygen concentration for combustion (MOCC), or 8 percent by volume for vapor of crude oil, gasoline blends, or benzene. The oxygen content of each tank, or each area of a tank formed by each partial bulkhead, must be measured at a point 1 meter (3.28 feet) below the tank top and at a point equal to one-half of the ullage;

(2) Prior to starting transfer operations, the oxygen analyzer required by 46 CFR 39.4003(a) must be tested for proper operation;

(3) During transfer operations the oxygen content of vapors being transferred must be continuously monitored;

(4) Cargo transfer must be terminated if the oxygen content exceeds 60 percent by volume of the cargo's MOCC, or 8 percent by volume for vapor of crude oil, gasoline blends, or benzene;

(5) Transfer operations may resume once the oxygen content in the tanks of the vessel receiving cargo is reduced to 60 percent by volume or less of the cargo's MOCC, or 8 percent by volume or less for vapor of crude oil, gasoline blends, or benzene; and

(6) Prior to starting vapor transfer operations, the vapor transfer hose must be purged of air and inerted.

(c) The isolation valve located on the service vessel required by 46 CFR 39.2001(g) must not be opened until the pressure in the vapor collection system on the vessel receiving cargo exceeds the pressure in the vapor collection system on the vessel discharging cargo.

(d) The vessel discharging cargo must control the cargo transfer rate so that the transfer rate does not exceed—

(1) The authorized maximum discharge rate of the vessel discharging cargo;

(2) The authorized maximum loading rate of the vessel receiving cargo; or

(3) The processing rate of the approved vessel vapor processing system, if one is used to process the vapor collected during the transfer operations.

(e) The pressure in the vapor space of any cargo tank connected to the vapor collection line on either the vessel receiving cargo or the vessel discharging cargo must not exceed 80 percent of the lowest setting of any pressure relief valve during ballasting or cargo transfer.

(f) Impressed current cathodic protection systems must be de-energized during cargo transfer operations.

(g) Tank washing is prohibited unless the cargo tanks on both the vessel discharging cargo and the vessel receiving cargo are inerted, or the tank is isolated from the vapor collection line.

Subpart 39.5000—Multi-breasted Loading Using a Single Facility Vapor Connection

§ 39.5001 General requirements for multi-breasted loading—B/CLBR.

(a) Each barge must be owned or operated by the same entity and must have an approved vapor control system (VCS).

(b) There must be only one crossover vapor hose and it must—

(1) Comply with 46 CFR 39.2001(h) and (i);

(2) Have a diameter at least as that of the largest pipe in the outboard barge's VCS, and

(3) If it extends more than 25 feet (7.62 meters) between the two barges during the transfer operation, it must be as short as is practicable, safe for the conditions, supported off the vessels' decks, and its pressure drop calculations must be approved for its length by the Marine Safety Center (MSC), or reapproved by the MSC if existing approval was based on a 25-foot hose.

(c) The hazards associated with barge-to-barge or barge-to-shore electric currents must be controlled in accordance with sections 11.9 or 17.5 of OCIMF ISGOTT (incorporated by reference, see 46 CFR 39.1005).

(d) The cargo transfer procedures must reflect the procedures to align and disconnect a facility VCS to and from an inboard barge, and alternately, to and from an outboard barge through the vapor cross-over hose and the inboard barge's vapor header, or ''dummy'' header. This must include proper connections for the facility VCS's alarm/shutdown system to the alarm/shutdown system of the barge being loaded at the time.

(e) Calculations for multi-breasted loading must consider additional pressure drops across the barges' vapor collection systems and the cross vapor hose and must be reviewed and approved by the MSC per 46 CFR 39.1017(a).

(f) Barge owners and operators must comply with any additional operational requirements imposed by the local Captain of the Port (COTP) in whose zone the shore facility is located. These facilities' VCSs must be certified for conducting such an operation.

§ 39.5003 Additional requirements for multi-breasted loading using an inboard barge vapor collection system—B/CLBR.

(a) Each barge must have at least one liquid overfill protection system that fulfills the requirements of 46 CFR 39.2009.

(b) The vapor header of an inboard barge that is used during outboard barge loading must—

(1) Be aligned with the vapor header of the outboard barge;

(2) Have a diameter at least as large as the diameter of the largest pipe in the vapor collection system of the outboard barge; and

(3) Be marked in accordance with 46 CFR 39.2001(h).

(c) A licensed tankerman, trained in and familiar with multi-breasted loading operations, must be onboard each barge during transfer operations. The tankerman serves as the barge person-in-charge (PIC). During transfer operations, the barge PICs must maintain constant communication with each other as well as with the facility PIC.

(d) If multi-breasted loading will be conducted using more than one liquid transfer hose from the shore facility, the facility must be capable of activating the emergency shutdown system required by 33 CFR 154.550. This will automatically stop the cargo flow to each transfer hose simultaneously, in the event an upset condition occurs that closes the remotely operated cargo vapor shutoff valve in the facility's vapor control system. Multi-breasted loading is prohibited unless the shore facility can comply with this requirement.

§ 39.5005 Additional requirements for multi-breasted loading using a ''dummy'' vapor header—B/CLBR.

(a) Each inboard barge ''dummy'' header used during outboard barge loading must—

(1) Be aligned with the vapor header of the outboard barge;

(2) Have a diameter at least as large as the diameter of the largest pipe in the vapor collection system of the outboard barge;

(3) Be marked in accordance with 46 CFR 39.2001(h); and

(4) Meet the same design and installation requirements for the vapor collection piping onboard the same barge.

(b) Flanges must meet the same design and installation requirements for flanges in the vapor collection system onboard the same barge.

(c) A stud must be permanently attached, as required in 46 CFR 39.2001(j), to the vapor connection flange on the ''dummy'' header.

Subpart 39.6000—Tank Barge Cleaning Operations with Vapor Collection

§ 39.6001 Design and equipment of vapor collection and stripping systems—B/ALL.

(a) Each barge engaged in cleaning operations at an approved cleaning facility must have a conductive fixed stripping line installed in each cargo tank. The line must extend to the low point of each cargo tank, extend through and be welded to the top of the cargo tank, and terminate above deck with a full port valve plugged at the open end.

(b) An existing fixed stripping system may be used instead of the stripping line required in paragraph (a) of this section.

(c) Each stripping line must be labeled at an on-deck location with the words ''Stripping Line-Tank'' followed by the tank's number, name, or location.

(d) Vapors may be collected from the barge's cargo tanks through a common fixed vapor header, through the fixed liquid cargo header, or through flanged flexible hoses located at the top of each cargo tank.

(e) The vapor collection system must not interfere with the proper operation of the cargo tank venting system.

(f) A barge being gas-freed by a fluid displacement system must fulfill the following requirements:

(1) If the fluid medium is a compressible fluid, such as inert gas, it must be injected into the barge's cargo tanks through a common fixed vapor header, through the fixed liquid cargo header, or through a flexible hoses flanged to a connection located at the top of each cargo tank;

(2) If the fluid medium is a non-compressible fluid, such as water, it must be injected into the barge's cargo tanks through the fixed liquid cargo header only; and

(3) If the fluid medium is a non-compressible fluid, such as water, the barge must be equipped with a liquid overfill protection arrangement and fulfill the requirements for tank barge liquid overfill protection contained in 46 CFR 39.2009.

(g) The barge vapor connection must be electrically insulated from the facility vapor connection and the fluid injection connection must be electrically insulated from the fluid injection source, if fitted, in accordance with OCIMF ISGOTT section 17.5 (incorporated by reference, see 46 CFR 39.1005).

(h) Vapor collection piping must be electrically bonded to the barge hull and must be electrically continuous.

(i) All equipment used on the barge during cleaning operations must be electrically bonded to the barge and tested to ensure electrical continuity prior to each use.

(j) Hoses used for the transfer of vapors during cleaning operations must meet the requirements of 46 CFR 39.2001(i) and have markings as required in 46 CFR 39.2001(h).

(k) Hoses used for the transfer of liquids during cleaning operations must—

(1) Have a designed burst pressure of at least 600 pounds per square inch gauge (psig);

(2) Have a maximum allowable working pressure of at least 150 psig;

(3) Be capable of withstanding at least the maximum vacuum rating of the cleaning facility's vapor-moving device without collapsing or constricting;

(4) Be electrically continuous with a maximum resistance of 10,000 ohms;

(5) Have flanges with a bolthole arrangement complying with the requirements for 150 pound class ANSI B16.5 flanges (incorporated by reference, see 46 CFR 39.1005); and

(6) Be abrasion and kinking resistant and compatible with the liquids being transferred.

(l) If a hose is used to transfer either vapor or liquid from the barge during cleaning operations, hose saddles that provide adequate support to prevent the collapse or kinking of hoses must accompany hose handling equipment.

§ 39.6003 Overpressure and underpressure protection during stripping or gas-freeing operations—B/ALL.

(a) The volumetric flow rates during stripping or gas-freeing operations must be limited within a range such that the cargo tank venting system required by 46 CFR 32.55 will keep the cargo tank within its maximum design working pressure or the maximum design vacuum.

(b) Each barge must be fitted with a means for connecting the pressure-sensing and pressure-indicating devices required by 33 CFR 154.2203(g) and (o) on each cargo tank top, or on the common vapor header provided that pressures measured by the devices are adjusted to compensate for the pressure drop across the vapor piping from the cargo tank to the devices. The valve for the connection point must be labeled ''Pressure Sensor/indicator Connection.''

(c) For stripping operations with closed cargo tanks, the maximum stripping rate must not exceed the volumetric flow capacity of the vacuum relief valve protecting the cargo tank.

§ 39.6005 Inspection prior to conducting gas-freeing operations—B/ALL.

(a) The following inspections must be conducted by the barge person in charge prior to commencing gas-freeing operations, and show that—

(1) Each part of the barge's vapor collection system is aligned to allow vapor to flow to a cleaning facility's vapor control system (VCS);

(2) If a fluid displacement system is used to conduct gas-freeing operations—

(i) The fluid supply line is connected to the fluid injection connection; and

(ii) The maximum fluid injection rate is determined in accordance with 46 CFR 39.6007(c)(2);

(3) The maximum stripping or gas-freeing rate is determined in accordance with 46 CFR 39.6003(c) or 39.6007(c), respectively, and adequate openings required by 46 CFR 39.6007(c)(1) are available and identified;

(4) The pressure-sensing and pressure-indicating devices required by 33 CFR 154.2203 are connected as required by 46 CFR 39.6003(b);

(5) The maximum and minimum operating pressures of the barge being cleaned are determined;

(6) Unrepaired loose covers, kinks, bulges, gouges, cuts, slashes, soft spots, or any other defects which would permit the discharge of vapors through the vapor recovery hose material must be detected during inspection and repaired prior to operation;

(7) The facility vapor connection is electrically insulated from the barge vapor connection and the fluid injection connection is electrically insulated from the fluid injection source, if fitted, in accordance with OCIMF ISGOTT section 17.5 (incorporated by reference, see 46 CFR 39.1005); and

(8) All equipment is bonded in accordance with 46 CFR 39.6001(h).

§ 39.6007 Operational requirements for tank barge cleaning—B/ALL.

(a) During cleaning operations, vapors from a tank barge cannot be transferred to a cleaning facility which does not have a marine vapor control system (VCS) certified by a certifying entity, and its facility operations manual endorsed by the Captain of the Port (COTP) as meeting the requirements of 33 CFR part 154, subpart P.

(b) Prior to commencing stripping operations, the maximum allowable stripping rate must be determined. The maximum allowable stripping rate must not exceed the volumetric flow capacity of the vacuum relief valve protecting the cargo tank.

(c) The maximum gas-freeing rate is determined by the following:

(1) For a vacuum displacement system—

(i) The maximum allowable gas-freeing rate is a function of the area open to the atmosphere for the cargo tank being gas-freed. The area open to the atmosphere must be large enough to maintain the pressure in the cargo tank being gas-freed at or above 14.5 pounds per square inch absolute (psia) (−0.2 pounds per square inch gauge (psig));

(ii) The maximum allowable gas-freeing rate must be calculated from Table 1 of this section, using the area open to the atmosphere for the cargo tank being gas-freed as the entering determination;

(2) For a fluid displacement system, the maximum allowable gas-freeing rate is determined by the lesser of the following:

(i) Eighty percent of the total venting capacity of the pressure relief valve in the cargo tank venting system when relieving at its set pressure;

(ii) Eighty percent of the total vacuum relieving capacity of the vacuum relief valve in the cargo tank venting system when relieving at its set pressure; or

(iii) The rate based on pressure drop calculations at which, for a given pressure at the facility vapor connection, the pressure in the cargo tank being gas-freed exceeds 80 percent of the setting of any pressure relief valve in the cargo tank venting system.

