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Rules and Regulations

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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.

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

FEDERAL RESERVE SYSTEM

12 CFR Part 261

[Docket No. R–1481]

RIN 7100 AD–80

Rules Regarding Availability of Information

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) published in the **Federal Register** of September 13, 2011, technical changes to the Board's rules regarding availability of information and other regulations that been made to account for the transfer of authority over Savings and Loans Holding Companies (SLHCs) to the Board. The publication inadvertently resulted in the omission of language in the Board's rules regarding availability of information. This document reinstates that language.

DATES: Effective February 3, 2014.

FOR FURTHER INFORMATION CONTACT: Katherine Wheatley, Associate General Counsel, (202) 452–3779.

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve System published in the **Federal Register** of September 13, 2011, technical changes to the Board's rules regarding availability of information and other regulations that been made to account for the transfer of authority over SLHCs to the Board. The publication inadvertently resulted in the omission of language in the Board's rules regarding the disclosure of confidential information to state financial institution supervisory agencies. This document reinstates that language.

List of Subjects in 12 CFR Part 261

Confidential business information, Freedom of information, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the Supplementary Information, 12 CFR part 261 is amended as follows.

PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 248(i) and (k), 321 *et seq.,* 611 *et seq.,* 1442, 1467a, 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o), 1821(t), 1830, 1844, 1951 *et seq.,* 2601, 2801 *et seq.,* 2901 *et seq.,* 3101 *et seq.,* 3401 *et seq.;* 15 U.S.C. 77uuu(b), 78q(c)(3); 29 U.S.C. 1204; 31 U.S.C. 5301 *et seq.;* 42 U.S.C. 3601; 44 U.S.C. 3510.

■ 2. In § 261.20, paragraphs (d)(1) and (2) are added to read as follows:

§ 261.20 Confidential supervisory information made available to supervised financial institutions and financial institution supervisory agencies.

* * * * *

(d) * * *

(1) A state financial institution supervisory agency having direct supervisory authority over such supervised financial institution; or

(2) A state financial institution supervisory agency not having direct supervisory authority over such supervised financial institution if the requesting agency has entered into an information sharing agreement with the appropriate Federal Reserve Bank and the information to be provided concerns a supervised financial institution that has acquired or has applied to acquire a financial institution subject to that agency's direct supervisory authority.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, January 28, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–02116 Filed 1–31–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0708; Airspace Docket No. 13–AWP–11]

Establishment of Class E Airspace, Amendment of Class D and Class E Airspace, and Revocation of Class E Airspace; Salinas, CA

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

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace and modifies Class D airspace and Class E airspace at Salinas, CA, to accommodate aircraft departing and arriving under Instrument Flight Rules (IFR) at Salinas Municipal Airport. This action also removes Class E airspace designated as surface area. Adjustments to the geographic coordinates of the airport also are made in the respective Class D airspace and Class E airspace areas. This action, initiated by the biennial review of the Salinas airspace area, enhances the safety and management of aircraft operations at the airport.

DATES: Effective date, 0901 UTC, April 3, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

History

On October 22, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Salinas, CA (78 FR 62498). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D airspace and Class E airspace designations are published in paragraphs 5000, 6002, 6004 and 6005,

respectively, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class D airspace and Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 13.1-mile radius of Salinas Municipal Airport, Salinas, CA. Additionally, the 10-mile southeast segment of Class E airspace designated as an extension to Class D surface area is modified from the 4.3-mile radius of the airport to 8 miles southeast of the airport. This modification eliminates the need for Class E airspace designated as surface airspace and is, therefore, removed. The geographic coordinates of the airport are updated in the respective Class D airspace and Class E airspace areas to coincide with the FAA's aeronautical database. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Salinas Municipal Airport, Salinas, CA.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist, that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AWP CA D Salinas, CA [Modified]

Salinas Municipal Airport, CA
(Lat. 36°39′46″ N., long. 121°36′23″ W.)

Airspace extending upward from the surface to, but not including 2,500 feet mean sea level within a 4.3-mile radius of the Salinas Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AWP CA E2 Salinas, CA [Removed]

Paragraph 6004 Class E airspace areas designated as an extension to Class D surface area.

* * * * *

AWP CA E4 Salinas, CA [Modified]

Salinas Municipal Airport, CA
(Lat. 36°39′46″ N., long. 121°36′23″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the 150° bearing of the Salinas Municipal Airport extending from the 4.3-mile radius to 8 miles southeast of the airport. This Class E airspace area is effective during the dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Salinas, CA [New]

Salinas Municipal Airport, CA
(Lat. 36°39′46″ N., long. 121°36′23″ W.)

Airspace extending upward from 700 feet above the surface within a 13.1-mile radius of the Salinas Municipal Airport.

Issued in Seattle, Washington, on January 17, 2014.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2014–02044 Filed 1–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No.: FAA–2013–1013; Amdt. No. 121–367]

RIN 2120–AK–35

Use of Additional Portable Oxygen Concentrators on Board Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Immediately adopted final rule.

SUMMARY: This action amends the FAA's rules for permitting use of portable oxygen concentrator (POC) devices on board aircraft, provided certain conditions in the SFAR are met. This action is necessary to allow all POC devices deemed acceptable by the FAA for use in air commerce to be available to the traveling public in need of oxygen therapy. Passengers will be able to carry these devices on board the aircraft and use them with the approval of the aircraft operator.

DATES: Effective February 18, 2014.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact DK Deaderick, Air Transportation Division, AFS–200, Flight Standards Service, Federal Aviation Administration, 800

Independence Avenue SW., Washington, DC 20591; telephone 202–267–8166; email *DK.Deaderick@faa.gov.* For legal questions concerning this action, contact Robert H. Frenzel, Manager, Operations Law Branch, Office of the Chief Counsel, Regulations Division (AGC–220), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–3073; email *Robert.Frenzel@faa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making the rule final without prior proposal and opportunity for comment because the issues related to the use of POC devices on board aircraft have already been discussed as part of an earlier rulemaking. More specifically, on July 14, 2004, the FAA issued a notice of proposed rulemaking (NPRM) on the use of POC devices on board aircraft (69 FR 42324). Then, on July 12, 2005, after reviewing public comments received, the FAA published Special Federal Aviation Regulation 106 (SFAR 106) entitled, ''Use of Certain Portable Oxygen Concentrator Devices on Board Aircraft'' (70 FR 40156). Therefore, the FAA has determined that notice and public comment are unnecessary.

Moreover, pursuant to 5 U.S.C. 553(d)(3), we find that good cause exists for making this rule effective in less than 30 days. This rule is being made effective 15 calendar days after its publication in the **Federal Register** to prevent unnecessary delay of additional POC devices for use on board aircraft by airlines while still providing airlines adequate notice and time to ensure the devices can be used safely on board aircraft. We believe, based on information the Department has received from airlines, that fifteen calendar days is sufficient amount of time for an airline to ensure that an FAA-approved POC device does not cause interference with avionics systems on that carrier's aircraft and convey this information to the appropriate airline personnel in order to accept these devices on board aircraft for use by passengers who need medical oxygen therapy for air travel. As such, the FAA believes that good cause exists for making this rule effective 15 calendar days after its publication in the **Federal Register**.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (U.S.C.). This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which vests final authority in the Administrator for carrying out all functions, powers, and duties of the administration relating to the promulgation of regulations and rules, and section 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

I. Overview of the Immediately Adopted Final Rule

This action amends SFAR 106 and permits the use of additional POC devices on board aircraft. Specifically, the FAA is adding the use of SeQual Technologies's eQuinox (model 4000) and Oxywell (Model 4000), and VBOX Inc.'s Trooper on the list of POC devices authorized for use in air commerce. The FAA has reviewed these devices and accepted the documentation provided by the manufacturer. After reviewing the applicable Food and Drug Administration (FDA) safety standards and the Pipeline and Hazardous Materials Safety Administration (PHMSA) findings, the devices were determined by the FAA to be acceptable for use in air commerce.

II. Background

A. Statement of the Problem

When SFAR 106 was published, the FAA committed to establishing a single performance standard for all POCs so the regulations would not apply to specific manufacturers and models of device. Whenever possible, the FAA tries to regulate by creating performance-based standards. In the case of SFAR 106, the most efficient way to serve both the passenger and the aircraft operator was to allow the use of the devices determined to be acceptable by the FAA in SFAR 106 in a special temporary regulation.

As the FAA stated in the preamble discussion of the final rule that established SFAR 106, ''while we are committed to developing a performance-based standard for all future POCs, we do not want to prematurely develop standards that have the effect of stifling new technology of which we are unaware.'' The FAA developed and published SFAR 106 so passengers who otherwise could not fly could do so with an affordable alternative to what existed before SFAR 106 was published.

The FAA continues to pursue the performance-based standard for all POC devices. This process is time-consuming, and the FAA intends to publish a notice in the **Federal Register** and offer the public a chance to comment on the proposal when it is complete. In the meantime, manufacturers continue to create new and innovative POC devices, and manufacturers have requested that their products also be included as acceptable POC devices in SFAR 106. SeQual Technologies, Inc. and VBOX, Inc. have submitted requests for approval and addition to SFAR 106, with all required documentation for their POC devices, to the FAA.

B. Related Actions

On July 12, 2005, the FAA published SFAR 106 entitled, ''Use of Certain Portable Oxygen Concentrator Devices Onboard Aircraft'' (70 FR 40156). SFAR 106 is the result of a notice the FAA published on July 14, 2004 (69 FR 42324) to address the needs of passengers who must travel with medical oxygen. Before publication of SFAR 106, passengers in need of medical oxygen during air transportation faced many obstacles when requesting service. Many aircraft operators did not provide medical oxygen service aboard flights, and those that did often provided service at a price that travelers could not afford. Coordinating service between operators and suppliers at airports was also difficult, and passengers frequently chose not to fly because of these difficulties.

SFAR 106 permits passengers to carry-on and use certain POC devices on board aircraft, if the aircraft operator ensures that the conditions specified in the SFAR 106 for their use are met. The POC devices initially determined acceptable for use in SFAR 106, published July 14, 2005, were AirSep Corporation's LifeStyle and Inogen, Inc.'s Inogen One. SFAR 106 has been amended six times to allow passengers to use additional devices.

III. Discussion of the Immediately Adopted Rule

New medical oxygen technologies (POC devices) approved by the FDA reduce the risks typically associated with compressed oxygen and provide a safe alternative for passengers who need oxygen therapy. Numerous manufacturers have developed small POC devices that work by separating

oxygen from nitrogen and other gases contained in ambient air and dispensing it in concentrated form to the user with an oxygen concentration of about 90%. The POC devices operate using either rechargeable batteries or, if the aircraft operator obtains approval from the FAA, aircraft electrical power. Additionally, as stated in Section 2 of SFAR 106, no covered device may contain hazardous materials as determined by PHMSA (written documentation necessary), and each device must also be regulated by the FDA.

This immediately adopted amendment to SFAR 106 is adding three additional POC devices, thus, increasing the number of options for aircraft passengers to carry on and use on board aircraft. The FAA is adding SeQual Technologies, Inc.'s eQuinox Oxygen System (model 4000) and Oxywell Oxygen System (model 4000), as well as VBOX, Inc.'s Trooper device to the list of POC devices that may be carried on and used by a passenger on board an aircraft. Each manufacturer has included technical specifications for their devices in each request for approval, as well as the required documentation from PHMSA and the FDA.

SFAR 106 is an enabling rule, which means that no aircraft operator is required to allow passengers to operate POC devices on board. If an aircraft operator chooses to allow a passenger to operate these devices, SFAR 106 enables such action, provided that the SFAR 106 conditions are met.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

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

This action amends SFAR 106 to allow for the use of additional POC devices on board aircraft, provided certain conditions in the SFAR are met. This action is necessary to allow additional POC devices deemed acceptable by the FAA to be available to the traveling public in need of oxygen therapy, for use in air commerce. As the rule increases the number of acceptable POC devices on board aircraft, the rule does not increase costs and provides additional benefits. The FAA has, therefore, determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

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

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As this final rule enables additional POC devices to be carried on board aircraft, the rule provides benefits at minimal costs for passengers and minimal implementation costs for all business entities.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

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

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of

$143.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

Information collection requirements associated with this final rule have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120–0702. This final rule requires that if a passenger carries a POC device on board the aircraft with the intent to use it during the flight, he or she must inform the pilot in command of that flight. Additionally, the passenger who plans to use the device must provide a written statement signed by a licensed physician that verifies the passenger's ability to operate the device, respond to any alarms, the extent to which the passenger must use the POC (all or a portion of the flight), and prescribes the maximum oxygen flow rate. The Paperwork Reduction Act paragraph in the final rule that established SFAR 106 still applies to this amendment. The availability of a new POC device will likely increase the availability and options for a passenger in need of oxygen therapy, but the paperwork burden discussed in the original final rule is unchanged. Therefore, the OMB Control Number associated with this collection remains 2120–0702.

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.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

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

G. Environmental Analysis

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

V. Executive Order Determinations

A. Executive Order 13132, Federalism

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

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

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

VI. How To Obtain Additional Information

A. Rulemaking Documents

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

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

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

3. Access the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

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

B. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends SFAR No. 106 to Chapter I of title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

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

Authority: 49 U.S.C. 106(f), 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

■ 2. Amend SFAR 106 by revising sections 2 and 3(a) introductory text to read as follows:

Special Federal Aviation Regulation 106—Rules for Use of Portable Oxygen Concentrator Systems on Board Aircraft

* * * * *

Section 2. Definitions—For the purposes of this SFAR the following definitions apply: Portable Oxygen

Concentrator: means the AirSep FreeStyle, AirSep LifeStyle, AirSep Focus, AirSep Freestyle 5, Delphi RS–00400, DeVilbiss Healthcare iGo, Inogen One, Inogen One G2, Inogen One G3, Inova Labs LifeChoice, Inova Labs LifeChoice Activox, International Biophysics LifeChoice, Invacare XPO2, Invacare Solo2, Oxlife Independence Oxygen Concentrator, Oxus RS–00400, Precision Medical EasyPulse, Respironics EverGo, Respironics SimplyGo, SeQual Eclipse, SeQual eQuinox Oxygen System (model 4000), SeQual Oxywell Oxygen System (model 4000), SeQual SAROS and VBOX Trooper Oxygen Concentrator medical device units as long as those medical device units: (1) Do not contain hazardous materials as determined by the Pipeline and Hazardous Materials Safety Administration; (2) are also regulated by the Food and Drug Administration; and (3) assist a user of medical oxygen under a doctor's care. These units perform by separating oxygen from nitrogen and other gases contained in ambient air and dispensing it in concentrated form to the user.

Section 3. Operating Requirements—

(a) No person may use and no aircraft operator may allow the use of any portable oxygen concentrator device, except the AirSep FreeStyle, AirSep LifeStyle, AirSep Focus, AirSep FreeStyle 5, Delphi RS–00400, DeVilbiss Healthcare iGo, Inogen One, Inogen One G2, Inogen One G3, Inova Labs LifeChoice, Inova Labs LifeChoice Activox, International Biophysics LifeChoice, Invacare XPO2, Invacare Solo2, Oxlife Independence Oxygen Concentrator, Oxus RS–00400, Precision Medical EasyPulse, Respironics EverGo, Respironics SimplyGo, SeQual Eclipse, SeQual eQuinox Oxygen System (model 4000), SeQual Oxywell Oxygen System (model 4000), SeQual SAROS and VBOX Trooper Portable Oxygen Concentrator units. These units may be carried on and used by a passenger on board an aircraft provided the aircraft operator ensures that the following conditions are satisfied:

* * * * *

Issued under authority provided by 49 U.S.C. 106(f) and 44701(a)(5) in Washington, DC, on December 23, 2013.

Michael P. Huerta,

Administrator.

[FR Doc. 2014–02121 Filed 1–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No.: FAA–2012–1059; Amdts. No.: 121–368, 125–63, 135–128]

RIN 2120–AK11

Minimum Altitudes for Use of Autopilots

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rulemaking amends and harmonizes minimum altitudes for use of autopilots for transport category airplanes; it also enables the operational use of advanced autopilot and navigation systems by incorporating the capabilities of current and future autopilots, flight guidance systems, and Global Navigation Satellite System (GNSS) guidance systems while protecting the continued use of legacy systems at current autopilot minimum use altitudes. Additionally, this final rule implements a performance-based approach, using the certified capabilities of autopilot systems as established by the Airplane Flight Manual (AFM) or as approved by the Administrator.

DATES: Effective April 4, 2014.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How To Obtain Additional Information'' section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Kel O. Christianson, FAA, Aviation Safety Inspector, Performance Based Flight Systems Branch (AFS–470), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–385–4702; email *Kel.christianson@faa.gov.*

For legal questions concerning this action, contact Robert H. Frenzel, Manager, Operations Law Branch, Office of the Chief Counsel, Regulations Division (AGC–220), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–3073; email *Robert.Frenzel@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules and 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. This amendment to the regulation is within the scope of that authority because it prescribes an accepted method for ensuring the safe operation of aircraft while using autopilot systems.

I. Overview of Final Rule

The FAA amends and harmonizes minimum altitudes for use of autopilots for transport category airplanes in order to streamline and simplify these operational rules. This final rule enables the operational use of advanced autopilot and navigation systems by incorporating the capabilities of existing and future autopilots, flight guidance systems, and GNSS guidance systems while protecting the continued use of legacy systems. This allows the FAA to enable the benefits of Next Generation Air Transportation System (NextGen) technologies and procedures (Optimized Profile Descents, Performance Based Navigation (PBN)) to enhance aviation safety in the National Airspace System (NAS). This final rule also gives the FAA Administrator the authorization to require an altitude higher than the AFM if the Administrator believes it to be in the interest of public safety.

Currently, operators have a choice whether or not to update their aircraft with new autopilots as they are developed and certified by equipment manufacturers. This final rule does not affect this decision-making process and protects operators to continue operating as they do today. As a result, this action does not impose any additional costs on certificate holders that operate under parts 121, 125, or 135. Also, by setting new minimum altitudes for each phase of flight that approved equipment may operate to, this final rule gives manufacturers more certainty that new products can be used as they are developed.

In response to Executive Order 13563 issued by President Obama on January 18, 2011, this rule was identified for inclusion in the Department of Transportation Retrospective Regulatory Review (May 2011), noting that the current minimum altitudes for use of autopilots were unduly restrictive and would limit the ability to use new technologies. On May 10, 2012,

President Obama signed Executive Order 13610, establishing the Retrospective Regulatory Review as an on-going obligation. The final rule is consistent with the requirement in Executive Order 13610 to modify or streamline regulations ''in light of changed circumstances, including the rise of new technologies.''

II. Background

A. Statement of the Problem

The FAA and Civil Aeronautics Administration (CAA) (the predecessor to the FAA) technical standards for autopilot systems date back to 1947. These standards have been revised eight times since 1959, but the operating rules for autopilot minimum use altitudes in 14 Code of Federal Regulations (14 CFR) §§ 121.579, 125.329, and 135.93 have not been amended in any significant way since the recodification of the Civil Aviation Regulations (CAR) and Civil Aviation Manuals (CAM) on December 31, 1964.

By contrast, autopilot certification standards contained in 14 CFR 25.1329 were updated as recently as April 11, 2006. Consequently, operational regulations in parts 121, 125, and 135 do not adequately reflect the capabilities of modern technologies in use today and thus make it difficult to keep pace with the FAA's implementation of NextGen.

B. History

The FAA published an NPRM in the **Federal Register** on December 9, 1994 (59 FR 63868) based on a recommendation from the Autopilot Engagement Working Group of the Aviation Rulemaking Advisory Committee (ARAC) to change the existing rules concerning engagement of autopilots during takeoff. The ARAC determined that the increased use of an autopilot during takeoff would enhance aviation safety by giving pilots greater situational awareness of what was going on inside and outside of the aircraft. This benefit would be realized by reducing the task loading required to manually fly the aircraft during the critical takeoff phase of flight. The FAA received seven comments in response to the NPRM, and all commenters supported an amendment to the rule.

In 1997, the FAA amended §§ 121.579, 125.329, and 135.93 to permit certificate holders the use of an approved autopilot system for takeoff, based on the 1994 NPRM and an expectation that autopilot technology would continue to advance (62 FR 27922; May 21, 1997). This authorization was given to certificate holders through an Operations Specification (OpSpec), which was implemented as a stopgap measure. The rule itself was not changed to provide manufacturers and operators the guidance for producing and operating new aircraft capable of attaining lower autopilot minimum use altitudes. The amendment also failed to address autopilot minimum use altitudes on instrument approaches or harmonize 14 CFR parts 121, 125 and 135.

C. ARAC Efforts To Amend Autopilots Rules

Since 1997, multiple groups have been formed to review current regulations and autopilot technologies. The FAA Transport Airplane Directorate initiated an effort under the ARAC Flight Guidance Harmonization Working Group to evaluate the status of current autopilot technologies, rules and guidance along with the harmonization of U.S. policy and guidance with the Joint Aviation Authorities. Later, the Performance-based operations Aviation Rulemaking Committee, which established the Autopilot Minimum Use Height (MUH) action team, evaluated autopilot minimum use altitudes and made recommendations to the Associate Administrator for Aviation Safety. The team was specifically tasked with developing recommendations to address progress in the area of PBN and the subsets of area navigation (RNAV) and required navigation performance (RNP) operations. The team's conclusions aligned with the previous groups' acknowledgement that §§ 121.579, 125.329 and 135.93 were outdated and recommended new rulemaking to take advantage of advancements in modern aircraft technologies and the certified capabilities of autopilot systems to create a performance-based structure to aid in the implementation of NextGen flight operations.

D. Summary of the NPRM

The FAA published an NPRM in the **Federal Register** on December 4, 2012 (77 FR 71735), proposing to enable the operational use of advanced autopilot and navigation systems by incorporating the capabilities of current and future autopilots, flight guidance systems, and GNSS guidance systems while protecting the continued use of legacy systems. The NPRM proposed to accomplish this through a performance-based approach, using the certified capabilities of autopilot systems as established by the Airplane Flight Manual (AFM) or as approved by the Administrator. The comment period closed on February 4, 2013.

E. General Overview of Comments

The FAA received 3 public comments. The National Business Aviation Association (NBAA) provided one comment supporting the rule. The second commenter focused on the definitions and terms used in the regulatory text and the third commenter requested a clarification of the regulatory text.

III. Discussion of Public Comments and Final Rule

A. Revise Minimum Altitudes for Use of Autopilot (§ 121.579, 125.329 and 135.93)

A commenter suggested that Threshhold Elevation (THRE) be added to the definition of TDZE to read, ''touchdown zone/threshold elevation'' (TDZE). The suggestion was made based on the fact that, at the time of the NPRM, TDZEs were being replaced with THREs on instrument approach plates (IAPs) in the NAS. This resulted in instrument approach plates published with either a TDZE or THRE. The comment was suggested so that the rule would reference both terms, thus allowing both terms to be used by the pilots as a reference for adding the applicable altitudes or heights published in the AFM.

The policy to change TDZE to THRE has been rescinded. TDZE will now be the standard and will replace THRE on IAPs that are currently published with THRE. Based on this, the FAA has decided that TDZE will remain the only term used in this final rule. As a result, this final rule will allow operators to add the applicable altitudes or heights published in the AFM to the airport elevation and TDZE published on the instrument approach plate. This will provide a standard reference for all operators and manufacturers using and producing Flight Management Systems (FMS).

The third commenter suggested clarifying the regulatory text as it related to the base minimum use altitude for an approach and how §§ 91.175 and 91.155 weather conditions are used when applying autopilot minimums. The FAA agrees with the comment and has clarified this particular section. Specifically, the FAA has realigned the regulatory text and placed into separate paragraphs the specific conditions that must be met in order to apply the autopilot minimums.

This final rule is a complete rewrite of §§ 121.579, 125.329 and 135.93. The language in each section of the regulations is identical except for an additional paragraph in § 135.93 exempting rotorcraft. This final rule

harmonizes these three parts of 14 CFR because this final rule is based on the performance capabilities of the equipment being utilized, not the operating certificate held. Nothing in this final rule will prevent or adversely affect the continued safe operation of aircraft using legacy navigation systems.

Furthermore, this action defines altitude references for the different phases of flight, whereas the original rule defined all altitudes with reference to terrain. Altitudes for takeoff/initial climb and go-around/missed approach are defined as above the airport elevation. Altitudes for enroute operations are defined as above terrain elevation. Altitudes used for approach are defined as being above Touchdown Zone Elevation (TDZE). If the altitude is in reference to a Decision Altitude/Height (DA(H)) or Minimum Descent Altitude (MDA), the altitude will be defined in relation to the DA(H) or MDA itself (e.g. 50 ft. below DA(H)). Upon further review of the proposed regulatory text, the FAA is removing subparagraph (a)(4) from each of these sections. The language ''Altitudes defined as being above airport elevation, TDZE or terrain are above ground level (AGL)'' as proposed in the NPRM is redundant. The provisions defining the altitude references in subparagraphs (a)(1), (a)(2) and (a)(3) are sufficient to define the elevations that will be used to calculate the autopilot minimum use height/altitude for each phase of flight.

This final rule is formatted to model the actual phases of flight: takeoff through landing or go-around/missed approach. Each paragraph in this final rule has a base minimum autopilot use altitude for the intended phase of flight that all aircraft may utilize. In order to protect the use of all legacy systems, the base altitudes will remain identical to the altitudes in the current rule. Lower minimum use altitudes are based on certification of the autopilot system and limitations found in the AFM. The enroute minimum use altitude will not change from the current rule. Additionally, the minimum use altitude in each paragraph can be raised by the Administrator if warranted by an operational or safety need.

No other comments were received on these three sections and they are adopted as proposed.

B. Takeoff and Initial Climb (§§ 121.579 (b), 125.329(b) and 135.93(b))

The current rule defines the base minimum altitude at which all aircraft may engage the autopilot after takeoff as 500 ft. or double the autopilot altitude loss (as specified in the AFM) above the terrain, whichever is higher. The current rule also gives the Administrator the authority to use OpSpecs to authorize a lower minimum engagement altitude on takeoff, which must be specified in the AFM.

This final rule retains the same minimum altitudes for all aircraft to protect legacy systems and introduces the ability to use a lower engagement altitude on takeoff/initial climb based upon the certified limits of the autopilot as specified in the AFM. This final rule also gives the Administrator the authority to specify an altitude above, but not below, that specified in the AFM.

As a result, this final rule establishes the AFM as a performance-based standard by which a certificate holder may be authorized for operations through its OpSpecs. Once an autopilot's capabilities and limitations are certified and reflected in the AFM, a certificate holder may request a change to its OpSpecs to authorize use of the new autopilot minimum use altitude specified in the AFM. No comments were received on these three sections and they are adopted as proposed.

C. Enroute (§§ 121.579(c), 125.329(c) and 135.93(c))

The enroute paragraph of the current rule specifies a minimum use altitude of 500 ft. above terrain, or an altitude that is no lower than twice the autopilot altitude loss specified in the AFM, whichever is higher, for all operations. This final rule maintains the same base minimum use altitude as the current rule, while granting the Administrator the authority to specify a higher altitude if required by an operational or safety related need.

No comments were received on these three sections and they are adopted as proposed.

D. Approach (§§ 121.579(d), 125.329(d), 135.93(d))

The base minimum use altitude for an approach in this final rule will remain the same as the current rule. Aircraft with a specified height loss may use an autopilot no lower than 50 ft. below the DA (H) or MDA or twice the altitude loss specified in the AFM, whichever is greater. The current rule allows for exceptions to this altitude with the use of a coupled autopilot, instrument landing system (ILS), and specified reported weather conditions.

This final rule is written to allow current operators the ability to operate as they do now (thereby protecting legacy systems), while also allowing operators with updated systems to attain lower minimum use heights. If an operator has an approved autopilot that can fly a coupled approach, ILS or other than the ILS, it may use the AFM specified ''altitude loss'' or Administrator directed height as the basis for disconnecting the autopilot on the approach. In instrument flight rules (IFR) conditions or operations in less than visual flight rules (VFR), the aircraft is below the MDA or DA and pilot has § 91.175 references, the disengage height remains ''altitude loss plus 50 ft.'' In VFR conditions, the operator may use the ''altitude loss'' as the disengage height or 50 ft., whichever is higher. This final rule allows the aircraft to be used down to a lower minimum use height based on the AFM limitation and the ability of the pilot to immediately recognize a possible autopilot deviation by using visual references outside the aircraft.

No other comments were received on these three sections and they are adopted as proposed. Sections 121.579(d), 125.329(d), and 135.93(d) appear in the final rule with the changes as described for paragraphs (d)(1).

E. Go Around/Missed Approach (§§ 121.579(e), 125.329(e) and 135.93(e))

The final rule provides guidance for executing a missed approach/go-around that the current rule lacks. This guidance is first presented in the approach paragraph, wherein an aircraft does not need to comply with the autopilot minimum use altitude of that paragraph provided it is executing a coupled missed approach/go-around. A new subparagraph provides guidance on when the autopilot can be engaged on the missed approach/go-around when accomplished.

No comments were received on these three sections and they are adopted as proposed.

F. Landing (§§ 121.579(f), 125.329(f) and 135.93(f))

The last paragraph in this final rule provides guidance for landing. Current language authorizes the Administrator, through OpSpecs, to allow an aircraft to touchdown with the autopilot engaged using an approved autoland flight guidance system. This authorization relies upon an ILS to meet this requirement. This final rule states that minimum use altitudes do not apply to autopilot operations when an approved and authorized landing system mode is being used for landing. This final rule will not limit approved landing systems to ground based systems. This action will allow new performance based landing systems to be approved and implemented for autoland operations as they become available.

No comments were received on these three sections and they are adopted as proposed.

G. Rotorcraft Operations (§ 135.93(g))

The current rule expressly excludes rotorcraft operations from the minimum altitudes for use of autopilots. This final rule continues to exclude rotorcraft operations.

No comments were received on § 135.93(g), and it appears as proposed.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect, and the basis for it, be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. A full regulatory evaluation was not prepared for this final rule. The reasoning for this determination follows:

Benefits

This final rule incorporates the capabilities of current autopilots and will allow operators to more readily utilize the capabilities of future autopilots, flight guidance systems, and GNSS guidance systems as they are developed. These new capabilities accelerate the benefits of NextGen technologies and procedures that depend upon auto flight guidance systems to enhance aviation safety in the NAS. If operators pursue the lower minimum altitudes based on their autopilots' certification, they will realize benefits from increased ability to operate.

Costs

This final rule specifies autopilot minimum use altitudes for parts 121, 125 and 135 operators. This final rule is based on the capabilities of the aircraft and the minimum use altitudes or lack of minimum use altitudes published in the AFM. This final rule does not affect the minimum use altitudes presently used by operators in the NAS. Operators have the option to operate as they currently do or pursue the proposed lower minimum use altitudes based on their aircraft's autopilot certification. Operators with approved autopilots and wishing to immediately achieve the lower minimum use altitudes may incur the cost of accelerated training. This voluntary accelerated training cost is a change in present value, but not in total cost, because this type of training would have occurred in the future. Additionally, operators will not incur certification costs for aircraft, avionics equipment, autopilot and flight management systems that have already been certificated. Also, by setting new minimum altitudes for each phase of flight that approved equipment might operate to, this final rule gives manufacturers more certainty that new products can be used as they are developed.

The FAA recognizes that autopilots in some older airplanes are not approved to utilize the lower minimum use altitudes. These operators will not incur any additional costs unless they seek new autopilot certifications. However, the FAA does not believe the majority of operators of older aircraft will seek to modify their aircraft in order to be approved for the lower minimum use altitudes. The FAA did not receive any public comments in response or contradiction to these findings. Due to the voluntary provisions of the rule, there are no quantifiable cost reductions.

The FAA has, therefore, determined that this final rule does not qualify as a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

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

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

In the initial regulatory flexibility analysis, the FAA stated the rule would not impose additional cost, because operators could choose to operate as they currently do. The FAA did not receive any public comments in response or contradiction to this finding. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United

States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it is relieving, thus will not create unnecessary obstacles to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

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

E. Paperwork Reduction Act

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

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

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

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances.

The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

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

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

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

VI. How To Obtain Additional Information

A. Rulemaking Documents

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

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

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

3. Access the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

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

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

The Amendment

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

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

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

Authority: 49 U.S.C. 106(f), 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

■ 2. Revise § 121.579 to read as follows:

§ 121.579 Minimum altitudes for use of autopilot.

(a) *Definitions.* For purpose of this section—

(1) Altitudes for takeoff/initial climb and go-around/missed approach are defined as above the airport elevation.

(2) Altitudes for enroute operations are defined as above terrain elevation.

(3) Altitudes for approach are defined as above the touchdown zone elevation (TDZE), unless the altitude is specifically in reference to DA (H) or MDA, in which case the altitude is defined by reference to the DA(H) or MDA itself.

(b) *Takeoff and initial climb.* No person may use an autopilot for takeoff or initial climb below the higher of 500 feet or an altitude that is no lower than twice the altitude loss specified in the Airplane Flight Manual (AFM), except as follows—

(1) At a minimum engagement altitude specified in the AFM; or

(2) At an altitude specified by the Administrator, whichever is greater.

(c) *Enroute.* No person may use an autopilot enroute, including climb and descent, below the following—

(1) 500 feet;

(2) At an altitude that is no lower than twice the altitude loss specified in the AFM for an autopilot malfunction in cruise conditions; or

(3) At an altitude specified by the Administrator, whichever is greater.

(d) *Approach.* No person may use an autopilot at an altitude lower than 50 feet below the DA(H) or MDA for the instrument procedure being flown, except as follows—

(1) For autopilots with an AFM specified altitude loss for approach operations—

(i) An altitude no lower than twice the specified altitude loss if higher than 50 feet below the MDA or DA(H);

(ii) An altitude no lower than 50 feet higher than the altitude loss specified in the AFM, when the following conditions are met—

(A) Reported weather conditions are less than the basic VFR weather conditions in § 91.155 of this chapter;

(B) Suitable visual references specified in § 91.175 of this chapter have been established on the instrument approach procedure; and

(C) The autopilot is coupled and receiving both lateral and vertical path references;

(iii) An altitude no lower than the higher of the altitude loss specified in the AFM or 50 feet above the TDZE, when the following conditions are met—

(A) Reported weather conditions are equal to or better than the basic VFR weather conditions in § 91.155 of this chapter; and

(B) The autopilot is coupled and receiving both lateral and vertical path references; or

(iv) A greater altitude specified by the Administrator.

(2) For autopilots with AFM specified approach altitude limitations, the greater of—

(i) The minimum use altitude specified for the coupled approach mode selected;

(ii) 50 feet; or

(iii) An altitude specified by Administrator.

(3) For autopilots with an AFM specified negligible or zero altitude loss for an autopilot approach mode malfunction, the greater of—

(i) 50 feet; or

(ii) An altitude specified by Administrator.

(4) If executing an autopilot coupled go-around or missed approach using a certificated and functioning autopilot in accordance with paragraph (e) in this section.

(e) *Go-Around/Missed Approach.* No person may engage an autopilot during a go-around or missed approach below the minimum engagement altitude specified for takeoff and initial climb in paragraph (b) in this section. An autopilot minimum use altitude does not apply to a go-around/missed approach initiated with an engaged autopilot. Performing a go-around or missed approach with an engaged autopilot must not adversely affect safe obstacle clearance.

(f) *Landing.* Notwithstanding paragraph (d) of this section, autopilot minimum use altitudes do not apply to autopilot operations when an approved automatic landing system mode is being used for landing. Automatic landing systems must be authorized in an operations specification issued to the operator.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

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

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 4. Revise § 125.329 to read as follows:

§ 125.329 Minimum altitudes for use of autopilot.

(a) *Definitions.* For purpose of this section—

(1) Altitudes for takeoff/initial climb and go-around/missed approach are defined as above the airport elevation.

(2) Altitudes for enroute operations are defined as above terrain elevation.

(3) Altitudes for approach are defined as above the touchdown zone elevation (TDZE), unless the altitude is specifically in reference to DA (H) or MDA, in which case the altitude is defined by reference to the DA(H) or MDA itself.

(b) *Takeoff and initial climb.* No person may use an autopilot for takeoff or initial climb below the higher of 500 feet or an altitude that is no lower than twice the altitude loss specified in the Airplane Flight Manual (AFM), except as follows—

(1) At a minimum engagement altitude specified in the AFM; or

(2) At an altitude specified by the Administrator, whichever is greater.

(c) *Enroute.* No person may use an autopilot enroute, including climb and descent, below the following—

(1) 500 feet;

(2) At an altitude that is no lower than twice the altitude loss specified in the AFM for an autopilot malfunction in cruise conditions; or

(3) At an altitude specified by the Administrator, whichever is greater.

(d) *Approach.* No person may use an autopilot at an altitude lower than 50 feet below the DA(H) or MDA for the instrument procedure being flown, except as follows—

(1) For autopilots with an AFM specified altitude loss for approach operations—

(i) An altitude no lower than twice the specified altitude loss if higher than 50 feet below the MDA or DA(H);

(ii) An altitude no lower than 50 feet higher than the altitude loss specified in the AFM, when the following conditions are met—

(A) Reported weather conditions are less than the basic VFR weather conditions in § 91.155 of this chapter;

(B) Suitable visual references specified in § 91.175 of this chapter have been established on the instrument approach procedure; and

(C) The autopilot is coupled and receiving both lateral and vertical path references;

(iii) An altitude no lower than the higher of the altitude loss specified in the AFM or 50 feet above the TDZE, when the following conditions are met—

(A) Reported weather conditions are equal to or better than the basic VFR weather conditions in § 91.155 of this chapter; and

(B) The autopilot is coupled and receiving both lateral and vertical path references; or

(iv) A greater altitude specified by the Administrator.