(d) Any hatch and/or fitting used to calculate the minimum area required to be open to the atmosphere must be opened and secured in such a manner as to prevent accidental closure during gas freeing. All flame screens for the hatch and/or fitting opened must be removed in order to allow for maximum airflow. The hatch and/or fitting must be secured open before the pressure in the cargo tank falls below 10 percent of the highest setting of any of the barge's vacuum relief valves.

(e) ''Do Not Close Hatch/Fitting'' signs must be conspicuously posted near the hatch and/or fitting opened during gas-freeing operations.

(f) To minimize the dangers of static electricity, all equipment used on the barge during gas-freeing and cleaning operations must be electrically bonded to the barge and tested to ensure electrical continuity before each use.

(g) If the barge is equipped with an inert gas system, the inert gas main isolation valve must remain closed during cleaning operations.

(h) Vapors from incompatible cargoes that are collected simultaneously must be kept separated throughout the barge's entire vapor collection system. Chemical compatibility must be determined in accordance with the procedures contained in 46 CFR part 150, part A.

TABLE 1—MINIMUM OPEN AREA FOR BARGE CLEANING HATCHES

Air flow (CFM) (cubic feet/minute)	Air flow (CFS) (cubic feet/ second)	Open area (square inches)	Diameter opening (inches)	Square opening (inches)
500	8.3	10.7	3.7	3.3
600	10.0	12.8	4.0	3.6
700	11.7	15.0	4.4	3.9
800	13.3	17.1	4.7	4.1
900	15.0	19.3	5.0	4.4
1000	16.7	21.4	5.2	4.6
1100	18.3	23.6	5.5	4.9
1200	20.0	25.7	5.7	5.1
1300	21.7	27.8	6.0	5.3
1400	23.3	30.0	6.2	5.5
1500	25.0	32.1	6.4	5.7
1600	26.7	34.3	6.6	5.9
1700	28.3	36.4	6.8	6.0
1800	30.0	38.5	7.0	6.2
1900	31.7	40.7	7.2	6.4

TABLE 1—MINIMUM OPEN AREA FOR BARGE CLEANING HATCHES—Continued

Air flow (CFM) (cubic feet/minute)	Air flow (CFS) (cubic feet/ second)	Open area (square inches)	Diameter opening (inches)	Square opening (inches)
2000	33.3	42.8	7.4	6.5
2100	35.0	45.0	7.6	6.7
2200	36.7	47.1	7.7	6.9
2300	38.3	49.3	7.9	7.0
2400	40.0	51.4	8.1	7.2
2500	41.7	53.5	8.3	7.3
2600	43.3	55.7	8.4	7.5
2700	45.0	57.8	8.6	7.6
2800	46.7	60.0	8.7	7.7
2900	48.3	62.1	8.9	7.9
3000	50.0	64.2	9.0	8.0
3100	51.7	66.4	9.2	8.1
3200	53.3	68.5	9.3	8.3
3300	55.0	70.7	9.5	8.4
3400	56.7	72.8	9.6	8.5
3500	58.3	75.0	9.8	8.7
3600	60.0	77.1	9.9	8.8
3700	61.7	79.2	10.0	8.9
3800	63.3	81.4	10.2	9.0
3900	65.0	83.5	10.3	9.1
4000	66.7	85.7	10.4	9.3

§ 39.6009 Barge person in charge: Designation and qualifications—B/ALL.

The designation and qualification requirements contained in 33 CFR 155.700 and 33 CFR 155.710(a)(2) apply to the barge person in charge.

Dated: June 25, 2013.

J.G. Lantz,

Director of Commercial Regulations and Standards, U. S. Coast Guard.

[FR Doc. 2013–15808 Filed 7–15–13; 8:45 am]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 229

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 130201095–3095–01]

RIN 0648–BC90

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan (Plan). This proposed rule revises the management measures for reducing the incidental mortality and serious injury to the North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), and fin whale (*Balaenoptera physalus*) in commercial trap/pot and gillnet fisheries to meet the goals of the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). The measures identified in the Plan are also intended to benefit minke whales (*Balaenoptera acutorostrata*), which are not strategic, but are known to be taken incidentally in commercial fisheries.

DATES: Submit comments on or before September 16, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0095, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2013–0095* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Mary Colligan, Assistant Regional Administrator for Protected Resources, NMFS Northeast Region, 55 Great Republic Dr., Gloucester, MA 01930, Attn: Large Whale Proposed Rule.
- *Fax:* 978–281–9394 Attn: Large Whale Proposed Rule

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kate Swails, NMFS, Northeast Region, 978–282–8482, *Kate.Swails@noaa.gov;* Kristy Long, NMFS Office of Protected Resources, 301–427–8440, *Kristy.Long@noaa.gov;* or Barb Zoodsma, NMFS Southeast Region, 904–321–2806, *Barb.Zoodsma@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the Plan and the take reduction planning process can be downloaded from the Plan Web site at *http://www.nero.noaa.gov/whaletrp/.* Copies of the Draft Environmental Impact Statement/Regulatory Impact Review for this action can be obtained from the Plan's Web site. The complete text of the regulations implementing the Plan can be found either in the Code of Federal Regulations (CFR) at 50 CFR 229.32 or downloaded from the Web site, along with a guide to the regulations.

Background

The Plan was originally developed pursuant to section 118 of the MMPA to reduce the level of serious injury and mortality of three strategic stocks of large whales (fin, humpback and North Atlantic right) interacting with Category I and II fisheries. The MMPA defines a strategic stock of marine mammals as a stock: (1) For which the level of direct human-caused mortality exceeds the Potential Biological Removal (PBR) level; (2) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the ESA within the foreseeable future; or (3) which is listed as threatened or endangered species under the ESA or depleted under the MMPA (16 U.S.C. 1362(19)). Specific Category I and II fisheries addressed by the Plan include the Northeast sink gillnet, Northeast drift gillnet, Northeast anchored float gillnet, Southeast Atlantic gillnet, Mid-Atlantic gillnet, Southeastern US Atlantic shark gillnet, Atlantic mixed species trap/pot, Atlantic blue crab trap/pot, and Northeast/Mid-Atlantic American lobster trap/pot.

The background for the take reduction planning process and initial development of the Plan is provided in the preambles to the proposed (62 FR 16519, April 7, 1997), interim final (62 FR 39157, July 22, 1997), and final (64 FR 7529, February 16, 1999) rules that implemented the original plan.

Since its 1997 implementation, the Plan has been modified several times to reduce the risk of serious injury and mortality of large whales that interact with commercial sink gillnet and trap/pot gear. The most recent final rule was implemented in September 2008 (73 FR 51228).

ESA Section 7 Consultation and the Plan

As described above, the Plan was developed under section 118 of the MMPA and subsequently modified to comply with the statutory requirements and mandates of the MMPA. However, the three whale species directly protected by the Plan (fin, humpback, and North Atlantic right) are also listed as Endangered under the ESA (16 U.S.C. 1531 *et seq.*). In addition, many of the fisheries affected by the Plan are subject to interagency consultation under section 7 of the ESA since the fisheries occur (at least in part) in Federal waters and are federally managed. These include the American lobster, black sea bass, and deep sea red crab trap/pot fisheries; and the Northeast multispecies, monkfish, spiny dogfish, bluefish, southeastern U.S. Atlantic shark, and South Atlantic gillnet fisheries.

Section 7 of the ESA requires Federal agencies to ensure that their actions do not jeopardize the continued existence of ESA-listed species. The process for determining whether a Federal-agency action will jeopardize any ESA-listed species is referred to as a ''section 7 consultation.''

The most recent consultations for the American lobster and deep sea red crab trap/pot fisheries; the Northeast black sea bass, multispecies, monkfish, spiny dogfish, and bluefish fisheries; and Southeastern U.S. Atlantic shark fisheries evaluated the effect of the proposed measures under each of the fishery management plans as well as those under the Plan. Specifically, these Biological Opinions stated that it was anticipated that the final regulations implementing the conservation measures proposed in this action would prioritize risk reduction in areas where there is the greatest co-occurrence of

vertical lines and large whales. The Biological Opinions stated that a model was being developed and used to analyze various gear configurations and determine the relative co-occurrence reductions (as a proxy for risk) that could be achieved by gear configuration changes and/or effort reductions by area. This co-occurrence analysis is an integral component of the vertical line strategy that will further minimize the risk of large whale entanglement and associated serious injury and death. The Biological Opinions identified the steps NMFS is taking to develop, analyze and implement a vertical line reduction rule including publication of a proposed rule by late 2013 and a final rule by late summer 2014.

NMFS issued its most recent biological opinion for the American Lobster Fishery on August 3, 2012. However, NMFS has also reinitiated consultation on the spiny dogfish, monkfish and Northeast multispecies fisheries. NMFS anticipates the new biological opinions for these fisheries to be finalized in 2014.

The 2006 consultation on the South Atlantic Snapper-Grouper Fishery Management Plan, which includes the black sea bass fishery, and the 2007 consultation on the Southeast Coastal Migratory Pelagic Fishery Management Plan, which includes Southeast Atlantic gillnet fishery, both considered the effects of proposed measures under those fisheries management plans as well as those under the Plan. Those consultations pre-dated the vertical line strategy proposed in this action. However, changes within the black sea bass fishery have reduced risk to large whales. Today, fishermen are allowed a limited number of pots and must return pots to shore at the end of each trip. Most notably, the black sea bass fishing season has not co-occurred with the right whale season for the last four years.

Take Reduction Team Activities

Based on continued entanglements that resulted in a serious injury or mortality of large whales managed under the Plan, NMFS, in consultation with the Atlantic Large Whale Take Reduction Team (Team), determined that additional modifications to the Plan were warranted. The Team is made up of fishing industry representatives, environmentalists, state and federal officials, and other interested parties.

At the 2003 meeting, the Team agreed to manage entanglement risk by first reducing the risk associated with groundlines and then reducing the risk associated with vertical lines in commercial trap/pot and sink gillnet gear. In June 2005, NMFS issued a proposed rule and in October 2007, NMFS issued a final rule that implemented broad-based gear modifications to replace the Seasonal Area Management and Dynamic Area Management programs. This broad-based gear modification strategy includes expanded weak link and sinking groundline requirements, additional gear marking requirements, changes in boundaries, seasonal restrictions for gear modifications, expanded exempted areas, and regulatory language changes for the purposes of clarification and consistency (72 FR 57104, October 5, 2007). The broad-based sinking groundline requirement for trap/pot fishermen became fully effective on April 5, 2009.

Following the implementation of the sinking groundline rule, NMFS and the Team turned its focus toward addressing the entanglement risks associated with vertical lines from trap/pot and gillnet gear. At the 2009 Team meeting, the Team agreed on a schedule to develop a management approach to reduce the risk of serious injury and mortality due to vertical lines. As a result of this schedule, NMFS committed to publishing a final rule to address vertical line entanglement by 2014. The approach for the vertical line rule focuses on reducing the risk of vertical line entanglements in high impact areas versus a wide-broad scale management scheme. Using fishing gear survey data and whale sightings per unit effort (SPUE), a model was developed to determine the co-occurrence of fishing gear density and whale density (i.e., the ''co-occurrence model'').

The Team's Northeast Subgroup met in November 2010 and the Mid-Atlantic/Southeast Subgroup met in April 2011 to review the co-occurrence model and consider its implications for an overall management strategy to address vertical line entanglements. The Team agreed NMFS should use the model to consider and develop possible options to address fishery interactions with large whales by reducing the potential for entanglements, minimizing adverse effects if entanglements occur, and mitigating the effects of any unavoidable entanglements. In addition, the gear characterization information in the model shows the majority of the vertical lines coastwide are from lobster trap/pot and other trap/pot fisheries. As a result, NMFS decided to narrow the scope of the proposed rule to focus on the reduction of verticals lines from trap/pot gear instead of both trap/pot and gillnet gear. The Team also discussed using the model to identify areas of high co-occurrence of right whales and humpback whales combined instead of focusing on a single species.

During the subgroup meetings, the Team requested that NMFS allow stakeholders to submit proposals outlining vertical line risk reduction strategies tailored to specific areas and fisheries. This approach would avoid broad-based management and move towards finer scale management. The proposals were submitted for review by NMFS and the Team at the next meeting in January 2012. Acceptable proposals included descriptions of the areas and fisheries affected, management approach, monitoring plan, and enforcement plan.

To solicit additional stakeholder involvement, on June 14, 2011, NMFS published a Notice of Intent in the **Federal Register** (76 FR 34654) to announce the agency's intent to prepare an Environmental Impact Statement that would analyze the impacts of alternatives for amending the Plan. In the NOI, NMFS announced multiple public scoping meetings along the east coast to solicit comments. In July and August 2011, NMFS held 15 scoping meetings to solicit feedback on the vertical line risk reduction strategy. The information provided at the scoping meetings was also reviewed at a full Team meeting in January 2012. Team members further refined their vertical line risk reduction proposals and the team met via teleconference in February 2012 to review the final proposals submitted. The Team reviewed five proposals: three from state agencies, one from the scientist/academic community, and one from the conservation community. Results of the proposals were presented via teleconference in April 2012. Each vertical line risk reduction proposal was analyzed to assess its impact on both the number of vertical lines and co-occurrence scores relative to the baseline in the Northeast and coastwide.