(2) For autopilots with AFM specified approach altitude limitations, the greater of—

(i) The minimum use altitude specified for the coupled approach mode selected;

(ii) 50 feet; or

(iii) An altitude specified by Administrator.

(3) For autopilots with an AFM specified negligible or zero altitude loss for an autopilot approach mode malfunction, the greater of—

(i) 50 feet; or

(ii) An altitude specified by Administrator.

(4) If executing an autopilot coupled go-around or missed approach using a certificated and functioning autopilot in accordance with paragraph (e) in this section.

(e) *Go-Around/Missed Approach.* No person may engage an autopilot during a go-around or missed approach below the minimum engagement altitude specified for takeoff and initial climb in paragraph (b) in this section. An autopilot minimum use altitude does not apply to a go-around/missed approach initiated with an engaged autopilot. Performing a go-around or missed approach with an engaged autopilot must not adversely affect safe obstacle clearance.

(f) *Landing.* Notwithstanding paragraph (d) of this section, autopilot minimum use altitudes do not apply to autopilot operations when an approved automatic landing system mode is being used for landing. Automatic landing systems must be authorized in an operations specification issued to the operator.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULE GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 5. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 45101–45105.

■ 6. Revise § 135.93 to read as follows:

§ 135.93 Minimum altitudes for use of autopilot.

(a) *Definitions.* For purpose of this section—

(1) Altitudes for takeoff/initial climb and go-around/missed approach are defined as above the airport elevation.

(2) Altitudes for enroute operations are defined as above terrain elevation.

(3) Altitudes for approach are defined as above the touchdown zone elevation (TDZE), unless the altitude is specifically in reference to DA (H) or MDA, in which case the altitude is defined by reference to the DA(H) or MDA itself.

(b) *Takeoff and initial climb.* No person may use an autopilot for takeoff or initial climb below the higher of 500 feet or an altitude that is no lower than twice the altitude loss specified in the Airplane Flight Manual (AFM), except as follows—

(1) At a minimum engagement altitude specified in the AFM; or

(2) At an altitude specified by the Administrator, whichever is greater.

(c) *Enroute.* No person may use an autopilot enroute, including climb and descent, below the following—

(1) 500 feet;

(2) At an altitude that is no lower than twice the altitude loss specified in the AFM for an autopilot malfunction in cruise conditions; or

(3) At an altitude specified by the Administrator, whichever is greater.

(d) *Approach.* No person may use an autopilot at an altitude lower than 50 feet below the DA(H) or MDA for the instrument procedure being flown, except as follows—

(1) For autopilots with an AFM specified altitude loss for approach operations—

(i) An altitude no lower than twice the specified altitude loss if higher than 50 feet below the MDA or DA(H);

(ii) An altitude no lower than 50 feet higher than the altitude loss specified in the AFM, when the following conditions are met—

(A) Reported weather conditions are less than the basic VFR weather conditions in § 91.155 of this chapter;

(B) Suitable visual references specified in § 91.175 of this chapter have been established on the instrument approach procedure; and

(C) The autopilot is coupled and receiving both lateral and vertical path references;

(iii) An altitude no lower than the higher of the altitude loss specified in the AFM or 50 feet above the TDZE, when the following conditions are met—

(A) Reported weather conditions are equal to or better than the basic VFR weather conditions in § 91.155 of this chapter; and

(B) The autopilot is coupled and receiving both lateral and vertical path references; or

(iv) A greater altitude specified by the Administrator.

(2) For autopilots with AFM specified approach altitude limitations, the greater of—

(i) The minimum use altitude specified for the coupled approach mode selected;

(ii) 50 feet; or

(iii) An altitude specified by Administrator.

(3) For autopilots with an AFM specified negligible or zero altitude loss for an autopilot approach mode malfunction, the greater of—

(i) 50 feet; or

(ii) An altitude specified by Administrator.

(4) If executing an autopilot coupled go-around or missed approach using a certificated and functioning autopilot in accordance with paragraph (e) in this section.

(e) *Go-Around/Missed Approach.* No person may engage an autopilot during a go-around or missed approach below the minimum engagement altitude specified for takeoff and initial climb in paragraph (b) in this section. An autopilot minimum use altitude does not apply to a go-around/missed approach initiated with an engaged autopilot. Performing a go-around or missed approach with an engaged autopilot must not adversely affect safe obstacle clearance.

(f) *Landing.* Notwithstanding paragraph (d) of this section, autopilot minimum use altitudes do not apply to autopilot operations when an approved automatic landing system mode is being used for landing. Automatic landing systems must be authorized in an operations specification issued to the operator.

(g) This section does not apply to operations conducted in rotorcraft.

Issued under authority provided by 49 U.S.C. 106(f) and 44701(a)(5) in Washington, DC, on December 24, 2013.

Michael P. Huerta,

Administrator.

[FR Doc. 2014–02123 Filed 1–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 17

[Docket No. FDA–2014–N–0113]

Maximum Civil Money Penalty Amounts; Civil Money Penalty Complaints

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a new regulation to adjust for inflation the maximum civil money penalty (CMP) amounts for the various CMP authorities within our jurisdiction and to amend the process for initiating certain CMP

administrative actions. We are taking these actions to comply with the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended, and to streamline our internal processes. The last CMP adjustment was published in the **Federal Register** of November 12, 2008, and the FCPIAA requires Federal Agencies to adjust their CMPs at least once every 4 years. We are using direct final rulemaking for these actions because the Agency expects that there will be no significant adverse comment on the rule. We are concurrently proposing and soliciting comments on this rule. If significant adverse comments are received, we will withdraw this final rule and address the comments in a subsequent final rule. FDA will not provide additional opportunity for comment.

DATES: This rule is effective June 18, 2014, without further notice, unless FDA receives significant adverse comment by April 21, 2014. If we receive no timely significant adverse comments, we will publish a document in the **Federal Register** before May 19, 2014, confirming the effective date of the direct final rule. If we receive any timely significant adverse comments, we will publish a document in the **Federal Register** withdrawing this direct final rule before June 18, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2014–N–0113, by any of the following methods.

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- Mail/Hand delivery/Courier (for paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2014–N–0113 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jarilyn Dupont, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903, 301–796–4830.

SUPPLEMENTARY INFORMATION: The last CMP adjustment was published in the **Federal Register** of November 12, 2008 (73 FR 66750).

I. Background

A. CMP Amounts

FDA is amending § 17.2 (21 CFR 17.2) to update the maximum CMP amounts. In general, FCPIAA requires Federal Agencies to issue regulations to adjust for inflation each CMP penalty provided by law within their jurisdiction. (28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701)). FCPIAA directs Agencies to adjust the CMP provided by law by October 23, 1996, and to make additional adjustments at least once every 4 years thereafter. The adjustments are based on changes in the cost of living, and the FCPIAA defines the cost of living adjustment as the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law (28 U.S.C. 2461 note, section 5(b)).

FCPIAA also prescribes a rounding method based on the size of the penalty after the calculated increase, but states that the adjustment of a CMP may not exceed 10 percent of the penalty. FCPIAA defines a CMP as any penalty, fine, or other sanction that is for a specific monetary amount as provided by Federal law; or has a maximum amount provided for by Federal law; and is assessed or enforced by an agency pursuant to Federal law; and is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal Courts (28 U.S.C. 2461 note, section 3(2)).

B. CMP Complaints

Currently, under § 17.5(a) (21 CFR 17.5(a)), CMP complaints against retailers of tobacco products may only be signed by attorneys in FDA's Office of the Chief Counsel (OCC). Given the routine nature of many of these CMPs, FDA is amending this regulation to permit the Chief Counsel to designate other FDA staff, such as those in FDA's Center for Tobacco Products, to sign a tobacco retailer CMP complaint.

Based on FDA's experience, the large majority of the tobacco retailer complaints to date have involved alleged violations of the requirement to not sell cigarettes and smokeless tobacco to any person younger than 18 years of age or to verify age in accordance with 21 CFR 1140.14(b). These complaints have almost always been straightforward, they involve simple fact patterns, and they do not require a complex legal analysis. Over time, such CMP complaints have increased in volume, and we anticipate that the volume will continue to be relatively high.

We have determined that, with certain limitations and controls, non-attorney staff outside OCC can carry out the function of reviewing the evidence and signing the tobacco retailer CMP complaints in appropriate circumstances. The proposed amendment to § 17.5(a) would give this decisionmaking authority to the Chief Counsel, who could ensure the authority to sign complaints is only given to appropriate staff and under appropriate circumstances. Under the proposal, the Chief Counsel would have the authority to set and revise limitations and controls, and to broaden, limit, or rescind any authorizations to sign tobacco retailer CMP complaints.

The limitations could include, for example, limiting the delegation to situations where the CMP amount is below a certain dollar value; the CMP involves specified tobacco retailer charges that OCC has determined are routine and predictable and do not require a complex legal analysis; and involve charges for which FDA has developed OCC-approved templates, parameters, and procedures. The controls could include, for example, an audit or other quality review.

FDA is publishing this rule as a direct final rule without prior proposal and comment because we view these as noncontroversial amendments and anticipate no significant adverse comment. This rule incorporates requirements specifically set forth in the FCPIAA requiring FDA to issue a regulation implementing inflation adjustments for all its CMP provisions. These technical changes, required by law, do not substantively alter the existing regulatory framework, nor do they in any way affect the terms under which CMPs are assessed by FDA. The formula for the amount of the penalty

adjustment is prescribed by Congress in the FCPIAA, and these changes are not subject to the exercise of discretion by FDA. The amendment to § 17.5(a) changes an internal process.

This direct final rule:

- Revises the table in § 17.2 to adjust the maximum CMP amounts for inflation as prescribed by FCPIAA.
- Revises § 17.5(a) to provide authority for the Chief Counsel to delegate the responsibility for initiating a CMP administrative action against a tobacco retailer.

II. Environmental Impact

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Paperwork Reduction Act

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule simply adjusts the maximum amount of CMPs administered by FDA as required by the FCPIAA, and because the proposed rule makes a change to FDA's internal processes, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $141 million, using the most current (2012) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

VI. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

List of Subjects in 21 CFR Part 17

Administrative practice and procedure, Penalties.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 17 is amended as follows:

PART 17—CIVIL MONEY PENALTIES HEARINGS

■ 1. The authority citation for 21 CFR part 17 continues to read as follows:

Authority: 21 U.S.C. 331, 333, 337, 351, 352, 355, 360, 360c, 360f, 360i, 360j, 371; 42 U.S.C. 262, 263b, 300aa–28; 5 U.S.C. 554, 555, 556, 557.

■ 2. Section 17.2 is revised to read as follows:

§ 17.2 Maximum penalty amounts.

The following table shows maximum civil monetary penalties associated with the statutory provisions authorizing civil monetary penalties under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act.

CIVIL MONETARY PENALTIES AUTHORITIES ADMINISTERED BY FDA AND ADJUSTED MAXIMUM PENALTY AMOUNTS

U.S.C. Section	Former maximum penalty amount (in dollars)	Assessment method	Date of last penalty figure or adjustment	Adjusted maximum penalty amount (in dollars)
21 U.S.C.				
333(b)(2)(A)	60,000	For each of the first two violations in any 10-year period.	2013	65,000.
333(b)(2)(B)	1,200,000	For each violation after the second conviction in any 10-year period.	2013	1,275,000.
333(b)(3)	120,000	Per violation	2013	130,000.
333(f)(1)(A)	16,500	Per violation	2008	16,500 (not adjusted).
333(f)(1)(A)	1,200,000	For the aggregate of violations	2013	1,275,000.
333(f)(2)(A)	55,000	Per individual	2013	60,000.
333(f)(2)(A)	300,000	Per ''any other person''	2013	325,000.
333(f)(2)(A)	600,000	For all violations adjudicated in a single proceeding	2013	650,000.

CIVIL MONETARY PENALTIES AUTHORITIES ADMINISTERED BY FDA AND ADJUSTED MAXIMUM PENALTY AMOUNTS—Continued

U.S.C. Section	Former maximum penalty amount (in dollars)	Assessment method	Date of last penalty figure or adjustment	Adjusted maximum penalty amount (in dollars)
333(f)(3)(A)	10,000	For all violations adjudicated in a single proceeding	2013	11,000.
333(f)(3)(B)	10,000	For each day the violation is not corrected after a 30-day period following notification until the violation is corrected.	2013	11,000.
333(f)(4)(A)(i)	250,000	Per violation	2013	275,000.
333(f)(4)(A)(i)	1,000,000	For all violations adjudicated in a single proceeding	2013	1,075,000.
333(f)(4)(A)(ii)	250,000	For the first 30-day period (or any portion thereof) of continued violation following notification.	2013	275,000.
333(f)(4)(A)(ii)	1,000,000	For any 30-day period, where the amount doubles for every 30-day period of continued violation after the first 30-day violation.	2013	1,075,000.
333(f)(4)(A)(ii)	10,000,000	For all violations adjudicated in a single proceeding	2013	10,850,000.
333(f)(9)(A)	15,000	Per violation	2009	15,000 (not adjusted).
333(f)(9)(A)	1,000,000	For all violations adjudicated in a single proceeding	2013	1,050,000.
333(f)(9)(B)(i)(I)	250,000	Per violation	2013	275,000.
333(f)(9)(B)(i)(I)	1,000,000	For all violations adjudicated in a single proceeding	2013	1,050,000.
333(f)(9)(B)(i)(II)	250,000	For the first 30-day period (or any portion thereof) of continued violation following notification.	2013	275,000.
333(f)(9)(B)(i)(II)	1,000,000	For any 30-day period, where the amount doubles for every 30-day period of continued violation after the first 30-day violation.	2013	1,050,000.
333(f)(9)(B)(i)(II)	10,000,000	For all violations adjudicated in a single proceeding	2013	10,525,000.
333(f)(9)(B)(ii)(I)	250,000	Per violation	2013	275,000.
333(f)(9)(B)(ii)(I)	1,000,000	For all violations adjudicated in a single proceeding	2013	1,050,000.
333(f)(9)(B)(ii)(II)	250,000	For the first 30-day period (or any portion thereof) of continued violation following notification.	2013	275,000.
333(f)(9)(B)(ii)(II)	1,000,000	For any 30-day period, where the amount doubles for every 30-day period of continued violation after the first 30-day violation.	2013	1,050,000.
333(f)(9)(B)(ii)(II)	10,000,000	For all violations adjudicated in a single proceeding	2013	10,525,000.
333(g)(1)	250,000	For the first violation in any 3-year period	2013	275,000.
333(g)(1)	500,000	For each subsequent violation in any 3-year period	2013	550,000.
333 note	250	For the second violation (following a first violation with a warning) within a 12-month period by a retailer with an approved training program.	2009	250 (not adjusted).
333 note	500	For the third violation within a 24-month period by a retailer with an approved training program.	2009	500 (not adjusted).
333 note	2,000	For the fourth violation within a 24-month period by a retailer with an approved training program.	2009	2,000 (not adjusted).
333 note	5,000	For the fifth violation within a 36-month period by a retailer with an approved training program.	2009	5,000 (not adjusted).
333 note	10,000	For the sixth or subsequent violation within a 48-month period by a retailer with an approved training program.	2013	11,000.
333 note	250	For the first violation by a retailer without an approved training program.	2009	250 (not adjusted).
333 note	500	For the second violation within a 12-month period by a retailer without an approved training program.	2009	500 (not adjusted).
333 note	1,000	For the third violation within a 24-month period by a retailer without an approved training program.	2013	1,100.
333 note	2,000	For the fourth violation within a 24-month period by a retailer without an approved training program.	2009	2,000 (not adjusted).
333 note	5,000	For the fifth violation within a 36-month period by a retailer without an approved training program.	2009	5,000 (not adjusted).
333 note	10,000	For the sixth or subsequent violation within a 48-month period by a retailer without an approved training program.	2013	11,000.
335b(a)	300,000	Per violation for an individual	2013	325,000.
335b(a)	1,200,000	Per violation for "any other person"	2013	1,275,000.
360pp(b)(1)	1,100	Per violation per person	2008	1,100 (not adjusted).
360pp(b)(1)	355,000	For any related series of violations	2013	375,000.
42 U.S.C.				
263b(h)(3)	11,000	Per violation	2008	11,000 (not adjusted).
300aa–28(b)(1)	120,000	Per occurrence	2013	130,000.

■ 3. In § 17.5, revise paragraph (a) to read as follows:

§ 17.5 Complaint.

(a) The Center with principal jurisdiction over the matter involved shall begin all administrative civil money penalty actions by serving on the respondent(s) a complaint signed by the Office of the Chief Counsel attorney for the Center and by filing a copy of the complaint with the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. For a civil money penalty action against retailers of tobacco products, the complaint may be signed by any Agency employee designated by the Chief Counsel.

* * * * *

Dated: January 28, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–02150 Filed 1–31–14; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0210; FRL–9394–2]

αlpha-Alkyl-ω-Hydroxypoly (Oxypropylene) and/or Poly (Oxyethylene) Polymers Where the Alkyl Chain Contains a Minimum of Six Carbons etc.; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons, and α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons and a minimum number average molecular weight (in amu) 1,100 (hereinafter referred to as ''AAAs'' (alkyl alcohol alkoxylates) when used as an inert ingredient as a surfactant in pesticide formulations in growing crops without limitations. Akzo Nobel Surface Chemistry submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an amendment to an existing requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of AAAs.

DATES: This regulation is effective February 3, 2014. Objections and requests for hearings must be received on or before April 4, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0210, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0210 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 4, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0210, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of August 5, 2009 (74 FR 38935) (FRL–8430–1), EPA issued a final rule, announcing the establishment of a tolerance exemption pursuant to a pesticide petition (PP 9E7534) by The Joint Inerts Task Force (JITF), Cluster Support Team Number 1 (CST1), c/o CropLife America, 1156 15th Street NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.910, 40 CFR 180.930, 40 CFR 180.940a, and 40 CFR 180.960 be

amended by establishing exemptions from the requirement of a tolerance for residues of a group of substances known as AAAs. The exemptions narratively describe the subject chemical as α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons and specify the individual chemicals covered by the exemptions by a listing of CAS Reg. Nos. The current petition seeks to expand these exemptions by adding additional chemicals identified by the CAS Reg. No.

In the **Federal Register** of July 19, 2013 (78 FR 43118) (FRL–9392–9), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (IN–10544) by Spring Trading Company, 10805 W. Timberwagon Cir., Spring, TX 77380–4030, on behalf of Akzo Nobel Surface Chemistry, LLC, 525 West Van Buren, Chicago, IL 60607–3823. The petition requested that 40 CFR 180.920, 40 CFR 180.930, and 40 CFR 180.960 be amended by modifying the exemption from the requirement of a tolerance for residues of AAAs by adding residues of additional chemicals of α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly(oxyethylene) polymers where the alkyl chain contains a minimum of six carbons, and α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons, minimum number average molecular weight (in AMU) 1,100 in or on growing crops at no limitation when used as an inert ingredient in pesticide formulations. That notice referenced a summary of the petition prepared by Akzo Nobel Surface Chemistry, the petitioner, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. A public comment noted that the requested 40 CFR sections, 180.920, 180.930, or 180.960 were not all the correct sections for AAAs. The petitioner agreed and resubmitted their request.

In the **Federal Register** of September 12, 2013 (78 FR 56187) (FRL–9399–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (IN–10544) by Spring Trading Company, 10805 W. Timberwagon Cir., Spring, TX 77380–4030, on behalf of Akzo Nobel Surface Chemistry, LLC, 525 West Van Buren, Chicago, IL 60607–3823. The petition requested that 40 CFR 180.910, 40 CFR 180.930, 40 CFR 180.940(a) and 40 CFR 180.960 be amended by modifying the exemption from the requirement of a tolerance for residues of AAAs to include CAS Reg. No.: 9004–87–9; 9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 9046–09–7; 25190–05–0; 25231–21–4; 26401–47–8; 26403–74–7; 26636–39–5; 27252–75–1; 37311–00–5; 37311–01–6; 37311–04–9; 39278–93–8; 50861–66–0; 52232–09–4; 57455–38–6; 57497–74–2; 59112–62–8; 62648–50–4; 63303–00–4; 63303–01–5; 63658–45–7; 63793–60–2; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 67254–71–1; 67763–08–0; 67784–96–7; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–48–5; 68439–53–2; 68526–95–4; 68603–20–3; 68920–69–4; 68954–94–9; 68987–90–6; 68991–48–0; 69227–20–9; 70955–07–6; 70955–69–0; 71011–10–4; 72066–65–0; 72108–90–8; 72484–69–6; 73018–31–2; 74432–13–6; 74499–34–6; 79771–03–2; 102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103819–03–0; 116810–32–3; 116810–33–4; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 139381–39–8; 139626–71–4; 152231–44–2; 154518–36–2; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160901–09–7; 160901–19–9; 160901–20–2; 161025–21–4; 161025–22–5; 176022–76–7; 287935–46–0; 288095–59–0; 288260–45–7; 303176–75–2; and 954108–36–2 when used as an inert ingredient in pesticide formulations applied to growing crops without limitations. That notice referenced a summary of the petition prepared by Akzo Nobel Surface Chemistry, the petitioner, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit V.C.

In this petition, Akzo Nobel Surface Chemistry claims that the chemicals CAS Reg. No.; 9004–87–9; 9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 9046–09–7; 25190–05–0; 25231–21–4; 26401–47–8; 26403–74–7; 26636–39–5; 27252–75–1; 37311–00–5; 37311–01–6; 37311–04–9; 39278–93–8; 50861–66–0; 52232–09–4; 57455–38–6; 57497–74–2; 59112–62–8; 62648–50–4; 63303–00–4; 63303–01–5; 63658–45–7; 63793–60–2; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 67254–71–1; 67763–08–0; 67784–96–7; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–48–5; 68439–53–2; 68526–95–4; 68603–20–3; 68920–69–4; 68954–94–9; 68987–90–6; 68991–48–0; 69227–20–9; 70955–07–6; 70955–69–0; 71011–10–4; 72066–65–0; 72108–90–8; 72484–69–6; 73018–31–2; 74432–13–6; 74499–34–6; 79771–03–2; 102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103819–03–0; 116810–32–3; 116810–33–4; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 139381–39–8; 139626–71–4; 152231–44–2; 154518–36–2; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160901–09–7; 160901–19–9; 160901–20–2; 161025–21–4; 161025–22–5; 176022–76–7; 287935–46–0; 288095–59–0; 288260–45–7; 303176–75–2; and 954108–36–2 are covered by the published tolerance exemption for AAAs and that no further data or review is required to amend the existing tolerance exemption to include the additional CAS Reg. Nos.

Based upon review of the data supporting the petition, EPA has confirmed that most of the originally requested CAS Reg. Nos. are acceptable for consideration under the currently approved descriptor. However, several of the originally requested compounds have aromatic components or have an alkyl chain too short or contain an ester which do not fit within the AAA descriptor, are not acceptable, and EPA is denying that portion of the petition. CAS Reg. Nos 9004–87–9, 9046–09–7, 26401–47–8, 26403–74–7, 9278–93–8, 57455–38–6, 57497–74–2, 63303–00–4, 68987–90–6, 70955–69–0, and 288095–59–0 are denied because these compounds contain a phenyl group as part of their structure which is considered an aromatic component. These substances do not fall within the aliphatic descriptor and are not supported by the existing data. CAS Reg. No. 139381–39–8 is denied because its alkyl chain contains only four carbons (butyl group) which is too short to fit the AAA descriptor. CAS Reg No. 67784–96–7 is denied because it contains an ester which is not included in the tolerance exemption descriptor. The cluster data is based on common chemical structures and the denied chemicals would not fit within the established category. This limitation is based on the Agency's risk assessment which can be found at *http://www.regulations.gov* in document IN–10544. Requesting to Amend the Exemption from the Requirement of a Tolerance for α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons, and α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons and a minimum number average molecular weight (in amu) 1,100, under 40 CFR 180.910, 180.930, 180.940(a) or 180.960 in docket ID number EPA–HQ–OPP–2013–0210.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

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

The Agency agrees with the petitioner that CAS Reg. No.: 9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 25190–05–0; 25231–21–4; 26636–39–5; 27252–75–1; 37311–00–5; 37311–01–6; 37311–04–9; 50861–66–0; 52232–09–4; 59112–62–8; 62648–50–4; 63303–01–5; 63658–45–7; 63793–60–2; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 67254–71–1; 67763–08–0; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–48–5; 68439–53–2; 68526–95–4; 68603–20–3; 68920–69–4; 68954–94–9; 68991–48–0; 69227–20–9; 70955–07–6; 71011–10–4; 72066–65–0; 72108–90–8; 72484–69–6; 73018–31–2; 74432–13–6; 74499–34–6; 79771–03–2;102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103819–03–0; 116810–32–3; 116810–33–4; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 139626–71–4; 152231–44–2; 154518–36–2; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160901–09–7; 160901–19–9; 160901–20–2; 161025–21–4; 161025–22–5; 176022–76–7; 287935–46–0; 288260–45–7; 303176–75–2; and 954108–36–2 are AAAs each having molecular structures conforming to the chemical description given in the tolerance exemption expression, i.e., α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons and which do not contain additional structural elements that are not included within the tolerance exemption expression description. In 2009, in establishing the exemption for the AAAs, EPA assessed their safety generally using worst case exposure assumptions. (74 FR 38935) (FRL–8430–1). EPA concluded that that assessment showed that exempting the AAAs from the requirement from a tolerance would be safe. Inclusion of additional chemicals described above in the risk assessment for the AAAs would in no way alter that prior risk assessment given the generic findings on toxicity and the worst case exposure assumptions used in that risk assessment. Accordingly, based on the findings in that earlier rule, EPA has determined that there is a reasonable certainty that no harm to any population subgroup, including infants and children, will result from aggregate exposure to AAAs, by including the additional chemicals described above, under reasonably foreseeable circumstances. Therefore, the amendment of an exemption from tolerance under 40 CFR 180.910, 180.930, 180.940, and 180.960, for residues of AAAs to include the chemicals described above is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for AAAs.

C. Response to Comments

One comment was received for a notice of filing from a private citizen who opposed the authorization to sell any pesticide that leaves a residue on food. The Agency understands the commenter's concerns and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by section 408 of

the Federal Food, Drug and Cosmetic Act (FFDCA), EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by the statute.

VI. Conclusions

Therefore, the exemptions from the requirement of a tolerance under 40 CFR 180.910, 180.930, 180.940a, and 180.960 for AAAs when used as an inert ingredient as a surfactant in pesticide formulations applied to growing crops is amended to add the following CAS numbers: 9004–87–9; 9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 9046–09–7; 25190–05–0; 25231–21–4; 26401–47–8; 26403–74–7; 26636–39–5; 27252–75–1; 37311–00–5; 37311–01–6; 37311–04–9; 39278–93–8; 50861–66–0; 52232–09–4; 57455–38–6; 57497–74–2; 59112–62–8; 62648–50–4; 63303–00–4; 63303–01–5; 63658–45–7; 63793–60–2; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 67254–71–1; 67763–08–0; 67784–96–7; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–48–5; 68439–53–2; 68526–95–4; 68603–20–3; 68920–69–4; 68954–94–9; 68987–90–6; 68991–48–0; 69227–20–9; 70955–07–6; 70955–69–0; 71011–10–4; 72066–65–0; 72108–90–8; 72484–69–6; 73018–31–2; 74432–13–6; 74499–34–6; 79771–03–2; 102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103819–03–0; 116810–32–3; 116810–33–4; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 139381–39–8; 139626–71–4; 152231–44–2; 154518–36–2; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160901–09–7; 160901–19–9; 160901–20–2; 161025–21–4; 161025–22–5; 176022–76–7; 287935–46–0; 288095–59–0; 288260–45–7; 303176–75–2; and 954108–36–2.

VII. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 17, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, the table is amended by revising the following inert ingredient to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * *	*	*
α-Alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons (CAS Reg. No.: 9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 25190–05–0; 25231–21–4; 26636–39–5; 27252–75–1; 37311–00–5; 37311–01–6; 37311–04–9; 50861–66–0; 52232–09–4; 59112–62–8; 62648–50–4; 63303–01–5; 63658–45–7; 63793–60–2; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 67254–71–1; 67763–08–0; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–48–5; 68439–53–2; 68526–95–4; 68603–20–3; 68920–69–4; 68954–94–9; 68991–48–0; 69227–20–9; 70955–07–6; 71011–10–4; 72066–65–0; 72108–90–8; 72484–69–6; 73018–31–2; 74432–13–6; 74499–34–6; 79771–03–2;102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103819–03–0; 116810–32–3; 116810–33–4; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 139626–71–4; 152231–44–2; 154518–36–2; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160901–09–7; 160901–19–9; 160901–20–2; 161025–21–4; 161025–22–5; 176022–76–7; 287935–46–0; 288260–45–7; 303176–75–2; 954108–36–2	Surfactants, related adjuvants of surfactants.	
* * * * *	*	*

■ 3. In § 180.930, the table is amended by revising the following inert ingredient to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * *	*	*
α-Alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons (CAS Reg. No.: 9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 25190–05–0; 25231–21–4; 26636–39–5; 27252–75–1; 37311–00–5; 37311–01–6; 37311–04–9; 50861–66–0; 52232–09–4; 59112–62–8; 62648–50–4; 63303–01–5; 63658–45–7; 63793–60–2; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 67254–71–1; 67763–08–0; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–48–5; 68439–53–2; 68526–95–4; 68603–20–3; 68920–69–4; 68954–94–9; 68991–48–0; 69227–20–9; 70955–07–6; 71011–10–4; 72066–65–0; 72108–90–8; 72484–69–6; 73018–31–2; 74432–13–6; 74499–34–6; 79771–03–2;102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103819–03–0; 116810–32–3; 116810–33–4; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 139626–71–4; 152231–44–2; 154518–36–2; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160901–09–7; 160901–19–9; 160901–20–2; 161025–21–4; 161025–22–5; 176022–76–7; 287935–46–0; 288260–45–7; 303176–75–2; 954108–36–2	Surfactants, related adjuvants of surfactants.	
* * * * *	*	*

■ 4. In § 180.940, the table in paragraph (a) is amended by revising the following entry to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

(a) * * *

* * * * *

Pesticide chemical	CAS Reg. No.	Limits
* * *	* * *	*
α-Alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons.	9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 25190–05–0; 25231–21–4; 26636–39–5; 27252–75–1; 37311–00–5; 37311–01–6; 37311–04–9; 50861–66–0; 52232–09–4; 59112–62–8; 62648–50–4; 63303–01–5; 63658–45–7; 63793–60–2; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 67254–71–1; 67763–08–0; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–48–5; 68439–53–2; 68526–95–4; 68603–20–3; 68920–69–4; 68954–94–9; 68991–48–0; 69227–20–9; 70955–07–6; 71011–10–4; 72066–65–0; 72108–90–8; 72484–69–6; 73018–31–2; 74432–13–6; 74499–34–6; 79771–03–2;102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103819–03–0; 116810–32–3; 116810–33–4; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 139626–71–4; 152231–44–2; 154518–36–2; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160901–09–7; 160901–19–9; 160901–20–2; 161025–21–4; 161025–22–5; 176022–76–7; 287935–46–0; 288260–45–7; 303176–75–2; 954108–36–2.	

Pesticide chemical	CAS Reg. No.	Limits
* * * * * * *		

* * * * *

■ 5. In § 180.960, the table is amended by revising the following entry to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
α-Alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons and a minimum number average molecular weight (in amu) 1,100.	9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 25190–05–0; 25231–21–4; 26636–39–5; 27252–75–1; 37311–00–5; 37311–01–6; 37311–04–9; 50861–66–0; 52232–09–4; 59112–62–8; 62648–50–4; 63303–01–5; 63658–45–7; 63793–60–2; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 67254–71–1; 67763–08–0; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–48–5; 68439–53–2; 68526–95–4; 68603–20–3; 68920–69–4; 68954–94–9; 68991–48–0; 69227–20–9; 70955–07–6; 71011–10–4; 72066–65–0; 72108–90–8; 72484–69–6; 73018–31–2; 74432–13–6; 74499–34–6; 79771–03–2;102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103819–03–0; 116810–32–3; 116810–33–4; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 139626–71–4; 152231–44–2; 154518–36–2; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160901–09–7; 160901–19–9; 160901–20–2; 161025–21–4; 161025–22–5; 176022–76–7; 287935–46–0; 288260–45–7; 303176–75–2; 954108–36–2.
* * * * * * *	

[FR Doc. 2014–02203 Filed 1–31–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130802673–4053–02]

RIN 0648–BD49

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Revisions to Headboat Reporting Requirements for Species Managed by the Gulf of Mexico Fishery Management Council

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in a framework action to the Fishery Management Plans for the Reef Fish Resources of the Gulf of Mexico (Gulf), as prepared by the Gulf of Mexico Fishery Management Council (Gulf Council); and Coastal Migratory Pelagic (CMP) Resources of the Gulf and South Atlantic Region, as prepared by the Gulf Council and the South Atlantic Fishery Management Council (South Atlantic Council) (Headboat Reporting Framework). This final rule modifies the recordkeeping and reporting requirements for headboat owners and operators who fish for species managed by the Gulf Council through the previously mentioned FMPs. These revisions require fishing records to be submitted electronically (via computer or internet) on a weekly basis or at intervals shorter than a week if notified by the NMFS' Southeast Fisheries Science Center (SEFSC) Science and Research Director (SRD), and prohibit headboats from continuing to fish if they are delinquent in submitting reports. Additionally, this final rule includes two corrections to regulatory text. The purpose of this final rule is to obtain timelier fishing information from headboats to better monitor recreational annual catch limits (ACLs), improve stock assessments, and improve compliance with reporting in Gulf fisheries.

DATES: This rule is effective March 5, 2014.

ADDRESSES: Electronic copies of the Headboat Reporting Framework, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and OMB, by email at *OIRA Submission@omb.eop.gov,* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *Rich.Malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Councils manage the fisheries for Gulf reef fish and Gulf and South Atlantic CMP under their respective FMPs. The FMPs were prepared by the Gulf and South Atlantic Councils and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October 25, 2013, NMFS published a proposed rule for the framework and requested public comment (78 FR 63946). The proposed rule and framework outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

This final rule requires electronic reporting for headboat vessels in the Gulf reef fish and Gulf coastal migratory pelagic fisheries; increases the reporting frequency for headboat vessels in these fisheries; and prohibits headboats from continuing to fish if they are delinquent in submitting their reports. As

explained in the preamble to the proposed rule, this rule will require headboat owners and operators, who are selected by the SRD, to use an electronic logbook (eLog) form through the ''Southeast Region Headboat Survey,'' an electronic reporting system developed by the SEFSC for trips completed, and to submit no fishing reports when no trips are taken. This form is available through a password protected Web site that can be accessed by personal computer, computer tablet, or ''smart'' phone (an application can be downloaded on both Android phones and iPhones). The Web site can be accessed at *https://selogbook.com.* An access code is required to log in to the Web site. Bluefin Data also requires a current email address for each vessel owner to send access codes and other information regarding the Web site to vessel owners. Once Bluefin Data registers a vessel owner and provides the vessel owner with an access code via email, the vessel owner is able to log in to the Web site and create a password for his account. The vessel owner can register more than one vessel under his password and more than one captain. The vessel owner determines who can access the Web site using his password.

Additionally, this final rule includes two corrections to regulatory text. An interim final rule to reorganize the 50 CFR part 622 regulations published on April 17, 2013 (78 FR 22950), and included a restructuring of the prohibition section to just include general prohibitions instead of specific prohibitions. Then a final rule that published on July 31, 2013 (78 FR 46292), added a prohibition that prohibited any person from failing to comply with the passenger capacity requirements in §§ 622.20(b)(1)(iv) and 622.373(e). A final rule for the reorganization of 50 CFR part 622 published on September 19, 2013 (78 FR 57534), that changed the prohibition section back to specific prohibitions instead of general prohibitions, however, NMFS inadvertently did not include the prohibition from the July 31, 2013, rule into the final reorganization rule. The preamble to the final reorganization rule clearly indicated that the intent was to replace the general prohibitions with all relevant specific prohibitions and stakeholders should have understood that the omission of this specific prohibition was not intentional. Therefore, that prohibition is added back into the regulations through this final rule. A final rule that published on September 18, 2013 (78 FR 57313), included new quotas for Gulf red snapper, based on the framework action entitled ''Red Snapper 2013 Quota Increase and Supplemental Recreational Season''. These quotas were established in pounds and then codified in pounds, round weight, along with their kilogram conversions. However, the kilogram conversions were incorrect in that final rule. This final rule corrects those conversions.

Comments and Responses

NMFS received six comment submissions on the framework action and the proposed rule; one from an environmental organization and five from individuals. Two individuals and the environmental organization expressed general support for the action in the framework. Two individuals opposed requiring electronic reporting. One of these commenters thought daily reporting should be required while the other commenter thought bi-monthly reporting was sufficient. One comment was on issues outside the scope of the action in the framework and this final rule, and one comment was related to the economic analysis in the proposed rule. A summary of the comments and NMFS' responses to those comments appears below.

Comment 1: Daily reporting should be required so it can be verified before the boat docks, which currently occurs in the commercial sector.

Response: NMFS disagrees that daily reporting should be required for headboats. The Council considered requiring daily reporting for headboats but did not select that alternative because it would impose a more burdensome requirement on the industry when daily reporting may not be necessary to effectively monitor the fisheries. The alternative selected by the Council requires weekly reporting but also allows the SRD to require more frequent reporting if necessary. NMFS agrees with the Council that requiring weekly reporting, with the flexibility to require more frequent reporting if necessary, ensures that the timely and accurate data necessary to manage the fishery is received while imposing less burden on administrators and industry.

With respect to the commercial sector, daily reporting and dockside verification are not generally required. Commercial landings are reported on a per trip basis by dealers. Currently, most dealers are required to report bi-monthly, however, the Council developed the Generic Dealer Reporting Amendment to change the frequency of dealer reporting to weekly. The proposed rulemaking implementing that amendment published on January 2, 2014 (79 FR 81). The only commercial vessel permit holders that must report estimated catch before docking are those that participate in the Gulf red snapper and grouper/tilefish individual fishing quota (IFQ) programs. This allows NMFS the opportunity to intercept an IFQ vessel at the dock to verify that this data is accurate and is necessary for enforcement reasons that are not present outside the IFQ programs.

Comment 2: Bi-monthly reporting is sufficient because requiring more frequent reporting will inhibit headboat productivity.

Response: NMFS disagrees that requiring weekly, as opposed to bi-monthly, reporting will increase the administrative burden on headboat owners to such an extent that productivity is inhibited. Headboat operators will be required to record and submit the same information as is currently required but will be submitting it on a more regular basis. Further, although more frequent reporting may increase the direct costs to headboat businesses, it is also expected to increase the accuracy of the harvest monitoring process, which will increase economic benefits. The Council determined, and NMFS agrees, that requiring weekly reporting will allow managers to obtain the data necessary to more effectively manage harvest while minimizing costs to headboat businesses.

Comment 3: Reporting by phone and/or mail along with electronic reporting should be allowed, at least for a transition period during initial implementation of electronic reporting.

Response: NMFS disagrees that allowing alternative reporting methods is necessary during the initial implementation of the electronic reporting requirement. Since January 1, 2013, the SRD has requested that headboat owners and operators report electronically. Currently, 95 percent of headboats are reporting electronically. The remaining 5 percent have known that electronic reporting would be required since the Council took final action on the framework action in June 2013. Additional time to comply with the new requirement is unnecessary and would delay the benefits of transitioning to this more timely and accurate method of reporting.

Comment 4: Dockside sampling frequency should be increased and a Gulf at-sea headboat observer program should be established to validate logbook data and better define bycatch and discards. In addition, the collection of economic data should be included as part of the electronic logbook program.

Response: Such additional data collection elements are beyond the scope of the current rulemaking.

However, the Gulf Council or NMFS could, in the future, consider increasing the amount of dockside and onboard sampling to validate electronic logbook data and collect economic data as part of the logbook program.

Comment 5: The rule would affect more businesses than forecasted; the projected reporting expense of $374 per business per year ''can have negative effects'' on small businesses; and the assessment understated the significance of the economic effects of the proposed rule.

Response: NMFS disagrees that the analysis in the proposed rule understated the significance of the economic effects of the reporting change on headboat businesses. The analysis stated that the rule would directly affect all headboat businesses permitted to operate in the Gulf EEZ. Thus, all appropriate businesses were included in the assessment. With respect to the estimated reporting expense, the commenter misinterpreted this expense. As discussed in the proposed rule, this estimate equals the labor burden for reporting via either paper or electronic means. Because paper reports have been required, this estimate equals the current reporting labor cost as well as the reporting cost for electronic reporting and thus would not be a new business expense. Any new expense that might be incurred as a result of this rule would be associated with a possible need to purchase a computer and acquire internet access. However, as also discussed in the proposed rule, computers and internet access are believed to be routinely used by businesses in general and in this industry. Additionally, electronic reporting has been requested by the SRD since January 1, 2013. As a result, few, if any, of the businesses directly affected by this rule would be expected to have to incur any new expenses to meet the requirements of this rule.

Changes From the Proposed Rule

In the proposed rule, the requirements for headboat reporting methods and frequency of reporting for coastal migratory pelagic fish were separated into Gulf requirements (§ 622.371(b)(1)(ii) and (b)(2)(ii)) and South Atlantic requirements (§ 622.371(b)(1)(iii) and (b)(2)(iii)). The South Atlantic Fishery Management Council proposed identical headboat reporting requirements and that proposed rule also separated the requirements for headboat reporting methods and frequency of reporting for coastal migratory pelagic fish into Gulf requirements and South Atlantic requirements. The final rule implementing the South Atlantic changes to the headboat reporting requirements published before this final rule. Therefore, in this final rule, the paragraphs for Gulf and South Atlantic headboat reporting requirements for coastal migratory pelagic fish have been combined (for both reporting methods and frequency) because when this final rule becomes effective, both Gulf and South Atlantic headboat reporting requirements for coastal migratory pelagic fish will be the same.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary for the management of the Gulf reef fish and coastal migratory pelagic fisheries and is consistent with the framework, the FMP, the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. In addition to the actions considered in the framework, this final rule makes changes to regulatory text in §§ 622.13 and 622.39. These changes are described in the preamble to this final rule. These changes correct mistakes that occurred in prior regulatory action and do not impose new restrictions. As a result, none of these changes in the regulatory text would be expected to result in any reduction in profits to any small entities. Comments on the economic analysis are addressed in the comments and responses section (Comment 5) of this final rule. No changes to the final rule were made in response to these comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

This final rule contains collection-of-information requirements subject to the requirements of the Paperwork Reduction Act (PRA), which have been approved by OMB under control number 0648–0016. NMFS estimates that the requirement for Gulf headboat owners and operators to report electronically results in a net zero effect on the reporting burden under OMB control number 0648–0016, because headboat owners and operators will continue to report all species harvested, however, now electronically instead of by paper. NMFS estimates that the requirement for headboat owners and operators to report more frequently (weekly instead of monthly) does not create more burden on headboat owners and operators, because the headboat owners and operators will still be reporting the same amount of information, but just transmitting the data more frequently. These estimates of the public reporting burden include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

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 PRA, unless that collection-of-information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Headboat, Reporting and recordkeeping requirements.

Dated: January 28, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.13, paragraph (pp) is added to read as follows:

§ 622.13 Prohibitions.

* * * * *

(pp) Fail to comply with the passenger capacity related requirements in §§ 622.20(b)(1)(iv) and 622.373(e).

* * * * *

■ 3. In § 622.26, paragraph (b) is revised to read as follows:

§ 622.26 Recordkeeping and reporting.

* * * * *

(b) *Charter vessel/headboat owners and operators*—(1) *General reporting requirement*—(i) *Charter vessels.* The owner or operator of a charter vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued, as required under § 622.20(b), or whose vessel fishes for or lands such reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by

the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(ii) *Headboats.* The owner or operator of a headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued, as required under § 622.20(b), or whose vessel fishes for or lands such reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must submit an electronic fishing record for each trip of all fish harvested within the time period specified in paragraph (b)(2)(ii) of this section, via the Southeast Region Headboat Survey.

(2) *Reporting deadlines*—(i) *Charter vessels.* Completed fishing records required by paragraph (b)(1)(i) of this section for charter vessels must be submitted to the SRD weekly, postmarked no later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats.* Electronic fishing records required by paragraph (b)(1)(ii) of this section for headboats must be submitted at weekly intervals (or intervals shorter than a week if notified by the SRD) by 11:59 p.m., local time, the Sunday following a reporting week. If no fishing activity occurred during a reporting week, an electronic report so stating must be submitted for that reporting week by 11:59 p.m., local time, the Sunday following a reporting week.

(3) *Catastrophic conditions.* During catastrophic conditions only, NMFS provides for use of paper forms for basic required functions as a backup to the electronic reports required by paragraph (b)(1)(ii) of this section. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. The paper forms will be available from NMFS. During catastrophic conditions, the RA has the authority to waive or modify reporting time requirements.

(4) *Compliance requirement.* Electronic reports required by paragraph (b)(1)(ii) of this section must be submitted and received by NMFS according to the reporting requirements under this section. A report not received within the time specified in paragraph (b)(2)(ii) is delinquent. A delinquent report automatically results in the owner and operator of a headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued being prohibited from harvesting or possessing such species, regardless of any additional notification to the delinquent owner and operator by NMFS. The owner and operator who are prohibited from harvesting or possessing such species due to delinquent reports are authorized to harvest or possess such species only after all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements under this section.

* * * * *

■ 4. In § 622.39, paragraphs (a)(1)(i) and (a)(2)(i) are revised to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) *Commercial quota for red snapper*—5.610 million lb (2.545 million kg), round weight.

* * * * *

(2) * * *

(i) *Recreational quota for red snapper*—5.390 million lb (2.445 million kg), round weight.

* * * * *

■ 5. In § 622.374, paragraph (b) is revised, to read as follows:

§ 622.374 Recordkeeping and reporting.

* * * * *

(b) *Charter vessel/headboat owners and operators*—(1) *General reporting requirement*—(i) *Charter vessels.* The owner or operator of a charter vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), or whose vessel fishes for or lands Gulf or South Atlantic coastal migratory fish in or from state waters adjoining the Gulf or South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2)(i) of this section.

(ii) *Headboats.* The owner or operator of a headboat for which a charter vessel/headboat permit for Gulf coastal migratory fish or South Atlantic coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), or whose vessel fishes for or lands Gulf or South Atlantic coastal migratory pelagic fish in or from state waters adjoining the Gulf or South Atlantic EEZ, who is selected to report by the SRD must submit an electronic fishing record for each trip of all fish harvested within the time period specified in paragraph (b)(2)(ii) of this section, via the Southeast Region Headboat Survey.

(2) *Reporting deadlines*—(i) *Charter vessels.* Completed fishing records required by paragraph (b)(1)(i) of this section for charter vessels must be submitted to the SRD weekly, postmarked no later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats.* Electronic fishing records required by paragraph (b)(1)(ii) of this section for headboats must be submitted at weekly intervals (or intervals shorter than a week if notified by the SRD) by 11:59 p.m., local time, the Sunday following a reporting week. If no fishing activity occurred during a reporting week, an electronic report so stating must be submitted for that reporting week by 11:59 p.m., local time, the Sunday following a reporting week.

(3) *Catastrophic conditions.* During catastrophic conditions only, NMFS provides for use of paper forms for basic required functions as a backup to the electronic reports required by paragraph (b)(1)(ii) of this section. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. The paper forms will be available from NMFS. During catastrophic conditions, the RA has the authority to waive or modify reporting time requirements.

(4) *Compliance requirement.* Electronic reports required by paragraph (b)(1)(ii) of this section must be submitted and received by NMFS according to the reporting requirements under this section. A report not received within the time specified in paragraph (b)(2)(ii) is delinquent. A delinquent report automatically results in the owner and operator of a headboat for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued being prohibited from harvesting or possessing such species,

regardless of any additional notification to the delinquent owner and operator by NMFS. The owner and operator who are prohibited from harvesting or possessing such species due to delinquent reports are authorized to harvest or possess such species only after all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements under this section.

* * * * *

[FR Doc. 2014–02177 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 22
Monday, February 3, 2014

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0005; Directorate Identifier 2013–NM–144–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A310 series airplanes. This proposed AD was prompted by a report of an electrical arc and a hydraulic haze in the wheel bay of the left-hand main landing gear (MLG), possibly resulting from chafing between a hydraulic high pressure hose and electrical wiring of the green electrical motor pump (EMP). This proposed AD would require modification of the electrical routing and replacement of the union elbows. We are proposing this AD to prevent chafing of hydraulic pressure hoses and electrical wiring of the green EMPs, which, in combination with a system failure, could cause an uncontrolled and undetected fire in the MLG bay.

DATES: We must receive comments on this proposed AD by March 20, 2014.

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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0005; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0005; Directorate Identifier 2013–NM–144–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on 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 proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0165, dated July 25, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> An A310 operator reported an electrical arc and a large hydraulic haze in the Left Hand (LH) Main Landing Gear (MLG) wheel bay that occurred during ground operation.
>
> The analysis of the occurrence revealed that this was likely caused by chafing between a hydraulic high pressure hose and electrical wiring of the Green Electrical Motor Pump (EMP).
>
> This condition, * * * could result in an undetected and uncontrolled fire in the LH MLG wheel bay.
>
> For the reason described above, this [EASA] AD requires modification of the electrical routing and installation of reinforced hydraulic pipes [by replacing the union elbows to re-route the delivery pipe at the upper EMP].

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA-2014-0005.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A310–29–2103, dated December 21, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 36 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $1,170 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be 54,360, or $1,510 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2014–0005; Directorate Identifier 2013–NM–144–AD.

(a) Comments Due Date

We must receive comments by March 20, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category, all serial numbers on which Airbus modification number 04797 has been embodied in production and those on which Airbus Service Bulletin A310–29–2091 has been embodied in service.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic Power.

(e) Reason

This AD was prompted by a report of an electrical arc and a hydraulic haze in the wheel bay of the left-hand main landing gear (MLG) possibly resulting from chafing between a hydraulic high pressure hose and electrical wiring of the green electrical motor pump (EMP). We are issuing this AD to prevent chafing of hydraulic pressure hoses and electrical wiring of the green EMPs, which, in combination with a system failure, could cause an uncontrolled and undetected fire in the MLG bay.

(f) Compliance

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

(g) Actions

Within 36 months after the effective date of this AD, modify the electrical routing of the electrical motor pump (EMP) power supply in the hydraulic bay at frame 54 on the left-hand side and replace the union elbows to re-route the delivery pipe at the upper EMP, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–29–2103, dated December 21, 2012.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2013–0165, dated July 25, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0005.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*. You may view this 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.

Issued in Renton, Washington, on January 22, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–02158 Filed 1–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0006; Directorate Identifier 2013–NM–147–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A330–200 Freighter, A330–200, A330–300, A340–200, and A340–300 series airplanes. This proposed AD was prompted by the results of endurance qualification tests on the trimmable horizontal stabilizer actuator (THSA), which revealed a partial loss of the no-back brake (NBB) efficiency in specific load conditions. This proposed AD would require inspecting certain THSAs to determine the number of total flight cycles the THSA has accumulated, and replacing the THSA if necessary. We are proposing this AD to detect and correct premature wear of the carbon friction disks on the NBB of the THSA, which could lead to reduced braking efficiency in certain load conditions and, in conjunction with the inability of the power gear train to keep the ball screw in its last commanded position, could result in uncommanded movements of the THS and loss of control of the airplane.

DATES: We must receive comments on this proposed AD by March 20, 2014.

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

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

For service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0006; Directorate Identifier 2013–NM–147–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on 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 proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0144R1, dated August 27, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During endurance qualification tests on A380 Trimmable Horizontal Stabilizer Actuator (THSA), a partial loss of the no-back brake (NBB) efficiency was experienced. Due to THSA design similarity on the A330/A340 fleet, a similar partial loss of the NBB efficiency was identified on THSA Part Number (P/N) 47147, installed on A330–300 and A340–200/–300 aeroplanes, and on THSA P/N 47172, installed on A330–200/–300 and A340–200/–300 aeroplanes.
>
> Investigation results concluded that this particular malfunction was due an ageing/endurance issue of the surfaces of the NBB carbon friction disks, leading to a partial loss of braking efficiency in some specific aerodynamic load conditions.
>
> This condition, if not detected and corrected and in conjunction with the power gear train not able to keep the ball screw in its last commanded position, could lead to uncommanded movements of the THSA, possibly resulting in the loss of control of the aeroplane.
>
> To address this potential unsafe condition, EASA issued * * * [an earlier AD] to require replacement of each THSA that has exceeded 16,000 flight cycles (FC) in-service, to be sent in shop for NBB carbon disk replacement.
>
> Since that AD was issued, a need for clarification has been demonstrated, regarding the identification of the THSA ''affected'' by this requirement.
>
> For this reason, EASA AD 2013–0144 is revised, confirming that the AD only affects those THSA identified by Part Number (P/N) in Airbus Alert Operator Transmission (AOT) A27L005–13. In addition, a note has been added to make clear that the life limits as specified in the current revision of ALS Part 4 are still relevant for the affected THSA, as applicable to aeroplane model and THSA P/N. This AD addresses the life limit for the NBB installed on the THSA, not the life limit for the THSA itself.
>
> A further reduction of the life limit of the NBB, probably down to 12,000 FC, is under evaluation by EASA and further actions are likely to follow for the THSA that have exceeded that limit in service. In that context and to assess the operational status of the THSA of the A330–200/–300 and A340–200/–300 fleet, this AD also requires identification of the THSA, collection of operational data, and reporting the results to Airbus.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0006.

Relevant Service Information

Airbus has issued Alert Operators Transmission (AOT) A27L005–13, dated July 11, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 76 airplanes of U.S. registry.

We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $38,760, or $510 per product.

In addition, we estimate that any necessary follow-on actions would take about 23 work-hours and require parts costing $722,556, for a cost of $724,511 per product. We have no way of determining the number of aircraft that might need this action.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES–200.

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 proposed regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2014–0006; Directorate Identifier 2013–NM–147–AD.

(a) Comments Due Date

We must receive comments by March 20, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(5) of this AD; certificated in any category; all manufacturer serial numbers.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A340–211, –212, and –213 airplanes.

(5) Model A340–311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by the results of endurance qualification tests on the trimmable horizontal stabilizer actuator (THSA), which revealed a partial loss of the no-back brake (NBB) efficiency in specific load conditions. We are issuing this AD to detect and correct premature wear of the carbon friction disks on the NBB of the THSA, which could lead to reduced braking efficiency in certain load conditions and, in conjunction with the inability of the power gear train to keep the ball screw in its last commanded position, could result in uncommanded movements of the THS and loss of control of the airplane.

(f) Compliance

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

(g) Inspection

For airplanes having a THSA with a part number specified in Airbus Alert Operators Transmission (AOT) A27L005–13, dated July 11, 2013: Within 30 days after the effective date of this AD, identify each THSA that has accumulated 10,000 total flight cycles or more since the THSA's first installation on an airplane, and report the collected operational life data to Airbus, in accordance with the instruction of Airbus AOT A27L005–13, dated July 11, 2013.

(h) THSA Replacement

For airplanes having a THSA with a part number specified in Airbus AOT A27L005–13, dated July 11, 2013: At the applicable time specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, replace each affected THSA with a serviceable THSA, in accordance with the instructions of Airbus AOT A27L005–13, dated July 11, 2013.

(1) For a THSA that has accumulated 20,000 total flight cycles or more since the THSA's first installation on an airplane, as of the effective date of this AD: Replace the

THSA within 12 months or 1,500 flight cycles after the effective date of this AD, whichever occurs first.

(2) For a THSA that has accumulated 16,000 total flight cycles or more, but less than 20,000 total flight cycles since the THSA's first installation on an airplane, as of the effective date of this AD, and that is installed on an Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, or –343 airplane: Replace the THSA within 30 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first.

(3) For a THSA that has accumulated 16,000 total flight cycles or more, but less that 20,000 total flight cycles since the THSA's first installation on an airplane, as of the effective date of this AD, and that is installed on an Airbus Model A340–211, –212, –213, –311, –312, or –313 airplane: Replace the THSA within 30 months or 3,000 flight cycles after the effective date of this AD, whichever occurs first.

(i) Definition of Serviceable THSA

Except as required by paragraph (j)(2) of this AD, for the purposes of this AD a serviceable THSA is a THSA:

(1) Having a part number identified in Airbus AOT A27L005–13, dated July 11, 2013, that has accumulated fewer than 20,000 total flight cycles since first installation on an airplane; or

(2) Having a part number that is not identified in Airbus AOT A27L005–13, dated July 11, 2013.

(j) Parts Installation Limitation and Replacement

(1) As of 12 months after the effective date of this AD, no person may install on any airplane a THSA with a part number specified in Airbus AOT A27L005–13, dated July 11, 2013, that has accumulated 20,000 total flight cycles or more since the THSA's first installation on an airplane. For any airplane having a THSA with a part number specified in Airbus AOT A27L005–13, dated July 11, 2013, that has accumulated 20,000 total flight cycles or more since the THSA's first installation on an airplane: As of 12 months after the effective date of this AD, before further flight, replace the affected THSA with a serviceable THSA, in accordance with Airbus AOT A27L005–13, dated July 11, 2013.

(2) As of 30 months after the effective date of this AD, no person may install on any airplane a THSA with a part number specified in Airbus AOT A27L005–13, dated July 11, 2013, that has accumulated 16,000 total flight cycles or more since the THSA's first installation on an airplane. For any airplane having a THSA with a part number specified in Airbus AOT A27L005–13, dated July 11, 2013, that has accumulated 16,000 total flight cycles or more since the THSA's first installation on an airplane: As of 30 months after the effective date of this AD, before further flight, replace the affected THSA with a serviceable THSA, in accordance with Airbus AOT A27L005–13, dated July 11, 2013.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or by the Design Approval Holder with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

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

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2013–0144R1, dated August 27, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0006.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this 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.

Issued in Renton, Washington, on January 22, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–02156 Filed 1–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0008; Directorate Identifier 2013–NM–076–AD]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2012–23–09, for all Embraer S.A. Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes. AD 2012–23–09 currently requires revising the maintenance program to incorporate modifications in airworthiness limitations specified in Embraer S.A. ERJ 190 195 Maintenance Review Board Report (MRBR). Since we issued AD 2012–23–09, we have determined that more restrictive maintenance requirements and airworthiness limitations are necessary. This proposed AD would require revising the maintenance or inspection program to incorporate modifications in the airworthiness limitations specified in Embraer S.A. ERJ 190 195 MRBR to include new inspection tasks and their respective thresholds and intervals. We are proposing this AD to detect and correct fatigue cracking of structural components, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by March 20, 2014.

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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may view this 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* by searching for and locating Docket No. FAA–2014–0008; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: (425) 227–2180; fax: (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0008; Directorate Identifier 2013–NM–076–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on 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 proposed AD.

Discussion

On November 13, 2012, we issued AD 2012–23–09, Amendment 39–17265 (77 FR 73270, December 10, 2012). AD 2012–23–09 requires actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2012–23–09, Amendment 39–17265 (77 FR 73270, December 10, 2012), the Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, has issued Brazilian Airworthiness Directive 2012–10–02, dated October 29, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''). We have determined that more restrictive maintenance requirements and airworthiness limitations are necessary. The MCAI states:

> This [Brazilian] AD (*http://www2.anac.gov.br/certificacao/da/textos/1363amd.pdf*) results from a new revision to the Airworthiness Limitations Section (ALS) of Embraer ERJ 190 Maintenance Review Board Report (MRBR 1928), to include new or modification of the current tasks and its respective thresholds and intervals. Failure to inspect these structural components, according to the new or revised tasks, thresholds and intervals, could prevent a timely detection of fatigue cracking. These cracks, if not properly addressed, could adversely affect the structural integrity of the airplane.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0008.

Relevant Service Information

Embraer S.A. has issued Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitation—(AL), of the EMBRAER 190 195 MRBR, MRB–1928, Revision 6, dated August 20, 2012; and Temporary Revision (TR) 6–3, dated November 30, 2012, to Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitations—(AL), of the EMBRAER 190 195 MRBR, MRB–1928, Revision 6, dated August 20, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k) of this AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Costs of Compliance

We estimate that this proposed AD affects 98 airplanes of U.S. registry.

The actions that are required by AD 2012–23–09, Amendment 39–17265 (77 FR 73270, December 10, 2012), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that were required by AD 2012–23–09 is $85 per product.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $8,330, or 85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive AD 2012–23–09, Amendment 39–17265 (77 FR 73270, December 10, 2012):

Embraer S.A: Docket No. FAA–2014–0008; Directorate Identifier 2013–NM–076–AD.

(a) Comments

We must receive comments by March 20, 2014.

(b) Affected ADs

This AD supersedes AD 2012–23–09, Amendment 39–17265 (77 FR 73270, December 10, 2012).

(c) Applicability

This AD applies to Embraer S.A. Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; certificated in any category; all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors; 53, Fuselage; 54, Nacelles/Pylons; 55, Stabilizers; 57, Wings; 71, Powerplant; and 78, Engine Exhaust.

(e) Reason

This AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. We are proposing this AD to detect and correct fatigue cracking of structural components, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Maintenance Program

This paragraph restates the actions required by paragraph (h) of AD 2012–23–09, Amendment 39–17265 (77 FR 73270, December 10, 2012). Within 90 days after January 14, 2013 (the effective date of AD 2012–23–09), revise the maintenance program to incorporate the tasks specified in Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitations (AL), of the EMBRAER 190 Maintenance Review Board Report, MRB–1928, Revision 5, dated November 11, 2010; and EMBRAER Temporary Revision (TR) 5–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitations (AL), of the EMBRAER 190 Maintenance Review Board Report, MRB–1928, Revision 5, dated November 11, 2010; with the thresholds and intervals stated in these documents. The initial compliance times for the tasks are stated in the ''Implementation Plan'' section of Appendix A, Airworthiness Limitations (AL), of the EMBRAER 190 Maintenance Review Board Report, MRB–1928, Revision 5, dated November 11, 2010.

(h) Retained No Alternative Actions or Intervals

This paragraph restates the actions required by paragraph (i) of AD 2012–23–09, Amendment 39–17265 (77 FR 73270, December 10, 2012). After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals, may be used, unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD, and except as required by paragraph (i) of this AD.

(i) New Requirements of This AD: Revision of the Maintenance or Inspection Program

Within 60 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the tasks specified in Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitations—(AL), of the EMBRAER 190 195 Maintenance Review Board Report MRB–1928, Revision 6, dated August 20, 2012; and EMBRAER TR 6–3, dated November 30, 2012, to Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitations—(AL), of the EMBRAER 190 195 Maintenance Review Board Report, MRB–1928, Revision 6, dated August 20, 2012; with the thresholds and intervals stated in these documents. The initial compliance times for the tasks are stated in the ''Implementation Plan'' section of Appendix A, Airworthiness Limitations—(AL), of the EMBRAER 190 195 Maintenance Review Board Report, MRB–1928, Revision 6, dated November 30, 2012, or within 90 days after the effective date of this AD, whichever occurs later. Doing the revision required by this paragraph terminates the revision required by paragraph (g) of this AD.

(j) No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

After accomplishment of the revision required by paragraph (i) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Kathrine Rask, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: (425) 227–2180; fax: (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/

certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the Design Approval Holder with a State of Design Authority's design organization approval, as applicable). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian Airworthiness Directive 2012–10–02, dated October 29, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0008.

(2) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may view this 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.

Issued in Renton, Washington, on January 22, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–02159 Filed 1–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0007; Directorate Identifier 2012–NM–038–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. This proposed AD was prompted by reports that the bracket of the rod in the carbon fiber reinforced plastic (CFRP) main landing gear (MLG) outboard door had detached. In addition, we received reports of broken recessed heads on titanium attachment bolts of the operating rod brackets on the modified CFRP MLG outboard doors. This proposed AD would require a detailed inspection of the CFRP MLG outboard door for play or cracks in the recessed countersunk heads of the operating rod bracket attachment bolts; replacement of the bolt if necessary; and, for certain airplanes, modification of the CFRP MLG outboard doors and attachment to the MLG. We are proposing this AD to detect and correct the affected MLG from moving to the down and locked position, which could result in MLG collapse during landing or roll-out, and consequent damage to the airplane and injury to passengers.

DATES: We must receive comments on this proposed AD by March 20, 2014.

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

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

For service information identified in this proposed AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* You may view this 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0007; Directorate Identifier 2012–NM–038–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on 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 proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Airworthiness Directive 2012–0023, dated February 6, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

In 2005, several occurrences were reported where the bracket of the rod in the Carbon Fibre Reinforced Plastic (CFRP) MLG outboard door had detached, preventing the MLG to lock properly when selected down. Prompted by these reports, CAA–NL [Civil Aviation Authority-Netherlands] issued AD NL–2006–001 (EASA approval 2006–0002) to require the inspection and modification of the attachment of the operating rod bracket as detailed in Fokker Service Bulletin (SB) SBF100–52–080.

After that [EASA] AD was issued, several operators reported broken recessed heads of titanium attachment bolts of the operating rod bracket on modified (i.e. post-SBF100–52–080) CFRP MLG outboard doors. In such a situation, the remaining bolt shafts can get pulled through the external repair patch and the carbon fibre door outer skin, causing the operating rod, with the detached bracket, to get stuck between the MLG main fitting and wing lower skin. The primary factor to the

cause of breaking bolt heads has been determined to be incorrect adjustment of the MLG outboard door.

This condition, if not detected and corrected, would prevent the affected MLG from moving to the down and locked position, possibly resulting in MLG collapse during landing or roll-out and consequent damage to the aeroplane and/or injury to the occupants.

To address this potential unsafe condition, Fokker Services has published SBF100–52–090, providing modification instructions to install an improved attachment of the MLG outboard door operating rod.

For the reasons described above, this new [EASA] AD requires a one-time detailed inspection for play or cracks in the recessed bolt heads and, depending on findings, applicable corrective actions, modification of the operating rod bracket attachment to the CFRP MLG outboard door, and introduction of a weaker (aluminium) bolt in the attachment of the MLG outboard door operating rod.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0007.

Relevant Service Information

Fokker Services B.V. has issued the following service information:

- Fokker Component Service Bulletin D13312–52–09, December 12, 2005;
- Fokker Component Service Bulletin D13312–52–015, dated November 17, 2011; and
- Fokker Service Bulletin SBF100–52–090, dated November 17, 2011, including Fokker Manual Change Notification F100–147, dated October 28, 2011, and Fokker Service Bulletin Change Notification SBF100–52–090101, dated January 24, 2012.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

Paragraph (2) of the MCAI specifies to ''accomplish one of the actions specified in paragraph B of part 1 of the accomplishment instructions of Fokker Services SBF100–52–090'' before further flight. However, this proposed AD requires (before further flight) replacing the operating rod bracket attachment with a new bolt, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–090, dated November 17, 2011, including Fokker Manual Change Notification F100–147, dated October 28, 2011, including Fokker Service Bulletin Change Notification SBF100–52–090101, dated January 24, 2012. This difference has been coordinated with EASA.

Costs of Compliance

We estimate that this proposed AD affects 4 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	12 work-hours × $85 per hour = $1,020	$10,000	$11,020	$44,080

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 proposed regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2014–0007; Directorate Identifier 2012–NM–038–AD.

(a) Comments Due Date

We must receive comments by March 20, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes,

certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by reports that the bracket of the rod in the carbon fiber reinforced plastic (CFRP) main landing gear (MLG) outboard door had detached. In addition, we received reports of broken recessed heads on titanium attachment bolts of the operating rod brackets on the modified CFRP MLG outboard doors. We are issuing this AD to detect and correct the affected MLG from moving to the down and locked position, which could result in MLG collapse during landing or roll-out, and consequent damage to the airplane and injury to passengers.

(f) Compliance

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

(g) Inspection

Within 9 months after the effective date of this AD, do a detailed inspection of the CFRP MLG outboard door for play and cracks in the recessed countersunk heads of the operating rod bracket attachment bolts, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–090, dated November 17, 2011, including Fokker Manual Change Notification F100–147, dated October 28, 2011, and Fokker Service Bulletin Change Notification SBF100–52–090101, dated January 24, 2012.

(h) Corrective Action

If, during the inspection required by paragraph (g) of this AD, any play or crack is found in any countersunk bolt head, and the configuration deviation list (CDL) item 52–07 cannot be applied: Before further flight, replace the bolt with a new bolt, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–090, dated November 17, 2011, including Fokker Manual Change Notification F100–147, dated October 28, 2011, and Fokker Service Bulletin Change Notification SBF100–52–090101, dated January 24, 2012.

(i) Modification Prior to CFRP Door Installation

At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD: Modify the CFRP MLG outboard doors and attachment to the MLG, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–090, dated November 17, 2011, including Fokker Manual Change Notification F100–147, dated October 28, 2011, and Fokker Service Bulletin Change Notification SBF100–52–090101, dated January 24, 2012. Accomplishing the modification in this paragraph terminates the inspection required by paragraph (g) of this AD.

(1) For airplanes on which a CFRP MLG outboard door is installed as of the effective date of this AD: Do the modification within 24 months after the effective date of this AD.

(2) For airplanes on which an aluminum door is installed as of the effective date of this AD: Do the modification prior to the installation of the CFRP MLG outboard door.

Note 1 to paragraph (i) of this AD: The aluminum MLG outboard doors and the CFRP MLG outboard doors are two-way interchangeable.

(j) Parts Installation Prohibition

As of the effective date of this AD, do not install on any airplane a MLG outboard door having part number (P/N) D13310–401 through –418 or any MLG outboard door assembly having P/N D13312–401 through –410.

Note 2 to paragraph (j) of this AD: Civil Aviation Authority-Netherlands (CAA–NL) AD NL–2006–001 (European Aviation Safety Agency (EASA) approval 2006–002) contains the information on how to modify all spare MLG outboard door assemblies having P/N D13312–401 through –410, to P/N D13312–7XX standard, as specified in the Accomplishment Instructions of Fokker Component Service Bulletin D13312–52–09, December 12, 2005.

(k) Parts Installation Limitation

As of the effective date of this AD, do not install on any airplane a P/N D13310–701 through–708 MLG outboard door or a P/N D13312–702 through–711 MLG outboard door assembly, unless the part has been inspected for cracks in the recessed bolt heads, all applicable corrective actions have been done, and the CFRP MLG outboard door has been modified, in accordance with the Accomplishment Instructions of Fokker Component Service Bulletin D13312–52–015, dated November 17, 2011.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information EASA Airworthiness Directive 2012–0023, dated February 6, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0007.

(2) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* You may view this 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.

Issued in Renton, Washington, on January 22, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–02161 Filed 1–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16, 225, 500, 507, and 579

[Docket No. FDA–2011–N–0922]

RIN 0910–AG10

Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Food for Animals; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the notice of proposed rulemaking that appeared in the **Federal Register** of October 29, 2013 (78 FR 64736), entitled ''Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Food for Animals '' and its information collection

provisions. We are taking this action in response to requests for an extension to allow interested persons more time to comment given that in addition to the proposed preventive control requirements, the proposed current good manufacturing practice (CGMP) requirements are also new to the animal food industry, unlike the human food industry.

We also are taking this action to keep the comment period for the information collection provisions associated with the rule consistent with the comment period for the proposed rule.

DATES: FDA is extending the comment period on the proposed rule and its information collection provisions. Submit either electronic or written comments on the proposed rule and the information collection by March 31, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0922 and/or Regulatory Information Number (RIN) 0910–AG10, by any of the following methods, except that comments on information collection issues under the PRA must be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section of this document).

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

Mail/Hand delivery/Courier (for paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name, Docket No. FDA–2011–N–0922, and RIN 0910–AG10 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Request for Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*, and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: *With regard to the proposed rule:* Kim Young, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–2207.

With regard to the information collection: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, *Domini.Bean@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 29, 2013, we published a proposed rule entitled ''Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Food for Animals'' with a 120-day comment period on the provisions of the proposed rule and on the information collection provisions that are subject to review by OMB under the PRA (44 U.S.C. 3501–3520).

FDA has received requests for an extension of the comment period on the proposed rule. The requests conveyed concern that the current 120-day comment period does not allow time to develop a meaningful response to the proposed rule because, unlike the human food industry, in addition to the proposed preventive controls, the proposed CGMPs are new to the animal food industry. The requests also stated an extended comment period would allow interested persons an opportunity to consider the interrelationship between this proposed rule and the proposed rules entitled ''Foreign Supplier Verification Programs for Importers of Food for Humans and Animals'' (78 FR 45729, July 29, 2013) and ''Accreditation of Third-Party Auditors/Certification Bodies to Conduct Food Safety Audits and to Issue Certifications'' (78 FR 45782, July 29, 2013). FDA has considered the requests and is granting an extension of the comment period to March 31, 2014, for the ''Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Food for Animals'' proposed rule to allow interested persons additional time to submit comments. We also are extending the comment period for the information collection provisions to March 31, 2014, to make the comment period for the information collection provisions the same as the comment period for the provisions of the proposed rule. To clarify, FDA is requesting comment on all issues raised by the proposed rule.

II. Paperwork Reduction Act of 1995

Interested persons may either submit electronic comments regarding the information collection to *oira_submission@omb.eop.gov* or fax written comments to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285. All comments should be identified with the title ''Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Food for Animals.''

III. Request for Comments

Interested persons may submit either electronic comments regarding the proposed rule 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*.

Dated: January 28, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–02111 Filed 1–31–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 17

[Docket No. FDA–2014–N–0113]

Maximum Civil Money Penalty Amounts; Civil Money Penalty Complaints

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing this companion proposed rule to the direct final rule, issuing a new regulation to adjust for inflation the maximum civil money penalty (CMP) amounts for the various CMP authorities within our jurisdiction and to amend the process for initiating certain CMP administrative actions. We are taking these actions to comply with the Federal Civil Penalties Inflation Adjustment Act of 1990

(FCPIAA), as amended, and to streamline our internal processes. The last CMP adjustment was published in the **Federal Register** of November 12, 2008, and the FCPIAA requires Federal Agencies to adjust their CMPs at least once every 4 years. We are using direct final rulemaking for these actions because the Agency expects that there will be no significant adverse comment on the rule.