NMFS designed the proposed alternatives in the DEIS based on comments received during public scoping and using many of the measures submitted by the team in their stakeholder proposals.

Reducing the Risk of Entanglement Associated With Vertical Lines

NMFS believes that all parts of fixed gear create entanglement risk because all have been identified as entangling large whales. However, at this time, determining which part of fixed gear creates the most entanglement risk for large whales is difficult due to the uncertainties associated with entanglements, as well as unknown

biases associated with reporting effort and the lack of information about the types and amounts of gear being used (Johnson et al., 2005). For example, buoy line may be reported more frequently at sea than groundline, since it is easier to recognize when a buoy or high-flyer is present. Groundline, on the other hand, does not have a distinguishing characteristic that would allow it to be identified without removing it from an entangled animal and analyzing it (Johnson *et al.,* 2005). Therefore, vertical line (buoy and surface system line) may only seem to create more of an entanglement risk than groundline, when in fact it is difficult to quantify and compare the risks associated with each part of the gear. In some cases, it is still impossible to determine the gear part even when the gear is recovered and/or identified. Despite gear recovery and/or identification, 44 percent (20 out of the total 45) of the right and humpback whale entanglement events analyzed involved an unknown part of the gear (source Johnson et al., 2005). Currently, the only definitive way to assess the nature of entanglements is through gear removal, as it is difficult to identify a line's origin through photographs alone (Johnson *et al.,* 2005). However, all of the caveats noted above must be considered when gear has been recovered and an assessment is in progress.

A better scientific understanding about the nature of entanglements, specifically the gear components involved (e.g., buoy line), would help NMFS develop better management programs and reduce the risk of serious injury and mortality of large whales due to incidental interactions with commercial fisheries. Therefore, NMFS is also proposing to expand gear marking requirements for fisheries that are subject to the Plan. This information may provide valuable insight concerning where, when, and how the entangling gear was set.

In order to better understand the entanglement risk resulting from vertical lines, NMFS commissioned the development of a model to evaluate the potential risk of entanglement and inform the following types of questions: Where do the fisheries that are subject to the Plan operate? Where are concentrations of vertical line the greatest? Do whales frequent areas with high concentrations of vertical line?

Although the model successfully identifies the highest areas of large whale and commercial fishing gear co-occurrence, the model cannot provide a direct assessment of the probability of an entanglement at a particular place and time, nor does it assess the risk of injury or death in the event of an entanglement. It focuses instead on relative indicators of the potential for an entanglement to occur (% change in number of vertical lines and % change in co-occurrence), using these as a proxy measure of risk.

Given the significant public interest in this topic, it was critical for NMFS to obtain a transparent and independent review of the model documentation. It is important that the model contain the best available information on both whale density and fishing gear density and that the associated caveats seem reasonable.

Therefore, NMFS sought a Center for Independent Experts (CIE) peer review of the model documentation and associated caveats. The CIE reviewers had combined working knowledge and recent experience in spatial analysis, scenario modeling, marine mammal biology, and fisheries management.

Reviewers desired clarification on portions of the model but overall the reviews were favorable. Reviewers provided ideas for future expansion of the model as more information becomes available stating that the assumptions made about current inputs are reasonable. The model could be improved as NMFS learns more about the nature of entanglements. The reviewers suggested NMFS continue to work with their state partners to improve the gear characterization information as well. In an attempt to address multiple reviewers concerns about accounting for uncertainty, and lack of SPUE data within the model, a sensitivity analysis was conducted. The results of this analysis are in the Draft Environmental Impact Statement (DEIS) that supports this proposed action. One reviewer suggested the model be compared to other approaches or models as a way to attempt to validate the results. NMFS is unaware of a completed model that attempts to characterize the risk of entanglement through co-occurrence. In addition, the model was vetted through the Team on numerous occasions and the model inputs were heavily influenced by Team member input.

NMFS and the Team agreed that the vertical line risk reduction measures proposed by stakeholders should be analyzed by the model to see what percent change in vertical lines and percent change in co-occurrence resulted from each proposal. The proposals include measures requiring increased traps per trawl, the use of weaker weak links and/or vertical lines of lower breaking strength, and potential time-area closures.

Alternatives

As a result of public input provided through the scoping process and Team meetings, NMFS developed six alternatives including a ''No Action'' or status quo alternative, to modify the Plan. All six of these alternatives are described and analyzed in detail in the DEIS prepared to accompany this proposed rule. Of the six alternatives considered, NMFS has identified a Preferred Alternative (Alternative 5 in the DEIS) for amending the Plan, which is described below. Although NMFS has identified six alternatives, one of which is preferred, NMFS is seeking comment on all the alternatives. Based on comments received, NMFS proposes to implement one of those six alternatives in the final rule.

Preferred Alternative (Alternative Five)

Changes Proposed to the Plan for Boundaries and Seasons

The co-occurrence model currently incorporates data on fishing activity in Federal waters from 2000 to 2011. This range represents the most recent period for which data on commercial fishing activity are available. Because states have differing data collection programs that have evolved over time, the availability of data characterizing fishing in state waters varies by state. At minimum, the model incorporates state data that characterizes vessel activity from 2008 to 2010; many states have provided data from prior years, and some have recently provided data for 2011. The North Atlantic Right Whale Sightings per Unit Effort dataset includes information obtained from surveys conducted between October 1978 and May 2010.

NMFS proposes to exempt New Hampshire state waters from the Plan's requirements based on the co-occurrence model, with the exception of marking requirements (see § 229.32 (b)(2) and (3)). The co-occurrence model does not indicate any monthly co-occurrence concerns with the exception of November within nearshore state waters. During the month of November effort within state waters is already being reduced due to part-time and limited commercial harvesters seasonally removing gear from state waters and federal/state commercial and limited commercial harvesters are moving to federal waters.

NMFS proposes to expand the Cape Cod Bay Restricted Area to include portions of the Outer Cape, and the area abutting the Great South Channel. This new area, Massachusetts Restricted Area, would be closed for a portion of the year (January 1–April 30) to trap/pot

fisheries. According to a recent report by Massachusetts Division of Marine Fisheries (2011) there has been an increase in presence of whales, particularly right whales, in this area in the months of January through April. Increasing the closure area to include the Outer Cape creates a protection corridor for the whales to travel through on their way to their Cape Cod Bay feeding ground. Recent passive acoustic studies analyzing right whale calls detected in Massachusetts Bay indicate a persistent presence of right whales and call activity throughout much of the year (Morano et al. 2012; Mussoline *et al.* 2012).

NMFS proposes to seasonally close two other areas to trap/pot fishing: Jeffreys Ledge and Jordan Basin areas from October 1 through January 31 and November 1 through January 31, respectively. These are areas of high co-occurrence and high use by whales according to the SPUE data in the model. During the winter months, recent aerial surveys have sighted aggregations of right whales in the central Gulf of Maine. The demographic composition of individuals suggests this may be a mating ground (NMFS Northeast Fisheries Science Center, unpublished data).

Finally, NMFS proposes to create a new trap/pot management area in the Southeast Region. The eastern boundary of the current Southern Nearshore Trap/Pot waters area would be aligned with the eastern boundary of the existing Southeast Restricted Area North management area. This new area would coincide with the current Southeast Restricted Area North management area in place for gillnets. Creating a new management area for trap/pots would better focus proposed vertical line risk reduction measures to the area of overlap of vertical lines off South Carolina, Georgia, and Florida with the presence of whales. During the winter months (November through April), right whales are most often sighted south of the North Carolina/South Carolina border. Occasionally, humpback whales are also reported in the southeast coastal waters during this time of year. Management measures in this area would be in place from November 15 through April 15.

Changes Proposed to the Plan for Trap/Pot Gear

In the Northeast Region, NMFS proposes to institute restrictions designed to reduce the number of buoy lines that fishermen employ. The preferred alternative would limit the number of lines in the Northeast by prohibiting single trap/pots and requiring fishermen to increase the number of traps per trawl they set based on area and distance to shore. In some areas (mainly inshore and nearshore waters) this may represent a change from how they currently fish. In Federal waters and offshore, larger trawls are currently fished so this requirement may not affect these vessels to the same extent as smaller inshore vessels. The current requirement of one endline for trawls less than or equal to five traps remains in place. Larger trawls (i.e., > 5 traps/pots) would not be required to have one endline.

The numbers of traps per trawl proposed are based on the co-occurrence model, discussions with the public, and NMFS state partners. The required traps per trawl differ based on distance to shore and lobster management area. In Maine the traps per trawl were defined based on Maine state lobster zones.

In the Southeast Region, NMFS proposes to require single trap/pots, implement weaker weak links and breaking strength of vertical lines, and require all vertical lines to be free of objects (e.g. weights, floats, etc.) except where it attaches to the buoy and trap/pot, and made of sinking line.

Single trap/pots are preferable in the Southeast to reduce damage to sensitive habitats and protect newborn calves. The Southeast U.S. has extensive amounts of live bottom and traps set in multiple-trap trawls can damage live bottom more than single traps. Additionally, newborn calves are less buoyant than older whales and apparently have a difficult time raising their blowholes above the water to breathe (Thomas and Taber 1984). For this reason, lighter gear is less risky to newborn calves than heavy gear (i.e., multiple traps are heavier than single traps).

The Plan requires the use of weak links with breaking strengths of 600 to 1,500 lbs (272 to 680 kg) depending on management area. The preferred alternative proposes to decrease the required breaking strength of weak links in Florida state waters. Right whale mother/calf pairs in the calving area are most often sighted in water depths of 10 to 20 m (32 to 65 ft) (Keller *et al.* 2012). The greatest co-occurrence of trap/pot gear and right whales occurs off the Northeast Florida shoreline. Florida state waters are deeper and can be greater than 10 m deep within ⅓ of mile of the beach, whereas Georgia and South Carolina state oceanic waters are generally less than 10 m deep. Therefore, neophyte calf and reproducing female interactions with trap pot gear is a greater risk in Florida State waters than in Georgia or South Carolina State waters. Requiring weak links in Florida state waters of the Southeast U.S. Restricted Area North is a measure designed to help mitigate the risk in an area where there is a high co-occurrence of right whales, particularly newborn calves, and blue crab trap/pot gear.

NMFS proposes to define the maximum breaking strength of vertical line in the Southeast. Currently the required breaking strength of vertical line is not defined but most fishermen use No.8 or No.10 Osprey line with a breaking strength of 1,500 or 2,200 lbs. respectively. Codifying the current practices would ensure that any new effort in the area would be required to use an established breaking strength.

In an effort to decrease the number of ways gear is rigged, NMFS is also proposing to require that vertical lines be made of sinking line and free of objects for those traps set in the Southeast. Gear that is splice-free, knot-free, and/or free of attachments may be more likely to slide through the whale's baleen freeing the animal rather than becoming lodged in the mouth or elsewhere creating a serious injury or mortality risk. Fishermen will still be encouraged to maintain knot free buoy lines as in other areas of the coast.

Changes Proposed to the Plan for Gear Marking

The Plan currently requires fishermen to mark their trap/pot or gillnet buoy lines with one 4-inch (10.2 cm) mark depending on the area they fish. This colored mark should be midway along the buoy line and surface buoys are marked to identify the vessel or fishery. Colors correspond to specific Plan management areas.

This current gear marking strategy (implemented in 1997) is inadequate. From 1997–2008 there were 364 large whale entanglement events. Gear was retrieved in 129 of these cases; of the cases where gear was retrieved, gear marking led to 36 cases where fishery, location, and date were known. A stronger gear marking strategy would help answer questions such as when and where entanglements occur.

The proposed gear marking scheme would maintain the current color combinations but increase the size and frequency of the mark. The new mark must equal 12-inch (30.5 cm) in length and buoy lines must be marked three times (top, middle, bottom). A mark for the Maine and New Hampshire exempted waters would also be required. A mark for the new Southeast U.S. Restricted Area North would be required for both state and Federal

waters. This proposal would continue to allow multiple methods for marking line (e.g., paint, tape, rope, etc).

Regulatory Language Changes

A correction and clarification has been identified since the last regulation was implemented. The following changes to the current Plan regulations are proposed to improve consistency and clarity:

Exempted waters: NMFS proposes to add language to clarify the exempted waters description.

Southeast U.S. Monitoring Area Clarification: The proposed rule would clarify the restricted period for the Southeast US Monitoring Area. Currently the restricted period is not defined. This was an oversight in the last amendment (73 FR 51228). The added language would define the restricted period as December 1 through March 31.

Definitions: The proposed rule would modify the definition of groundline when referring to gillnets to remove reference to buoy line. The definition would read: Groundline with reference to trap/pot gear, means a line connecting traps in a trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor.