DATES: Submit either electronic or written comments on the proposed rule by April 21, 2014. If FDA receives any significant adverse comments, the Agency will publish a document in the **Federal Register** withdrawing the direct final rule within 30 days after the comment period ends. FDA will then proceed to respond to comments under this proposed rule using the usual notice and comment procedures.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2014–N–0113, by any of the following methods.

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *Mail/Hand delivery/Courier (for paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2014–N–0113 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jarilyn Dupont, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903, 301–796–4830.

SUPPLEMENTARY INFORMATION: The last CMP adjustment was published in the **Federal Register** of November 12, 2008 (73 FR 66750).

I. Background

A. CMP Amounts

FDA is amending § 17.2 (21 CFR 17.2) to update the maximum CMP amounts. In general, FCPIAA requires Federal Agencies to issue regulations to adjust for inflation each CMP provided by law within their jurisdiction. (28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701)). FCPIAA directs Agencies to adjust the CMP provided by law by October 23, 1996, and to make additional adjustments at least once every 4 years thereafter. The adjustments are based on changes in the cost of living, and the FCPIAA defines the cost of living adjustment as the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law (28 U.S.C. 2461 note, section 5(b)).

FCPIAA also prescribes a rounding method based on the size of the penalty after the calculated increase, but states that the adjustment of a CMP may not exceed 10 percent of the penalty. FCPIAA defines a CMP as any penalty, fine, or other sanction that is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law, and is assessed or enforced by an agency pursuant to Federal law, and is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal Courts (28 U.S.C. 2461 note, section 3(2)).

B. CMP Complaints

Currently, under § 17.5(a) (21 CFR 17.5(a)), CMP complaints against retailers of tobacco products may only be signed by attorneys in FDA's Office of the Chief Counsel (OCC). Given the routine nature of many of these CMPs, FDA is amending this regulation to permit the Chief Counsel to designate other FDA staff, such as those in FDA's Center for Tobacco Products, to sign a tobacco retailer CMP complaint.

Based on FDA's experience, the large majority of the tobacco retailer complaints to date have involved alleged violations of the requirement to not sell cigarettes and smokeless tobacco to any person younger than 18 years of age or to verify age in accordance with 21 CFR 1140.14(b). These complaints have almost always been straightforward, they involve simple fact patterns, and they do not require a complex legal analysis. Over time, such CMP complaints have increased in volume, and we anticipate that the volume will continue to be relatively high.

We have determined that, with certain limitations and controls, non-attorney staff outside OCC can carry out the function of reviewing the evidence and signing the tobacco retailer CMP complaints in appropriate circumstances. The proposed amendment to § 17.5(a) would give this decisionmaking authority to the Chief Counsel, who could ensure the authority to sign complaints is only given to appropriate staff and under appropriate circumstances. Under the proposal, the Chief Counsel would have the authority to set and revise limitations and controls, and to broaden, limit, or rescind any authorizations to sign tobacco retailer CMP complaints.

The limitations could include, for example, limiting the delegation to situations where the CMP amount is below a certain dollar value; the CMP involves specified tobacco retailer charges that OCC has determined are routine and predictable and do not require a complex legal analysis; and involve charges for which FDA has developed OCC-approved templates, parameters, and procedures. The controls could include, for example, an audit or other quality review.

This proposed rule incorporates requirements specifically set forth in the FCPIAA requiring FDA to issue a regulation implementing inflation adjustments for all its CMP provisions. These technical changes, required by law, do not substantively alter the existing regulatory framework, nor do they in any way affect the terms under which CMPs are assessed by FDA. The formula for the amount of the penalty adjustment is prescribed by Congress in the FCPIAA, and these changes are not subject to the exercise of discretion by FDA. The amendment to § 17.5(a) changes an internal process.

This proposed rule is a companion to the direct final rule published elsewhere in this issue of the **Federal Register**. This companion proposed rule and the direct final rule are identical in substance. This companion proposed rule will provide the procedural framework to proceed with standard notice-and-comment rulemaking in the event the direct final rule receives significant adverse comment and is

withdrawn. The comment period for the companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule and vice versa.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment unless the comment states why this rule would be ineffective without the additional change.

If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to the companion proposed rule. Instead, we will publish a confirmation notice in the **Federal Register** within 30 days after the comment period ends. We intend the direct final rule to become effective 30 days after publication of the confirmation notice.

If we receive significant adverse comments, we will withdraw the direct final rule. We will proceed to respond to all the comments received regarding the direct final rule, treating those comments as comments to this proposed rule. The Agency will address the comments in the subsequent final rule. We will not provide additional opportunity for comment. If we receive a significant adverse comment that applies to part of the rule and that part may be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of significant adverse comment.

For additional background information, see the corresponding direct final rule published elsewhere in this issue of the **Federal Register**.

This proposed rule:

- Revises the table in § 17.2 to adjust the maximum CMP amounts for inflation as prescribed by FCPIAA.
- Revises § 17.5(a) to provide authority for the Chief Counsel to delegate the responsibility for initiating a CMP administrative action against a tobacco retailer.

II. Environmental Impact

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Paperwork Reduction Act

This proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IV. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule simply adjusts the maximum amount of CMPs administered by FDA, the adjustment is required by the FCPIAA, and the proposed rule makes a change to FDA's internal processes, the Agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $141 million, using the most current (2012) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule, when finalized, to result in any 1-year expenditure that would meet or exceed this amount.

VI. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

List of Subjects in 21 CFR Part 17

Administrative practice and procedure, Penalties.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, FDA proposes that 21 CFR part 17 be amended as follows:

PART 17—CIVIL MONEY PENALTIES HEARINGS

■ 1. The authority citation for 21 CFR part 17 continues to read as follows:

Authority: 21 U.S.C. 331, 333, 337, 351, 352, 355, 360, 360c, 360f, 360i, 360j, 371; 42 U.S.C. 262, 263b, 300aa–28; 5 U.S.C. 554, 555, 556, 557.

■ 2. Section 17.2 is revised to read as follows:

§ 17.2 Maximum penalty amounts.

The following table shows maximum civil monetary penalties associated with the statutory provisions authorizing civil monetary penalties under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act.

CIVIL MONETARY PENALTIES AUTHORITIES ADMINISTERED BY FDA AND ADJUSTED MAXIMUM PENALTY AMOUNTS

U.S.C. section	Former maximum penalty amount (in dollars)	Assessment method	Date of last penalty figure or adjustment	Adjusted maximum penalty amount (in dollars)
		21 U.S.C.		
333(b)(2)(A)	60,000	For each of the first two violations in any 10-year period ...	2013	65,000
333(b)(2)(B)	1,200,000	For each violation after the second conviction in any 10-year period.	2013	1,275,000
333(b)(3)	120,000	Per violation	2013	130,000
333(f)(1)(A)	16,500	Per violation	2008	16,500
333(f)(1)(A)	1,200,000	For the aggregate of violations	2013	1,275,000
333(f)(2)(A)	55,000	Per individual	2013	60,000
333(f)(2)(A)	300,000	Per ''any other person''	2013	325,000
333(f)(2)(A)	600,000	For all violations adjudicated in a single proceeding	2013	650,000
333(f)(3)(A)	10,000	For all violations adjudicated in a single proceeding	2013	11,000
333(f)(3)(B)	10,000	For each day the violation is not corrected after a 30-day period following notification until the violation is corrected.	2013	11,000
333(f)(4)(A)(i)	250,000	Per violation	2013	275,000
333(f)(4)(A)(i)	1,000,000	For all violations adjudicated in a single proceeding	2013	1,075,000
333(f)(4)(A)(ii)	250,000	For the first 30-day period (or any portion thereof) of continued violation following notification.	2013	275,000
333(f)(4)(A)(ii)	1,000,000	For any 30-day period, where the amount doubles for every 30-day period of continued violation after the first 30-day violation.	2013	1,075,000
333(f)(4)(A)(ii)	10,000,000	For all violations adjudicated in a single proceeding	2013	10,850,000
333(f)(9)(A)	15,000	Per violation	2009	15,000
333(f)(9)(A)	1,000,000	For all violations adjudicated in a single proceeding	2013	1,050,000
333(f)(9)(B)(i)(I)	250,000	Per violation	2013	275,000
333(f)(9)(B)(i)(I)	1,000,000	For all violations adjudicated in a single proceeding	2013	1,050,000
333(f)(9)(B)(i)(II)	250,000	For the first 30-day period (or any portion thereof) of continued violation following notification.	2013	275,000
333(f)(9)(B)(i)(II)	1,000,000	For any 30-day period, where the amount doubles for every 30-day period of continued violation after the first 30-day violation.	2013	1,050,000
333(f)(9)(B)(i)(II)	10,000,000	For all violations adjudicated in a single proceeding	2013	10,525,000
333(f)(9)(B)(ii)(I)	250,000	Per violation	2013	275,000
333(f)(9)(B)(ii)(I)	1,000,000	For all violations adjudicated in a single proceeding	2013	1,050,000
333(f)(9)(B)(ii)(II)	250,000	For the first 30-day period (or any portion thereof) of continued violation following notification.	2013	275,000
333(f)(9)(B)(ii)(II)	1,000,000	For any 30-day period, where the amount doubles for every 30-day period of continued violation after the first 30-day violation.	2013	1,050,000
333(f)(9)(B)(ii)(II)	10,000,000	For all violations adjudicated in a single proceeding	2013	10,525,000
333(g)(1)	250,000	For the first violation in any 3-year period	2013	275,000
333(g)(1)	500,000	For each subsequent violation in any 3-year period	2013	550,000
333 note	250	For the second violation (following a first violation with a warning) within a 12-month period by a retailer with an approved training program.	2009	250
333 note	500	For the third violation within a 24-month period by a retailer with an approved training program.	2009	500
333 note	2,000	For the fourth violation within a 24-month period by a retailer with an approved training program.	2009	2,000
333 note	5,000	For the fifth violation within a 36-month period by a retailer with an approved training program.	2009	5,000
333 note	10,000	For the sixth or subsequent violation within a 48-month period by a retailer with an approved training program.	2013	11,000
333 note	250	For the first violation by a retailer without an approved training program.	2009	250
333 note	500	For the second violation within a 12-month period by a retailer without an approved training program.	2009	500
333 note	1,000	For the third violation within a 24-month period by a retailer without an approved training program.	2013	1,100
333 note	2,000	For the fourth violation within a 24-month period by a retailer without an approved training program.	2009	2,000
333 note	5,000	For the fifth violation within a 36-month period by a retailer without an approved training program.	2009	5,000
333 note	10,000	For the sixth or subsequent violation within a 48-month period by a retailer without an approved training program.	2013	11,000
335b(a)	300,000	Per violation for an individual	2013	325,000
335b(a)	1,200,000	Per violation for ''any other person''	2013	1,275,000
360pp(b)(1)	1,100	Per violation per person	2008	1,100

CIVIL MONETARY PENALTIES AUTHORITIES ADMINISTERED BY FDA AND ADJUSTED MAXIMUM PENALTY AMOUNTS—Continued

U.S.C. section	Former maximum penalty amount (in dollars)	Assessment method	Date of last penalty figure or adjustment	Adjusted maximum penalty amount (in dollars)
360pp(b)(1)	355,000	For any related series of violations	2013	375,000
42 U.S.C.				
263b(h)(3)	11,000	Per violation	2008	11,000
300aa–28(b)(1)	120,000	Per occurrence	2013	130,000

[1] Not adjusted.

■ 3. In § 17.5, revise paragraph (a) to read as follows:

§ 17.5 Complaint.

(a) The Center with principal jurisdiction over the matter involved shall begin all administrative civil money penalty actions by serving on the respondent(s) a complaint signed by the Office of the Chief Counsel attorney for the Center and by filing a copy of the complaint with the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. For a civil money penalty action against retailers of tobacco products, the complaint may be signed by any Agency employee designated by the Chief Counsel.

* * * * *

Dated: January 28, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–02149 Filed 1–31–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 507

[Docket No. FDA–2013–N–1043]

Draft Qualitative Risk Assessment of Risk of Activity/Animal Food Combinations for Activities (Outside the Farm Definition) Conducted in a Facility Co-Located on a Farm; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for a document we made available for public comment in the **Federal Register** of October 29, 2013 (78 FR 64428) (the draft RA). We are taking this action to make the comment period for the draft RA conform to the comment period for proposed rule entitled ''Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Food for Animals'' (the proposed preventive controls rule for food for animals).

DATES: FDA is extending the comment period on the draft RA. Submit either electronic or written comments by March 31, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2013–N–1043 by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

Mail/Hand delivery/Courier (for paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2013–N–1043. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Request for Comments'' heading of the **SUPPLEMENTARY INFORMATION**.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*, and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kim Young, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–2207.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 29, 2013, we published a notification with a 120-day comment period announcing the availability of, and requesting comment on, a document entitled ''Draft Qualitative Risk Assessment of Risk of Activity/Animal Food Combinations for Activities (Outside the Farm Definition) Conducted in a Facility Co-Located on a Farm'' (the draft RA). The purpose of the draft RA is to provide a science-based risk analysis of those activity/animal food combinations that would be considered low risk.

We conducted this draft RA to satisfy requirements of the FDA Food Safety Modernization Act (FSMA) to conduct a science-based risk analysis and to consider the results of that analysis in rulemaking that is required by FSMA.

In the **Federal Register** of October 29, 2013, we announced that we had used the results of the draft RA to propose to exempt certain animal food facilities (i.e., those that are small or very small businesses that are engaged only in specific types of on-farm manufacturing, processing, packing, or holding activities identified in the draft RA as low-risk activity/animal food combinations) from the proposed requirements of the Federal Food, Drug, and Cosmetic Act for hazard analysis and risk-based preventive controls (the proposed preventive controls rule). Interested persons were originally given until February 26, 2014, to comment on the proposed preventive controls rule.

FDA has received requests for an extension of the comment period on the proposed preventive controls rule for

food for animals to allow interested persons an opportunity to consider the interrelationship between this proposed rule and the proposed rules entitled ''Foreign Supplier Verification Programs for Importers of Food for Humans and Animals'' (78 FR 45729, July 29, 2013) and ''Accreditation of Third-Party Auditors/Certification Bodies to Conduct Food Safety Audits and to Issue Certifications'' (78 FR 45782, July 29, 2013). We have considered the requests, and elsewhere in this issue of the **Federal Register**, we are granting an extension of the comment period to March 31, 2014, for the proposed preventive controls rule. We are extending the comment period for the draft RA to March 31, 2014, to continue to make the comment period for the draft RA conform to the comment period for the proposed preventive controls rule.

II. Request for Comments

Interested persons may submit either electronic comments regarding the proposed rule 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*.

Dated: January 28, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–02112 Filed 1–31–14; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF DEFENSE

40 CFR Part 1700

[EPA–HQ–OW–2013–0469; FRL–9903–49–OW]

RIN 2040–AD39

Uniform National Discharge Standards for Vessels of the Armed Forces—Phase II

AGENCY: Environmental Protection Agency and Department of Defense.

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) and the U.S. Department of Defense (DoD) are proposing performance standards for certain discharges incidental to the normal operation of a vessel of the Armed Forces into the navigable waters of the United States, the territorial seas, and the contiguous zone. The proposed standards would reduce the adverse environmental impacts associated with the discharges, stimulate the development of improved pollution control devices, and advance the development of environmentally sound ships by the Armed Forces. The proposed standards are designed to be consistent with the effluent limitations included in the recently issued National Pollutant Discharge Elimination System (NPDES) general permit for discharges incidental to the normal operation of a non-military vessel.

DATES: Comments must be received on or before April 4, 2014.

ADDRESSES: Submit your comments, identified by Docket No. EPA–HQ–OW–2013–0469, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow on-line instructions for submitting comments.

Mail: Send an original and one copy of your comments and enclosures (including references) to EPA Water Docket, U.S. Environmental Protection Agency, Mail Code: 2822–IT, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention Docket No. EPA–HQ–OW–2013–0469.

Hand Delivery: EPA Water Docket, EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004, Docket No. EPA–HQ–OW–2013–0469. Deliveries to the docket are accepted only during their normal hours of operation: 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, call (202) 566–2426, to schedule an appointment.

Email: ow-docket@epa.gov; Attention Docket No. EPA–HQ–OW–2013–0469. To ensure that EPA can properly respond to comments, commenters should cite the paragraph(s) or section(s) in the proposed rule to which each comment refers. Commenters should use a separate paragraph for each issue discussed, and must submit any references cited in their comments. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. Electronic files should avoid any form of encryption and should be free of any defects or viruses.

Instructions: Direct your comments to docket ID number EPA–HQ–OW–2013–0469. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*. The Federal *http://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 *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment 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 any form of encryption and should be free of any defects or viruses. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: The electronic version of the public docket is available through the Federal Docket Management System (FDMS) found at *http://www.regulations.gov*. You may use the FDMS to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once at the Web site, enter the appropriate Docket ID No. in the ''Search'' box to view the docket. Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in hard copy in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available

docket materials through the EPA Water Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue (EPA West Building), NW., Washington, DC 20004. The Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Katherine B. Weiler, Marine Pollution Control Branch (4504T), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460; (202) 566–1280; *weiler.katherine@epa.gov,* or Mike Pletke, Chief of Naval Operations (N45), 2000 Navy Pentagon (Rm 2D253), Washington, DC 20350–2000; (703) 695–5184; *mike.pletke@navy.mil.*

SUPPLEMENTARY INFORMATION: This supplementary information is organized as follows:

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VI. Appendix A.

I. General Information

A. Legal Authority for the Proposed Rule

EPA and DoD propose this rule under the authority of Clean Water Act (CWA) § 312, 33 U.S.C. 1322. Section 325 of the National Defense Authorization Act of 1996 (''NDAA''), entitled ''Discharges from Vessels of the Armed Forces'' (Pub. L. 104–106, 110 Stat. 254), amended CWA § 312 to require the Administrator of the U.S. Environmental Protection Agency (Administrator) and the Secretary of Defense of the U.S. Department of Defense (Secretary) to develop uniform national standards to control certain discharges incidental to the normal operation of a vessel of the Armed Forces. The term Uniform National Discharge Standards or ''UNDS'' is used in this preamble to refer to the provisions in CWA §§ 312(a)(12)–(14) & (n) (33 U.S.C. 1322(a)(12)–(14) & (n)).

B. Purpose of the Proposed Rule

UNDS are intended to enhance the operational flexibility of vessels of the Armed Forces domestically and internationally, stimulate the development of innovative vessel pollution control technology, and advance the development by the U.S. Navy of environmentally sound ships. Section 312(n)(3)(A) of the CWA requires EPA and DoD to promulgate uniform national discharge standards for certain discharges incidental to the normal operation of a vessel of the Armed Forces (CWA § 312(a)(12)), unless the Secretary finds that compliance with UNDS would not be in the national security interests of the United States (CWA § 312(n)(1)).

The proposed rule would amend Title 40 Code of Federal Regulations (CFR) part 1700 to establish performance standards for 11 of the discharges incidental to the normal operation of a vessel of the Armed Forces from among the 25 discharges for which EPA and DoD previously determined (64 FR 25126) that it is reasonable and practicable to require a marine pollution control device (MPCD). The 11 discharges addressed by the proposal are the following: Aqueous film-forming foam; chain locker effluent; distillation and reverse osmosis brine; elevator pit effluent; gas turbine water wash; non-oily machinery wastewater; photographic laboratory drains; seawater cooling overboard discharge; seawater piping biofouling prevention; small boat engine wet exhaust; and welldeck discharges.

The proposed performance standards would not become enforceable until after promulgation of a final rule, as well as promulgation of regulations by DoD under CWA § 312(n)(5)(C) to govern the design, construction, installation, and use of a MPCD.

UNDS do not apply to the following discharges from vessels of the Armed Forces: Overboard discharges of rubbish, trash, garbage, or other such materials; sewage; air emissions resulting from the operation of a vessel propulsion system, motor driven equipment, or incinerator; or discharges that require permitting under the NPDES program, including operational discharges and other discharges that are not incidental to the normal operation of a vessel of the Armed Forces.

C. What vessels are potentially affected by the proposed rule?

The proposed rule would apply to vessels of the Armed Forces. For the purposes of the rulemaking, the term ''vessel of the Armed Forces'' is defined at CWA § 312(a)(14). Vessel of the Armed Forces means any vessel owned or operated by the U.S. Department of Defense (i.e., U.S. Navy, Military Sealift Command, U.S. Marine Corps, U.S. Army, and U.S. Air Force), other than a time or voyage chartered vessel, as well as any U.S. Coast Guard vessel designated by the Secretary of the Department in which the U.S. Coast Guard is operating. The preceding list is not intended to be exhaustive, but rather provides a guide for the reader regarding the vessels of the Armed Forces to be regulated by the proposed rule. The proposed rule would not apply to commercial vessels; private vessels; vessels owned or operated by state, local, or tribal governments; vessels under the jurisdiction of the U.S. Army Corps of Engineers; certain vessels under the jurisdiction of the U.S.

Department of Transportation; vessels preserved as memorials and museums; vessels under construction; vessels in drydock; amphibious vehicles; and, as noted above, time or voyage chartered vessels. For answers to questions regarding the applicability of this action to a particular vessel, consult one of the contacts listed in the **FOR FURTHER INFORMATION CONTACT** section.

D. What is the geographic scope of the proposed rule?

The proposed rule would be applicable to discharges from a vessel of the Armed Forces operating in the navigable waters of the United States, territorial seas, and the contiguous zone (CWA § 1322(n)(8)(A)). Together, the preamble refers to these waters as ''waters subject to UNDS.'' Sections 502(7), 502(8), and 502(9) of the CWA define the term ''navigable waters,'' ''territorial seas,'' and ''contiguous zone'' respectively. The term ''navigable waters'' means waters of the United States, including the territorial seas. The United States includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands. The term ''territorial seas'' means the belt of seas that generally extends three miles seaward from the line of ordinary low water along the portion of the coast in direct contact with the open sea and the line marking the seaward limit of inland waters. The term ''contiguous zone'' means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone. Generally, the contiguous zone extends seaward for the next nine miles (i.e., from three to 12 miles from the U.S. coastline). The proposed rule would not be applicable seaward of the contiguous zone. The term ''waters subject to UNDS'' is also proposed for addition to 40 CFR 1700.3 (definitions).

E. Rulemaking Process

The UNDS rulemaking is a joint rulemaking between EPA and DoD and is under development in three phases. The first two phases reflect joint rulemaking between EPA and DoD; the third phase is a DoD-only rule. The first phase is complete (64 FR 25126). The proposed rule is part of Phase II.

Phase I

EPA and DoD promulgated the Phase I regulations on May 10, 1999 (64 FR 25126), and these existing regulations are codified at 40 CFR part 1700. During Phase I, EPA and DoD identified the discharges incidental to the normal operation of a vessel of the Armed Forces for which it is reasonable and practicable to require control with a MPCD to mitigate potential adverse impacts on the marine environment (CWA § 312(n)(2)), as well as those discharges for which it is not. Section 312(a)(13) of the CWA defines a MPCD as any equipment or management practice, for installation or use on a vessel of the Armed Forces, that is designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel, and determined to be the most effective equipment or management practice to reduce the environmental impacts of the discharge consistent with the considerations set forth for UNDS.

During Phase I, EPA and DoD, identified the following 25 discharges as requiring control with a MPCD: Aqueous Film-Forming Foam; Catapult Water Brake Tank and Post-Launch Retraction Exhaust; Chain Locker Effluent; Clean Ballast; Compensated Fuel Ballast; Controllable Pitch Propeller Hydraulic Fluid; Deck Runoff; Dirty Ballast; Distillation and Reverse Osmosis Brine; Elevator Pit Effluent; Firemain Systems; Gas Turbine Water Wash; Graywater; Hull Coating Leachate; Motor Gasoline Compensating Discharge; Non-Oily Machinery Wastewater; Photographic Laboratory Drains; Seawater Cooling Overboard Discharge; Seawater Piping Biofouling Prevention; Small Boat Engine Wet Exhaust; Sonar Dome Discharge; Submarine Bilgewater; Surface Vessel Bilgewater/Oil-Water Separator Discharge; Underwater Ship Husbandry; and Welldeck Discharges (40 CFR 1700.4).

During Phase I, EPA and DoD, identified the following 14 discharges as not requiring control with a MPCD: Boiler Blowdown; Catapult Wet Accumulator Discharge; Cathodic Protection; Freshwater Layup; Mine Countermeasures Equipment Lubrication; Portable Damage Control Drain Pump Discharge; Portable Damage Control Drain Pump Wet Exhaust; Refrigeration/Air Conditioning Condensate; Rudder Bearing Lubrication; Steam Condensate; Stern Tube Seals and Underwater Bearing Lubrication; Submarine Acoustic Countermeasures Launcher Discharge; Submarine Emergency Diesel Engine Wet Exhaust; and Submarine Outboard Equipment Grease and External Hydraulics.

As of the effective date of the Phase I rule (June 9, 1999), neither states nor political subdivisions of states may adopt or enforce any state or local statutes or regulations with respect to the 14 discharges that were identified as not requiring control, except to establish no-discharge zones (CWA §§ 312(n)(6)(A) & 312(n)(7)). However, section 312(n)(5)(D) of the CWA authorizes a Governor of any State to submit a petition to DoD and EPA requesting the re-evaluation of a prior determination that a MPCD is required for a particular discharge (40 CFR 1700.4) or a MPCD is not required for a particular discharge (40 CFR 1700.5) if there is significant new information, not considered previously, that could reasonably result in a change to the determination (CWA § 312(n)(5)(D) & 40 CFR 1700.11).

Phase II

Section 312(n)(3) of the CWA provides for Phase II and requires EPA and DoD to develop Federal performance standards for each of the 25 discharges identified in Phase I as requiring control. In doing so, EPA and DoD are required to consult with the Department in which the U.S. Coast Guard is operating, the Secretary of Commerce, interested states, the Secretary of State, and other interested Federal agencies. In promulgating Phase II performance standards, CWA § 312(n)(2)(B) directs EPA and DoD to consider seven factors: the nature of the discharge; the environmental effects of the discharge; the practicability of using the MPCD; the effect that installation or use of the MPCD would have on the operation or the operational capability of the vessel; applicable U.S. law; applicable international standards; and the economic costs of installation and use of the MPCD. Section 312(n)(3)(C) of the CWA further provides that EPA and DoD may establish discharge standards that (1) distinguish among classes, types, and sizes of vessels; (2) distinguish between new and existing vessels; and (3) provide for a waiver of applicability of standards as necessary or appropriate to a particular class, type, age, or size of vessel.

EPA and DoD have developed processes to establish Phase II standards in two separate batches. The first batch of performance standards is proposed in the rule and addresses 11 of the 25 discharges identified as requiring control (64 FR 25126). The second batch of performance standards—the remaining 14 discharges—will be proposed in a separate, subsequent notice.

In developing the Phase II performance standards, EPA and DoD referenced the NPDES general permit that EPA proposed in 2011 for

discharges incidental to the normal operation of a vessel as the ''baseline'' for each comparable discharge incidental to the normal operation of a vessel of the Armed Forces (76 FR 76716). The NPDES proposed Small Vessel General Permit and the final Vessel General Permit provide for CWA authorization of discharges incidental to the normal operation of non-military and non-recreational vessels extending to the outer reach of the 3-mile territorial sea as defined in CWA § 502(8). The proposed and final NPDES vessel general permits include effluent limits that are based on both the technology available to treat the pollutants (i.e., technology-based effluent limitations), and limits that would be protective of the designated uses of the receiving water (water quality-based effluent limits), including both non-numeric (e.g., management practices) and numeric limitations. Additional information on NPDES permitting can be found on-line at *http://cfpub.epa.gov/npdes/*. In the proposed rule preamble, EPA and DoD refer to these NPDES permits collectively as the ''VGP.''

Using the VGP as a baseline for developing the MPCD performance standard(s) for discharges incidental to the normal operation of a vessel of the Armed Forces allowed EPA and DoD to maximize the use of EPA's scientific and technical work developed to support the VGP and to adapt, as appropriate, the VGP technology-based effluent limitations and water quality-based effluent limitations for application to discharges incidental to the normal operation of a vessel of the Armed Forces. EPA and DoD also considered relevant water quality standards, including numeric and narrative criteria, designated uses, and anti-degradation policies in order to evaluate the potential environmental effects of the discharges consistent with CWA § 312(n)(2)(B)(ii).

Phase III

Phase III of UNDS requires DoD, in consultation with EPA and the Secretary of the Department in which the U.S. Coast Guard is operating, within one year of finalization of the Phase II standards, to promulgate regulations governing the design, construction, installation, and use of MPCDs necessary to meet the discharge performance standards. DoD will implement the Phase III regulations under the authority of the Secretary as a DoD publication. The Phase III regulations would be publicly released and made available on the following Web site *http://www.dtic.mil/whs/directives*. Similar to Phase II, Phase III will be promulgated in two batches. Phase III-Batch One will address the 11 discharges proposed in the proposed rule and Phase III-Batch Two will address the remaining 14 discharges.

Following the effective date of regulations under Phase III, it will be unlawful for a vessel of the Armed Forces to operate within waters subject to UNDS if the vessel is not equipped with the required MPCD meeting the final Phase II standards (CWA § 312 (n)(7)). It also will be unlawful for a vessel of the Armed Forces to discharge a regulated UNDS discharge into waters where a prohibition on the discharge has been established (i.e., to discharge into an UNDS no-discharge zone) (CWA § 312(n)(8)). Any person in violation of this requirement shall be liable to a civil penalty of not more than $5,000 for each violation (CWA § 312(j)). The Secretary of the Department in which the U.S. Coast Guard is operating is empowered to enforce these provisions and may utilize law enforcement officers, EPA personnel and facilities, other Federal agencies, or the states to carry out these provisions. States may also enforce these provisions (CWA §§ 312(k) & (n)(9)).

In addition, as of the effective date of Phase III regulations, neither states nor political subdivisions of states may adopt or enforce any state or local statute or regulation with respect to discharges identified as requiring control, except to establish no-discharge zones (CWA § 312(n)(7)). CWA § 312(n)(7) provides for the establishment of no-discharge zones either (A) by state prohibition after application and a determination by EPA, or (B) directly by EPA prohibition. The Phase I UNDS regulations established the criteria and procedures for establishing no-discharge zones (40 CFR 1700.9–1700.10).

If a state determines that the protection and enhancement of the quality of some or all of its waters require greater environmental protection, the state may prohibit one or more discharges incidental to the normal operation of a vessel of the Armed Forces, whether treated or not, into those waters (40 CFR 1700.9). A state prohibition does not apply until after the Administrator determines that (1) the protection and enhancement of the quality of the specified waters within the state require a prohibition of the discharge into the waters; (2) adequate facilities for the safe and sanitary removal of the discharge incidental to the normal operation of a vessel are reasonably available for the waters to which the prohibition would apply; and (3) the prohibition will not have the effect of discriminating against a vessel of the Armed Forces by reason of the ownership or operation by the Federal government, or the military function, of the vessel (40 CFR 1700.9(b)(2)).

Alternatively, a state may request that EPA prohibit, by regulation, the discharge of one or more discharges incidental to the normal operation of a vessel of the Armed Forces, whether treated or not, into specified waters within a state (40 CFR 1700.10). In this case, EPA would make a determination that the protection and enhancement of the quality of the specified waters requires a prohibition of the discharge. As with the application of a state prohibition described above, the Administrator would need to determine that (1) the protection and enhancement of the quality of the specified waters within the state require a prohibition of the discharge into the waters; (2) adequate facilities for the safe and sanitary removal of the discharge incidental to the normal operation of a vessel are reasonably available for the waters to which the prohibition would apply; and (3) the prohibition will not have the effect of discriminating against a vessel of the Armed Forces by reason of the ownership or operation by the Federal government, or the military function, of the vessel (40 CFR 1700.9(b)(2)). EPA may not, however, disapprove a state application for this latter type of prohibition for the sole reason that there are not adequate facilities for the safe and sanitary removal of such discharges (CWA §§ 312(n)(7)(B)(ii) and 40 CFR 1700.10(b)).

The statute also requires EPA and DoD to review the determinations and standards every five years, and if necessary, to revise them based on significant new information. Specifically, CWA §§ 312(n)(5)(A) and (B) contain provisions for reviewing and modifying both of the following determinations: (1) Whether control should be required for a particular discharge, and (2) the substantive standard of performance for a discharge for which control is required. A Governor also may petition the Administrator and the Secretary to review UNDS determinations and standards if there is significant new information, not considered previously, that could reasonably result in a change to the determination or standard (CWA § 312(n)(5)(D) & 40 CFR 1700.11).

F. Summary of Public Outreach and Consultation With Federal Agencies, States, Territories, and Tribes

During the development of the proposed Phase II rule, EPA and DoD consulted with other Federal agencies, states, and tribes regarding the enhancement of the operational flexibility of vessels of the Armed Forces domestically and internationally; development of innovative vessel pollution control technology; and advancement of the development by the U.S. Navy of environmentally sound ships. In addition, EPA and DoD reviewed comments on the VGP from Federal agencies, states, territories, and environmental organizations.

G. Supporting Documentation

The proposed rule is supported by ''Technical Development Document (TDD) Phase I Uniform National Discharge Standards (UNDS) for Vessels of the Armed Forces,'' the draft and final UNDS Phase I rules, various VGP documents, including, but not limited to the ''Proposed 2013 Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels (VGP),'' the ''Final 2013 Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels (VGP),'' the ''Vessel General Permit (VGP) Fact Sheet,'' the ''Proposed Small Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels Less Than 79 Feet (sVGP),'' the ''Small Vessel General Permit (sVGP) Fact Sheet,'' the ''Economics and Benefits Analysis of the Proposed and Final 2013 Vessel General Permit (VGP),'' ''Economics and Benefits Analysis of the Proposed 2013 Small Vessel General Permit (sVGP),'' ''Report to Congress: Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less than 79 Feet,'' and ''Environmentally Acceptable Lubricants.'' These documents are available from the EPA Water Docket, Docket No. EPA–HQ–OW–2013–0469 (Email: *ow-docket@epa.gov;* Phone Number: (202) 566–2426; Mail: Water Docket, *Mail Code:* 2822–IT, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or Online: *http://www.regulations.gov*). The VGP background documents also are available online: *http://www.epa.gov/npdes/vessels.*

H. What should I consider as I prepare my comments?

The public may submit comments in written or electronic form. Electronic comments must be identified by the docket number EPA–HQ–OW–2013–0469. These electronic submissions will be accepted in Microsoft Word or Adobe PDF. If your comment cannot be read due to technical difficulties and you cannot be contacted for clarification, EPA and DoD may not be able to consider your comment. Avoid the use of special characters and any form of encryption.

Tips for Preparing Comments. Please follow these guidelines as you prepare your comments so that EPA and DoD can better address them in a timely manner.

1. Identify the proposed rule by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

2. Explain why you agree or disagree with any proposed performance standards; suggest alternatives and substitute language for your requested changes.

3. Describe any assumptions and provide any technical information and/or data that you used.

4. Provide specific examples to illustrate your concerns and suggest alternatives.

5. Explain your views as clearly as possible.

Make sure to submit your comments by the comment period deadline. EPA and DoD are not obligated to accept or consider late comments.

II. UNDS Performance Standards Development

During the development of the proposed discharge performance standards, EPA and DoD analyzed the information from Phase I of UNDS and considered the VGP effluent limitations as well as the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD determined that the VGP effluent limitations, which include technology-based and water quality-based effluent limitations, provide a sound basis for developing performance standards for the 11 discharges covered in the proposed rule. EPA and DoD used the VGP effluent limitations language and adapted the language as necessary to incorporate the considerations of the UNDS Phase I information and the seven statutory factors. The subsections below outline EPA and DoD's approach to considering the seven statutory factors in the development of the proposed discharge standards.

EPA and DoD invite comment on the two agencies' approach to use the VGP as a baseline from which to develop the performance standards for the discharges identified in Phase I that require control.

A. Nature of the Discharge

During Phase I, EPA and DoD gathered information on the discharges incidental to the normal operation of a vessel of the Armed Forces and developed ''nature of discharge'' reports. The ''nature of discharge'' reports discuss how the discharge is generated, volumes and frequencies of the generated discharge, where the discharge occurs, and the constituents present in the discharge. In addition, EPA and DoD reviewed relevant discharge information in the supporting documentation of the VGP. The nature of the discharge reports can be found in Appendix A of the Technical Development Document—EPA 821–R–99–001,

B. Environmental Effects

Discharges incidental to the normal operation of a vessel of the Armed Forces have the potential to negatively impact the aquatic environment. The discharges contain a wide variety of constituents that have the potential to negatively impact aquatic species and habitats. These discharges can contain aquatic nuisance species (ANS), nutrients, thermal pollution, bacteria and/or pathogens (e.g., E. coli and fecal coliform), oil and grease, metals, most conventional pollutants (e.g., organic matter, bicarbonate, and total suspended solids), and other toxic and non-conventional pollutants with toxic effects. While it is unlikely that these discharges would cause an acute or chronic exceedance of water quality criteria across a large water body, these discharges have the potential to cause adverse environmental impacts on a more localized scale due to the ''end-of-pipe'' nature of the discharges. For each of the 11 discharges below, EPA and DoD discuss the constituents of concern released into the environment and potential water quality impacts. The proposed performance standards would reduce the discharge of constituents of concern and mitigate the environmental risks to the receiving waters.