Prohibitions: The proposed rule would eliminate the individual prohibition paragraphs on fishing or possessing trap/pot gear, anchored gillnet, drift gillnet, gillnet, and shark gillnets (§ 229.3(h) through § 229.3(l)) and condense the intended prohibitions into three paragraphs that apply to any person or vessel and fishing gear subject to the Plan.

We are proposing to add a paragraph that clarifies fishermen are responsible for proving that an exemption or exception under § 229.32 is applicable.

Other Special Measures: We are proposing to add language clarify the intent of § 229.32(i)(2) to include consultation with the Take Reduction Team. In addition to comments on the alternatives NMFS is also seeking comment on two additional areas. Since vertical lines pose a risk to whales regardless of vessel size, NMFS is proposing to require both small and large vessels to increase the number of traps per trawl to reduce the number of vertical lines in the water column. To address impacts to smaller vessels, state managers and industry representatives on the Team proposed utilizing smaller minimum number of trap/pots per trawl. Those smaller limits in inshore state water areas are contained in several of the proposed alternatives. However, we recognize that this may still result in some difficulty for smaller vessels, so we are requesting comments on whether the final regulations should be adjusted so that the number of traps per trawl is limited by specific vessel sizes. In addition, NMFS requests public comment on whether the net benefits of the rule would be affected, either positively or negatively, by exempting vessels under a particular size class.

Also, because the measures developed are based on a model, which accounts for the way the fishing industry deployed its gear in the past, 'credit' for past requirements has already been accounted for when the proposed measures were developed. However, NMFS realizes that potential effort reductions or increases in the future could reduce or increase the number of vertical lines in the water column. Therefore, NMFS is interested in public comment during this comment period on suggestions for how best to quantify potential future trap reductions or increases with respect to how many vertical lines could be reduced.

Should future fishery management actions result in a reduction in vertical lines such that a party would want to request relief from certain measures of the Atlantic Large Whale Take Reduction Plan, such requests should be submitted and evaluated consistent with the NMFS Process for Evaluating Exemption Requests (*http://www.nero.noaa.gov/whaletrp/plan/ALWTRT%20Exemption%20Request%20Process_final.pdf*) that was developed in cooperation with the Team. Following the Team's existing Process, NMFS may allow such exemptions. As a part of the Process NMFS will, among other things, forward each request to the Team, seek to identify any issues or concerns with the request, and convene the Team to discuss and provide a recommendation on the request before taking appropriate action (i.e., commence rulemaking, request more information, or deny request).

Classification

This proposed rule has been determined significant for the purposes of Executive Order 12866. This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act (PRA), specifically, the marking of fishing gear. The proposed collection of information requirement was submitted to the Office of Management and Budget for approval. Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance and function of the agency, including: the practical utility of the information; the accuracy of the burden estimate; the opportunities to enhance the quality, utility, and clarity of the information to be collected; and the ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

The DEIS includes several alternatives on which NMFS will solicit comment during a 60-day public comment period. The gear marking scheme proposed in each alternative does not differ; however, the burden estimates may vary by alternative for two reasons: (1) Differences in the number of affected vessels between alternatives and (2) differences in the number of buoy lines allowed per trawl for lobster and other trap/pot vessels. The alternatives were analyzed two ways to account for varying fishing effort depending upon the behavior of industry as a result of the proposed closures. One way assumed 100% suspension of fishing as a result of the closures and the other way assumed some vessels would relocate to fish outside the closed areas. The table below depicts the range in the estimate of burden. The burden for all the alternatives falls within these estimates.

TABLE 1—ESTIMATED ANNUAL BURDEN

Proposed alternative	Number of respondents	Total estimated annual burden hours	Estimated annual burden hours per person	Total estimated annual cost to public	Estimated annual cost to public per person
No Action	6,130	114,541	56	$75,597	$37
Preferred	6,143	102,178	50	67,437	32.93

Send comments on these or any other aspects of the collection of information to the **ADDRESSES** above, and to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a valid Office of Management and Budget (OMB) Control Number.

As required by the Regulatory Flexibility Act, NMFS prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule. A summary of that IRFA follows.

This proposed rule would identify measures that reduce the risk of serious injury or mortality from entanglement of large whales under the Plan. The objective of this proposed rule, issued pursuant to section 118 of the MMPA, is to reduce the level of serious injury and mortality of right, humpback, and fin whales in commercial east coast trap/pot and gillnet fisheries. The small entities affected by this proposed rule are commercial gillnet and trap/pot fishermen.

The geographic range of the proposed rule would include the Northeast Atlantic, Mid-Atlantic, and Southeast Atlantic waters. In the lobster trap/pot fishery, there are potentially 5,301 vessels that would be affected. In the other trap/pot fisheries, there are potentially 282 vessels that would be affected. In the blue crab fishery there are potentially 48 vessels that would be affected. In the gillnet fishery, there are approximately 499 vessels that would be affected. All vessels are assumed to be small entities within the meaning of the Regulatory Flexibility Act.

The most affected vessels are based in the Northeast due to the high number of vessels that would need to reconfigure gear in this region. However, when considering the coastwide gear marking requirement, the number of vessels considered most affected is essentially identical under all alternatives with the exception of the no action alternative (Alternative 1).

Six alternatives, consisting of one status quo, one preferred alternative, and four additional alternatives were evaluated using model vessels, each of which represents a group of vessels that share similar operating characteristics and would face similar requirements under a given regulatory alternative. Both an upper and lower bound of annual compliance costs for lobster and other trap/pot was analyzed. A summary of analysis describing the potential range of compliance costs follows:

1. NMFS considered a ''no action'' or status quo alternative (Alternative 1) that would result in no changes to the current measures under the Plan and, as such, would result in no additional economic effects on the fishing industry.

2. Alternative 2, which would implement new gear marking restrictions coastwide, increase traps per trawl, and require the use of weaker weak links and/or vertical lines of lower breaking strength. This alternative would also implement a new management area in the Southeast Region. Under this alternative, the average annual vessel compliance costs would equal or range from $1.8 to $4.5 million for lobster trap/pot vessels; $435,000 to $859,900 for other trap/pot vessels; $7,000 for blue crab and $5,000 for gillnet vessels.

3. Alternative 3 would implement all of the requirements of Alternative 2, except the number of traps per trawl required in Maine would differ. Under this alternative NMFS proposes a closure in the Cape Cod Bay from February 1 through April 30. In addition, New Hampshire state waters would be exempt from the Plan's requirements. Under this alternative, the average annual vessel compliance costs would equal or range from $1.6 to $3.6 million for lobster trap/pot vessels; $420,000 to $844,000 for other trap/pot vessels; $7,000 for blue crab and $5,000 for gillnet vessels.

4. Alternative 4 would implement all of the requirements of Alternative 2. In addition, NMFS would propose three closures: (1) Jordan Basin from November 1 through January 31; (2) Jeffreys Ledge from October 1 through January 31; and (3) Cape Cod Bay (including a portion of the Outer Cape and abutting the Great South Channel) from January 1 through April 30. Under this alternative, the average annual vessel compliance costs would equal or range from $3.2 to $6.6 million for lobster trap/pot vessels; $435,000 to $859,000 for other trap/pot vessels; and $7,000 for blue crab and $5,000 for gillnet vessels.

5. Alternative 5 (Preferred Alternative) is a combination of Alternatives 2, 3, and 4. The traps per trawl for Maine would mimic what is required under alternative 3; traps per trawl in all other areas would mimic what is required under Alternative 2. New Hampshire state waters would be exempt under Alternative 5. The closures proposed under Alternative 4 remain in place under Alternative 5. Under this alternative, the average annual vessel compliance costs would equal or range from $3 to $5.7 million for lobster trap/pot vessels; $420,000 to $844,000 for other trap/pot vessels; and $7,000 for blue crab and $5,000 for gillnet vessels.

6. Alternative 6 would implement all of the requirements of Alternative 5 with a few exceptions. Doubles would be required in Massachusetts state waters instead of three traps per trawl. Also, only one closure would be implemented. From January 1 through April 30 Cape Cod Bay and the Outer Cape would be closed to fishing. Under this alternative, the average annual vessel compliance costs would equal or range from $2.2 to $4.4 million for lobster trap/pot vessels; $423,000 to $847,000 for other trap/pot vessels; and $7,000 for blue crab and $5,000 for gillnet vessels.

NMFS has determined that this action is consistent to the maximum extent practicable with the approved coastal management programs of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed with our conclusion that this proposed rule is consistent with the enforceable policies of the approved coastal management program for that state.

This proposed rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action to the appropriate official(s) of affected state, local, and/or tribal governments.

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Figure 1. Exemption lines for the state of New Hampshire. Waters left of the dotted line would be exempt. See proposed Plan regulations for exact exemption line coordinates.

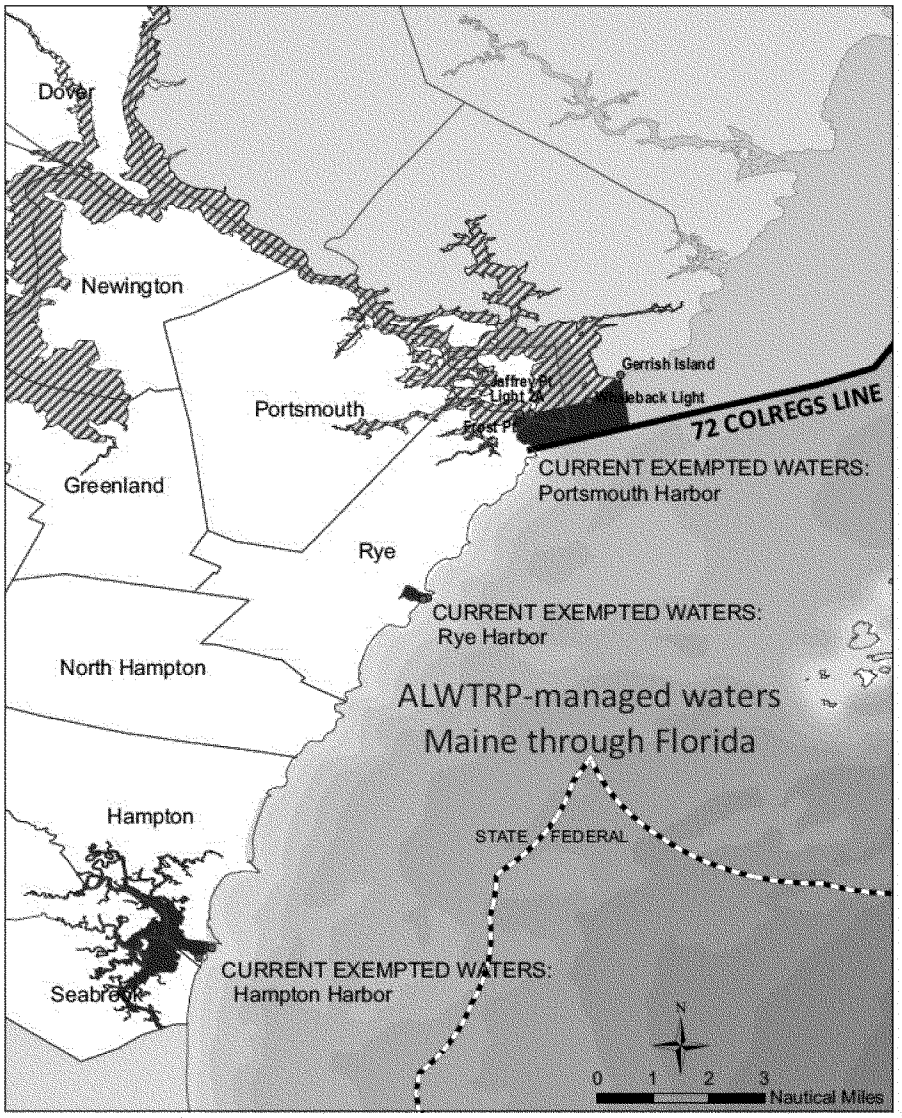


Figure 2. Proposed Massachusetts Restricted Area under Alternative 5.