C. Cost, Practicability, and Operational Impacts

The population of vessels of the Armed Forces affected by the proposed rule encompasses more than 6,000 vessels distributed among the U.S. Navy, Military Sealift Command (MSC), U.S. Coast Guard, U.S. Army, U.S. Marine Corps, and U.S. Air Force. These vessels range in design and size from small boats with lengths of less than 20 feet for coastal operations to aircraft carriers with lengths of over 1,000 feet for global operations. Approximately

82% of the vessels of the Armed Forces are less than 79 feet in length. Larger vessels (i.e., with length equal to or greater than 79 feet) comprise 18% of the vessels of the Armed Forces. EPA and DoD considered vessel class, type, and size when developing the proposed discharge standards as not all vessels have the same discharges. For more information on the various vessel classes, characteristics, and mission, see Appendix A.

EPA and DoD assessed the relative costs, practicability, and operational impacts of the proposed rule by comparing current operating conditions and practices of vessels of the Armed Forces with the anticipated operating conditions and practices that would be required to meet the proposed discharge performance standards.

EPA and DoD determined that the vessels of the Armed Forces are generally implementing the proposed operating conditions and practices for all 11 discharges; therefore, it is anticipated that any incremental increase in performance costs, practicability, and operational impacts will be marginal for these discharges.

D. Applicable U.S. and International Law

EPA and DoD reviewed U.S. laws and international standards that would be relevant to discharges incidental to the normal operation of a vessel of the Armed Forces. A number of U.S. environmental laws include specific provisions for Federal facilities and properties that may result in different environmental requirements for Federal and non-federal entities. Similarly, many international treaties do not apply to vessels of the Armed Forces because they are entitled to sovereign immunity under international law or apply different approaches to adoption of appropriate environmental control measures consistent with the objects and purposes of such treaties. EPA and DoD incorporated any relevant information in the development of the proposed discharge standards after reviewing the requirements of the following laws and treaties: International Convention for the Prevention of Pollution from Ships (also referred to as MARPOL); International Convention on the Control of Harmful Anti-Fouling Systems on Ships; International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004; Act to Prevent Pollution from Ships; CWA section 311, as amended by the Oil Pollution Control Act of 1990; Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); Hazardous Materials Transportation Act; Title X of the Coast Guard Authorization Act of 2010; National Marine Sanctuaries Act; Antiquities Act of 1906; Resource Conservation and Recovery Act; Toxic Substances Control Act; and the VGP. EPA and DoD invite comment on the application of the laws and international standards considered in the development of the proposed performance standards.

E. Definitions

EPA and DoD propose adding UNDS definitions to 40 CFR part 1700. Specifically, the proposal would define the terms: Bioaccumulative; biodegradable; environmentally acceptable lubricants; federally-protected waters; hazardous material; non-toxic; person in charge; toxic materials; and waters subject to UNDS. EPA and DoD are defining these terms to support the proposal of the performance standards described in the following section. These definitions intend to clarify, simplify, and/or improve understanding of the proposed performance standards. EPA and DoD invite comment on these definitions as applied to the specific proposed performance standards.

III. UNDS Discharge Analysis and Performance Standards

This section provides additional detail regarding the nature of the 11 discharges and the potential for adverse environmental effects associated with the discharges. The section also describes the proposed MPCD determined to be reasonable and practicable to mitigate the adverse impacts to the marine environment.

The proposed performance standards described in each section below would apply to discharges incidental to the normal operation of a vessel of the Armed Forces, operating within waters subject to UNDS, except as otherwise expressly excluded in the ''exceptions'' section of the proposed rule (40 CFR 1700.39). In addition, if two or more regulated discharge streams are combined into one, the resulting discharge stream must meet the requirements applicable to all discharge streams that are combined prior to discharge (40 CFR 1700.40). Furthermore, recordkeeping (40 CFR 1700.41) and non-compliance reporting (40 CFR 1700.42) apply generally to each proposed performance standard unless expressly provided in a particular performance standard.

A. Aqueous Film-Forming Foam

1. Nature of Discharge

Aqueous film-forming foam (AFFF) is the primary firefighting agent used to extinguish flammable liquid fires on surface ships of the Armed Forces. For the purposes of UNDS, AFFF is the firefighting foam and seawater mixture discharged during training, testing, or maintenance operations (i.e., non-emergency, but routine situations) (40 CFR 1700.4(a)). UNDS do not apply to the operational AFFF discharged to prevent loss of life, personal injury, vessel endangerment, or severe damage to the vessel (e.g., firefighting) (40 CFR 1700.39(a)).

AFFF or fluoroprotein foam concentrate is a foam concentrate mixed with seawater to form a diluted seawater foam solution (3–6% AFFF). Fluoroprotein foam is a protein-based material to which fluorinated surfactants have been added to improve fluidity and surface tension properties, while reducing the tendency of the protein base to absorb liquids. The diluted seawater solution is sprayed as foam on the fire and is applied with both fire hoses and fixed sprinkler devices. However, only the diluted seawater foam solution is discharged; the actual concentrate is never discharged. As such, AFFF contains constituents found both in the foam concentrate (e.g., perfluorooctane sulfonate (PFOS) or perfluorooctanoic acid (PFOA)) and in the firemain (e.g., copper and microorganisms). Some alternatives to AFFF exist that have lower concentrations of perfluorinated surfactants, or contain non-fluorinated surfactants, that are less persistent than AFFF or fluoroprotein foam.

AFFF discharges occur during training, planned maintenance, system testing and inspections, or flight deck certifications. During or after these activities occur, the seawater foam solution is discharged either directly overboard from hoses, washed overboard from accumulations on the flight deck, or drained to the bilge. These training, maintenance, and testing cases generally occur annually, at 18 month intervals, and/or at 3 year intervals depending on the vessel requirements.

Approximately 10% of the vessels of the Armed Forces (i.e., aircraft carriers, surface combatants, amphibious support ships, and most classes of patrol ships and auxiliary ships) discharge AFFF. Vessels less than 79 feet in length are not expected to have seawater foam firefighting systems. For more information regarding AFFF, please see the AFFF NOD in Appendix A of the

Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

AFFF could negatively impact receiving waters due to the constituents in the foam concentrate and the copper and microorganisms found in the firemain system.

The constituents of AFFF concentrate include water, 2-(2-butoxyethoxy)-ethanol, urea, alkyl sulfate salts, amphoteric fluoroalkylamide derivative, perfluoroalkyl sulfonate salts, triethanolamine, and methyl-1H-benzotriazole. In addition, because the seawater mixed with the AFFF concentrate comes from the vessel's firemain system, the discharge may also include bis(2-ethylhexyl) phthalate, nitrogen (measured as total Kjeldahl nitrogen), copper, nickel, iron, and microorganisms which can be found in the actual piping of the firemain system.

The concentration of many of the constituents in the AFFF, particularly bis(2-ethylhexyl) phthalate, copper, nickel, and iron could negatively impact the receiving waters and could potentially contribute to an exceedance of relevant recommended water quality criteria. The PFOS found in the AFFF is a persistent, bioaccumulative, toxic, and carcinogenic chemical compound that is suspected of causing adverse human health effects. The discharge of the microorganisms from the firemain system also could result in the introduction of ANS and negatively impact biodiversity, water quality, and the designated uses of water bodies. In addition, AFFF could potentially cause foam to float on the surface of the water, altering visibility and violating aesthetic water quality criteria.

Restricting the discharge of AFFF and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose to require that AFFF (i.e., AFFF used during training, testing, or maintenance operations) shall not be discharged (i.e., AFFF should be collected and stored for on shore disposal or discharged when the vessel is located seaward of waters subject to UNDS) because the constituents have the potential to contribute to an exceedance of water quality criteria and to cause adverse environmental and human health impacts.

B. Chain Locker Effluent

1. Nature of the Discharge

Chain locker effluent is the accumulated precipitation and seawater that is emptied from the compartment used to store the vessel's anchor chain (40 CFR 1700.4(c)). Anchor chains used by surface vessels are stored in the chain locker when not in use. The small amount of water that is washed into the chain locker eventually drains through the bottom grating and into the sump where it can come into contact with paint chips, rust, grease, and sacrificial zinc anodes. This collected water also has the potential to contain ANS.

Chain locker effluent is discharged when the chain locker sump is emptied directly overboard. The generation rate of this discharge depends on many factors, including the amount of precipitation and seawater that enters the chain locker, the size of the vessel, the number of chain lockers per vessel, and the frequency of anchor use. Approximately 500 vessels of the Armed Forces have at least one chain locker, and thus generate chain locker effluent. However, inspections of the chain lockers during Phase I revealed that the chain lockers are often dry and only a small amount of water actually accumulates in the chain locker. Submarine chain lockers are always submerged, open to the sea, and do not collect effluent. Vessels less than 79 feet in length are not expected to have chain lockers.

For more information regarding chain locker effluent, please see the chain locker effluent NOD in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Chain locker effluent could negatively impact receiving waters due to the possible presence of paint chips, rust, grease, sacrificial zinc anodes, and microorganisms. The discharge of the microorganisms could result in the introduction of ANS and negatively impact biodiversity, water quality, and the designated uses of water bodies. Restricting the discharge of chain locker effluent and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose to require that all anchor chains from surface vessels (submarines are not subject to this requirement) must be carefully and thoroughly washed down (i.e., more than a cursory rinse) as they are being hauled out of the water to remove sediment and organisms. EPA and DoD also propose to require that all chain lockers must be cleaned periodically to eliminate accumulated sediments and any potential accompanying pollutants. The dates of all chain locker inspections must be recorded in the ship's log or other vessel recordkeeping documentation.

In addition, EPA and DoD propose to require that for vessels that sail seaward of waters subject to UNDS at least once per month, chain lockers shall not be rinsed or pumped out within waters subject to UNDS to eliminate any potential impact to nearshore waters. If technically feasible, the chain locker shall be periodically cleaned, rinsed, and/or the accumulated water and sediment (i.e., chain locker effluent) shall be pumped out prior to entering waters subject to UNDS (preferably in mid-ocean). For vessels that do not sail seaward of waters subject to UNDS at least once per month, if a discharge of chain locker effluent occurs within waters subject to UNDS it shall occur at the greatest distance practicable from shore and, if technically feasible, shall not be discharged in federally-protected waters.

C. Distillation and Reverse Osmosis Brine

1. Nature of the Discharge

Distillation and reverse osmosis brine is the concentrated seawater (brine) produced as a by-product of the processes used to generate freshwater from seawater (40 CFR 1700.4(i)). Distillation and reverse osmosis brine derives from distilling and reverse osmosis equipment and machinery that generate freshwater from seawater for a variety of shipboard applications, including potable water for drinking, aircraft and vehicle washdowns, boiler feedwater on steam-powered vessels, and auxiliary boiler feedwater on most vessels.

The brine from distillation and reverse osmosis differs based on whether the brine originates from distilling equipment or reverse osmosis equipment. Distillation equipment boils seawater and the resulting steam is condensed into high-purity distilled water; the remaining seawater concentrate (i.e., brine) that is not evaporated is discharged overboard.

Reverse osmosis equipment separates freshwater from seawater by using semi-permeable membranes as a physical barrier to allow a portion of the seawater to pass through the membrane as freshwater; the retained substances become concentrated into brine that includes a large percentage of suspended and dissolved constituents and is subsequently discharged overboard. This seawater concentrate, or brine, primarily consists of seawater, but can also contain materials from these processes, such as nutrients and anti-scaling treatment chemicals as well as some metals, including copper and zinc.

Approximately 10% of U.S. Navy, MSC, U.S. Coast Guard, and U.S. Army surface vessels and submarines are equipped with water purification equipment and therefore generate this discharge. The majority of the 10% are operating distillation equipment. Vessels less than 79 feet in length are not expected to have water purification equipment.

For more information regarding distillation and reverse osmosis brine, please see the distillation and reverse osmosis brine NOD in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Distillation and reverse osmosis brine could negatively impact receiving waters due to the presence of dissolved and suspended solids, anti-scaling chemicals, and metals. The constituents found in the brine are generally present in the influent seawater used in the distillation or reverse osmosis processes and become concentrated in the brine before being discharged. Specifically, the concentration of copper and zinc found in the brine discharges could potentially contribute to an exceedance of relevant recommended water quality criteria. Restricting the discharge of distillation and reverse osmosis and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose to prohibit the discharge of the distillation and reverse osmosis brine overboard within waters subject to UNDS if it comes in contact with machinery or industrial equipment (other than distillation or reverse osmosis machinery), toxic or hazardous materials, or wastes.

D. Elevator Pit Effluent

1. Nature of the Discharge

Elevator pit effluent is the liquid that accumulates in, and is discharged from, the sumps of elevator wells on vessels (40 CFR 1700.4(j)). Most large surface vessels have at least one type of elevator. Shipboard elevators operate using cables, rails, or hydraulic pistons. Elevator shafts typically have a sump or reservoir in the pit that collects liquids that may enter the elevator and shaft area. If the elevator pit is located above the waterline, the sump is typically fitted with a drain that directs the waste overboard. This drain is normally higher than the sump floor to prevent clogging from solids that otherwise settle out and remain in the sump. If the elevator pit is located below the waterline, the pit is educted dry using the pressure of the firemain water supply to remove fluids from the sump.

Elevator pit effluent may contain grease, lubricants, solvents, soot, dirt, paint chips, or nutrients. Furthermore, when water enters the elevator pit, it sometimes contains materials that were on the deck, including aviation fuel, hydraulic fluid, lubricating oil, residual water, and AFFF. Residue in the elevator car from the transport of materials may also be washed into the elevator pit. The cleaning solvent used during maintenance cleaning operations as well as liquid wastes generated by the cleaning process then drain into the elevator pit sump. This mixture of materials and liquid collects in the sump at the bottom of the elevator pit. If the firemain system is used to educt fluids from the pit, the effluent may also contain nitrogen, bis(2-ethylhexyl) phthalate, copper, iron, and nickel.

The generation rate of this discharge depends on the periodicity of cleaning and lubrication of the mechanical components (e.g., guide rollers and bearings) on the elevator car and in the elevator shaft and pit, the frequency and volume of water from the deck that enters the elevator pit, and the frequency of elevator use (frequent use allows for more deck runoff entry). These factors vary greatly among vessel classes and between elevators aboard any given vessel. Vessel inspections conducted during UNDS Phase I, however, revealed that elevator pits were often dry.

Approximately 5% of surface vessels, all of them belonging to the U.S. Navy and MSC, generate elevator pit effluent. The U.S. Coast Guard, U.S. Army, U.S Air Force, and U.S. Marine Corps vessels do not produce elevator pit effluent because their vessels do not have elevators.

For more information regarding elevator pit effluent, please see the elevator pit effluent NOD in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Elevator pit effluent could negatively impact receiving waters due to the possible presence of lubricants, cleaning solvents, soot, paint chips, and constituents of concern (total nitrogen, bis(2-ethylhexyl) phthalate, silver, chromium, copper, iron, nickel, lead, zinc, and phenols). These constituents may be present in concentrations that could potentially contribute to an exceedance of relevant recommended water quality criteria. Restricting the discharge of elevator pit effluent and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose to prohibit the direct discharge of elevator pit effluent overboard within waters subject to UNDS to minimize the potential impact to nearshore waters. Elevator pit effluent could be discharged within waters subject to UNDS but only if it is commingled with another discharge for the purposes of treatment prior to discharge; under no circumstances may oils, including oily mixtures, be discharged from that combined discharge in quantities that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, or contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., International Organization for Standardization (ISO) Method 9377) or U.S. Coast Guard, or are otherwise harmful to the public health or welfare of the United States.

E. Gas Turbine Water Wash

1. Nature of the Discharge

Gas turbine water wash is the water released from washing gas turbine

components (40 CFR 1700.4(l)). Gas turbines are used for propulsion and electricity generation and are cleaned occasionally to remove byproducts that accumulate and affect their operation. Expected constituents of gas turbine water wash include synthetic lubricating oil, grease, solvent-based cleaning products that contain naphthalene, hydrocarbon combustion by-products, salts from the marine environment, and metals leached from metallic turbine surfaces. Gas turbine water wash effluent and any drainage of residual material from leaks and spills usually are either collected and held in a dedicated tank system for shore disposal or discharged to the environment as a commingled component of another UNDS discharge.

The discharge rates and concentrations of gas turbine water wash vary according to the frequency of washdowns. Some U.S. Navy vessels conduct gas turbine washdowns as frequently as every 48 hours with over 100 gallons of water wash generated per washdown.

Fewer than 5% of the surface vessels (i.e., surface combatants and auxiliary support ships) of the Armed Forces have shipboard gas turbine systems and therefore generate gas turbine water wash. Vessels less than 79 feet in length are not expected to have gas turbines.

For more information regarding gas turbine water wash, please see the gas turbine water wash NOD in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Gas turbine water wash could negatively impact receiving waters due to the possible presence of oil, grease, and solvent-based cleaning products that contain naphthalene. The estimated concentration of naphthalene could potentially contribute to an exceedance of relevant recommended water quality criteria, and the concentration of oil also could potentially contribute to an exceedance of relevant recommended water quality criteria because the source of this discharge (gas turbine cleaning) is designed to dissolve fuel, lubricant, and other hydrocarbon deposits. Restricting the discharge of gas turbine water wash and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose to prohibit the direct discharge of gas turbine water wash overboard within waters subject to UNDS. Gas turbine water wash should be collected separately and disposed of at an onshore facility. If gas turbine water wash is commingled with any other discharge for the purposes of treatment prior to discharge, then under no circumstances may oils, including oily mixtures, be discharged from that combined discharge in quantities that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, or contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., ISO Method 9377) or U.S. Coast Guard, or are otherwise harmful to the public health or welfare of the United States.

F. Non-Oily Machinery Wastewater

1. Nature of the Discharge

Non-oily machinery wastewater discharge is the combined wastewater from the operation of distilling plants, water chillers, valve packings, water piping, low- and high-pressure air compressors, and propulsion engine jacket coolers (40 CFR 1700.4(p)). Non-oily machinery wastewater systems are designed to separate the wastewater generated from machinery that does not contain oil from the wastewater generated from machinery that has oil content. Vessels have numerous sources of non-oily machinery wastewater, including distilling plants start-up discharge, chilled water condensate drains, fresh and saltwater pump drains, potable water tank overflows, and leaks from propulsion shaft seals.

Non-oily machinery wastewater discharge can contain a suite of conventional pollutants, metals, and organics (e.g., copper, nickel, silver, zinc, mercury, and a variety of nutrients). Normally, the discharge is drained directly overboard continuously as it is produced or is pumped overboard intermittently from non-oily machinery wastewater tanks. In some instances, non-oily machinery wastewater may be drained to the bilge.

Non-oily machinery wastewater discharge rates vary by vessel size and operation type, ranging from less than 100 gallons per hour (gph) to over 4,000 gph.

Approximately 4% of the vessels of the Armed Forces have dedicated non-oily machinery wastewater collection systems. Most of the vessels that generate this discharge are U.S. Navy vessels greater than or equal to 79 feet in length. Vessels less than 79 feet in length are not expected to generate this discharge.

For more information regarding non-oily machinery wastewater, please see the non-oily machinery wastewater NOD in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Non-oily machinery wastewater discharges could negatively impact receiving waters due to the possible presence of metals and other toxic pollutants. The constituents of concern (bis(2-ethylhexyl) phthalate, copper, nickel, and silver) are sometimes present in concentrations that could potentially contribute to an exceedance of relevant recommended water quality criteria. Restricting the discharge of non-oily machinery wastewater and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose to require that direct discharges of non-oily machinery wastewater or discharges of non-oily machinery wastewater that are commingled with any other discharge for the purposes of treatment prior to discharge be free from any additives that are toxic or bioaccumulative in nature. In addition, under no circumstances may oils, including oily mixtures contained in non-oily machinery wastewater be discharged in quantities that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, or contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., ISO Method 9377) or U.S. Coast Guard, or otherwise are harmful to the public health or welfare of the United States.

G. Photographic Laboratory Drains

1. Nature of the Discharge

The photographic laboratory (''photo lab'') drains contain laboratory wastewater resulting from the processing of photographic film (40 CFR 1700.4(q)). The wastewater resulting from a photographic laboratory aboard a vessel is the same as the wastewater that would result from a shore-based photographic developing facility. The wastewater results from the processing of color, black-and white, and X-ray film. The photographic wastewater processing system consists of three elements: a film processor, a washwater recycle system, and a fixer recycle and silver recovery subsystem. These three elements contribute to wastewater that includes developer solutions, fixers, hardener solutions, detergents, rinse-waters, and wastewater from silver recovery units.

Major constituents in the discharge can include acetic acid, aluminum sulfate, ammonia, boric acid, ethylene glycol, sulfuric acid, sodium acetate, sodium chloride, ammonium bromide, formaldehyde, and silver. These constituents also vary based on whether the photos use color, black-and-white or X-ray film.

Only U.S. Navy aircraft carriers, which represent fewer than 1% of vessels of the Armed Forces, are likely to produce photographic laboratory wastewater, if at all. The widespread use of digital photography has nearly eliminated the use of wet film processing and DoD expects that photographic laboratory wastewater generation onboard vessels will be almost entirely eliminated over time.

For more information regarding photographic laboratory wastewater, please see the photographic laboratory lab drains NOD in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Photo lab drain discharges could negatively impact receiving waters due to the possible presence of metals and other toxic pollutants. Specifically, concentrations of silver could potentially contribute to an exceedance of relevant recommended water quality criteria. The use of digital photography, however, has almost completely eliminated the use of wet film processing and ultimately the waste water produced by photo labs. Restricting the discharge of photo lab drain discharges and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose to prohibit the discharge of photographic laboratory drain discharges within waters subject to UNDS.

H. Seawater Cooling Overboard Discharge

1. Nature of the Discharge

Seawater cooling overboard discharge is the discharge of seawater from a dedicated piping system that provides non-contact cooling water for other vessel systems (40 CFR 1700.4(r)). The seawater cooling system continuously provides cooling water to heat exchangers, removing heat from main propulsion machinery, electrical generating plants, and other auxiliary equipment. The cooling water is typically circulated through an enclosed system that does not come in direct contact with machinery, but still may contain sediment from water intake, traces of hydraulic or lubricating oils, and trace metals leached or eroded from the pipes within the system. In addition, because the discharge is used for cooling, the effluent will have an increased temperature.

The discharge sometimes contains entrained or dissolved materials, sediment, and biota because seawater cooling water may come in contact with sea chests and hull connections. Sea chests and hull connections are equipped with sea strainer plates to prevent debris from entering the seawater cooling system (especially when in port or in coastal waters) and may accumulate sediment and biota from the seawater during this process.

The generation rate of this discharge varies depending on many factors, including the type of vessel, equipment aboard, and vessel operating schedules (number of transits and days in port per year). Rates can vary from several gallons per minute (gpm) for smaller, diesel-powered ships to flows of greater than 170,000 gpm for aircraft carriers during full-power steaming. While transiting near port areas, vessels tend to operate their propulsion plants at low levels that are sufficient to maintain steering control and that do not require the maximum amount of seawater cooling. While anchored or pier-side, seawater cooling flow rates are at their lowest because only certain auxiliary equipment is required.

All vessels of the Armed Forces (with the exception of some non-self propelled service craft such as barges) use seawater for cooling. The majority of the volume of seawater cooling overboard discharge, however, is generated by approximately 10% of the vessel population (i.e., vessels greater than or equal to 79 feet in length).

For more information regarding seawater cooling, please see the seawater cooling overboard discharge NOD in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Seawater cooling overboard discharges could negatively impact receiving waters due to the possible presence of metals, biota, and increased temperature. The constituents of concern include nitrogen, copper, iron, aluminum, zinc, nickel, tin, silver, titanium, arsenic, manganese, chromium, lead, and possibly oil and grease from valves and pumps. The nitrogen, copper, nickel, and silver could potentially contribute to an exceedance of relevant recommended water quality criteria. The potential also exists for the transport of ANS because the blowdown procedure for the strainer plates may dislodge biota that has grown on the plate over time. However, this may be mitigated by seawater piping biofouling prevention systems that reduce the discharge of potential ANS. Lastly, the temperature of the discharge could potentially contribute to an exceedance of relevant recommended water quality criteria for thermal mixing zones while in port. Restricting the discharge of seawater cooling and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B).

EPA and DoD propose to require a performance standard that restricts the occurrence of the discharge. Specifically, the discharge should occur only when the vessel is underway. Discharges that occur when the vessel is underway ensure dispersion of any adverse thermal impacts. In addition, the standard would provide for the reduction in production and discharge of seawater cooling overboard by urging the use of shore power in port if: (1) Shore power is readily available; (2)

shore-based power supply systems are capable of providing the needed electricity; and (3) the vessel is equipped to connect to shore-based power. Certain discharges of cooling water associated with critical ship function (e.g., air conditioning system) cannot be eliminated by connecting to shore power and are expected to occur when the vessel is in port. Specifically, EPA and DoD propose to require that, for vessels that are greater than or equal to 79 feet in length, fouling organisms be removed from seawater piping on a regular basis and the discharge of such removed organisms would be prohibited within waters subject to UNDS. For vessels that are less than 79 feet in length, maintenance of all piping and seawater cooling systems would need to meet the requirements of 40 CFR 1700.32 (Seawater Piping Biofouling Prevention) and fouling organisms removed from seawater piping could not be discharged within waters subject to UNDS. Submarines have suction clearing procedures, which must be performed for vessel safety purposes; therefore, these operational procedures to remove fouling organisms are not subject to these requirements.

I. Seawater Piping Biofouling Prevention

1. Nature of the Discharge

Seawater piping biofouling prevention is defined as the discharge of seawater containing additives used to prevent the growth and attachment of biofouling organisms in dedicated seawater cooling systems on selected vessels (40 CFR 1700.4(s)). Biofouling prevention is accomplished on certain vessels with on-board chlorinators that inject low concentrations of sodium hypochlorite, a chlorine solution, at or near seawater cooling system intakes. Seawater piping biofouling prevention can occur through several technologies. Some vessels prevent biofouling with electrolytic chlorinators that use naturally occurring dissolved chloride to generate chlorine. The resultant free chlorine and reaction products from saltwater are collectively called ''chlorine produced oxidants'' or CPO.

Discharges from seawater biofouling treatment systems are continuous for as long as seawater cooling systems are in operation. The seawater is pumped through heat exchangers where the seawater absorbs heat and is then discharged overboard. The anti-biofouling systems are designed to prevent organisms from attaching to any part of seawater systems, resulting in the discharge of such organisms directly overboard in the same geographical area in which they are pulled into the system.

The generation rate of this discharge varies depending on many factors, including the propulsion plant operating conditions and the system cooling requirements. There is a greater demand for cooling water when a vessel is underway because the propulsion plant is operating.

Seawater biofouling prevention equipment is installed on U.S. Navy aircraft carriers, submarines, some MSC vessels, most surface combatants, newer amphibious support ships, many larger auxiliary ships, and some patrol ships, all of which represent fewer than 5% of the vessels of the Armed Forces.

For more information regarding seawater piping biofouling, please see the seawater piping biofouling prevention NOD in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Seawater piping biofouling prevention discharges could negatively impact receiving waters due to the possible presence of chlorinated substances. For chlorinator biofouling prevention systems, chlorine is discharged in concentrations that could potentially contribute to an exceedance of relevant recommended water quality criteria. Restricting the discharge of seawater piping biofouling prevention and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose a performance standard for seawater piping biofouling prevention that minimizes the amount of biofouling chemicals (e.g., chlorine) used to keep fouling under control. In addition, fouling organisms would need to be removed via a cleaning event from seawater piping on a regular basis to minimize the impact to the receiving waters. Fouling organisms removed during a cleaning event would be prohibited from being discharged within waters subject to UNDS to prevent the spread of ANS. This prohibition would not apply to the discharge of organisms resulting from the routine chemical biofouling control system nor would it apply to submarines. Lastly, this performance standard would require practices consistent with FIFRA registration requirements for seawater piping biofouling chemicals and would prohibit discharges within waters subject to UNDS of pesticides or chemicals banned for use in the United States.

J. Small Boat Engine Wet Exhaust

1. Nature of the Discharge

Small boat engine wet exhaust (SBEWE) is the seawater that is mixed and discharged with small boat propulsion engine exhaust to cool the exhaust and quiet the engine (40 CFR 1700.4(t)). SBEWE occurs on vessels that are less than 79 feet in length. Small boat engines commonly use seawater to both cool and quiet their exhaust. Seawater passes through the heat exchanger, gear oil cooler, and aftercooler (if equipped), and is then injected into the exhaust. When injected, some of the gaseous and solid components of the exhaust transfer into the cooling water; the cooling water then discharges into the receiving water. Thus, the cooling process can result in the accumulation of the following constituents: Oxides of nitrogen, sulfur dioxide, organic compounds (including hydrocarbons), carbon monoxide, and particulates.

SBEWE discharge includes constituents from the engine exhaust that are transferred to the injected seawater and discharged overboard. The constituents discharged by outboard engines differ from those discharged by inboard engines due to the different fuel and engine types. Inboard engines usually discharge wet exhaust above the waterline. Outboard engines generally discharge wet exhaust underwater through the propeller hub. For naval vessels, EPA and DoD estimate that outboard engines discharge wet exhaust at a rate of 20 gpm while inboard diesel engines discharge at a rate of 150 gpm.

Approximately all of the vessels of the Armed Forces less than 79 feet in length (5,144) operate with engines that generate this discharge.

For more information regarding SBEWE, please see the SBEWE NOD in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

SBEWE could negatively impact receiving waters due to the possible presence of nitrogen oxides, sulfur dioxide, carbon monoxide, hydrocarbons, and other organic compounds and particulates. Specifically, benzene, toluene, ethylbenzene, and naphthalene concentrations in two-stroke outboard

engines could potentially contribute to an exceedance of relevant recommended water quality criteria. Benzene and ethylbenzene concentrations in four-stroke outboard engine wet exhaust, and total polycyclic aromatic hydrocarbons in inboard engine wet exhaust also could potentially contribute to an exceedance of relevant recommended water quality criteria. Restricting the discharge of SBEWE and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose that alternative fuels be used to reduce the concentration of pollutants in the discharges from SBEWE. In addition, the performance standard would indicate that, for vessels generating wet exhaust, four-stroke engines should be considered instead of two-stroke engines. Vessels using two-stroke engines would be required to use environmentally acceptable lubricants (found in the proposed definition for this term at 40 CFR 1700.3) unless such use would be technologically infeasible. Additionally, the standard would urge that low sulfur alternative fuels should be used to reduce the concentration of pollutants in discharges from small boat engine wet exhaust.

K. Welldeck Discharges

1. Nature of the Discharge

Welldeck discharges are defined as the water that accumulates from seawater flooding of the docking well (welldeck) of an amphibious support ship used to transport, load, and unload amphibious vehicles, and from maintenance and freshwater washings of the welldeck and equipment and vessels stored in the welldeck (40 CFR 1700.4(y)). The welldeck is a floodable platform used for launching or loading small satellite amphibious vehicles, landing crafts, and cargo. Welldeck discharges may include the following: (1) Washout when the ship ballasts to embark or disembark landing craft; (2) water or detergent and water mixture used for air-cushion landing craft gas turbine engine washes; (3) graywater and condensate that can be discharged from the utility landing craft; (4) freshwater wash to remove salt and dirt from vehicles, equipment, and landing craft; and (5) U.S. Department of Agriculture washes for the welldeck, vehicle storage areas, and all vehicles, equipment, and landing craft during overseas operations. The constituents expected in welldeck discharges include freshwater, distilled water, firemain water, graywater, air-conditioning condensate, sea-salt residues, paint chips, wood splinters, dirt, sand, organic debris, oil, grease, fuel, detergents, combustion by-products, and lumber treatment chemicals.

Depending on the specific activities conducted, welldeck discharges may contain a variety of residual constituents, including oil and grease, ethylene glycol (antifreeze), chlorine, detergents/cleaners, metals, solvents, ANS, and sea-salt residues. Effluent is discharged to the environment by washout or surge when landing craft are operating in the welldeck or when washdowns occur. Effluent from the various washes performed on the welldeck is either discharged as it drains overboard from the welldeck or is pumped overboard by an eductor, a vacuum-like device. The volume of the welldeck effluent varies depending on the type of landing craft to be loaded or unloaded.

Only U.S. Navy amphibious support ships with welldecks, which represent fewer than 1% of the vessels of the Armed Forces, produce this discharge.

For more information regarding welldeck discharges, please see the welldeck discharges NOD in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Welldeck discharges could negatively impact receiving waters due to the presence of oil and grease. These discharges have the potential to cause adverse environmental effects because oil drippings spilled during vehicle and equipment maintenance could leave an oil film on the deck surface. The oil has the potential to be discharged overboard when the welldeck becomes flooded and could possibly create an oil sheen that could potentially contribute to an exceedance of relevant recommended water quality criteria. Restricting the discharge of welldeck discharges and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B).

EPA and DoD propose to prohibit welldeck discharges containing graywater within waters subject to UNDS and would prohibit the washdown of gas turbine engines within three nautical miles of the United States to minimize the impact of oil and grease on nearshore waters. Welldeck discharges from equipment and vehicle washdowns would need to be free from garbage, and could not contain oil in quantities that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, or contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., ISO Method 9377) or U.S. Coast Guard, or otherwise are harmful to the public health or welfare of the United States.

IV. Additional Information of the Proposed Rule

This section provides an overview of the additional amendments proposed for 40 CFR part 1700. These proposed changes include an amendment to subsections referenced Effect (§ 1700.2), a provision that would authorize certain discharges notwithstanding the proposed performance standards in situations where vessel safety or lives are endangered (§ 1700.39), a provision that would require combined discharge streams to meet the requirements applicable to all discharge streams that are combined (§ 1700.40), a proposed requirement for recordkeeping (§ 1700.41), and a proposed requirement to report instances of non-compliance with MPCD performance standards (§ 1700.42).

1. Amendment to Subsections Referenced in § 1700.2 Effect

EPA and DoD are proposing to amend the reference sections noted in the Effect Section 1700.2 (a) by amending ''Federal standards of performance for each required Marine Pollution Control Device are listed in § 1700.14'' to ''Federal standards of performance for each required Marine Pollution Control Device are listed in §§ 1700.14 through 1700.38. Federal standards of performance apply to all vessels, whether existing or new, and regardless of vessel class, type, or size, unless otherwise expressly provided in §§ 1700.14 through 1700.38.''

2. Reservation of Sections

As noted previously, EPA and DoD are proposing the Phase II standards in two batches. For the purpose of proposing the second batch, the proposal reserves the following sections for those future rulemaking actions:

Section 1700.15 Catapult Water Brake Tank & Post-Launch Retraction Exhaust;
Section 1700.17 Clean Ballast;
Section 1700.18 Compensated Fuel Ballast;
Section 1700.19 Controllable Pitch Propeller Hydraulic Fluid;
Section 1700.20 Deck Runoff;
Section 1700.21 Dirty Ballast;
Section 1700.24 Firemain Systems;
Section 1700.26 Graywater;
Section 1700.27 Hull Coating Leachate;
Section 1700.28 Motor Gasoline and Compensating Discharge;
Section 1700.34 Sonar Dome Discharge;
Section 1700.35 Submarine Bilgewater;
Section 1700.36 Surface Vessel Bilgewater/Oil-Water Separator Effluent (OWSE); and
Section 1700.37 Underwater Ship Husbandry.

3. Section 1700.39 Exceptions

EPA and DoD propose to add an ''Exceptions'' subsection at § 1700.39, which would provide a place to identify certain excluded discharges from the scope of UNDS notwithstanding the proposed performance standards in situations where vessel safety or lives are endangered. The section also would identify requirements for maintaining records of all discharge exceptions.

4. Section 1700.40 Commingling of Discharges

EPA and DoD propose to add a ''Commingling of Discharges'' subsection at § 1700.40. By adding this subsection, EPA and DoD propose that if two or more regulated discharge streams are combined into one, the resulting discharge stream must meet the requirements applicable to all discharge streams that are combined prior to discharge.

5. Section 1700.41 Records

EPA and DoD propose to add a ''Records'' subsection at § 1700.41. By adding this subsection, EPA and DoD propose recordkeeping requirements that shall document all inspections, instances of non-compliance, and instances of an exception.

6. Section 1700.42 Non-Compliance Reports

EPA and DoD propose to add a ''Non-Compliance Reports'' subsection at § 1700.42. By adding this subsection, EPA and DoD propose reporting requirements for any non-compliance with performance standards prescribed for this Part.

V. Related Acts of Congress and Executive Orders

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden, as EPA and DoD have determined that Phase II of UNDS does not create any additional collections of information beyond those already mandated under the existing Phase I of UNDS. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 1700) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2040–0187. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The proposed rule has no direct effects on small entities as it only applies to discharges from a vessel of the Armed Forces. Small entities do not own or operate vessels of the Armed Forces. Hence, after considering the economic impacts of the proposed rule on small entities, EPA and DoD certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action implements mandates specifically and explicitly set forth by the Congress in UNDS. The proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector because the rule imposes no enforceable duty on any of these entities. Therefore, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA and DoD have determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments.