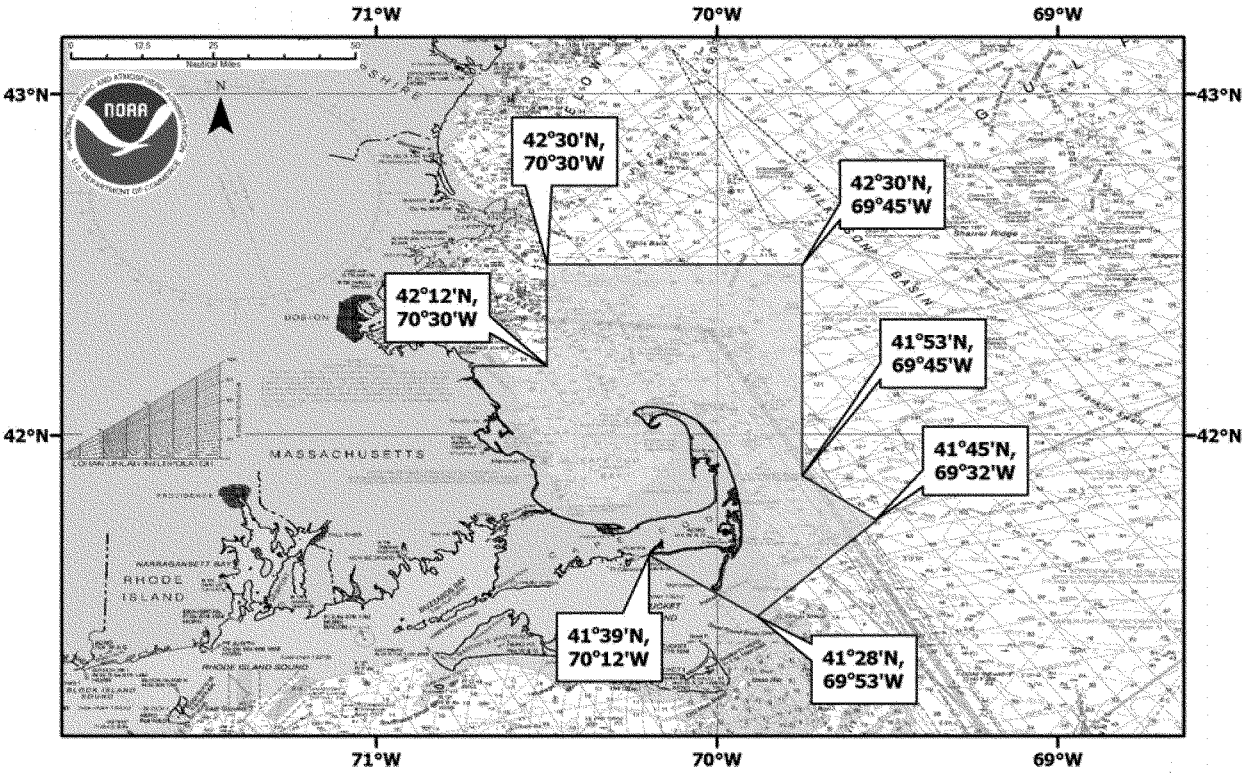


Figure 3. Proposed Jordan Basin Restricted Area under Alternative 5.

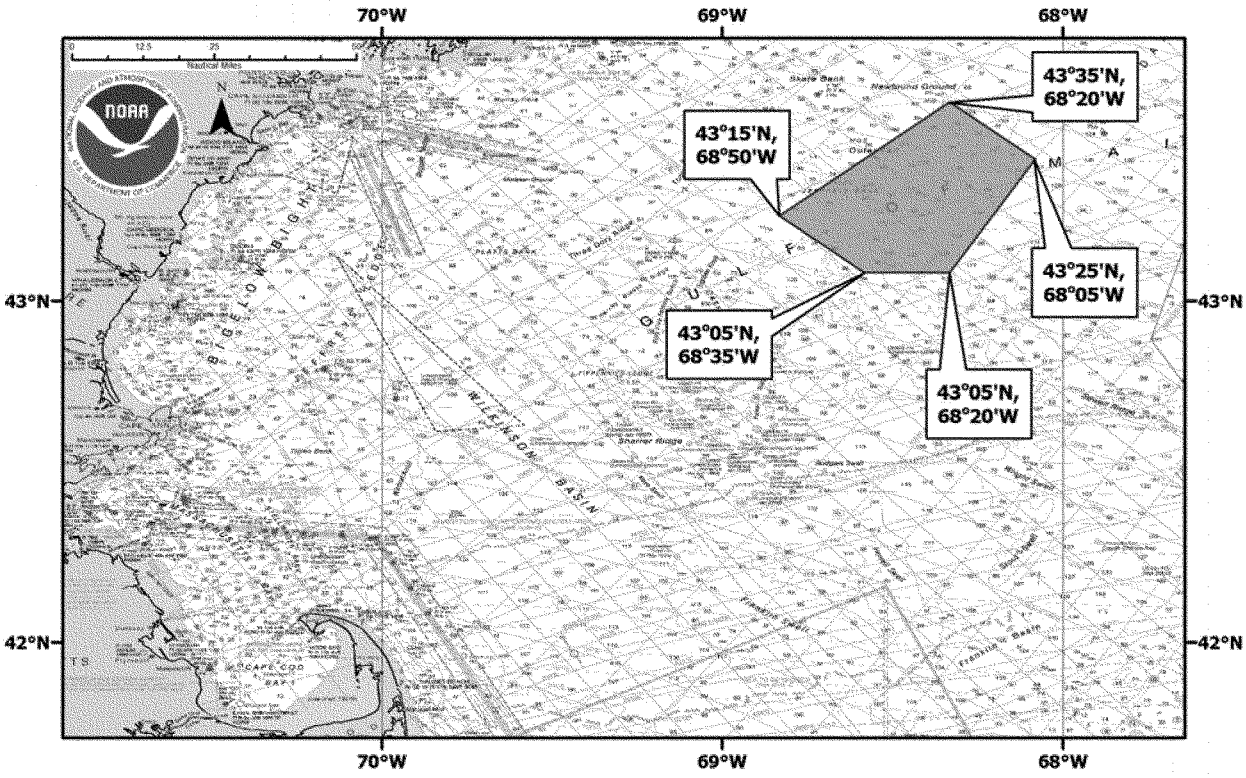


Figure 4. Proposed Jeffreys Ledge Restricted Area under Alternative 5.

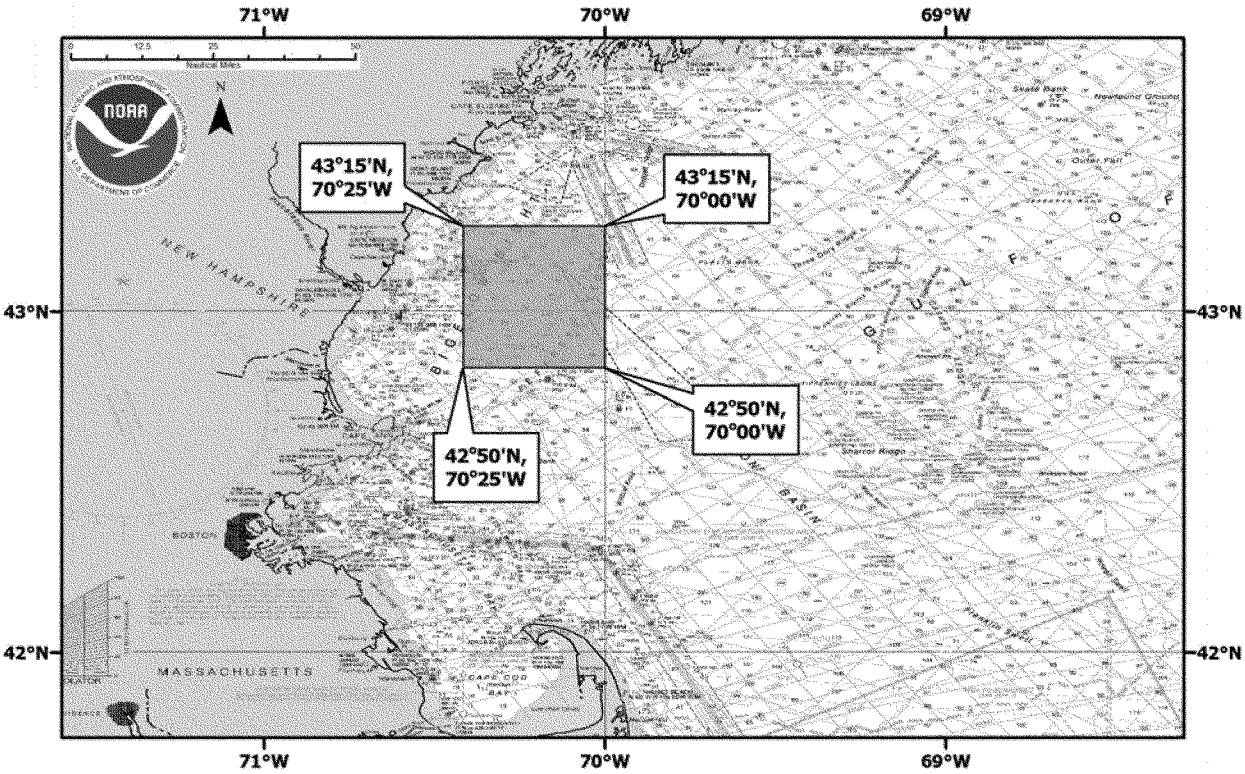
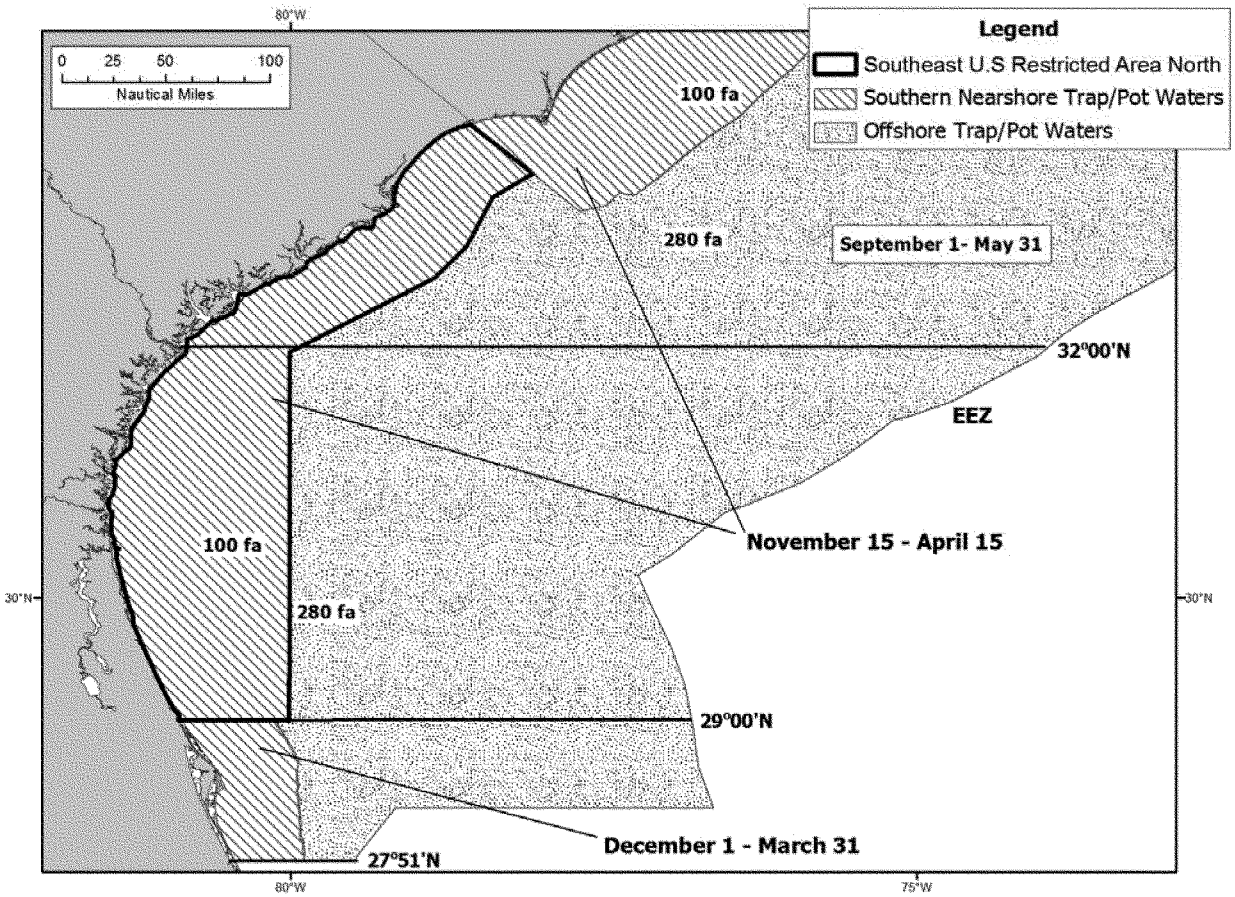


Figure 5. Proposed new Southeast Restricted Area North Trap/Pot Waters. See proposed Plan regulations for exact management area coordinates.



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List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: July 3, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended to read as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.;* § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

■ 2. In § 229.2, the definition of ''Groundline'' is revised in to read as follows:

§ 229.2 Definitions.

* * * * *

Groundline, with reference to trap/pot gear, means a line connecting traps in a trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor.

* * * * *

■ 3. Revise § 229.3 paragraphs (h) through (j) and remove and reserve paragraphs (k) and (l) to read as follows:

§ 229.3 Prohibitions.