In developing the proposed rule, EPA consulted with small governments under a plan developed pursuant to section 203 of UMRA concerning the regulatory requirements in the proposed rule that might significantly or uniquely affect small governments. EPA and DoD notified potentially affected small governments of those requirements; enabled officials of affected small governments to have meaningful and timely input into the development of regulatory proposals with any significant Federal intergovernmental mandates; and informed, educated, and advised small governments on compliance with the regulatory requirements. For more information on the consultations conducted with state and local or tribal governments, consult the sections below regarding Executive Order 13132 and Executive Order 13175, respectively.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires Federal agencies to

develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, Federal agencies may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

EPA and DoD concluded that the proposed rule, once finalized in Phase III, will have federalism implications. Once the proposed national discharge performance standards are promulgated in Phase III by DoD, adoption and enforcement of new or existing state or local regulations for the discharges will be preempted. Accordingly, EPA and DoD provide the following federalism summary impact statement as required by section 6(c) of Executive Order 13132.

During Phase I of UNDS, EPA and DoD conducted two rounds of consultation meetings (i.e., outreach briefings) to allow states to have meaningful and timely input into the development of the rulemaking. Twenty-two states accepted the offer to be briefed on UNDS and discuss state concerns. EPA and DoD provided clarification on the technical aspects of the UNDS process, including preliminary discharge determinations and analytical information supporting decisions to control or not control discharges. State representatives were provided with discharge summaries containing the description, analysis, and preliminary determination of each of the 39 discharges from vessels of the Armed Forces—25 of which were determined to require control.

During Phase II, EPA and DoD consulted again with state representatives early in the process of developing the proposed regulation. On March 14, 2013, EPA held a Federalism consultation in Washington, DC, and invited representatives from states and political subdivisions of states in order to obtain meaningful and timely input in the development of the proposed discharge standards. EPA and DoD informed the state representatives that the two agencies planned to use the VGP effluent limitations as a baseline for developing the proposed performance standards for the 25 UNDS discharges identified in Phase I as requiring control.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires Federal agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The UNDS rulemaking will not impact vessels operated by tribes because the rule only regulates discharges from vessels of the Armed Forces. However, tribes may be interested in this action because vessels of the Armed Forces, including U.S. Coast Guard vessels, may operate in or near tribal waters. EPA hosted a National Teleconference on March, 26, 2013, in order to obtain meaningful and timely input during the development of the proposed discharge standards. EPA and DoD informed the representatives that the two agencies planned to use the VGP effluent limitations as a baseline for developing the performance standards for the 25 UNDS discharges identified in Phase I as requiring control.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that is determined to be ''economically significant'' as defined under Executive Order 12866, and concerns an environmental health or safety risk that EPA and DoD have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA and DoD must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA and DoD.

The proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA and DoD do not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The 11 proposed discharge standards are designed to control discharges incidental to the normal operation of a vessel of the Armed Forces that could adversely affect human health and the environment. The standards will reduce the impacts to the receiving waters and any person using the receiving waters, regardless of age. For these reasons, EPA and DoD do not have reason to believe that the proposed rule will present a disproportionate risk to children.

H. Executive Order 13211: Actions That Concern Regulations That Significantly Affect Energy Supply, Distribution, and Use

The proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because the proposed rule is not likely to have any adverse energy effects because it only applies to discharges incidental to the normal operation of a vessel of the Armed Forces. The 11 discharges from a vessel of the Armed Forces do not affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs 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., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. When available and potentially applicable voluntary consensus standards are not used by EPA or DoD, NTTAA requires EPA and DoD to provide Congress, through OMB, an explanation of the reasons for not using such standards.

The proposed rule involves performance standards for certain discharges from a vessel of the Armed Forces. EPA and DoD performed a search to identify potentially applicable voluntary consensus standards. EPA and DoD determined that the ISO Method 9377—determination of hydrocarbon oil index—is a voluntary consensus standard and is being used as part of the proposed UNDS performance standards.

J. Executive Order 13112: Invasive Species

Executive Order 13112, entitled ''Invasive Species'' (64 FR 6183, February 8, 1999), requires each Federal

agency, whose actions may affect the status of invasive species, identify such actions, and, subject to the availability of appropriations, use relevant programs and authorities to, among other things, prevent, detect, control, and monitor the introduction of invasive species. As defined by this Executive Order, ''invasive species'' means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

As part of the environmental effects analyses, EPA and DoD considered the control of invasive species when developing the proposed discharge performance standards for all 11 discharges (See Section II). Therefore, the proposed discharge standards will help prevent or control the introduction of invasive species into federally-protected waters and waters subject to UNDS.

K. Executive Order 13089: Coral Reef Protection

Executive Order 13089, entitled ''Coral Reef Protection'' (63 FR 32701, June 16, 1998), requires all Federal agencies to identify actions that may affect U.S. coral reef ecosystems; utilize their programs and authorities to protect and enhance the conditions of such ecosystems; and to the extent permitted by law, ensure that any actions they authorize, fund, or carry out will not degrade the conditions of such ecosystems. The proposed discharge standards are designed to control or eliminate the discharges incidental to the normal operation of a vessel of the Armed Forces, ultimately minimizing the potential for causing adverse impacts to the marine environment including coral reefs.

L. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February, 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The proposed discharge performance standards would only apply to a vessel of the Armed Forces and would ultimately increase environmental protection; therefore, EPA and DoD determined that the proposed discharge performance standards would not disproportionately and adversely affect minority or low-income populations.

VI. APPENDIX A—DESCRIPTION OF VESSELS OF THE ARMED FORCES

TABLE A–1

Vessel type	Total vessels of the armed forces			
	Large vessels (greater than or equal to 79 feet)		Small vessels (less than 79 feet)	
	Count	% of vessels	Count	% of vessels
Aircraft Carriers	11	1	.....	.....
Amphibious Support Ships	37	3	.....	.....
Auxiliary Ships	368	32	.....	.....
Boats	.....	.....	5,132	100
Patrol Ships	203	17	.....	.....
Service Craft	355	31	12	< 1
Submarines	72	6	.....	.....
Surface Combatants	115	10	.....	.....
Total	1,161	100	5,144	100

Table A–1 provides information regarding the composition of vessels of the Armed Forces by vessel type and vessel size.

Aircraft Carriers: These are the largest vessels of the Armed Forces. They are designed primarily for conducting combat operations by fixed wing aircraft that are launched with catapults. Nuclear energy powers all vessels in this group. Aircraft carriers exceed 1,000 feet in length, and have crews of 4,000 to 6,000. Except during transit in and out of port, these vessels operate predominantly seaward of waters subject to UNDS.

Amphibious Support Ships: These are large vessels, ranging in length from 569 feet to 847 feet, designed to support amphibious assault operations. Many of these vessels have large clean ballast tanks used to lower and raise the hull during amphibious operations, and welldecks to support the recovery of landing crafts and amphibious vehicles. These large ocean-going vessels may operate within waters subject to UNDS during training and testing of equipment.

Auxiliary Ships: This is a large and diverse group of self-propelled vessels with lengths equal to or greater than 79 feet and designed to provide general support to either combatant forces or shore-based establishments. These ships fulfill multiple duties including but not limited to transporting supplies (e.g., fuel, ammunitions) and troops to and from the theater of operations, executing mine countermeasures operations, conducting research, maintaining navigations systems (e.g., buoys), and recovering targets and drones. This vessel class has crew sizes ranging from 10 to 200 people. Depending on mission and operation requirements, these vessels operate both within and seaward of waters subject to UNDS.

Boats: This type of vessel encompasses 81% of the vessels of the Armed Forces and includes all self-propelled vessels less than 79 feet in length. These vessels are used for such roles as security, combat operations, rescue, and training. Because of their relative small size, these vessels have small crews that range from 1 to 19, and produce limited sources of liquid discharges. These vessels operate predominantly within waters subject to UNDS, but may operate seaward of

waters subject to UNDS when deployed from larger ships.

Patrol Ships: These are self-propelled vessels with lengths equal to or greater than 79 feet, and are designed to conduct patrol duties (i.e., maritime homeland security, law enforcement, and national defense missions). Vessels in this group have crew sizes ranging from 10 to 200. Some vessels in this group may operate seaward of waters subject to UNDS, but the majority predominantly operates within waters subject to UNDS conducting security patrol missions.

Service Craft: This is a diverse group of non-self-propelled vessel classes designed to provide general support to other vessels in the Armed Forces fleet or shore-based establishments. Vessel classes in this group have an average length of 155 feet with more than 95% of them being between 40 feet and 310 feet. While most of these vessels have a very limited crew or no crew, barracks craft can provide sleeping accommodations for 100 to 1,200 crew members. These vessels include multiple barges and lighter designs, dredges, floating dry docks, floating cranes, floating causeway ferries, floating roll-on-off discharge facilities, dry deck shelters, floating workshops, and floating barracks. These vessels operate predominantly within waters subject to UNDS.

Submarines: These submersible combat vessels powered with nuclear energy can fulfill combatant, auxiliary, or research and development roles. Except during transit in and out of port, these vessels operate predominantly seaward of waters subject to UNDS.

Surface Combatants: These are surface ships designed primarily to engage in attacks against airborne, surface, sub-surface, and shore targets. Vessel classes in this group range in length from 378 feet to 567 feet, and have crew sizes that range from 40 for the Littoral Combat Ship to under 400 for a Guided Missile Destroyer or Cruiser. Except during transit in and out of port, these vessels operate predominantly seaward of waters subject to UNDS.

Uniform National Discharge Standards for Vessels of the Armed Forces—Phase II

List of Subjects in 40 CFR Part 1700

Environmental protection, Armed Forces, Vessels, Coastal zone, Reporting and recordkeeping requirements, Water pollution control.

Dated: December 20, 2013.

Gina McCarthy,

Administrator, Environmental Protection Agency.

Dated: January 15, 2014.

Dennis McGinn,

Assistant Secretary of the Navy,Energy, Installations & Environment.

For the reasons stated in the preamble, title 40, chapter VII, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1700—UNIFORM NATIONAL DISCHARGE STANDARDS FOR VESSELS OF THE ARMED FORCES

■ 1. The authority citation for 40 CFR part 1700 continues to read as follows:

Authority: 33 U.S.C. 1322, 1361.

Subpart A—Scope

■ 2. Amend § 1700.2 by revising paragraph (a) to read as follows:

§ 1700.2 Effect.

(a) This part identifies those discharges, other than sewage, incidental to the normal operation of Armed Forces vessels that require control within the navigable waters of the United States and the waters of the contiguous zone, and those discharges that do not require control. Discharges requiring control are identified in § 1700.4. Discharges not requiring control are identified in § 1700.5. Federal standards of performance for each required Marine Pollution Control Device are listed in §§ 1700.14 through 1700.38. Federal standards of performance apply to all vessels, whether existing or new, and regardless of vessel class, type, or size, unless otherwise expressly provided in §§ 1700.14 through 1700.38.

* * * * *

■ 3. Section 1700.3 is amended by adding in alphabetical order definitions for ''Bioaccumulative,'' ''Biodegradable,'' ''Environmentally acceptable lubricants,'' ''Federally-protected waters,'' ''Hazardous material,'' ''Non-toxic,'' ''Person in charge,'' ''Toxic materials,'' and ''Waters subject to UNDS'' to read as follows:

§ 1700.3 Definitions.

* * * * *

Bioaccumulative means the partition coefficients in the marine environment are log Kow >3 using test Methods OECD 117 and 107.

Biodegradable means:

(1) Regarding cleaning products and environmentally acceptable lubricants, ''biodegradable'' means the compound or mixture in question that is subject either to the removal of at least 70 percent of dissolved organic carbon, production of at least 60 percent of the theoretical carbon dioxide, or consumption of at least 60 percent of the theoretical oxygen demand within 28 days. Acceptable test methods include: Organization for Economic Co-operation and Development Test Guidelines 301 A–F, 306, and 310, and International Organization for Standardization 14593:1999.

(2) Regarding biocidal substances, ''biodegradable'' means the compound or mixture in question yields 60 percent of its theoretical maximum carbon dioxide and demonstrate a removal of at least 70 percent of dissolved organic carbon within 28 days as described in EPA 712–C–98–075 (OPPTS 835.3100 Aerobic Aquatic Biodegradation).

* * * * *

Environmentally acceptable lubricants means lubricants that are ''biodegradable'' and ''non-toxic,'' and are not ''bioaccumulative'' as defined in this Subpart. Products meeting the definition of ''environmentally acceptable lubricant'' include those labeled by the following labeling programs: Blue Angel, European Ecolabel, Nordic Swan, the Swedish Standards SS 1554434 and 155470, Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) requirements, and EPA's Design for the Environment (DfE).

* * * * *

Federally-protected waters means waters within 12 nautical miles of the United States that are also part of any of the following:

(1) Marine sanctuaries designated under the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) or Marine National Monuments designated under the Antiquities Act of 1906;

(2) A unit of the National Wildlife Refuge System, including Wetland Management Districts, Waterfowl Production Areas, National Game Preserves, Wildlife Management Areas, and National Fish and Wildlife Refuges;

(3) National Wilderness Areas; and

(4) Any component designated under the National Wild and Scenic Rivers System.

Hazardous material means any hazardous material as defined in 49 CFR 171.8.

* * * * *

Non-toxic means a substance must pass both OECD 201, 202, and 203 for acute toxicity testing, and OECD 210 and 211 for chronic toxicity testing. If a substance is evaluated for the formulation and main constituents, the LC50 of hydraulic fluids must be at least

100 mg/L and the LC50 of greases, two-stroke oils, and all other total loss lubricants must be at least 1000 mg/L. If a substance is evaluated for each constituent substance, rather than the complete formulation and main compounds, then constituents comprising less than 20 percent of hydraulic fluids can have an LC50 between 10–100 mg/L or a no observed effect concentration (NOEC) between 1–10 mg/L, constituents comprising less than 5 percent of hydraulic fluids can have an LC50 between 1–10 mg/L or a NOEC between 0.1–1 mg/L, and constituents comprising less than 1 percent of hydraulic fluids can have an LC50 less than 1 mg/L or a NOEC between 0–0.1 mg/L.

Person in charge (PIC) means the single individual named master of the vessel or placed in charge of the vessel, by the U.S. Department of Defense or by the Department in which the U.S. Coast Guard is operating, as appropriate, and who is responsible for the operation, manning, victualing, and supplying of the vessel of the Armed Forces.

(1) Examples of a PIC include but are not limited to:

(i) A Commanding Officer, Officer in Charge, or senior commissioned officer on board the vessel;

(ii) A civilian, military, or U.S. Coast Guard person assigned to a shore command or activity that has been designated as the PIC for one or more vessels, such as a group of boats or craft;

(iii) A Tugmaster, Craftmaster, Coxswain, or other senior enlisted person onboard the vessel;

(iv) A licensed civilian mariner onboard a Military Sealift Command vessel; or

(v) A contracted commercial person at a shore installation that is not part of the Armed Forces but as identified by the U.S. Department of Defense or the Department in which the U.S. Coast Guard is operating.

* * * * *

Toxic materials means any toxic pollutant identified in 40 CFR 401.15.

* * * * *

Waters subject to UNDS means the navigable waters of the United States, including the territorial seas and the waters of the contiguous zone, as these terms are defined in the Clean Water Act (33 U.S.C. 1362).

■ 4. Revise Subpart D to read as follows:

Subpart D—Marine Pollution Control Device (MPCD) Performance Standards

Sec.

1700.14 Aqueous film-forming foam.
1700.15 [Reserved].
1700.16 Chain locker effluent.
1700.17 [Reserved].
1700.18 [Reserved].
1700.19 [Reserved].
1700.20 [Reserved].
1700.21 [Reserved].
1700.22 Distillation and reverse osmosis brine.
1700.23 Elevator pit effluent.
1700.24 [Reserved].
1700.25 Gas turbine water wash.
1700.26 [Reserved].
1700.27 [Reserved].
1700.28 [Reserved].
1700.29 Non-oily machinery wastewater.
1700.30 Photographic laboratory drains.
1700.31 Seawater cooling overboard discharge.
1700.32 Seawater piping biofouling prevention.
1700.33 Small boat engine wet exhaust.
1700.34 [Reserved].
1700.35 [Reserved].
1700.36 [Reserved].
1700.37 [Reserved].
1700.38 Welldeck discharges.
1700.39 Exceptions.
1700.40 Commingling of discharges.
1700.41 Records.
1700.42 Non-compliance reports.

Subpart D—Marine Pollution Control Device (MPCD) Performance Standards

§ 1700.14 Aqueous film-forming foam.

(a) For the purposes of this section, regulated aqueous film-forming foam (AFFF) refers only to firefighting foam and seawater mixture discharged during training, testing, or maintenance operations.

(b) For vessels that sail seaward of waters subject to UNDS at least once per month, discharges of AFFF are prohibited (i.e., collect and store for on shore disposal or discharge when the vessel is located seaward of waters subject to UNDS).

(c) For vessels that do not sail seaward of waters subject to UNDS at least once per month:

(1) Discharges of fluorinated AFFF are prohibited (i.e., collect and store for onshore disposal or discharge when the vessel is located seaward of waters subject to UNDS); and

(2) Discharges of a non-fluorinated or alternative foaming agent are prohibited in port or in or near federally-protected waters, and should occur as far from shore as possible.

§ 1700.15 [Reserved].

§ 1700.16 Chain locker effluent.

(a) For all vessels, except submarines, the anchor chain must be carefully and thoroughly washed down (i.e., more than a cursory rinse) as it is being hauled out of the water to remove sediment and organisms.

(b) For all vessels, the chain lockers must be cleaned periodically to eliminate accumulated sediments and any potential accompanying pollutants. The dates of all chain locker inspections must be recorded in the ship's log or other vessel recordkeeping documentation.

(c) For vessels that sail seaward of waters subject to UNDS at least once per month, chain lockers shall not be rinsed or pumped out within waters subject to UNDS. If technically feasible, the chain locker shall be periodically cleaned, rinsed, and/or the accumulated water and sediment (i.e., chain locker effluent) shall be pumped out prior to entering waters subject to UNDS (preferably in mid-ocean).

(d) For vessels that do not sail seaward of waters subject to UNDS at least once per month, if a discharge of chain locker effluent occurs within waters subject to UNDS it shall occur at the greatest distance practicable from shore and, if technically feasible, shall not be discharged in federally-protected waters.

§ 1700.17 [Reserved].

§ 1700.18 [Reserved].

§ 1700.19 [Reserved].

§ 1700.20 [Reserved].

§ 1700.21 [Reserved].

§ 1700.22 Distillation and reverse osmosis brine.

Brine from the distillation system and reverse osmosis reject water shall not be discharged if it comes in contact with machinery or industrial equipment (other than distillation or reverse osmosis machinery), toxic or hazardous materials, or wastes.

§ 1700.23 Elevator pit effluent.

Direct discharges of elevator pit effluent overboard are prohibited. Notwithstanding the prohibition of direct discharges of elevator pit effluent overboard, if the elevator pit effluent is commingled with any other discharge for the purposes of treatment prior to discharge, then under no circumstances may oils, including oily mixtures, be discharged from that combined discharge in quantities that:

(a) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or

(b) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or

(c) Contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., ISO Method 9377) or U.S. Coast Guard; or

(d) Otherwise are harmful to the public health or welfare of the United States.

§ 1700.24 [Reserved].

§ 1700.25 Gas turbine water wash.

Direct discharges of gas turbine water wash overboard are prohibited. Gas turbine water wash should be collected separately and disposed of at an onshore facility. Notwithstanding the prohibition of direct discharges of gas turbine water wash overboard, if the gas turbine water wash is commingled with any other discharge for the purposes of treatment prior to discharge then under no circumstances may oils, including oily mixtures be discharged from that combined discharge in quantities that:

(a) Cause a film or sheen upon or discoloration of the surface of the water or adjoining Shorelines; or

(b) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or

(c) Contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., ISO Method 9377) or U.S. Coast Guard; or

(d) Otherwise are harmful to the public health or welfare of the United States.

§ 1700.26 [Reserved].

§ 1700.27 [Reserved].

§ 1700.28 [Reserved].

§ 1700.29 Non-oily machinery wastewater.

If non-oily machinery wastewater is discharged directly overboard or if it is commingled with any other discharge for the purposes of treatment prior to discharge, then the discharge must be free from any additives that are toxic or bioaccumulative in nature and under no circumstances may oils, including oily mixtures be discharged from that combined discharge in quantities that:

(a) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or

(b) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or

(c) Contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., ISO Method 9377) or U.S. Coast Guard; or

(d) Otherwise are harmful to the public health or welfare of the United States.

§ 1700.30 Photographic laboratory drains.

Direct discharges of photographic laboratory drains overboard are prohibited.

§ 1700.31 Seawater cooling overboard discharge.

For discharges from vessels that are less than 79 feet in length:

(a) When possible, non-contact engine cooling water, hydraulic system cooling water, refrigeration cooling water and other seawater cooling overboard discharges should occur when the vessel is underway in order to minimize any thermal impacts to the receiving water.

(b) To reduce the production and discharge of seawater cooling overboard discharge, the vessel should use shore based power when in port if:

(1) Shore power is readily available for the vessel from utilities or port authorities; and

(2) Shore based power supply systems are capable of providing all needed electricity required for vessel operations; and

(3) The vessel is equipped to connect to shore-based power and such systems are compatible with the available shore power.

(c) Fouling organisms must be removed from seawater piping on a regular basis. Fouling organisms removed during cleanings shall not be discharged.

For discharges from vessels that are greater than or equal to 79 feet in length:

(d) When possible, non-contact engine cooling water, hydraulic system cooling water, refrigeration cooling water and other seawater cooling overboard discharges should occur when the vessel is underway in order to minimize any thermal impacts to the receiving waters.

(e) To reduce the production and discharge of seawater cooling overboard discharge, the vessel should use shore based power when in port if:

(1) Shore power is readily available for the vessel from utilities or port authorities; and

(2) Shore based power supply systems are capable of providing all needed electricity required for vessel operations; and

(3) The vessel is equipped to connect to shore-based power and such systems are compatible with the available shore power.

(f) Maintenance of all piping and seawater cooling systems must meet the requirements of § 1700.32 (Seawater Piping Biofouling Prevention). For all vessels, except submarines, fouling organisms removed during maintenance shall not be discharged.

§ 1700.32 Seawater piping biofouling prevention.

(a) Seawater piping biofouling chemicals subject to registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (40 CFR 152.15) must be used in accordance with the FIFRA label. Pesticides or chemicals banned for use in the United States shall not be discharged.

(b) Only the minimum amount of biofouling chemicals should be used to keep fouling under control.

(c) Fouling organisms must be removed from seawater piping on a regular basis. For all vessels, except submarines, fouling organisms removed during cleanings shall not be discharged.

§ 1700.33 Small boat engine wet exhaust.

For discharges from vessels that are less than 79 feet in length:

(a) Vessels generating small boat engine wet exhaust must be maintained in good operating order, well tuned, and functioning according to manufacturer specifications in order to decrease pollutant concentrations and volumes in small boat engine wet exhaust.

(b) Low sulfur or alternative fuels should be used to reduce the concentration of pollutants in discharges from small boat engine wet exhaust.

(c) If possible, use four-stroke engines instead of two-stroke engines for vessels generating small boat engine wet exhaust. Use of a four-stroke engine may minimize the discharge of pollutants.

(d) Vessels using two-stroke engines must use environmentally acceptable lubricants unless use of such lubricants is technologically infeasible. If technologically infeasible, the use and justification for the use of a non-environmentally acceptable lubricant must be recorded in the vessel recordkeeping documentation.

§ 1700.34 [Reserved].

§ 1700.35 [Reserved].

§ 1700.36 [Reserved].

§ 1700.37 [Reserved].

§ 1700.38 Welldeck discharges.

Welldeck discharges that contain graywater from smaller vessels are prohibited. Welldeck discharges containing washdown from gas turbine engines are prohibited within three nautical miles of the United States and shall be discharged seaward of waters subject to UNDS when possible. Welldeck discharges from equipment and vehicle washdowns must be free from garbage and must not contain oil in quantities that:

(a) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or

(b) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or

(c) Contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., ISO Method 9377) or U.S. Coast Guard; or

(d) Otherwise are harmful to the public health or welfare of the United States.

§ 1700.39 Exceptions.

(a) Notwithstanding each of the MPCD performance standards established in this Part, a vessel of the Armed Forces is authorized to discharge, into waters subject to UNDS, when the person in charge (PIC) or their designated representative determines that such discharge is necessary to prevent loss of life, personal injury, vessel endangerment, or severe damage to the vessel.

(b) A vessel of the Armed Forces must maintain the following records for all discharges under paragraph (a) of this section:

(1) Name and title of the PIC who determined the necessity of the discharge;

(2) Date, location, and estimated volume of the discharge;

(3) Explanation of the reason the discharge occurred; and

(4) Actions taken to avoid, minimize, or otherwise mitigate the discharge.

(c) All records prepared under paragraph (b) of this section must be maintained in accordance with § 1700.41.

§ 1700.40 Commingling of discharges.

If two or more regulated discharge streams are combined into one, the resulting discharge stream must meet the requirements applicable to all discharge streams that are combined prior to discharge.

§ 1700.41 Records.

(a) All records shall be generated and maintained in the ship's logs (main, engineering, and/or damage control) or an UNDS Record Book and shall include the following information:

(1) Vessel owner information (e.g., U.S. Navy, U.S. Coast Guard);

(2) Vessel name and class; and

(3) Name of the PIC.

(b) The PIC shall maintain complete records of the following information:

(1) Any inspection or recordkeeping requirement as specified in §§ 1700.14–1700.38;

(2) Any instance of an exception and the associated recordkeeping requirements as specified in § 1700.39; and

(3) Any instance of non-compliance with any of the performance standards as specified in §§ 1700.14–1700.38. The information recorded shall include the following:

(i) Description of any non-compliance and its cause;

(ii) Date of non-compliance;

(iii) Period of non-compliance (time and duration);

(iv) Location of the vessel during non-compliance;

(v) Corrective action taken;

(vi) Steps taken or planned to reduce, eliminate, and prevent non-compliance in the future; and

(vii) If the non-compliance has not been corrected, an estimate of the time the non-compliance is expected to continue.

(c) All records prepared under this section must be maintained for a period of five years from the date they are created. The information in this paragraph will be available to EPA, states, or the U.S. Coast Guard upon request. Any information made available upon request shall be appropriately classified, as applicable, and handled in accordance with applicable legal requirements regarding national security.

§ 1700.42 Non-compliance reports.

The person in charge (PIC) must report any non-compliance, including the information as required under § 1700.41, to the Armed Service's designated office in writing and/or electronically within five days of the time the PIC becomes aware of the circumstances.

[FR Doc. 2014–01370 Filed 1–31–14; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 18, 19, and 52

[FAR Case 2012–022; Docket 2012–0022; Sequence 1]

RIN 9000–AM68

Federal Acquisition Regulation; Contracts Under the Small Business Administration 8(a) Program

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement revisions made by the Small Business Administration (SBA) to its regulations implementing section 8(a) of the Small Business Act, and to provide additional FAR coverage regarding protesting an 8(a) participant's eligibility or size status, procedures for releasing a requirement for non-8(a) procurements, and the ways a participant could exit the 8(a) Business Development program.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before April 4, 2014 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2012–022 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2012–022.'' Select the link ''Comment Now'' that corresponds with ''FAR Case 2012–022'' and follow the instructions provided at the screen. Please include your name, company name (if any), and ''FAR Case 2012–022'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2012–022, in all correspondence related to this case. 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. Karlos Morgan, Procurement Analyst, at 202–501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2012–022.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement changes made in the SBA's final rule that was published in the **Federal Register** at 76 FR 8222 on February 11, 2011, and SBA's subsequent technical amendment that was published in the

Federal Register at 77 FR 28237 on May 14, 2012, which made changes to the regulations governing the section 8(a) Business Development program (commonly referred to as the ''8(a) Program'').

II. Discussion and Analysis

This rule proposes to make a number of changes to regulations governing the 8(a) Program. While many of the changes are editorial and provide minor clarifications, other substantive changes are made, including situations in which an agency may or may not take credit towards its small business goals.

This rule also proposes to include new FAR sections 19.813 to address protesting an 8(a) participant's eligibility or size status, FAR 19.814 to address procedures for requesting a formal size determination, FAR 19.815 to address procedures for releasing a requirement for non-8(a) procurement, and FAR 19.816 on ways a participant could exit the program.

The following is a summary of the proposed FAR revisions associated with this rule:

A. FAR 5.205, FAR 6.204, and FAR 18.114 proposed revisions include the removal of the term 8(a) concerns, 8(a) contractors, and 8(a) firms, as applicable, and replacing it with 8(a) participants to reflect the accurate terminology used in SBA regulations.

B. FAR 19.000 proposes to remove the term ''business development.''

C. FAR 19.800 proposed revisions include new language to clarify that the 8(a) Business Development Program, is commonly referred to as the ''8(a) program'', and that a small business that is accepted into the 8(a) program is known as a ''participant''. The section further proposes to clarify that an 8(a) contractor is an 8(a) participant that is currently performing on a Federal contract or order that was reserved for 8(a) participants.

D. FAR 19.802 proposes to revise the title of the section from ''Selecting concerns for the 8(a) Program,'' to ''Determining eligibility for the 8(a) program'', and adds the location in SBA regulations where the eligibility requirements for participation in the 8(a) program can be found.

E. FAR 19.803 proposed revisions are minor technical clarifications.

F. FAR 19.804 propose the following revisions:

1. Minor revisions to FAR 19.804–1 and 19.804–2

2. Restructuring FAR 19.804–3 to add proposed new paragraph(s) 19.804–3(a)(1), (a)(2), and 19.804–3(c).

(i) FAR 19.804–3(a)(1) proposed revision advises contracting officers that, for acquisitions exceeding the simplified acquisition threshold, if SBA does not respond to an offering letter within 10 working days, the contracting office may seek acceptance through SBA's Associate Administrator for Business Development. The contracting office may assume that SBA has accepted the requirement identified in its offering letter into the 8(a) Program, if a reply from the SBA Associate Administrator for Business Development is not received within five business days of receipt of the contracting agency's request.

(ii) FAR 19.804–3(a)(2) proposed revision advises contracting officers that, for acquisitions not exceeding the simplified acquisition threshold, if SBA does not respond to an offering letter within 2 working days, the contracting officer may assume the offer is accepted and proceed with award of an 8(a) contract.

(iii) FAR 19.804–3(c) proposes to add new language for 8(a) sole source awards. The proposed language advises contracting officers that SBA will either work with the contracting officer to select an 8(a) participant for a possible award, or determine whether an appropriate match exists by matching requirements consistent with the 8(a) participants' capability, where the contracting officer nominates the 8(a) participant.

3. FAR 19.804–4 and 19.804–5 proposed revisions are minor technical clarifications.

4. FAR 19.804–6 proposes to make the following revisions—

(i) Revise FAR paragraph 19.804–6(a) to advise contracting officers that separate offering and acceptance are not required for indefinite delivery contracts that have been set-aside for exclusive 8(a) competition, and also includes minor technical clarifications.

(ii) Includes language concerning an 8(a) contractor's acceptance of new orders after the 8(a) contractor has left the program.

(iii) Clarify that agencies may still continue to take small disadvantaged business (SDB) credit even after the contractor has left the 8(a) Program, unless the contractor has re-represented that it is other than small.

G. FAR 19.805 proposed revisions include the following:

1. FAR 19.805–1 proposed revisions are minor technical clarifications.

2. FAR 19.805–2(b) proposed revisions include the requirement that an 8(a) participant must represent that it is a small business in accordance with the size standard corresponding to the North American Industry Classification System (NAICS) code assigned to the contract and discusses SBA's eligibility determination process.

3. FAR 19.805–2(b)(1) proposed revisions include deleting the text in paragraph (b)(1) and adds a new paragraph (b)(1)(i) and (b)(1)(ii). FAR 19.805–2(b)(1)(i) proposes to clarify that if SBA determines that the apparent successful offeror is ineligible, the contracting office must send to SBA the identity of the next highest evaluated firm for an eligibility determination. The process is repeated until SBA determines that an identified offeror is eligible for award. FAR 19.805–2(b)(1)(ii) includes language to advise that if the contracting office believes that the apparent successful offeror (or the offeror SBA has determined eligible for award) is not responsible to perform the contract, the contracting office must refer the matter to SBA for Certificate of Competency consideration.

4. FAR 19.805–2(c) proposed revisions are minor clarifications.

H. FAR 19.808–1 proposed revisions are minor clarifications and adds a new paragraph (d) and (e).

1. FAR 19.808–1(d) proposes to clarify that an 8(a) participant must represent that it is a small business in accordance with the size standard corresponding to the NAICS code assigned to the contract.

2. FAR 19.808–1(e) proposes to implement changes made to SBA's regulations at 13 CFR 124.109(a), 13 CFR 124.109(c)(3)(ii), 13 CFR 124.110(e), and 13 CFR 124.111(d). The new language advises contracting officers that an 8(a) participant owned by an Alaska Native Corporation, Indian Tribe, Native Hawaiian Organization, or Community Development Corporation, may not receive a sole source, follow-on 8(a) contract, if the predecessor contract was performed by another participant owned by the same Alaska Native Corporation, Indian Tribe, Native Hawaiian Organization, or Community Development Corporation.

I. FAR 19.808–2 and 19.809 proposed revisions are minor technical clarifications.

J. FAR 19.810 proposes to revise the title from ''SBA appeals'', to ''SBA appeals of a contracting officer's decision to the agency head'', and makes minor technical clarifications.

K. FAR 19.811 and 19.812 proposed revisions are minor technical clarifications.

L. Proposed new FAR section, FAR 19.813, Protesting an 8(a) Participant's eligibility or size status, adds language to clarify that the eligibility of an 8(a) participant for a sole source or competitive 8(a) requirement may not be challenged. However, a successful

offeror's size status for a competitive 8(a) award may be protested by any offeror whom the contracting officer has not eliminated for reasons unrelated to size, the contracting officer or SBA.

M. Proposed new FAR section, FAR 19.814, Requesting a formal size determination (8(a) sole source requirements), is added to clarify that if the size of an 8(a) participant nominated for award of an 8(a) sole source contract is called into question, a formal size determination may be requested.

N. Proposed new FAR section, FAR 19.815, Release for non-8(a) procurement is added to provide the procedures for obtaining SBA's consent to release an 8(a) requirement for non-8(a) procurement, and a brief discussion of the matters that will be taken into consideration in order to reach a decision as to whether or not releasing a requirement for non-8(a) procurement is in the best interest of the agency, and the business development program.

O. Proposed new FAR section, FAR 19.816, Exiting the 8(a) Program, adds language to advise contracting officers that—

1. When a contractor exits the 8(a) program, it is no longer eligible to receive new 8(a) contracts. However, the contractor remains under contractual obligation to complete existing contracts, and any priced options that may be exercised.

2. If an 8(a) contractor is suspended from the program it may not receive any new 8(a) contracts unless the head of the contracting agency (or designee) makes a determination that it is in the best interest of the Government to issue the award and SBA adopts that determination.

3. A contractor that has completed its term of participation in the 8(a) program may be awarded a competitive 8(a) contract if it was an 8(a) participant eligible for award of the contract on the initial date specified for receipt of offers contained in the contract solicitation, and if the contractor continues to meet all other applicable eligibility criteria.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense (DoD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act,5 U.S.C. 601, *et seq.,* because these changes do not place any new requirements on small business. The purpose of this rule is to implement changes made in SBA's final rule, published in the **Federal Register** at 76 FR 8222 on February 11, 2011 pertaining to the 8(a) Business Development Program and to clarify existing guidance in the FAR.

The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

The issues addressed in this proposed rule include: (1) clarification of the evaluation, offering, and acceptance process; (2) procedures for acquiring SBA's consent to release an 8(a) requirement outside the 8(a) program; and (3) clarification that it is the contracting officer's responsibility to determine that the potential 8(a) contractor meets the applicable performance of work requirements at time of award, and the impact of exiting the 8(a) program in terms of the firm's ability to receive future 8(a) requirements and its current contractual commitments. These revisions do not place any new requirements, financial or otherwise, on small entities, and serve mainly to provide more explicit guidance to Federal contracting officials. Currently, the 8(a) Program has approximately 8,567 participants. These participants may or may not be economically impacted by the changes discussed in this proposed rule.

This proposed rule will not impose any new information collections requirements on small businesses.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no alternative approaches that will accomplish the stated objectives of the rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2012–022) in correspondence.

V. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 5, 6, 18, 19, and 52

Government procurement.

Dated: January 23, 2014.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 5, 6, 18, 19 and 52 as set forth below:

■ 1. The authority citation for 48 CFR part 5 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 2. Amend section 5.205 by revising paragraph (f) to read as follows:

5.205 Special situations.

* * * * *

(f) *Section 8(a) competitive acquisition.* When a national buy requirement is being considered for competitive acquisition limited to eligible 8(a) participants under subpart 19.8, the contracting officer must transmit a synopsis of the proposed contract action to the GPE. The synopsis may be transmitted to the GPE concurrent with submission of the agency offering (see 19.804–2) to the Small Business Administration (SBA). The synopsis should also include information—

(1) Advising that the acquisition is being offered for competition limited to eligible 8(a) participants;

(2) Specifying the North American Industry Classification System (NAICS) code;

(3) Advising that eligibility to participate may be restricted to 8(a) participants in either the developmental stage or the developmental and transitional stages; and

(4) Encouraging interested 8(a) participants to request a copy of the solicitation as expeditiously as possible since the solicitation will be issued

without further notice upon SBA acceptance of the requirement for the section 8(a) program.

PART 6—COMPETITION REQUIREMENTS

■ 3. The authority citation for 48 CFR part 6 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 4. Revise section 6.204 to read as follows:

6.204 Section 8(a) competition.

(a) To fulfill statutory requirements relating to section 8(a) of the Small Business Act, as amended by Public Law 100–656, contracting officers may limit competition to eligible 8(a) participants (see Subpart 19.8).

(b) No separate justification or determination and findings is required under this part to limit competition to eligible 8(a) participants. (But see 6.302–5 and 6.303–1 for sole-source 8(a) awards over $20 million.)

PART 18—EMERGENCY ACQUISITIONS

■ 5. The authority citation for 48 CFR part 18 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

18.114 [Amended]

■ 6. Amend section 18.114 by removing ''firms'' and adding ''participants'' in its place.

PART 19—SMALL BUSINESS PROGRAMS

■ 7. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

19.000 [Amended]

■ 8. Amend section 19.000 by removing from paragraph (a)(3) ''business development''.

■ 9. Revise the subpart heading of 19.8 to read as follows:

Subpart 19.8—Contracting With the Small Business Administration (The 8(a) Program)

* * * * *

■ 10. Revise section 19.800 to read as follows:

19.800 General.

(a) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation. This program is the ''8(a) Business Development Program'', commonly referred to as the ''8(a) program''. A small business that is accepted into the 8(a) program is known as a ''participant''. SBA's subcontractors are referred to as ''8(a) contractors''. As used in this subpart, an 8(a) contractor is an 8(a) participant that is currently performing on a Federal contract or order that was reserved for 8(a) participants.

(b) Contracts may be awarded to the SBA for performance by eligible 8(a) participants on either a sole source or competitive basis.

(c) Acting under the authority of the program, the SBA certifies to an agency that the SBA is competent and responsible to perform a specific contract. The contracting officer has the discretion, to award the contract to the SBA based upon mutually agreeable terms and conditions.

(d) The contracting officer shall comply with 19.203 before deciding to offer an acquisition to a small business concern under the 8(a) program. For acquisitions above the simplified acquisition threshold, the contracting officer shall consider 8(a) set-asides or sole source awards before considering small business set-asides.

(e) When SBA has delegated its 8(a) program contract execution authority to an agency, the contracting officer must refer to its agency supplement or other policy directives for appropriate guidance.

■ 11. Revise section 19.802 to read as follows:

19.802 Determining eligibility for the 8(a) program.

Determining the eligibility of a small a business to be a participant in the 8(a) program is the responsibility of the SBA. SBA's regulations on eligibility requirements for participation in the 8(a) program are found at 13 CFR 124.101 through 124.112.

■ 12. Revise section 19.803 to read as follows:

19.803 Selecting acquisitions for the 8(a) program.

Through their cooperative efforts, the SBA and an agency match the agency's requirements with the capabilities of 8(a) participants to establish a basis for the agency to contract with the SBA under the program. Selection is initiated in one of three ways—

(a) The SBA advises the contracting activity of an 8(a) participant's capabilities through a search letter and requests the contracting activity to identify acquisitions to support the participant's business plans. In these instances, the SBA will provide at minimum the following information in order to enable the contracting activity to match an acquisition to the participant's capabilities:

(1) Identification of the concern and its owners.

(2) Background information on the concern, including any and all information pertaining to the concern's technical ability and capacity to perform.

(3) The participant's present production capacity and related facilities.

(4) The extent to which contracting assistance is needed in the present and the future, described in terms that will enable the agency to relate the concern's plans to present and future agency requirements.

(5) If construction is involved, the request shall also include the following:

(i) A participant's capabilities in and qualifications for accomplishing various categories of construction work typically found in North American Industrial Category System subsector 236 (construction of buildings), subsector 237 (heavy and civil engineering construction), or subsector 238 (specialty trade contractors.

(ii) The participant's capacity in each construction category in terms of estimated dollar value (*e.g.,* electrical, up to $100,000).

(b) The SBA identifies a specific requirement for one or more 8(a) participant(s) and sends a requirements letter to the agency's small business office, requesting the contracting office offer the acquisition to the 8(a) program. In these instances, in addition to the information in paragraph (a) of this section, the SBA will provide—

(1) A clear identification of the acquisition sought; *e.g.,* project name or number;

(2) A statement as to how the required equipment and real property will be provided in order to ensure that the participant will be fully capable of satisfying the agency's requirements;

(3) If construction, information as to the bonding capability of the participant(s); and

(4) Either—

(i) If a sole source request—

(A) The reasons why the participant is considered suitable for this particular acquisition; *e.g.,* previous contracts for the same or similar supply or service; and

(B) A statement that the participant is eligible in terms of its small business size status relative to the assigned

NAICS code, business support levels, and business activity targets; or

(ii) If competitive, a statement that at least two 8(a) participants are considered capable of satisfying the agency's requirements and a statement that the participants are also eligible in terms of their small business size status relative to the assigned NAICS code, business support levels, and business activity targets. If requested by the contracting office, SBA will identify at least two such participants and provide information concerning the participants' capabilities.

(c) Agencies may also review other proposed acquisitions for the purpose of identifying requirements which may be offered to the SBA. Where agencies independently, or through the self marketing efforts of an 8(a) participant, identify a requirement for the 8(a) program, they may offer on behalf of a specific 8(a) participant, for the 8(a) program in general, or for 8(a) competition.

■ 13. Revise section 19.804–1 to read as follows:

19.804–1 Agency evaluation.

In determining the extent to which a requirement should be offered in support of the 8(a) program, the agency should evaluate—

(a) Current and future plans to acquire the specific items or work that 8(a) participants are seeking to provide, identified in terms of—

(1) Estimated quantities of the supplies or services required or the estimated number of construction projects planned; and

(2) Performance or delivery requirements, including—

(i) Required monthly production rates, when applicable; and

(ii) For construction, geographical location;

(b) The impact of any delay in delivery;

(c) Whether the items or work have previously been acquired using small business set-asides, and the date the items or work were acquired;

(d) Problems encountered in previous acquisitions of the items or work from the 8(a) participants or other contractors; and

(e) Any other pertinent information about known 8(a) participants, the items, or the work. This includes any information concerning the participants' products or capabilities. When necessary, the contracting agency shall make an independent review of the factors in 19.803(a) and other aspects of the participants' capabilities which would ensure the satisfactory performance of the requirement being considered for commitment to the 8(a) program.

■ 14. Amend section 19.804–2 by—

■ a. Revising the introductory text of paragraph (a) and paragraph (a)(10);

■ b. Redesignating paragraphs (a)(12) through (a)(15) as paragraphs (a)(13) through (a)(16), respectively;

■ c. Adding a new paragraph (a)(12);

■ d. Removing from the newly designated paragraph (a)(13) ''Program'' and adding ''program'' in its place;

■ e. Removing from the newly designated paragraph (a)(15) ''sole source'' and adding ''sole-source'' in its place; and

■ f. Removing from paragraph (b)(3) ''firm'' and adding ''8(a) participant'' in its place (twice).

The revised and added text reads as follows:

19.804–2 Agency offering.

(a) After completing its evaluation, the contracting office shall notify the SBA of the extent of its plans to place 8(a) contracts with the SBA for specific quantities of items or work. The notification, referred to as an offering letter, shall identify the time frames within which prime contract and subcontract actions must be completed in order for the agency to meet its responsibilities. The offering letter shall also contain the following information applicable to each prospective contract:

* * * * *

(10) Identification of any particular 8(a) participant designated for consideration, including a brief justification, such as—

(i) The 8(a) participant, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) program; or

(ii) The acquisition is a follow-on or renewal contract and the nominated 8(a) participant concern is the incumbent.

* * * * *

(12) Identification of all 8(a) participants which have expressed an interest in being considered for the acquisition.

* * * * *

■ 15. Revise section 19.804–3 to read as follows:

19.804–3 SBA acceptance.

(a) Upon receipt of the contracting office's offering letter, SBA will determine whether to accept the requirement for the 8(a) program. SBA's decision whether to accept the requirement will be transmitted to the contracting office in writing within 10 working days of receipt of the offer if the contract is likely to exceed the simplified acquisition threshold and within 2 working days of receipt if the contract is at or below the simplified acquisition threshold. The contracting office may grant an extension of these time periods, if requested by SBA.

(1) For acquisitions exceeding the simplified acquisition threshold, if SBA does not respond to an offering letter within 10 working days, the contracting office may seek SBA's acceptance through the Associate Administrator for Business Development. The contracting office may assume that SBA has accepted the requirement into the 8(a) program if it does not receive a reply from the Associate Administrator for Business Development within five calendar days of receipt of the contracting office's request.

(2) For acquisitions not exceeding the simplified acquisition threshold, when the contracting office makes an offer to the 8(a) program on behalf of a specific 8(a) participant and does not receive a reply to its offering letter within 2 working days, the contracting office may assume the offer is accepted and proceed with award of an 8(a) contract.

(b) As part of the acceptance process, SBA will review the appropriateness of the NAICS code designation assigned to the requirement by the contracting officer.

(1) SBA will not challenge the NAICS code assigned to the requirement by the contracting officer if it is reasonable, even though other NAICS codes may also be reasonable.

(2) If SBA and the contracting officer are unable to agree on a NAICS code designation for the requirement, SBA may refuse to accept the requirement for the 8(a) program, appeal the contracting officer's determination to the head of the agency pursuant to 19.810, or appeal the NAICS code designation to the SBA Office of Hearings and Appeals under Subpart C of 13 CFR Part 134.

(c) *Sole-source 8(a) awards.* If an appropriate match exists, SBA will advise the contracting officer whether it will participate in contract negotiations or whether SBA will authorize the contracting officer to negotiate directly with the identified 8(a) participant. Where SBA has delegated its contract execution functions to a contracting agency, SBA will also identify that delegation in its acceptance letter.

(1) *Sole-source award where the contracting officer nominates a specific 8(a) participant.* SBA will determine whether an appropriate match exists where the contracting officer identifies a particular participant for a sole-source award.

(i) Once SBA determines that a procurement is suitable to be accepted as an 8(a) sole-source contract, SBA will

normally accept it on behalf of the 8(a) participant recommended by the contracting officer, provided that 8(a) participant complies with the requirements of 13 CFR 124.503(c)(1).

(ii) If an appropriate match does not exist, SBA will notify the 8(a) participant and the contracting officer, and may then nominate an alternate 8(a) participant.

(2) *Sole-source award where the contracting officer does not nominate a specific 8(a) participant.* When a contracting officer does not nominate as 8(a) participant for performance of a sole-source 8(a) contract, SBA will select an 8(a) participant for possible award from among two or more eligible and qualified 8(a) participants. The selection will be based upon relevant factors, including business development needs, compliance with competitive business mix requirements (if applicable), financial condition, management ability, technical capability, and whether award will promote the equitable distribution of 8(a) contracts. (For construction requirements see 13 CFR 124.503(d)(1)).

■ 16. Amend section 19.804–4 by—

■ a. Removing from the introductory text ''Program'' and adding ''program'' in its place;

■ b. Revising paragraph (b); and

■ c. Removing from paragraph (d) ''Program'' and adding ''program'' in its place.

The revised text reads as follows:

19.804–4 Repetitive acquisitions.

* * * * *

(b) A nominated 8(a) participant's eligibility, and whether or not it is the same 8(a) participant that performed the previous contract;

* * * * *

■ 17. Amend section 19.804–5 by revising paragraphs (a) and (c) to read as follows:

19.804–5 Basic ordering agreements.

(a) The contracting office shall submit an offering letter for, and SBA must accept, each order under a basic ordering agreement (BOA) in addition to offering and accepting the BOA itself.

* * * * *

(c) Once an 8(a) contractor's program term expires, the contractor otherwise exits the 8(a) program, or becomes other than small for the NAICS code assigned under the BOA, SBA will not accept new orders for the contractor.

■ 18. Revise section 19.804–6 to read as follows:

19.804–6 Indefinite delivery contracts.

(a) Separate offers and acceptances are not required for individual orders under multiple award contracts (including the Federal Supply Schedules managed by GSA, multi-agency contracts or Government-wide acquisition contracts, or indefinite-delivery, indefinite-quantity (IDIQ) contracts) that have been set aside for exclusive competition among 8(a) contractors. SBA's acceptance of the original contract is valid for the term of the contract.

(b) An 8(a) contractor may continue to accept new orders under the contract, even if it exits the 8(a) program, or becomes other than small for the NAICS code assigned to the contract.

(c) Agencies may continue to take credit toward their prime contracting small disadvantaged business or small business goals for orders awarded to 8(a) participants, even after the contractor's 8(a) program term expires, the contractor otherwise exits the 8(a) program, or the contractor becomes other than small for the NAICS code assigned under the 8(a) contract. However, if an 8(a) contractor rerepresents that it is other than small for the NAICS code assigned under the contract in accordance with 19.301–2 or, where ownership or control of the 8(a) contractor has changed and SBA has granted a waiver to allow the contractor to continue performance (see 13 CFR 124.515), the agency may not credit any subsequent orders awarded to the contractor towards its small disadvantaged business or small business goals.

■ 19. Amend section 19.805–1 by—

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

■ b. Removing from paragraph (a)(1) ''firms'' and adding ''participants'' in its place; and

■ c. Revising the introductory text of paragraph (b);

■ d. Removing from paragraph (b)(1) ''firms'' and adding ''participants'' in its place

■ e. Revising paragraph (d).

The revisions read as follows:

19.805–1 General.

(a) Except as provided in paragraph (b) of this subsection, an acquisition offered to the SBA under the 8(a) program shall be awarded on the basis of competition limited to eligible 8(a) participants when—

* * * * *

(b) Where an acquisition exceeds the competitive threshold as defined in paragraph (a)(2) of this section, the SBA may accept the requirement for a sole-source 8(a) award if—

* * * * *

(d) The SBA Associate Administrator for Business Development may approve a contracting office's request for a competitive 8(a) award below the competitive thresholds. Such requests will be approved only on a limited basis and will be primarily granted where technical competitions are appropriate or where a large number of responsible 8(a) participants are available for competition. In determining whether a request to compete below the threshold will be approved, the SBA Associate Administrator for Business Development will, in part, consider the extent to which the contracting activity is supporting the 8(a) program on a noncompetitive basis. The agency may include recommendations for competition below the threshold in the offering letter or by separate correspondence to the SBA Associate Administrator for Business Development.

■ 20. Revise section 19.805–2 to read as follows:

19.805–2 Procedures.

(a) Offers shall be solicited from those sources identified in accordance with 19.804–3.

(b) The SBA will determine the eligibility of the participants for award of the contract. Eligibility will be determined by the SBA as of the time of submission of initial offers which include price. Eligibility is based on Section 8(a) program criteria. An 8(a) participant must represent that it is a small business in accordance with the size standard corresponding to the NAICS code assigned to the contract.

(1) In either negotiated or sealed bid competitive 8(a) acquisitions SBA will determine the eligibility of the apparent successful offeror and advise the contracting office within 5 working days after receipt of the contracting office's request for an eligibility determination.

(i) If SBA determines that the apparent successful offeror is ineligible, the contracting office will then send to SBA the identity of the next highest evaluated firm for an eligibility determination. The process is repeated until SBA determines that an identified offeror is eligible for award. SBA determines whether a participant is eligible for a specific 8(a) competitive requirement as of the date that the 8(a) participant submitted its initial offer which includes price.

(ii) If the contracting office believes that the apparent successful offeror (or the offeror SBA has determined eligible for award) is not responsible to perform the contract, the contracting office must refer the matter to SBA for Certificate of Competency consideration under 19.6.

(2) In any case in which a 8(a) participant is determined to be

ineligible, SBA will notify the 8(a) participant of that determination.

(c) Any party with information concerning questioning the eligibility of an 8(a) participant to continue participation in the 8(a) program or for the purposes of a specific 8(a) award may submit such information to the SBA in accordance with 13 CFR 124.112(c).

■ 21. Amend section 19.808–1 by removing from paragraph (c) ''activity'' and adding ''officer'' in its place; and adding paragraphs (d) and (e) to read as follows.

19.808–1 Sole source.

* * * * *

(d) An 8(a) participant must represent that it is a small business in accordance with the size standard corresponding to the NAICS code assigned to the contract.

(e) An 8(a) participant owned by an ANC, Indian Tribe, Native Hawaiian Organization, or Community Development Corporation may not receive an 8(a) sole-source award that is a follow-on contract to an 8(a) contract, if the predecessor contract was performed by another 8(a) participant (or former 8(a) participant) owned by the same ANC, Indian Tribe, Native Hawaiian Organization, or Community Development Corporation (See 13 CFR 124.109–124.111).

■ 22. Revise section 19.808–2 to read as follows.

19.808–2 Competitive.

In competitive 8(a) acquisitions subject to Part 15, the contracting officer conducts negotiations directly with the competing 8(a) participants. Conducting competitive negotiations among 8(a) participants prior to SBA's formal acceptance of the acquisition for the 8(a) program may be grounds for SBA's not accepting the acquisition for the 8(a) program.

■ 23. Revise section 19.809 to read as follows.

19.809 Preaward considerations.

The contracting officer should request a preaward survey of the 8(a) participant whenever considered useful. If the results of the preaward survey or other information available to the contracting officer raise substantial doubt as to the participant's ability to perform, the contracting officer must refer the matter to SBA for Certificate of Competency consideration under Subpart 19.6.

■ 24. Amend section 19.810 by—

■ a. Revising the section heading;

■ b. Removing from paragraph (a)(2) ''firm'' and ''Program'' and adding ''participant'' and ''program'' in its place, respectively;

■ c. Removing from paragraph (a)(3) ''activity's'' and adding ''officer's'' in its place;

■ d. Revising paragraph (b); and

■ e. Removing from paragraph (c) ''firm'' and adding ''participant'' in its place.

The revisions read as follows:

19.810 SBA appeals of a contracting officer's decision to the agency head.

* * * * *

(b) Notification of an intent to appeal to the agency head by SBA must be received by the contracting officer within 5 working days after SBA is formally notified of the contracting officer's decision. SBA's Administrator will provide a copy of this notification of the intent to appeal to the contracting agency Director for Small and Disadvantaged Business Utilization or, for the Department of Defense, the Director of Small Business Programs, SBA must send the written appeal to the agency head within 15 working days of SBA's notification of intent to appeal or the appeal may be considered withdrawn. Pending issuance of a decision by the agency head, the contracting officer shall suspend action on the acquisition. The contracting officer need not suspend action on the acquisition if the contracting officer makes a written determination that urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for a decision.

* * * * *

■ 25. Amend section 19.811–1 by revising the introductory text of paragraph (b) to read as follows:

19.811–1 Sole source.

* * * * *

(b) The contracting officer shall prepare the contract that the SBA will award to the 8(a) contractor in accordance with agency procedures, as if awarding the contract directly to the 8(a) contractor, except for the following:

* * * * *

19.811–3 [Amended]

■ 26. Amend section 19.811–3 by—

■ a. Removing from the introductory text of paragraph (d) ''Concerns'' and adding ''Participants'' in its place; and

■ b. Removing from paragraphs (d)(1) and (e) ''concerns'' and adding ''participants'' in its place, respectively.

■ 27. Amend section 19.812 by removing from paragraph (b) ''firm'' and adding ''8(a) contractor'' in its place; and revising paragraph (d) to read as follows:

19.812 Contract administration.

* * * * *

(d) An 8(a) contract, whether in the base or an option year, must be terminated for convenience if the 8(a) contractor to which it was awarded transfers ownership or control of the firm or if the contract is transferred or novated for any reason to another firm, unless the Administrator of the SBA waives the requirement for contract termination (13 CFR 124.515). The Administrator may waive the termination requirement only if certain conditions exist. Moreover, a waiver of the requirement for termination is permitted only if the 8(a) contractor's request for waiver is made to the SBA prior to the actual relinquishment of ownership or control, except in the case of death or incapacity where the waiver must be submitted within 60 calendar days after such an occurrence. The clauses in the contract entitled ''Special 8(a) Contract Conditions'' and ''Special 8(a) Subcontract Conditions'' require the SBA and the 8(a) subcontractor to notify the contracting officer when ownership of the firm is being transferred. When the contracting officer receives information that an 8(a) contractor is planning to transfer ownership or control to another firm, the contracting officer shall take action immediately to preserve the option of waiving the termination requirement. The contracting officer shall determine the timing of the proposed transfer and its effect on contract performance and mission support. If the contracting officer determines that the SBA does not intend to waive the termination requirement, and termination of the contract would severely impair attainment of the agency's program objectives or mission, the contracting officer shall immediately notify the SBA in writing that the agency is requesting a waiver. Within 15 business days thereafter, or such longer period as agreed to by the agency and the SBA, the agency head must either confirm or withdraw the request for waiver. Unless a waiver is approved by the SBA, the contracting officer must terminate the contract for convenience upon receipt of a written request by the SBA. This requirement for a convenience termination does not affect the Government's right to terminate for default if the cause for termination of an 8(a) contract is other than the transfer of ownership or control.

■ 28. Add sections 19.813 through 19.816 to read as follows:

19.813 Protesting an 8(a) Participant's eligibility or size status.

(a) The eligibility of an 8(a) participant for a sole-source or competitive 8(a) requirement may not be

challenged by another 8(a) participant or any other party, either to SBA or any administrative forum as part of a bid or other contract protest (see 13 CFR 124.517).

(b) The size status of an 8(a) participant nominated for an 8(a) sole-source contract may not be protested by another 8(a) participant or any other party.

(c) The size status of the apparent successful offeror for competitive 8(a) awards may be protested. The filing of a size status protest is limited to—

(1) Any offeror whom the contracting officer has not eliminated for reasons unrelated to size;

(2) The contracting officer; or

(3) The SBA District Director, or designee, in either the district office serving the geographical area in which the contracting activity is located or the district office that services the apparent successful offeror, or the Associate Administrator for Business Development.

(d) Protests of competitive 8(a) awards shall follow the procedures at 19.302. For additional information, refer to 13 CFR 121.1001.

19.814 Requesting a formal size determination (8(a) sole source requirements).

(a) If the size status of an 8(a) participant nominated for award of an 8(a) sole-source contract is called into question, a request for a formal size determination may be submitted to SBA pursuant to 13 CFR 121.1001(b)(2)(ii) by—

(1) The 8(a) participant nominated for award of the particular sole-source contract;

(2) The contracting officer who has been delegated SBA's 8(a) contract execution functions, where applicable, or the SBA program official with authority to execute the 8(a) contract; or

(3) The SBA District Director in the district office that services the 8(a) participant or the Associate Administrator for Business Development.

(b) SBA's Government Contracting Area Director or designee will issue a formal size determination within 15 business days, if possible, after SBA receives the request for a formal size determination.

(c) An appeal from an SBA size determination shall follow the procedures at 19.302.

19.815 Release for non-8(a) procurement.

(a) Once a requirement has been accepted by SBA into the 8(a) program, any follow-on requirements shall remain in the 8(a) program unless SBA agrees to release the requirement from the 8(a) program in accordance with 13 CFR 124.504(d).

(b) To obtain release of a requirement for a non-8(a) procurement, the contracting officer shall make a written request to, and receive concurrence from, the SBA Associate Administrator for Business Development.

(c)(1) The SBA Associate Administrator for Business Development will consider the following information when determining whether to release a requirement from the 8(a) program—

(i) Whether the agency has achieved its SDB goal;

(ii) Whether the agency has not achieved its HUBZone, SDVOSB, WOSB, or small business goal(s);

(iii) Whether the requirement is critical to the business development of the 8(a) contractor that is currently performing the requirement.

(2) Generally, a requirement that was previously accepted into the 8(a) program will only be released for procurements outside the 8(a) program when the contracting activity agency agrees to set-aside the requirement under the small business, HUBZone, SDVOSB, or WOSB programs.

(3) The requirement that a follow-on procurement must be released from the 8(a) program in order for it to be fulfilled outside the 8(a) program does not apply to task or delivery orders offered to and accepted into the 8(a) program, where the basic contract was not accepted into the 8(a) program.

19.816 Exiting the 8(a) program.

(a) When a contractor exits the 8(a) program, it is no longer eligible to receive new 8(a) contracts. However, the contractor remains under contractual obligation to complete existing contracts, and any priced options that may be exercised.

(b) If an 8(a) contractor is suspended from the program (see 13 CFR 124.305), it may not receive any new 8(a) contracts unless the head of the contracting agency (or designee) makes a determination that it is in the best interest of the Government to issue the award and SBA adopts that determination.

(c) A contractor that has completed its term of participation in the 8(a) program may be awarded a competitive 8(a) contract if it was an 8(a) participant eligible for award of the contract on the initial date specified for receipt of offers contained in the contract solicitation, and if the contractor continues to meet all other applicable eligibility criteria.

(d) SBA's regulations on exiting the 8(a) program are found at 13 CFR 124.301 through 124.305, and 13 CFR 124.507(d).

■ 29. Amend section 19.1504 by revising paragraph (a) to read as follows:

19.1504 Exclusions.

* * * * *

(a) Requirements that an 8(a) contractor is currently performing under the 8(a) program or that SBA has accepted for performance under the authority of the 8(a) program, unless SBA has consented to release the requirements from the 8(a) program;

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 30. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(17) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Date)

* * * * *

(b) * * *

(17) 52.219–14, Limitations on Subcontracting (Date) (15 U.S.C. 637(a)(14)).

* * * * *

■ 31. Amend section 52.219–11 by revising the date of the clause and paragraph (c) to read as follows:

52.219–11 Special 8(a) Contract Conditions.

* * * * *

Special 8(a) Contract Conditions (Date)

* * * * *

(c) Except for novation agreements, delegate to the _____ [*insert name of contracting agency*] the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract; provided, however, that the ___ ___ [*insert name of contracting agency*] shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.

* * * * *

■ 32. Amend section 52.219–12 by revising the date of the clause and removing from paragraph (b)(2) ''and advance payments''.

The revision reads as follows:

52.219–12 Special 8(a) Subcontract Conditions.

* * * * *

Special 8(a) Subcontract Conditions (Date)

* * * * *

■ 33. Amend section 52.219–14 by revising the date of the clause and removing from paragraphs (b)(1), (b)(2), and (b)(3) ''8(a) concerns'' and adding ''8(a) participants'' in its place.

The revision reads as follows:

52.219–14 Limitations on Subcontracting.

* * * * *

Limitations on Subcontracting (Date)

* * * * *

■ 34. Amend section 52.219–17 by revising the date of the clause; and removing from paragraph (a)(2) ''and advance payments''.

The revision reads as follows:

52.219–17 Section 8(a) Award.

* * * * *

Section 8(a) Award (Date)

* * * * *

■ 35. Amend section 52.219–18 by:

■ a. Revising the section and clause heading;

■ b. Revising the date of the clause; and

■ c. Removing from Alternate I ''concerns'' and adding ''participants'' in its place.

The revisions read as follows.

52.219–18 Notification of Competition Limited to Eligible 8(a) Participants.

Notification of Competition Limited to Eligible 8(a) Participants (Date)

* * * * *

[FR Doc. 2014–01706 Filed 1–31–14; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register
Vol. 79, No. 22
Monday, February 3, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 28, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 5, 2014 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: 7 CFR 761, General Program Administration.

OMB Control Number: 0560–0238.

Summary of Collection: Authority to establish the regulatory requirements contained in 7 CFR 761 and 7 CFR 763, is derived from 5 U.S.C. 301 which provides that ''The Head of an Executive department or military department may prescribe regulations for the government of his department, the distribution and performance of its business . . .'' The Secretary delegated authority to administer the provisions of the Act applicable to the Farm Loan Program (FLP) to the Under Secretary for Farm and Foreign Agricultural Service in section 2.16 of 7 CFR part 2. FLP provides loans to family farmers to purchase real estate equipment and finance agricultural production. The regulations covered by this information collection package describes, the policies and procedures the agency uses to provide supervised credit to direct FLP applicants and borrowers in accordance with the provisions of the Consolidated Farm and Rural Development Act (Pub. L. 87–128), as amended.

Need and Use of the Information: Information collections are submitted by FLP direct applicants and borrowers to the local FSA office serving the county in which their business is headquartered. The information is necessary to provide supervised credit as legislatively mandated and is used by Agency Officials to: (1) Ensure that when loan funds or insurance proceeds are used for construction and development, projects, work is completed according to applicable state and local requirements, and in a manner that protects the Agency's financial interest. (2) Ensure that the loan repayment plan is developed using realistic data, based on the actual history of the operation and any planned improvements. (3) Identify potential concerns limiting the success of the operation and develop a loan assessment outlining the course of action to be followed, to improve the operation so that commercial credit is available. The agency is mandated to provide supervised credit; therefore, failure to collect the information, or collecting it less frequently, could result in the failure of the farm operation or loss of agency security property.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 91,830.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 248,881.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–02093 Filed 1–31–14; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to renew an advisory committee.

SUMMARY: The Secretary of Agriculture intends to renew the National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule (Committee). In accordance with provisions of the Federal Advisory Committee Act (FACA), the Committee is being renewed to continue providing advice and recommendations on the implementation of the National Forest System Land Management Planning Rule (Planning Rule). The Committee is currently deliberating and formulating advice for the Secretary on the Proposed Planning Rule Directives. The Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Tony Tooke, U.S. Department of Agriculture, Forest Service, National Forest System, Ecosystem Management Coordination; telephone: 202–205–0830 or email: *ttooke@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), the Secretary of Agriculture intends to renew the National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule. The Committee is a discretionary advisory committee. The Committee operates under the provisions of FACA and will report to the Secretary of Agriculture through the Chief of the Forest Service.

The purpose of the Committee is to provide advice and recommendations on implementation of the planning rule. The Committee will be asked to perform the following duties or other requests made by the Secretary of Agriculture or the Chief of the Forest Service:

1. Review the content of and provide recommendations on directives related to implementation of the planning rule;

2. Offer recommendations on implementation of the planning rule, based on lessons learned and best practices from on-going or completed assessments, revisions, and monitoring strategies;

3. Offer recommendations on new best practices that could be implemented based on lessons learned;

4. Offer recommendations for consistent interpretation of the rule where ambiguities cause difficulty in implementation of the rule;

5. Offer recommendations for effective ongoing monitoring and evaluation, including broadscale monitoring, for implementation of the planning rule;

6. Offer recommendations on how to foster an effective ongoing collaborative framework to ensure engagement of Federal, State, local and Tribal governments; private organizations and affected interests; the scientific community; and other stakeholders; and

7. Offer recommendations for integrating the land management planning process with landscape scale restoration activities through implementation of the planning rule.

Advisory Committee Organization

This Committee is currently comprised of 21 members who provide balanced and broad representation within each of the following three categories of interests:

1. Up to 7 members who represent one or more of the following:

a. Represent the affected public at-large
b. Hold State-elected office (or designee)
c. Hold county or local elected office
d. Represent American Indian Tribes
e. Represent Youth

2. Up to 7 members who represent one or more of the following:

a. National, regional, or local environmental organizations
b. Conservation organizations or watershed associations
c. Dispersed recreation interests
d. Archaeological or historical interests
e. Scientific Community

3. Up to 7 members who represent one or more of the following:

a. Timber Industry
b. Grazing or other land use permit holders or other private forest landowners
c. Energy and mineral development
d. Commercial or recreational hunting and fishing interests
e. Developed outdoor recreation, off-highway vehicle users, or commercial recreation interests

No individual who is currently registered as a Federal lobbyist is eligible to serve as a member of the Committee. Members of the Committee serve without compensation, but may be reimbursed for travel expenses while performing duties on behalf of the Committee, subject to approval by the DFO.

The Committee meets three to six times annually or as often as necessary and at such times as designated by the Designated Federal Official (DFO).

The appointment of members to the Committee was made by the Secretary of Agriculture. Further information about the Committee is posted on the Planning Rule Advisory Committee Web site: *http://www.fs.usda.gov/main/planningrule/committee.*

Equal opportunity practices in accordance with U.S. Department of Agriculture (USDA) policies will be followed in all appointments to the committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership includes to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: January 17, 2014.

Gregory L. Parham,

Assistant Secretary for Administration.

[FR Doc. 2014–02113 Filed 1–31–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board (Board) will meet in Rapid City, South Dakota. The Board is established consistent with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. II), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et.seq.), the National Forest Management Act of 1976 (16 U.S.C. 1612), and the Federal Public Lands Recreation Enhancement Act (Pub. L. 108–447). Additional information concerning the Board can be found by visiting the Board's Web site at: *http://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees.*

DATES: The meeting will be held Wednesday, February 19, 2014, at 1:00 p.m.

ADDRESSES: The meeting will be held at the Mystic Ranger District, 8221 South Highway 16, Rapid City, South Dakota. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Black Hills National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Scott Jacobson, Committee Coordinator, by phone at 605–673–9216, or by email at *sjjacobson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide:

(1) Orientation on Forest Funding, Appropriations and Trends.

(2) Update from the Motorized Travel working group.

(3) Appointment of Recreational Facilities working group.

(4) Briefing on the Forest Plan.

(5) Briefing on the 2013 Forest Monitoring Report.

(6) Update on board membership and status of charter renewal for NFAB.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by February 10, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written

comments and time requests for oral comments must be sent to Scott Jacobson, Black Hills National Forest Supervisor's Office, 1019 North Fifth Street, Custer, South Dakota 57730; by email to *sjjacobson@fs.fed.us,* or via facsimile to 605–673–9208. A summary of the meeting will be posted on the Web site listed above within 45 days after the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: January 24, 2014.

Craig Bobzien,

Forest Supervisor and Designated Federal Official.

[FR Doc. 2014–02152 Filed 1–31–14; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1929]

Approval of Subzone Status, Toshiba International Corporation; Houston, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of subzones for specific uses;

Whereas, the Port of Houston Authority, grantee of Foreign-Trade Zone 84, has made application to the Board for the establishment of a subzone at the facilities of Toshiba International Corporation located in Houston, Texas (FTZ Docket B–77–2013, docketed 8/8/2013);

Whereas, notice inviting public comment has been given in the **Federal Register** (78 FR 49254, 8/13/2013) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves subzone status at the facilities of Toshiba International Corporation located in Houston, Texas (Subzone 84T), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 27th day of January, 2014.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2014–02233 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–5–2014]

Foreign-Trade Zone (FTZ) 230—Piedmont Triad Area, North Carolina; Notification of Proposed Production Activity; Oracle Flexible Packaging, Inc. (Foil Backed Paperboard); Winston-Salem, North Carolina

Oracle Flexible Packaging, Inc. (OFP), an operator of FTZ 230, submitted a notification of proposed production activity to the FTZ Board for its facility located in Winston-Salem, North Carolina. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on January 6, 2014.

OFP already has authority to produce laminated foil and foil backed paper products. The current request would add a new finished product (foil backed paperboard) and certain foreign material to the scope of authority. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt OFP from customs duty payments on the foreign status materials used in export production. On its domestic sales, OFP would be able to choose the duty rate during customs entry procedures that applies to foil backed paperboard (free) for the foreign status input noted below and the inputs in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The material sourced from abroad is aluminum converter foil (duty rate: 5.8%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is March 17, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: January 22, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–02230 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–07–2014]

Foreign-Trade Zone (FTZ) 269—Athens, Texas; Notification of Proposed Production Activity; Schneider Electric USA (Electrical Component Assembly); Athens, Texas

Schneider Electric USA submitted a notification of proposed production activity to the FTZ Board for its facility in Athens, Texas within FTZ 269. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on January 15, 2014.