* * * * *

(h) It is prohibited to own, operate, or be on board a vessel subject to the Atlantic Large Whale Take Reduction Plan except if that vessel and all fishing gear comply with all applicable provisions of § 229.32.

(i) It is prohibited to fish for, catch, take, harvest or possess fish or wildlife while on board a vessel subject to the Atlantic Large Whale Take Reduction Plan, except if that vessel and all fishing gear is in compliance with all applicable provisions of § 229.32.

(j) Any person or vessel claiming the benefit of any exemption or exception under § 229.32 has the burden of

proving that the exemption or exception, is applicable.

* * * * *

■ 4. Section 229.32 is revised to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) *Purpose and scope.* The purpose of this section is to implement the Atlantic Large Whale Take Reduction Plan to reduce incidental mortality and serious injury of fin, humpback, and right whales in specific Category I and Category II commercial fisheries from Maine through Florida. Specific Category I and II commercial fisheries within the scope of the Plan are identified and updated in the annual List of Fisheries. The measures identified in the Atlantic Large Whale Take Reduction Plan are also intended to benefit minke whales, which are not designated as a strategic stock, but are known to be taken incidentally in gillnet and trap/pot fisheries. The gear types affected by this plan include gillnets (e.g., anchored, drift, and shark) and traps/pots. The Assistant Administrator may revise the requirements set forth in this section in accordance with paragraph (i) of this section.

(2) *Regulated waters.* The regulations in this section apply to all U.S. waters in the Atlantic except for the areas exempted in paragraph (a)(3) of this section.

(3) *Exempted waters.* (i) The regulations in this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet in Massachusetts.

(ii) The regulations in this section do not apply to waters landward of the 72 COLREGS demarcation lines (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 with the exception of the COLREGS lines for Casco Bay (Maine), Portsmouth Harbor (New Hampshire), Gardiners Bay and Long Island Sound (New York), and the state of Massachusetts.

(iii) *Other exempted waters.* The regulations in this section do not apply to waters landward of the following lines:

Maine

The specified waters below are exempt from the regulations stated in this section, except for paragraph (b) of this section.

A line connecting the following points (Quoddy Narrows/US-Canada border to Odiornes Pt., Portsmouth, New Hampshire):

44°49.67′ N. lat., 66°57.77′ W. long. (R N ''2'', Quoddy Narrows)
44°48.64′ N. lat., 66°56.43′ W. long. (G ''1'' Whistle, West Quoddy Head)
44°47.36′ N. lat., 66°59.25′ W. long. (R N ''2'', Morton Ledge)
44°45.51′ N. lat., 67°02.87′ W. long. (R ''28M'' Whistle, Baileys Mistake)
44°37.70′ N. lat., 67°09.75′ W. long. (Obstruction, Southeast of Cutler)
44°27.77′ N. lat., 67°32.86′ W. long. (Freeman Rock, East of Great Wass Island)
44°25.74′ N. lat., 67°38.39′ W. long. (R ''2SR'' Bell, Seahorse Rock, West of Great Wass Island)
44°21.66′ N. lat., 67°51.78′ W. long. (R N ''2'', Petit Manan Island)
44°19.08′ N. lat., 68°02.05′ W. long. (R ''2S'' Bell, Schoodic Island)
44°13.55′ N. lat., 68°10.71′ W. long. (R ''8BI'' Whistle, Baker Island)
44°08.36′ N. lat., 68°14.75′ W. long. (Southern Point, Great Duck Island)
43°59.36′ N. lat., 68°37.95′ W. long. (R ''2'' Bell, Roaring Bull Ledge, Isle Au Haut)
43°59.83′ N. lat., 68°50.06′ W. long. (R ''2A'' Bell, Old Horse Ledge)
43°56.72′ N. lat., 69°04.89′ W. long. (G ''5TB'' Bell, Two Bush Channel)
43°50.28′ N. lat., 69°18.86′ W. long. (R ''2 OM'' Whistle, Old Man Ledge)
43°48.96′ N. lat., 69°31.15′ W. long. (GR C ''PL'', Pemaquid Ledge)
43°43.64′N. lat., 69°37.58′ W. long. (R ''2BR'' Bell, Bantam Rock)
43°41.44′ N. lat., 69°45.27′ W. long. (R ''20ML'' Bell, Mile Ledge)
43°36.04′ N. lat., 70°03.98′ W. long. (RG N ''BS'', Bulwark Shoal)
43°31.94′ N. lat., 70°08.68′ W. long. (G ''1'', East Hue and Cry)
43°27.63′ N. lat., 70°17.48′ W. long. (RW ''WI'' Whistle, Wood Island)
43°20.23′ N. lat., 70°23.64′ W. long. (RW ''CP'' Whistle, Cape Porpoise)
43°04.06′ N. lat., 70°36.70′ W. long. (R N ''2MR'', Murray Rock)
43°02.93′ N. lat., 70°41.47′ W. long. (R ''2KR'' Whistle, Kittery Point)
43°02.55′ N. lat., 70°43.33′ W. long. (Odiornes Pt., Portsmouth, New Hampshire)

New Hampshire

New Hampshire state waters are exempt from the regulations stated in this section, except for paragraph (b) of this section. This includes the harbor waters listed below.

A line from 42°53.691′ N. lat., 70°48.516′ W. long. to 42°53.516′ N. lat., 70°48.748′ W. long. (Hampton Harbor)

A line from 42°59.986′ N. lat., 70°44.654′ W. long. to 42°59.956′ N., 70°44.737′ W. long. (Rye Harbor)

Rhode Island

A line from 41°22.441′ N. lat., 71°30.781′ W. long. to 41°22.447′ N. lat., 71°30.893′ W. long. (Pt. Judith Pond Inlet)

A line from 41°21.310′ N. lat., 71°38.300′ W. long. to 41°21.300′ N. lat., 71°38.330′ W. long. (Ninigret Pond Inlet)

A line from 41°19.875′ N. lat., 71°43.061′ W. long. to 41°19.879′ N. lat., 71°43.115′ W. long. (Quonochontaug Pond Inlet)

A line from 41°19.660′ N. lat., 71°45.750′ W. long. to 41°19.660′ N. lat., 71°45.780′ W. long. (Weekapaug Pond Inlet)

New York

A line that follows the territorial sea baseline through Block Island Sound (Watch Hill Point, RI, to Montauk Point, NY)

South Carolina

A line from 32°34.717′ N. lat., 80°08.565′ W. long. to 32°34.686′ N. lat., 80°08.642′ W. long. (Captain Sams Inlet)

(4) *Sinking groundline exemption.* The fisheries regulated under this section are exempt from the requirement to have groundlines composed of sinking line if their groundline is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m).

(5) *Net panel weak link and anchoring exemption.* The anchored gillnet fisheries regulated under this section are exempt from the requirement to install weak links in the net panel and anchor each end of the net string if the float-line is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m).

(b) *Gear marking requirements.* (1) *Specified areas.* The following areas are specified for gear marking purposes: Northern Inshore State Trap/Pot Waters, Cape Cod Bay Restricted Area, Massachusetts Restricted Area, Jordan Basin Restricted Area, Jeffreys Ledge Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Northern Nearshore Trap/Pot Waters Area, Great South Channel Restricted Trap/Pot Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, Southern Nearshore Trap/Pot Waters Area, Offshore Trap/Pot Waters Area, Other Northeast Gillnet Waters Area, Mid/South Atlantic Gillnet Waters Area, Other Southeast Gillnet Waters Area, Southeast U.S. Restricted Areas, Southeast U.S. Monitoring Area, and

Maine and New Hampshire exempted state waters.

(2) *Markings.* All specified gear in specified areas must be marked with the color code shown in (b)(3) of this section. The color of the color code must be permanently marked on or along the line or lines specified below under paragraphs (b)(2)(i) and (ii) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. The rope must be marked at least three times (top, middle, bottom) and each mark must total 12-inch (30.5 cm) in length. If the mark consists of two colors then each color mark may be 6-inch (15.25 cm) for a total mark of 12-inch (30.5 cm). If the color of the rope is the same as or similar to a color code, then a white mark may be substituted for that color code. In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Northeast Region upon request.

(i) *Buoy line markings.* All buoy lines greater than 4 feet (1.22 m) long must be marked within 2 feet (0.6 m) of the top of the buoy line (closest to the surface), midway along the length of the buoy line, and within 2 feet (0.6 m) of the bottom of the buoy line.

(ii) *Net panel markings.* Each gillnet net panel must be marked along both the floatline and the leadline at least once every 100 yards (91.4 m).

(iii) *Surface buoy markings.* Trap/pot and gillnet gear regulated under this section must mark all surface buoys to identify the vessel or fishery with one of the following: the owner's motorboat registration number, the owner's U.S. vessel documentation number, the federal commercial fishing permit number, or whatever positive identification marking is required by the vessel's home-port state. When marking of surface buoys is not already required by state or federal regulations, the letters and numbers used to mark the gear to identify the vessel or fishery must be at least 1 inch (2.5 cm) in height in block letters or arabic numbers in a color that contrasts with the background color of the buoy. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Northeast Region upon request.

(3) *Color code.* Gear must be marked with the appropriate colors to designate gear types and areas as follows:

COLOR CODE SCHEME

Plan management area	Lobster management area [1]	Color
Trap/Pot Gear		
Massachusetts Restricted Area	LMA 1	Red.
Jeffreys Ledge Restricted Area	LMA 1	Red.
Northern Nearshore	LMA 1, LMA 2, Outer Cape	Red.
Northern Inshore State	LMA 1, LMA 2, LMA 2/3, Outer Cape	Red.
Stellwagen Bank/Jeffreys Ledge Restricted Area	LMA 1	Red.
Great South Channel Restricted Area overlapping with LMA 2 and/or Outer Cape.	LMA2 and Outer Cape	Red.
Southern Nearshore	LMA 4, 5, 6	Orange.
Southeast Restricted Area North	State Waters	Blue and Orange.
Southeast Restricted Area	Federal Waters	Green and Orange.
North Offshore	LMA 2/3 and LMA 3	Black.
Great South Channel Restricted Area overlapping with LMA 2/3 and/or LMA 3.	LMA 2/3 and LMA 3	Black.
Jordan Basin Restricted Area	LMA 3	Black.
New Hampshire and Maine Exemption Area	LMA 1	Red and Blue.
Gillnet excluding shark gillnet		
Cape Cod Bay Restricted Area		Green.
Stellwagen Bank/Jeffreys Ledge Restricted Area		Green.
Great South Channel Restricted Area		Green.
Great South Channel Restricted Sliver Area		Green.
Other Northeast Gillnet Waters		Green.
Mid/South Atlantic Gillnet Waters		Blue.
Southeast US Restricted Area South		Yellow.
Other Southeast Gillnet Waters		Yellow.
New Hampshire and Maine Exemption Area		Red and Blue.
Shark Gillnet (with webbing of 5″ or greater)		
Southeast US Restricted Area South		Green and Blue.
Southeast Monitoring Area		Green and Blue.
Other Southeast Waters		Green and Blue.

[1] If applicable.

(c) *Restrictions applicable to trap/pot gear in regulated waters*—(1) *Universal trap/pot gear requirements.* In addition to the gear marking requirements listed in paragraph (b) of this section and the area-specific measures listed in paragraphs (c)(2) through (12) of this section, all trap/pot gear in regulated waters, including the Northern Inshore State Trap/Pot Waters Area, must comply with the universal gear requirements listed below.[1]

[1] Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are

(i) *No buoy line floating at the surface.* No person or vessel may fish with trap/pot gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

(ii) *No wet storage of gear.* Trap/pot gear must be hauled out of the water at least once every 30 days.

(iii) *Groundlines.* All groundlines must be composed entirely of sinking line. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(2) *Area specific gear requirements.* Trap/pot gear must be set according to the requirements outlined below and in the Table in paragraph (c)(2)(iii) of this section.

(i) *Single traps and multiple-trap trawls.* All traps must be set according to the configuration outlined in the Table (c)(2)(iii). Trawls up to and including 5 or fewer traps must only have one buoy line.

(ii) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(A) The breaking strength of the weak links must not exceed the breaking strength listed in paragraph (c)(2)(iii) of this section for a specified management area.

(B) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(C) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(iii) *Table of Area Specific Gear Requirements.*

Location	Mgmt area	Traps/trawl	Weak link strength
ME State Waters	Northern Inshore State	2	≤ 600 lbs.
ME Zones A–G (3–6 miles)	Northern Nearshore	3	≤ 600 lbs.
ME Zones A–C (6–12 miles)	Northern Nearshore	5	≤ 600 lbs.
ME Zones D–G (6–12 miles)	Northern Nearshore	10	≤ 600 lbs.
ME Zones A–E (12+ miles)	Northern Nearshore and Offshore	15	≤ 600 lbs (≤ 1500 lbs in offshore, 2,000 lbs if red crab trap/pot).
ME Zones F–G (12+ miles)	Northern Nearshore and Offshore	15 (Mar 1–Oct 31) 20 (Nov 1–Feb 28/29)	≤ 600 lbs (≤ 1500 lbs in offshore, 2,000 lbs if red crab trap/pot).
MA State Waters	Northern Inshore State	2	≤ 600 lbs.
LMA 1 (0–3 miles)	Northern Inshore State and Massachusetts Restricted Area and Stellwagen Bank/Jeffreys Ledge Restricted Area.	3	≤ 600 lbs.
LMA 1 (3–12 miles)	Northern Nearshore and Massachusetts Restricted Area and Stellwagen Bank/Jeffreys Ledge Restricted Area.	10	≤ 600 lbs.
LMA 1 (12+ miles)	Northern Nearshore	20	≤ 600 lbs.
LMA1/OC Overlap (0–3 miles)	Northern Inshore State and Massachusetts Restricted Area.	2	≤ 600 lbs.
OC (0–3 miles)	Northern Inshore State and Massachusetts Restricted Area.	2	≤ 600 lbs.
OC (3–12 miles)	Northern Nearshore and Massachusetts Restricted Area.	10	≤ 600 lbs.
OC (12+ miles)	Northern Nearshore and Great South Channel Restricted Area.	20	
LMA 2 (0–3 miles)	Northern Inshore State	3	≤ 600 lbs.
LMA 2 (3–12 miles)	Northern Nearshore	10	≤ 600 lbs.
LMA 2 (12+ miles)	Northern Nearshore	20	≤ 600 lbs.
LMA 2/3 Overlap (12+ miles)	Offshore	20	≤ 1500 lbs (2,000 lbs if red crab trap/pot).
LMA 3 (3–12 miles)	Offshore	10	≤ 1500 lbs (2,000 lbs if red crab trap/pot).
LMA 3 (12+ miles)	Offshore and Jordan Basin Restricted Area.	20	≤ 1500 lbs (2,000 lbs if red crab trap/pot).
LMA 4 5 6	Southern Nearshore		≤ 600 lbs.
FL State Waters	Southeast US Restricted Area North[2]	1	≤ 200 lbs.
GA State Waters	Southeast US Restricted Area North[2]	1	≤ 600 lbs.
SC State Waters	Southeast US Restricted Area North[2]	1	≤ 600 lbs.
Federal Waters off FL, GA, SC	Southeast US Restricted Area North[2]	1	≤ 600 lbs.

(3) *Massachusetts Restricted Area*—(i) *Area.* The Massachusetts restricted area is bounded by the following point surrounding the shoreline of Cape Cod, Massachusetts.

considered to be less of an entanglement threat and are thus preferable to knots.

[2] *See* § 229.32 (f)(1) for description of area.

Point	N. Lat.	W. Long.
MRA1	42°12′	70°30′
MRA2	42°30′	70°30′
MRA3	42°30′	69°45′
MRA4	41°53′	69°45′
MRA5	41°45′	69°32′
MRA6	41°28′	69°53′
MRA7	41°39′	70°12′

(ii) *Closure.* From January 1 to April 30, it is prohibited to fish with, set, or possess trap/pot gear in this area unless stowed in accordance with § 229.2.

(iii) *Area-specific gear or vessel requirements.* From May 1 through December 31, no person or vessel may fish with or possess trap/pot gear in the Massachusetts Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(4) *Great South Channel Restricted Trap/Pot Area*—(i) *Area.* The Great South Channel Restricted Trap/Pot Area consists of the area bounded by the following points.

Point	N. Lat.	W. Long.
GSC1	41°40′	69°45′
GSC2	41°0′	69°05′
GSC3	41°38′	68°13′
GSC4	42°10′	68°31′

(ii) *Closure.* From April 1 through June 30, it is prohibited to fish with, set, or possess trap/pot gear in this area unless stowed in accordance with § 229.2.

(iii) *Area-specific gear or vessel requirements.* From July 1 through March 31, no person or vessel may fish with or possess trap/pot gear in the Great South Channel Restricted Trap/Pot Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(5) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as the Cape Cod Bay Restricted Area in paragraph (c)(3) of this section, that lie south of 43°15′ N. lat. and west of 70°00′ W. long.

(ii) *Year round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(6) *Offshore Trap/Pot*[3] *Waters Area*—(i) *Area.* The Offshore Trap/Pot Waters Area includes all Federal waters of the EEZ Offshore Management Area 3, including the area known as the Area ⅔ Overlap and Area ⅗ Overlap as defined in the American Lobster Fishery regulations at 50 CFR 697.18, with the exception of the Great South Channel Restricted Trap/Pot Area and Southeast Restricted Area, and extending south along the 100-fathom (600-ft or 182.9-m) depth contour from 35°14′ N. lat. south to 27°51′ N. lat., and east to the eastern edge of the EEZ.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00′ N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and area-specific requirements in paragraph (c)(2) or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 32°00′ N. lat. south to 29°00′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 29°00′ N. lat. south to 27°51′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) in this section, or unless the gear is stowed as specified in § 229.2.

(vi) [Reserved]

(7) *Northern Inshore State Trap/Pot Waters Area*—(i) *Area.* The Northern Inshore State Trap/Pot Waters Area includes the state waters of Rhode Island, Massachusetts, and Maine, with the exception of Cape Cod Bay Restricted Area and those waters exempted under paragraph (a)(3) of this section. Federal waters west of 70°00'N.lat. in Nantucket Sound are also included in the Northern Inshore State Trap/Pot Waters Area.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Northern Inshore State Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(8) *Northern Nearshore Trap/Pot Waters Area*—(i) *Area.* The Northern Nearshore Trap/Pot Waters Area includes all Federal waters of EEZ Nearshore Management Area 1, Area 2, and the Outer Cape Lobster Management Area (as defined in the American Lobster Fishery regulations at 50 CFR 697.18), with the exception of

[3] Fishermen using red crab trap/pot gear should refer to § 229.32(c)(10) for the restrictions applicable to red crab trap/pot fishery.

the Great South Channel Restricted Trap/Pot Area, Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Federal waters west of 70°00'N.lat. in Nantucket Sound (included in the Northern Inshore State Trap/Pot Waters Area) and those waters exempted under paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Northern Nearshore Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(9) *Southern Nearshore*[4] *Trap/Pot Waters Area*—(i) *Area.* The Southern Nearshore Trap/Pot Waters Area includes all state and Federal waters which fall within EEZ Nearshore Management Area 4, EEZ Nearshore Management Area 5, and EEZ Nearshore Management Area 6 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18, and excluding the Area 3/5 Overlap), and inside the 100-fathom (600-ft or 182.9-m) depth contour line from 35°30′ N lat. south to 27°51′ N lat. and extending inshore to the shoreline or exemption line, with the exception of those waters exempted under paragraph (a)(3) of this section and those waters in the Southeast Restricted Area defined in paragraph (f)(1) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that is east of a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat., unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by 32°00′ N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 32°00′ N. lat. south to 29°00′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph(c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 29°00′ N. lat. south to 27°51′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(vi) [Reserved]

(10) *Restrictions applicable to the red crab trap/pot fishery*—(i) *Area.* The red crab trap/pot fishery is regulated in the waters identified in paragraphs (c)(6)(i) and (c)(9)(i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(10)(i) of this section that overlaps an area from the U.S./Canada border south to a straight line from 41° 18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(11)(i) of this section that overlaps an area bounded on the north by a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40° 00′ N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00′ N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(11)(i) of this section that overlaps an area from 32°00′ N. lat. south to 29°00′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(11)(i) of this section that overlaps an area from 29°00′ N. lat. south to 27°51′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2

(vi) [Reserved]

(11) *Jeffreys Ledge Restricted Area*—(i) *Area.* The Jeffreys Restricted Area is bounded by the following points:

Point	N. Lat.	W. Long.
JLRA1	43°15′	70°25′
JLRA2	43°15′	70°00′
JLRA3	42°50′	70°25′
JLRA4	42°50′	70°00′

[4] Fishermen using red crab trap/pot gear should refer to § 229.32(c)(10) for the restrictions applicable to red crab trap/pot fishery.

(ii) *Closure.* From October 1 to January 31, it is prohibited to fish with, set, or possess trap/pot gear in this area unless stowed in accordance with § 229.2.

(iii) *Area-specific gear or vessel requirements.* From February 1 through September 30, no person or vessel may fish with or possess trap/pot gear in the Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2

(12) *Jordan Basin Restricted Area*—(i) *Area.* The Jordan Basin Restricted Area is bounded by the following points:

Point	N. Lat.	W. Long.
JBRA1	43°15′	68°50′
JBRA2	43°35′	68°20′
JBRA3	43°25′	68°05′
JBRA4	43°05′	68°20′
JBRA5	43°05′	68°35′

(ii) *Closure.* From November 1 to January 31, it is prohibited to fish with, set, or possess trap/pot gear in this area unless stowed in accordance with § 229.2.

(iii) *Area-specific gear or vessel requirements.* From February 1 through October 31, no person or vessel may fish with or possess trap/pot gear in the Jordan Basin Restricted unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(d) *Restrictions applicable to anchored gillnet gear*—(1) *Universal anchored gillnet gear requirements.* In addition to the area-specific measures listed in paragraphs (d)(3) through (d)(8) of this section, all anchored gillnet gear in regulated waters must comply with the universal gear requirements listed below.[5]

(i) *No buoy line floating at the surface.* No person or vessel may fish with anchored gillnet gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, sinking and/or neutrally buoyant line must be used between these objects.

(ii) *No wet storage of gear.* Anchored gillnet gear must be hauled out of the water at least once every 30 days.

(iii) *Groundlines.* All groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(2) *Area specific gear restrictions.* No person or vessel may fish with or possess anchored gillnet gear in Areas referenced in paragraphs (d)(3) through (d)(8) of this section, unless that gear complies with the gear requirements specified in paragraph (d)(1) of this section, and the area specific requirements listed below, or unless the gear is stowed as specified in § 229.2.

(i) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(A) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(B) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(C) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(ii) *Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations unless exempted from this requirement under paragraph (a)(5) of this section:

(A) Configuration 1. (*1*) The weak link must be chosen from the following list approved by NMFS: plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request; and

(*2*) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(*3*) One weak link must be placed as close as possible to each end of the net panels on the floatline; and

(*4*) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(*5*) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(B) Configuration 2. (*1*) The weak link must be chosen from the following list approved by NMFS: plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request; and

(*2*) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(*3*) One weak link must be placed between the floatline tie loops between net panels; and

(*4*) One weak link must be placed where the floatline tie loops attaches to the bridle, buoy line, or groundline at the end of a net string; and

(*5*) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(*6*) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(iii) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor unless exempted

[5] Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.

from this requirement under paragraph (a)(5) of this section. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region.

(3) *Cape Cod Bay Restricted Area*—(i) *Area.* The Cape Cod Bay restricted area is bounded by the following points and on the south and east by the interior shoreline of Cape Cod, Massachusetts.

Point	N. Lat.	W. Long.
CCB1	41°40′	69°45′
CCB2	42°30′	69°45′
CCB3	42°30′	70°30′
CCB4	42°12′	70°30′

(ii) *Closure.* During January 1 through May 15 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area unless the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the **Federal Register** if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements.* From May 16 through December 31 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(4) *Great South Channel Restricted Gillnet Area*—(i) *Area.* The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points:

Point	N. Lat.	W. Long.
GSC1	41°02.2′	69°02′
GSC2	41°43.5′	69°36.3′
GSC3	42°10′	68°31′
GSC4	41°38′	68°13′

(ii) *Closure.* From April 1 through June 30 of each year, no person or vessel may set, fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements.* From July

(iii) *Area-specific gear or vessel requirements.* From July 1 through March 31 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(5) *Great South Channel Sliver Restricted Area*—(i) *Area.* The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points:

Point	N. Lat.	W. Long.
GSCRA1	41°02.2′	69°02′
GSCRA2	41°43.5′	69°36.3′
GSCRA3	41°40′	69°45′
GSCRA4	41°00′	69°05′

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Sliver Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(6) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as the Cape Cod Bay Restricted Area in paragraph(d)(3) of this section that lie south of 43°15′ N. lat. and west of 70°00′ W. long.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(7) *Other Northeast Gillnet Waters Area*—(i) *Area.* The Other Northeast Gillnet Waters Area consists of all state and Federal U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30′ W. long. south to 36°33.03′ N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(8) *Mid/South Atlantic Gillnet Waters*—(i) *Area.* The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY, at 72°30′ W. long. south to 36°33.03′ N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00′ N. lat., and east to the eastern edge of the EEZ. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as

specified in paragraphs (f)(1) and (f)(2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(ii) *Area-specific gear or vessel requirements.* From September 1 through May 31, no person or vessel may fish with or possess anchored gillnet gear in the Mid/South Atlantic Gillnet Waters unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the following area-specific requirements, or unless the gear is stowed as specified in § 229.2. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*2*) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(*3*) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* The weak link requirements apply to all variations in panel size. All net panels must contain weak links that meet the following specifications unless exempted under paragraph (a)(5) of this section:

(*1*) The breaking strength for each of the weak links must not exceed 1,100 lb (499.0 kg).

(*2*) The weak link must be chosen from the following list approved by NMFS: plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline then individual weak links are not required. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*3*) Weak links must be placed in the center of the floatline of each gillnet net panel up to and including 50 fathoms (300 ft or 91.4 m) in length, or at least every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels.

(C) *Additional anchoring system and net panel weak link requirements.* All gillnets must return to port with the vessel unless the gear meets the following specifications:

(*1*) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor unless exempted under paragraph (a)(5) of this section. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*2*) *Net panel weak links.* Net panel weak links must meet the specifications in this paragraph. The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations found in paragraphs (d)(2)(ii)(A) or (d)(2)(ii)(B)of this section.

(*3*) *Additional provision for North Carolina.* All gillnets set 300 yards (274.3 m) or less from the shoreline in North Carolina must meet the anchoring system and net panel weak link requirements in paragraphs (d)(8)(ii)(C)(*1*) and (d)(8)(ii)(C)(*2*) of this section, or the following:

(*i*) The entire net string must be less than 300 yards (274.3 m) from shore.

(*ii*) The breaking strength of each weak link must not exceed 600 lb (272.2 kg). The weak link requirements apply to all variations in panel size.

(*iii*) All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraphs (d)(2)(ii)(A) or (d)(2)(ii)(B) of this section.

(*iv*) Regardless of the number of net panels, all anchored gillnets must be secured at the offshore end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having a holding capacity equal to or greater than an 8-lb (3.6-kg) Danforth-style anchor, and at the inshore end of the net string with a dead weight equal to or greater than 31 lb (14.1 kg).

(e) *Restrictions applicable to drift gillnet gear*—(1) *Cape Cod Bay Restricted Area*—(i) *Area.* The Cape Cod Bay restricted area is bounded by the following points and on the south and east by the interior shoreline of Cape Cod, Massachusetts.

Point	N. Lat.	W. Long.
CCB1	41°40′	69°45′
CCB2	42°30′	69°45′
CCB3	42°30′	70°30′
CCB4	42°12′	70°30′

(ii) *Closure.* From January 1 through April 30 of each year, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the **Federal Register** if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements.* From May 1 through December 31 of each year, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Cape Cod Bay Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Cape Cod Bay Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(2) *Great South Channel Restricted Gillnet Area*—(i) *Area.* The Great South Channel Restricted Gillnet Area consists

of the area bounded by lines connecting the following four points:

Point	N. Lat.	W. Long.
GSC1	41°02.2′	69°02′
GSC2	41°43.5′	69°36.3′
GSC3	42°10′	68°31′
GSC4	41°38′	68°13′

(ii) *Closure.* From April 1 through June 30 of each year, no person or vessel may set, fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements.* From July 1 through March 31 of each year, no person or vessel may fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Restricted Gillnet Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Restricted Gillnet Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(3) *Great South Channel Sliver Restricted Area*—(i) *Area.* The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points:

Point	N. Lat.	W. Long.
GSCRA1	41°02.2′	69°02′.
GSCRA2	41°43.5′	69°36.3′.
GSCRA3	41°40′	69°45′.
GSCRA4	41°00′	69°05′.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Great South Channel Sliver Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Sliver Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Sliver Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated the Cape Cod Bay Restricted Area in paragraph (e)(1) of this section, that lie south of 43°15′ N. lat. and west of 70°00′ W. long.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Stellwagen Bank/Jeffreys Ledge Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Stellwagen Bank/Jeffreys Ledge Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(5) *Other Northeast Gillnet Waters Area*—(i) *Area.* The Other Northeast Gillnet Waters Area consists of all state and Federal U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30′ W. long. south to 36°33.03′ N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(6) *Mid/South Atlantic Gillnet Waters Area*—(i) *Area.* The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY at 72°30′ W. long. south to 36°33.03′ N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00′ N. lat., and east to the eastern edge of the EEZ. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(ii) *Area-specific gear or vessel requirements.* From September 1 through May 31, no person or vessel may fish with drift gillnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless:

(A) The gear complies with gear marking requirements specified in paragraph (b) of this section;

(B) The gear is tended; and

(C) All gear is removed from the water and stowed on board the vessel before a vessel returns to port. No person or vessel may possess drift gillnet at night in the Mid/South Atlantic Gillnet Waters unless the gear is stowed as specified in § 229.2. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(f) *Restrictions applicable to the Southeast U.S. Restricted Area*—(1) *Area.* The Southeast U.S. Restricted

Area consists of the area bounded by straight lines connecting the following points in the order stated from south to north:

Point	N. Lat.	W. Long.
SERA1	27°51′	(1)
SERA2	27°51′	80°00′
SERA3	32°00′	80°00′
SERA4	32°36′	78°52′
SERA5	32°51′	78°36′
SERA6	33°15′	78°24′
SERA7	33°27′	78°04′
SERA8	(2)	78°33.9′

[1] Florida shoreline.
[2] South Carolina shoreline.

(i) *Southeast U.S. Restricted Area N.* The Southeast U.S. Restricted Area N consists of the Southeast U.S. Restricted Area from 29°00' N. lat. northward.

(ii) *Southeast U.S. Restricted Area S.* The Southeast U.S. Restricted Area S consists of the Southeast U.S. Restricted Area southward of 29°00' N. lat.

(2) *Restricted periods, closure, and exemptions.* (i) *Restricted periods.* The restricted period for the Southeast U.S. Restricted Area N is from November 15 through April 15, and the restricted period for the Southeast U.S. Restricted Area S is from December 1 through March 31.

(ii) *Closure for gillnets.* (A) Except as provided under paragraph (f)(2)(v) of this section, fishing with or possessing gillnet in the Southeast U.S. Restricted Area N during the restricted period is prohibited.

(B) Except as provided under paragraphs (f)(2)(iii) and (f)(2)(iv) of this section, fishing with gillnet in the Southeast U.S. Restricted Area S during the restricted period is prohibited.

(iii) *Exemption for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with gillnet for sharks with webbing of 5 inches (12.7 cm) or greater stretched mesh is exempt from the restrictions under paragraph (f)(2)(ii)(B) of this section if:

(A) The gillnet is deployed so that it encloses an area of water;

(B) A valid commercial directed shark limited access permit has been issued to the vessel in accordance with 50 CFR 635.4(e) and is on board;

(C) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(D) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(E) Each set is made under the observation of a spotter plane;

(F) No gillnet is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(G) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear;

(H) The gear complies with the gear marking requirements specified in paragraph (b) of this section; and

(I) The operator of the vessel calls the Southeast Fisheries Science Center Panama City Laboratory in Panama City, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Panama City Laboratory requests that an observer be taken on board a vessel during a fishing trip at any time from December 1 through March 31 south of 29°00′ N. lat., no person may fish with such gillnet aboard that vessel in the Southeast U.S. Restricted Area S unless an observer is on board that vessel during the trip.

(iv) *Exemption for Spanish Mackerel component of the Southeast Atlantic gillnet fishery.* Fishing with gillnet for Spanish mackerel is exempt from the restrictions under paragraph (f)(2)(ii)(B) of this section from December 1 through December 31, and from March 1 through March 31 if:

(A) Gillnet mesh size is between 3.5 inches (8.9 cm) and 4⅞ inches (12.4 cm) stretched mesh;

(B) A valid commercial vessel permit for Spanish mackerel has been issued to the vessel in accordance with 50 CFR 622.4(a)(2)(iv) and is on board;

(C) No person may fish with, set, place in the water, or have on board a vessel a gillnet with a float line longer than 800 yards (2,400 ft, 732 m);

(D) No person may fish with, set, or place in the water more than one gillnet at any time;

(E) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm);

(F) No person may soak a gillnet for more than 1 hour. The soak period begins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing that, once the first mesh is retrieved or the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water;

(G) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(H) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(I) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(J) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear; and

(K) The gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(8)(ii)(A) through (d)(8)(ii)(D) of this section for the Mid/South Atlantic Gillnet Waters.

(v) *Exemption for vessels in transit with gillnet aboard.* Possession of gillnet aboard a vessel in transit is exempt from the restrictions under paragraph (f)(2)(ii)(A) of this section if: All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum; and all buoys, high flyers, and anchors are disconnected from all gillnets. No fish may be possessed aboard such a vessel in transit.

(vi) *Restrictions for trap/pot gear.* Fishing with trap/pot gear in the Southeast U.S. Restricted Area N during the restricted period is allowed if:

(A) Trap/pot gear is not fished in a trap/pot trawl;

(B) All buoys or flotation devices are attached to the buoy line with a weak link that meets the requirements of paragraph (c)(2)(ii) of this section. The weak link has a maximum breaking strength of 600 lbs (272 kg) except in Florida State waters where the maximum breaking strength is 200 lbs (91 kg);

(C) The buoy line has a maximum breaking strength of 2,200 lbs (998 kg) except in Florida State waters where the maximum breaking strength is 1,500 lbs (630 kg);

(D) The entire buoy line must be free of objects (e.g., weights, floats, etc.) except where it attaches to the buoy and trap/pot;

(E) The buoy line is made of sinking line;

(F) The gear complies with gear marking requirements as specified in paragraph (b) of this section; and

(G) Trap/pot gear that is deployed in the EEZ (as defined in 50 CFR 600.10) is brought back to port at the conclusion of each fishing trip.

(g) *Restrictions applicable to the Other Southeast Gillnet Waters* (1) *Area*—The Other Southeast Gillnet Waters Area includes all waters

bounded by 32°00′ N. lat. on the north (near Savannah, GA), 26°46.50′ N. lat. on the south (near West Palm Beach, FL), 80°00′ W. long. on the west, and the EEZ boundary on the east.

(2) *Closure for gillnets.* Fishing with or possessing gillnet gear in the Other Southeast Gillnet Waters Area north of 29°00′N lat. from November 15 through April 15 or south of 29°00′ N lat. from December 1 through March 31 is allowed if one of the following exemptions applies:

(i) *Exemption for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with or possessing gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh is allowed if:

(A) The gear is marked as required in paragraph (b) of this section.

(B) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale; and

(C) The gear is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear.

(ii) *Exemption for Southeast Atlantic gillnet fishery.* Fishing with or possessing gillnet gear is allowed if:

(A) The gear is marked as required in paragraph (b) of this section; or

(B) The gear is fished south of 27°51′ N.

(iii) *Exemption for vessels in transit with gillnet aboard.* Possession of gillnet gear aboard a vessel in transit is allowed if:

(A) All nets are covered with canvas or other similar material and securely fastened to the deck, rail, or drum; and

(B) All buoys, high flyers, and anchors are disconnected from all gillnets.

(h) *Restrictions applicable to the Southeast U.S. Monitoring Area*—(1) *Area.* The Southeast U.S. Monitoring Area consists of the area from 27°51′ N. lat. (near Sebastian Inlet, FL) south to 26°46.50′ N. lat. (near West Palm Beach, FL), extending from the shoreline or exemption line out to 80°00′ W. long.

(2) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with or possessing gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh from December 1 through March 31 is allowed if:

(i) The gear complies with the gear marking requirements specified in paragraph (b) of this section;

(ii) The vessel owner/operator is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69; and

(iii) The vessel owner/operator and crew are in compliance with observer requirements found in 50 CFR 229.7.

(3) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery vessels in transit.* Possession of gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh aboard a vessel in transit from December 1 through March 31 is allowed if:

(i) All gear is stowed as specified in 50 CFR 229.2; and

(ii) The vessel owner/operator is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69.

(i) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant Administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat or restricted areas.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay Restricted Area from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, the Southeast U.S. Restricted Area N from November 15 to April 15, or the Southeast U.S. Restricted Area S from December 1 through March 31 as the result of an entanglement by trap/pot or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type (i.e., trap/pot or gillnet) for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (i)(2) of this section or unless other measures are implemented under paragraph (i)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may, in consultation with the Take Reduction Team, revise the requirements of this section through a publication in the **Federal Register** if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

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H.R. 324/P.L. 113–16

To grant the Congressional Gold Medal, collectively, to the First Special Service Force, in recognition of its superior service during World War II. (July 12, 2013; 127 Stat. 477)

H.R. 1151/P.L. 113–17

To direct the Secretary of State to develop a strategy to obtain observer status for Taiwan at the triennial International Civil Aviation Organization Assembly, and for other purposes. (July 12, 2013; 127 Stat. 480)

H.R. 2383/P.L. 113–18

To designate the new Interstate Route 70 bridge over the Mississippi River connecting St. Louis, Missouri, and southwestern Illinois as the ''Stan Musial Veterans Memorial Bridge''. (July 12, 2013; 127 Stat. 484)

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