The Schneider Electric USA (Schneider Electric) facility is located within Site 1 of FTZ 269. The facility is used for the assembly and kitting of electrical components and finished products used to control lighting and HVAC equipment. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Schneider Electric from customs duty payments on the foreign status components used in export production. On its domestic sales, Schneider Electric would be able to choose the duty rates during customs entry procedures that apply to: Power supplies; bus couplers; dimmers; bus coupler boxes and box enclosures; button key inputs; occupancy sensors; dual and single 120-volt bus couplers; dual and single 277-volt bus couplers; 120-volt and 277-volt device routers; power supplies; power supply controllers; button labels; and, switch covers (duty rate ranges from free to 5.3%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: touch screen wall plates; filler plates; nail brackets; plasterboard brackets; wall plates; touch screen wall boxes; bar code readers; ethernet interfaces; network bridges; PC interfaces; USB PC interfaces; power supplies; remote control power supplies; C–BUS controllers; telephone interfaces; RF remotes; RF USB PB interfaces; wireless gateways; in-ceiling Kevlar speakers; in-wall Kevlar speakers; AMP external power supplies; audio amplifiers; audio matrix switchers; audio distribution units; in-ceiling polypropylene speakers; in-wall polypropylene speakers; outdoor speakers; license keys for networks; hand-held infrared remotes; four-channel relays with and without remotes; C–BUS-wired demo cases; desktop targets; dual and single IR leads; IR flat targets; keypads; occupancy sensor sample cases; pascal automation controllers; faceplates; dimmers and wireless dimmers; channel relays without power supplies; two-channel bus couplers; two-channel gateways; two-channel C–BUS infrared transmitters; four-channel 0–10 volt outputs; four-channel auxiliary input modules; four-channel changeover relays with and without power supplies; four-zone thermostats with relays; single-zone thermostats; low-voltage relays; bus coupler demo cases; dimmer training boards; hand-held universal remote controls; infrared code learning units; touch screens; network training boards; relay training boards; controller power supplies; programmable and single-zone thermostats; wireless training boards; bus coupler enclosures, boxes and covers; rocker switch assemblies; demo cases; termination boxes for dimmers; indoor light-level sensors; occupancy sensors; USB programming cables; network analyzers; and, C–BUS remote temperature sensors (duty rate ranges from free to 5.3%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 17, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: January 28, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–02232 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Enforcement and Compliance, Formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* February 3, 2014.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, except for the review of the antidumping duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules (''solar cells and modules'') from the People's Republic of China (''PRC''), the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (''Q&V'') Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Respondent Selection—Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules, From the PRC

In the event the Department limits the number of respondents for individual examination in the administrative review of the antidumping duty order on solar cells and modules from the PRC, the Department intends to select respondents based on volume data contained in responses to Q&V questionnaires. Further, the Department intends to limit the number of Q&V questionnaires issued in the review based on CBP data for U.S. imports of solar cells and solar modules from the PRC. The units used to measure the imported quantities of solar cells and solar modules are ''number''; however, it would not be meaningful to sum the number of imported solar cells and the number of imported solar modules in attempting to determine the largest PRC exporters of subject merchandise by volume. Therefore, the Department will limit the number of Q&V questionnaires issued based on the import values in CBP data which will serve as a proxy for imported quantities. Parties subject to the review to which the Department does not send a Q&V questionnaire may file a response to the Q&V questionnaire by the applicable deadline if they desire to be included in the pool of companies from which the Department will select mandatory respondents. The Q&V questionnaire will be available on the Department's Web site at *http://trade.gov/enforcement/news.asp* on the date of publication of this notice in the **Federal Register**. The responses to the Q&V questionnaire must be received by the Department by February 19, 2014. Please be advised that due to the time constraints imposed by the statutory and regulatory deadlines for antidumping duty administrative reviews, the Department does not intend to grant any extensions for the submission of responses to the Q&V questionnaire. Parties will be given the opportunity to comment on the CBP data used by the Department to limit the number of Q&V questionnaires issued. We intend to release the CBP data under APO to all parties having an APO within seven days of publication of this notice in the **Federal Register**. The Department invites comments regarding CBP data and respondent selection within five days of placement of the CBP data on the record.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment

of the proceeding [2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Furthermore, firms to which the Department issues a Q&V questionnaire in the antidumping duty administrative review of solar cells and modules from the PRC must submit a timely and complete response to the Q&V questionnaire, in addition to a timely and complete Separate Rate Application or Certification in order to receive consideration for separate-rate status. In other words, the Department will not give consideration to any timely Separate Rate Certification or Application made by parties to whom the Department issued a Q&V questionnaire but who failed to respond in a timely manner to the Q&V questionnaire. Exporters subject to the antidumping duty administrative review of solar cells and modules from the PRC to which the Department does *not* send a Q&V questionnaire may receive consideration for separate-rate status if they file a timely Separate Rate Application or a timely Separate Rate Certification without filing a response to the Q&V questionnaire. All information submitted by respondents in the antidumping duty administrative review of solar cells and modules from the PRC is subject to verification. As noted above, the Separate Rate Certification, the Separate Rate Application, and the Q&V questionnaire will be available on the Department's Web site on the date of publication of this notice in the **Federal Register**.

Initiation of Review

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than December 31, 2014.

	Period to be reviewed
Antidumping Duty Proceedings	
TAIWAN: Steel Wire Garment Hangers, A–583–849	8/2/12–11/30/13
C & T International Group Ltd.	
Chaang Rong Industry Co., Ltd.	
Damco Taiwan Co., Ltd.	
Faithful Engineering Products Co., Ltd.	
For You Beautiful Industrial Co., Ltd.	
Gee Ten Enterprise Co. Ltd.	
Global Sources Enterprise Co., Ltd.	
Golden Canyon Limited.	
Good Wonder Ltd.	
Hung-Li Die Co., Ltd.	
Inmall Enterprises Co., Ltd.	
Intini Co., Ltd.	
Mico Mit Co., Ltd.	
Multi-Sander Tech Co., Ltd.	
Nan Shan International Co., Ltd. (A/K/A Nanshan International Co., Ltd.).	
Ocean Concept Corporation.	
Oriental Dragon Co., Ltd.	
Richlife Texcare Co., Ltd.	
Saint Master Corp.	
South Crown Ltd.	
Taiwan Hanger Manufacturing Co., Ltd.	
Tay Ruey Enterprise Co.	
Thinkwide Trading Ltd.	
Tone World International Corp., B.V.	
Top Harvest Metal Co., Ltd.	
Yeh (Cayman) Intl Business.	
Young Max Enterprises Co. Ltd.	
The People's Republic of China: Carbazole Violet Pigment 23,[4] A–570–892	12/1/12–11/30/13
Haimen Ruifeng Pigment Co. Ltd.	
Jiangsu Haimen Industrial Chemicals Factory.	
Nantong Haidi Chemicals Co., Ltd.	

[2] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[3] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
The People's Republic of China: Certain Cased Pencils,[5] A–570–827	12/1/12–11/30/13
Orient International Holding Shanghai Foreign Trade Co., Ltd.	
Shandong Rongxin Import & Export Co., Ltd.	
The People's Republic of China: Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled into Modules,[6] A–570–979	5/25/12–11/30/13
Aiko Solar.	
Amplesun Solar.	
Baoding Jiasheng Photovoltaic Technology Co. Ltd.	
Baoding Tianwei Yingli New Energy Resources Co., Ltd.	
Beijing Hope Industry.	
Beijing Tianneng Yingli New Energy Resources Co. Ltd.	
Best Solar Hi-tech.	
Canadian Solar International Limited.	
Canadian Solar Manufacturing (Changshu) Inc.	
Canadian Solar Manufacturing (Luoyang) Inc.	
CEEG (Shanghai) Solar Science Technology Co., Ltd.	
CEEG Nanjing Renewable Energy Co., Ltd.	
Changzhou NESL Solartech Co., Ltd.	
Changzhou Trina Solar Energy Co., Ltd.	
China Sunergy.	
China Sunergy (Nanjing) Co., Ltd.	
Chinalight Solar.	
Chint Solar (Zhejiang) Co. Ltd.	
CNPV Dongying Solar Power Co., Ltd.	
CSG PVTech Co., Ltd.	
Dai Hwa Industrial.	
DelSolar Co., Ltd.	
De-Tech Trading Limited HK.	
Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd.	
EGing.	
ENN Solar Energy.	
Eoplly New Energy Technology Co., Ltd.	
Era Solar Co., Ltd.	
ET Solar Energy Limited.	
General Solar Power.	
Golden Partner development.	
Goldpoly (Quanzhou).	
Hainan Yingli New Energy Resources Co., Ltd.	
Hairun Photovoltaics Technology Co., Ltd.	
Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	
Hanwha SolarOne (Qidong) Co., Ltd.	
Hareon Solar Technology.	
HC Solar Power Co., Ltd.	
Hengdian Group Dmegc Magnetics.	
Hengshui Yingli New Energy Resources Co., Ltd.	
Himin Clean Energy Holdings Co., Ltd.	
Innovosolar.	
JA Solar Technology Yangzhou Co., Ltd.	
Jetion Solar (China) Co., Ltd.	
Jia Yi Energy Technology.	
Jiangsu Green Power PV Co., Ltd.	
Jiangsu Jiasheng Photovoltaic Technology Co., Ltd.	
Jiangsu Sunlink PV Technology Co., Ltd.	
Jiangxi Green Power Co. Ltd.	
Jiasheng Photovoltaic Tech.	
Jiawei Solar Holding.	
Jiawei Solarchina Co. (Shenzhen), Ltd.	
Jiawei Solarchina Co., Ltd.	
JingAo Solar Co., Ltd.	
Jinko Solar Co., Ltd.	
Jinko Solar Import and Export Co, Ltd.	
JinkoSolar International Limited.	
Jiutai Energy.	
Konca Solar Cell Co., Ltd.	
Kuttler Automation Systems (Suzhou) Co., Ltd.	
LDK Hi-Tech (Nanchang Co. Ltd.	
LDK Solar Hi-tech (Nanchang) Co., Ltd.	
LDK Solar Hi-tech (Suzhou) Co., Ltd.	
Leye Photovoltaic Science Tech.	
Lightway Green New Energy Co., Ltd.	
Linuo Photovoltaic.	
Lixian Yingli New Energy Resources Co., Ltd.	
Luoyang Suntech Power Co., Ltd.	
Magi Solar Technology.	

	Period to be reviewed
Motech (Suzhou) Renewable Energy Co., Ltd. Ningbo ETDZ Holdings, Ltd. Ningbo Komaes Solar Technology Co., Ltd. Ningbo Qixin Solar Electrical Appliance Co., Ltd. Ningbo Ulica Solar Science & Technology Co., Ltd. Perfectenergy. Perlight Solar Co., Ltd. Polar Photovoltaics. Qiangsheng (QS Solar). QXPV (Ningbo Qixin Solar Electrical Appliance Co., Ltd). Refine Solar. ReneSola. Renesola Jiangsu Ltd. Risen Energy Co, Ltd. Risun Solar (JiangXi Ruijing Solar Power Co., Ltd). Sanjing Silicon. Shanghai BYD Company Limited. Shanghai Chaori Solar Energy. Shanghai JA Solar Technology Co., Ltd. Shanghai Machinery Complete Equipment (Group) Corp., Ltd. Shanghai Solar Energy Science & Technology Co., Ltd. Shangpin Solar. Shanshan Ulica. Shenglong PV-Tech. Shenzhen Global Solar Energy Tech. Shenzhen Suntech Power Co., Ltd. Shenzhen Topray Solar Co. Ltd. ShunFeng PV. Shuqimeng Energy Tech. Skybasesolar. Solarbest Energy-Tech (Zhejiang) Co., Ltd. Solargiga Energy Holdings Ltd. Sopray Energy Co., Ltd. Star Power International Limited. Sumec Hardware & Tools Co., Ltd. Sun Earth Solar Power Co., Ltd. Sunflower. Sunlink PV. Suntech Power Co., Ltd. Sunvim Solar Technology. Suzhou Shenglong PV-Tech Co., Ltd. Tainergy Tech. tenKsolar (Shanghai) Co., Ltd. Tianjin Jinneng Solar Cell. Tianjin Yingli New Energy Resources Co., Ltd. Tianwei New Energy (Chengdu) PV Module Co., Ltd. Topray. Topsolar. Trina Solar (Changzhou) Science & Technology Co., Ltd. Trony. Upsolar Group Co., Ltd.,. Wanxiang Import & Export Co., Ltd. Weihai China Glass Solar. Wuxi Sunshine Power Co., Ltd. Wuxi Suntech Power Co., Ltd. Wuxi University Science Park International Incubator Co., Ltd. Yangzhou Rietech Renewal Energy Co., Ltd. Yangzhou Suntech Power Co., Ltd. Yingli Energy (China) Co., Ltd. Yingli Green Energy Holding Company Limited. Yingli Green Energy International Trading Company Limited. Yuhan Sinosola Science & Technology Co., Ltd. Yuhuan Solar Energy Source Co., Ltd. Yunnan Tianda. Yunnan Zhuoye Energy. Zhejiang Jiutai New Energy Co., Ltd. Zhejiang Leye Photovoltaic Science & Technology Co., Ltd. Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd. Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company. Zhejiang Top Point Photovoltaic Co., Ltd. Zhejiang Wanxiang Solar Co, Ltd. Zhejiang Xinshun Guangfu Science and Technology Co., Ltd. Zhejiang ZG-Cells Co., Ltd. Zhenjiang Huantai Silicon Science & Technology Co., Ltd.	

	Period to be reviewed
Zhenjiang Rietech New Energy Science & Technology Co., Ltd.	
Zhiheng Solar Inc.	
The People's Republic of China: Hand Trucks and Parts Thereof,[7] A–570–891	12/1/12–11/30/13
Full Merit Enterprise Limited.	
New-Tec Integration (Xiamen) Co., Ltd.	
Yangjiang Shunhe Industrial Co..	
The People's Republic of China: Honey,[8] A–570–863	12/1/12–11/30/13
Dongtai Peak Honey Industry Co., Ltd.	
Fuzhou Shenglinmark Trade Co., Ltd.	
Kunshan Xinlong Food Co., Ltd.	
The People's Republic of China: Multilayered Wood Flooring,[9] A–570–970	12/1/12–11/30/13
A&W (Shanghai) Woods Co., Ltd.	
Anhui Longhua Bamboo Product Co., Ltd.	
Armstrong Wood Products (Kunshan) Co., Ltd.	
Baishan Huafeng Wood Product Co., Ltd.	
Baiying Furniture Manufacturer Co., Ltd.	
Benxi Wood Company.	
Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd.	
Changzhou Hawd Flooring Co., Ltd.	
Chinafloors Timber (China) Co., Ltd.	
Dalian Dajen Wood Co., Ltd.	
Dalian Huade Wood Product Co., Ltd.	
Dalian Huilong Wooden Products Co., Ltd.	
Dalian Jiuyuan Wood Industry Co., Ltd.	
Dalian Kemian Wood Industry Co., Ltd.	
Dalian Penghong Floor Products Co., Ltd.	
Dalian T-Boom Wood Products Co., Ltd.	
Dasso Industrial Group Co., Ltd.	
Dazhuang Floor Co. (dba Dasso Industrial Group Co., Ltd.).	
Dongtai Fuan Universal Dynamics LLC.	
Dua Hua City Jisen Wood Industry Co., Ltd.	
Dua Hua Sen Tai Wood Co., Ltd.	
Duahua City Dexin Wood Industry Co., Ltd.	
Dunhua City Hongyuan Wood Industry Co., Ltd.	
Dunhua City Wanrong Wood Industry Co., Ltd.	
Dunhua Jisheng Wood Industry Co., Ltd.	
Dunhua Shengda Wood Industry Co., Ltd.	
Fine Furniture (Shanghai) Limited.	
Fu Lik Timber (HK) Co., Ltd.	
Fusong Jinlong Wooden Group Co., Ltd.	
Fusong Qianqiu Wooden Product Co., Ltd.	
GTP International Ltd.	
Guangdong Fu Lin Timber Technology Limited.	
Guangdong Yihua Timber Industry Co., Ltd.	
Guangzhou Homebon Timber Manufacturing Co., Ltd.	
Guangzhou Panyu Kangda Board Co., Ltd.	
Guangzhou Panyu Shatou Trading Co., Ltd.	
Guangzhou Panyu Southern Star Co., Ltd.	
HaiLin LinJing Wooden Products, Ltd.	
Hangzhou Hanje Tec Co., Ltd.	
Hangzhou Zhengtian Industrial Co., Ltd.	
Hunchun Forest Wolf Wooden Industry Co., Ltd.	
Hunchun Xingjia Wooden Flooring Inc.	
Huzhou Chenghang Wood Co., Ltd.	
Huzhou Fulinmen Imp. & Exp. Co., Ltd.	
Huzhou Fuma Wood Bus. Co., Ltd.	
Huzhou Jesonwood Co., Ltd.	
Huzhou Ruifeng Imp. & Exp. Co., Ltd.	
Huzhou Sunergy World Trade Co., Ltd.	
Jianfeng Wood (Suzhou) Co., Ltd.	
Jiangsu Kentier Wood Co., Ltd.	
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.	
Jiangsu Simba Flooring Co., Ltd.	
Jiashan Hui Jia Le Decoration Material Co., Ltd.	
Jiaxing Brilliant Import & Export Co., Ltd.	
Jiazing Brilliant Import & Export Co., Ltd.	
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.	
Jilin Xinyuan Wooden Industry Co., Ltd.	
Karly Wood Product Limited.	
Kemian Wood Industry (Kushan) Co., Ltd.	
Linyi Anying Wood Co., Ltd.	
Linyi Bonn Flooring Manufacturing Co., Ltd.	
Metropolitan Hardwood Floors, Inc.	
MuDanJiang Bosen Wood Industry Co., Ltd.	

	Period to be reviewed
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd.	
Nanjing Minglin Wooden Industry Co., Ltd.	
Pinge Timber Manufacturing (Zhejiang) Co., Ltd.	
Power Dekor Group Co., Ltd.	
Puli Trading Limited.	
Samling Group.	
Sennorwell International Group (Hong Kong) Limited.	
Shanghai Eswell Timber Co., Ltd.	
Shanghai Lairunde Wood Co., Ltd Shanghai Lizhong Wood Products Co., Ltd./The Lizhong Wood Industry Limited Company of Shanghai.	
Shanghai New Sihe Wood Co., Ltd.	
Shanghai Shenlin Corporation.	
Shenyang Haobainian Wooden Co., Ltd.	
Shenyang Sende Wood Co., Ltd.	
Shenyang Senwang Wooden Industry Co., Ltd.	
Shenzhenshi Huanwei Woods Co., Ltd.	
Suzhou Anxin Weiguang Timber Co., Ltd.	
Suzhou Dongda Wood Co., Ltd.	
Vicwood Industry (Suzhou) Co. Ltd.	
Xiamen Yung De Ornament Co., Ltd.	
Xuzhou Shenghe Wood Co., Ltd.	
Yekalon Industry, Inc.	
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.	
Yixing Lion-King Timber Industry Co., Ltd.	
Zhejiang AnJi XinFeng Bamboo & Wood Co., Ltd.	
Zhejiang Biyork Wood Co., Ltd.	
Zhejiang Dadongwu GreenHome Wood Co., Ltd.	
Zhejiang Desheng Wood Industry Co., Ltd.	
Zhejiang Fudeli Timber Industry Co., Ltd.	
Zhejiang Fuerjia Wooden Co., Ltd.	
Zhejiang Fuma Warm Technology Co., Ltd.	
Zhejiang Haoyun Wood Co., Ltd.	
Zhejiang Jeson Wood Co., Ltd.	
Zhejiang Layo Wood Industry Co., Ltd.	
Zhejiang Longsen Lumbering Co., Ltd.	
Zhejiang Shiyou Timber Co., Ltd.	
Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd.	
The People's Republic Of China: Polyethylene Terephthalate (PET) Film,[10] [11] A–570–924	11/1/12–10/31/13
Shaoxing Xiangyu Green Packing Co., Ltd.	
Countervailing Duty Proceedings	
The People's Republic of China: Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled into Modules, C–570–980	3/26/12–12/31/12
Aiko Solar.	
Amplesum Solar.	
Baoding Jiansheng Photovoltaic Technology Co., Ltd.	
Baoding Tianwei Yingli New Energy Resources Co., Ltd.	
Beijing Hope Industry.	
Beijing Tianneng Yingli New Energy Resources Co. Ltd.	
Best Solar Hi-tech.	
Canadian Solar International Limited.	
Canadian Solar Manufacturing (Changshu) Inc.	
Canadian Solar Manufacturing (Luoyang) Inc.	
CEEG (Shanghai) Solar Science Technology Co., Ltd.	
CEEG Nanjing Renewable Energy Co., Ltd.	
China Sunergy.	
Chinalight Solar.	
Chint Solar (Zhejiang) Co., Ltd.	
CNPV Dongying Solar Power Co., Ltd.	
CSG PVTech Co., Ltd.	
Changzhou NESL Solartech Co., Ltd.	
China Sunergy (Nanjing) Co., Ltd.	
Dai Hwa Industrial.	
De-Tech Trading Limited HK.	
DelSolar Co., Ltd.	
EGing.	
ENN Solar Energy.	
Eoplly New Energy Technology Co., Ltd.	
Era Solar Co., Ltd.	
ET Solar Energy Limited.	
General Solar Power.	
Golden Partner Development.	
Goldpoly (Quanzhou).	
Hainan Yingli New Energy Resources Co., Ltd.	

	Period to be reviewed
Hangzhou Zhejiang University Sunny Energy Science and Technology Co. Ltd. Hairun Photovoltaics Technology Co., Ltd. Hareon Solar Technology Co., Ltd. Hendigan Group Dmegc Magnetics. Hengshui Yingli New Energy Resources Co., Ltd. Himin Clean Energy Holdings Co., Ltd. Jiangsu Green Power PV Co., Ltd. Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. Jiawei Solarchina Co., Ltd. Jiawei Solarchina Co. (Shenzhen), Ltd. Jiawei Solar Holding. Innovosolar. JA Solar Technology Yangzhou Co., Ltd. Jetion Solar (China) Co., Ltd. Jiangsheng Photovoltaic Tech. Jiangsu Green Power PV Co., Ltd. Jiangsu Sunlink PV Technology Co., Ltd. Jiangxi Green Power Co. Ltd. Jiangxi Sunlink PV Technology Co., Ltd. Jia Yi Energy Technology. JingAo Solar Co., Ltd. Jinko Solar Import and Export Co., Ltd. Jinko Solar International Limited. Jinko Solar Co., Ltd. Jiuatai Energy. Konca Solar Cell Co., Ltd. Ningbo Komaes Solar Technology Co., Ltd. LDK Solar Hi-tech (Nanchang). LDK Solar Hi-tech (Suzhou) Co., Ltd. Leye Photovoltaic Science Tech. Lightway Green New Energy Co., Ltd. Linuo Photovoltaic. Lixian Yingli New Energy Resources Co., Ltd. Magi Solar Technology. Motech (Suzhou) Renewable Energy Co., Ltd. MS Solar Investments LLC. Ningbo ETDZ Holdings, Ltd. Ningbo Qixin Solar Electrical Appliance Co., Ltd. Ningbo Ulica Solar Science & Technology Co., Ltd. Perlight Solar Co., Ltd. Perfectenergy. Polor Photovoltaics. Qiangsheng (QS Solar). QXPV (Ningbo Qixin Solar Electrial Appliance Co., Ltd). Refine Solar. ReneSola. Renesola Jinagsu Ltd. Risen Energy Co, Ltd. Risun Solar (JiangXi Ruijing Solar Power Co., Ltd). Sanjing Silicon. Shanghai Chaori Solar Energy. Shanghai Solar Energy Science & Technology Co., Ltd. Shanghai BYD Company Limited. Shanghai JA Solar Technology Co., Ltd. Shanghai Machinery Complete Equipment (Group) Corp., Ltd. Shenzhen Global Solar Energy Tech. Shenzen Topray Solar Co., Ltd. Solarbest Energy-Techn (Zhejiang) Co., Ltd. Sopray Energy Co., Ltd. Shangpin Solar. Sumec Hardware & Tools Co., Ltd. Soloarbest Energy-Tech (Zhejiang) Co., Ltd. Shanshan Ulica. Shenglong PV-Tech. ShunFeng PV. Shupimeng Energy Tech. Skybasesolar. Solargiga Energy Holdings Ltd. Sun Earth Solar Power Co., Ltd. Sunflower. Sunlink PV. Wuxi Suntech Power Co., Ltd. Luoyang Suntech Power Co., Ltd. Suntech Power Co., Ltd.	

	Period to be reviewed
Wuxi Sun-shine Power Co., Ltd.	
Sunvim Solar Technology.	
Suzhou Shenglong PV-Tech Co., Ltd.	
Tainergy Tech.	
tenKsolar (Shanghai) Co., Ltd.	
Tianjin Jinneng Solar Cell.	
Tianjin Yingli New Energy Resources Co., Ltd.	
Tianwei New Energy (Chengdu) PV Module Co., Ltd.	
Boading Tianwei Yingli New Energy Resources Co., Ltd.	
Topray.	
Topsolar.	
Changzhou Trina Solar Energy Co., Ltd.	
Trina Solar (Changzhou) Science & Technology Co., Ltd.	
Trony.	
Wanxiang Import & Export Co., Ltd.	
Weihai China Glass Solar.	
Yingli Energy (China) Company Limited.	
Yingli Green Energy International Trading Company Limited.	
Yuhan Sinosola Science & Technology Co., Ltd.	
Yuhuan Solar Energy Source Co., Ltd.	
Yunnan Tianda.	
Yunnan Zhuoye Energy.	
Upsolar Group, Co. Ltd.	
HC Solar Power Co., Ltd.	
Zhiheng Solar Inc.	
Zhejiang Leye Photovoltaic Science & Technology Co., Ltd.	
Tianwei New Energy (Chengdu) PV Module Co., Ltd.	
Zhejiang ZG-Cells Co., Ltd.	
Zhejiang Xinshun Guangfu Science and Technology Co., Ltd.	
Zhejiang Jiutai New Energy Co. Ltd.	
Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd.	
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company.	
Zhejiang Wanxiang Solar Co, Ltd.	
Dongfang Electric (Yixing) MAGI Solar Power Technology Co. Ltd.	
Yangzhou Rietech Renewal Energy Co., Ltd.	
Zhenjiang Huantai Silicon Science & Technology Co., Ltd.	
Kuttler Automation Systems (Suzhou) Co. Ltd.	
Shenzhen Suntech Power Co., Ltd.	
Wuxi Sunshine Power.	
Wuxi Universary Science Park International Incubator Co., Ltd.	
Yangzhou Suntech Power Co., Ltd.	
Zhenjiang Rietech New Energy Science & Technology Co., Ltd.	
The People's Republic of China: Lightweight Thermal Paper,[12] C–570–921	1/1/12–12/31/12
The People's Republic of China: Multilayered Wood Flooring, C–570–971	1/1/12–12/31/12
A&W (Shanghai) Woods Co., Ltd.	
Anhui Suzhou Dongda Wood Co., Ltd.	
Armstrong Wood Products (Kunshan) Co., Ltd.	
Baishan Huafeng Wood Product Co., Ltd.	
Baiying Furniture Manufacturer Co., Ltd.	
Baroque Timber Industries (Zhongshan) Co., Ltd.	
Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd.	
Changzhou Hawd Flooring Co., Ltd.	
Chinafloors Timber (China) Co. Ltd.	
Dalian Dajen Wood Co., Ltd.	
Dalian Huade Wood Product Co., Ltd.	
Dalian Huilong Wooden Products Co., Ltd.	
Dalian Jiuyuan Wood Industry Co., Ltd.	
Dalian Kemian Wood Industry Co., Ltd.	
Dalian Penghong Floor Products Co., Ltd.	
Dalian T-Boom Wood Products Co., Ltd.	
Dongtai Fuan Universal Dynamics, LLC.	
Dun Hua City Jisen Wood Industry Co., Ltd.	
Dunhua City Dexin Wood Industry Co., Ltd.	
Dunhua City Hongyuan Wood Industry Co., Ltd.	
Dunhua City Wanrong Wood Industry Co., Ltd.	
Dunhua Sentai Wood Co., Ltd.	
Dunhua Shengda Wood Industry Co., Ltd.	
Fine Furniture (Shanghai) Limited.	
Fu Lik Timber (HK) Co., Ltd.	
Fusong Jinlong Wooden Group Co., Ltd.	
Fusong Qianqiu Wooden Product Co., Ltd.	
GTP International Ltd.	
Guangdong Yihua Timber Industry Co., Ltd.	
Guangzhou Homebon Timber Manufacturing Co., Ltd.	

	Period to be reviewed
Guangzhou Panyu Kangda Board Co., Ltd. Guangzhou Panyu Southern Star Co., Ltd. HaiLin XinCheng Wooden Products, Ltd. Hangzhou Dazhuang Floor Co., Ltd. (dba Dasso Industrial Group Co., Ltd.). Hangzhou Hanje Tec Co., Ltd. Hangzhou Zhengtian Industrial Co., Ltd. Hunchun Forest Wolf Wooden Industry Co., Ltd. Hunchun Xingjia Wooden Flooring Inc. Huzhou Chenghang Wood Co., Ltd. Huzhou Fulinmen Imp. & Exp. Co., Ltd. Huzhou Fuma Wood Co., Ltd. Huzhou Jesonwood Co., Ltd. Huzhou Ruifeng Imp. & Exp. Co., Ltd. Huzhou Sunergy World Trade Co., Ltd. Jiafeng Wood (Suzhou) Co., Ltd. Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. Jiangsu Simba Flooring Co., Ltd. Jiashan Hui Jia Le Decoration Material Co., Ltd. Jilin Forest Industry Jinqiao Flooring Group Co., Ltd. Jilin Xinyuan Wooden Industry Co., Ltd. Karly Wood Product Limited. Kemian Wood Industry (Kunshan) Co., Ltd. Linyi Anying Wood Co., Ltd. Linyi Bonn Flooring Manufacturing Co., Ltd. Linyi Youyou Wood Co., Ltd. Mudanjiang Bosen Wood Industry Co., Ltd. Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd. Nanjing Minglin Wooden Industry Co., Ltd. Power Dekor Group Co., Ltd. Riverside Plywood Corporation. Samling Elegant Living Trading (Labuan) Limited. Samling Riverside Co., Ltd. Shanghai Anxin (Weiguang) Timber Co., Ltd. Shanghai Eswell Timber Co., Ltd. Shanghai Lairunde Wood Co., Ltd. Shanghai Lizhong Wood Products Co., Ltd. (also known as the The Lizhong Wood Industry Limited Company of Shanghai). Shanghai New Sihe Wood Co., Ltd. Shanghai Shenlin Corporation. Shenyang Haobainian Wooden Co., Ltd. Shenzhenshi Huanwei Woods Co., Ltd. Vicwood Industry (Suzhou) Co. Ltd. Xiamen Yung De Ornament Co., Ltd. Xuzhou Shenghe Wood Co., Ltd. Yekalon Industry, Inc. Yingyi-Nature (Kunshan) Wood Industry Co., Ltd. Yixing Lion-King Timber Industry. Zhejiang Anji Xinfeng Bamboo and Wood Industry Co., Ltd. Zhejiang Biyork Wood Co., Ltd. Zhejiang Dadongwu Green Home Wood Co., Ltd. Zhejiang Desheng Wood Industry Co., Ltd. Zhejiang Fudeli Timber Industry Co., Ltd. Zhejiang Fuerjia Wooden Co., Ltd. Zhejiang Fuma Warm Technology Co., Ltd. Zhejiang Haoyun Wooden Co., Ltd. Zhejiang Longsen Lumbering Co., Ltd. Zhejiang Shiyou Timber Co., Ltd. Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd.	
Suspension Agreements	
None.	

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of Carbazole Violet Pigment 23 from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Cased Pencils from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If one of the above-named companies does not qualify for a separate rate, all other exporters of Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled into Modules from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If one of the above-named companies does not qualify for a separate rate, all other exporters of Hand Trucks and Parts Thereof PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[8] If one of the above-named companies does not qualify for a separate rate, all other exporters of Honey from the PRC who have not qualified for a separate rate are deemed to be covered by this

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that the meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Revised Factual Information Requirements

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[13] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. Ongoing segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011 should use the formats for the revised certifications provided at the end of the *Interim Final Rule.*[14] All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[15] The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in antidumping and countervailing duty proceedings: *Final Rule,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by

review as part of the single PRC entity of which the named exporters are a part.

[9] If one of the above-named companies does not qualify for a separate rate, all other exporters of Multilayered Wood Flooring from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[10] If one of the above-named companies does not qualify for a separate rate, all other exporters of Polyethylene Terephthalate (PET) Film from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[11] The company listed above was misspelled in the initiation notice that published on December 30, 2013 (78 FR 79392). The correct spelling of the company is listed in this notice.

[12] In the initiation notice that published on December 30, 2013 (78 FR 79392), the Department inadvertently included Shanghai Hanhong Paper Co., Ltd. and Hanhong International Limited in the initiation of the review of the countervailing duty order on Lightweight Thermal Paper from the PRC. We are not initiating a countervailing duty review with respect to Shanghai Hanhong Paper Co., Ltd. and Hanhong International Limited.

[13] *See* section 782(b) of the Act.

[14] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*''), amending 19 CFR 351.303(g)(1) and (2); *Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011).

[15] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*''); *see also* the frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: January 28, 2014.

Christian Marsh,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–02242 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Partial Rescission of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, Formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is partially rescinding the administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam for the period August 1, 2012, through July 31, 2013, based on the timely withdrawals of certain requests for review.

DATES: *Effective Date:* February 3, 2014.

FOR FURTHER INFORMATION CONTACT: Paul Walker or Steven Hampton, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0413 or (202) 482–0116, respectively.

SUPPLEMENTARY INFORMATION:;

Background

On August 1, 2013, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam.[1] Pursuant to requests from interested parties, the Department initiated an administrative review with respect to 33 exporters for the period August 1, 2012 through July 31, 2013.[2] On November 8, 2013, the Department published a correction notice to include two companies that were inadvertently omitted from the *Initiation Notice*.[3] The deadline for a party to withdraw a request for review was December 31, 2013.[4]

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[5] Thus, all of the deadlines in this segment of the proceeding were extended by 16 days. Therefore, the revised deadline for a party to withdraw a request for review was January 16, 2013.

Withdrawal of Review Requests

On December 27, 2013, Vinh Hoan Corporation (''Vinh Hoan'') withdrew its review request.[6] On January 3, 2014, Petitioner[7] withdrew its review requests with respect to nine companies, including An Phu Seafood Corporation (''An Phu Seafood'') and Vinh Hoan.[8] On January 16, 2014, Bien Dong Seafood Co., Ltd (''Bien Dong Seafood'') withdrew its review request,[9] and Petitioner withdrew its review request with respect to Bien Dong Seafood on the same date.[10] No other party requested an administrative review of An Phu Seafood, Bien Dong Seafood, or Vinh Hoan.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Vinh Hoan's, Bien Dong Seafood's, and Petitioner's withdrawals of their review requests of Vinh Hoan, Bien Dong Seafood, and An Phu Seafood were submitted within the deadline set forth under 19 CFR 351.213(d)(1). Moreover, An Phu Seafood,[11] Bien Dong Seafood,[12] and Vinh Hoan [13] obtained separate rates in the most recently-completed segments of this proceeding in which they were under review. Therefore, in accordance with 19 CFR 351.213(d)(1), the Department is rescinding this review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam with respect to An Phu Seafood, Bien Dong Seafood, and Vinh Hoan. The review will continue with respect to the 32 other firms for which a review was requested and initiated.

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 78 FR 46573 (August 1, 2013).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 60834 (October 2, 2013) (''*Initiation Notice*'').

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 67104 (November 8, 2013).

[4] *See Initiation Notice,* 78 FR at 60835.

[5] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013).

[6] *See* Letter from Vinh Hoan regarding Frozen Fish Fillets from the Socialist Republic of Vietnam: Withdraw of Request for Administrative Review—Vinh Hoan Corporation, dated December 27, 2013.

[7] Catfish Farmers of America and individual U.S. catfish processors America's Catch, Alabama Catfish Inc. dba Harvest Select Catfish, Inc., Heartland Catfish Company, Magnolia Processing, Inc. dba Pride of the Pond, and Simmons Farm Raised Catfish, Inc. (hereinafter, ''Petitioner'').

[8] *See* Letter from Petitioner regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Withdrawal of Request for Antidumping Duty Administrative Review, dated January 3, 2014. Petitioner withdrew their review requests with respect to An Giang Agriculture and Food Import-Export Joint Stock Company, An Phu Seafood, Dai Thanh Seafoods Co., Ltd., Fatifish Company Limited, GODACO Seafood Joint Stock Company, Hoang Long Seafood Processing Co., Ltd., Hung Vuong Seafood Joint Stock Company, Nam Viet Corporation, and Vinh Hoan.

[9] *See* Letter from Bien Dong Seafood regarding Frozen Fish Fillets from the Socialist Republic of Vietnam: Withdrawal of Request for Administrative Review—Bien Dong Seafood Co., Ltd., dated January 16, 2014.

[10] *See* Letter from Petitioner regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Withdrawal of Request for Antidumping Duty Administrative Review, dated January 16, 2014.

[11] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2010–2011,* 78 FR 17350 (March 21, 2013).

[12] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Seventh Antidumping Duty Administrative Review,* 77 FR 15039 (March 14, 2012).

[13] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Amended Final Results of the Antidumping Duty Administrative Review, 2010–2011,* 78 FR 29323 (May 20, 2013).

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries, consistent with 19 CFR 351.212(b)(1). For An Phu Seafood, Bien Dong Seafood, and Vinh Hoan, each of which obtained separate rates in the most recently-completed segment of this proceeding in which they were under review, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period August 1, 2012, through July 31, 2013, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instruction to CBP 15 days after publication of this notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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 presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a final reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 27, 2014.

Gary Taverman,

Senior Advisor, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–02194 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

Certain New Pneumatic Off-The-Road Tires From the People's Republic of China: Notice of Correction to the Rescission of the 2012 Countervailing Duty Administrative Review

AGENCY: Enforcement and Compliance, Formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 3, 2014.

FOR FURTHER INFORMATION CONTACT: David Lindgren, Enforcement and Compliance, AD/CVD Operations, Office VII, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3870.

SUPPLEMENTARY INFORMATION: On January 17, 2014, the Department of Commerce published the rescission of the 2012 administrative review of the countervailing duty order on certain new pneumatic off-the-road tires from the People's Republic of China.[1] Subsequent to publication, we identified an inadvertent error with the *Rescission.* Specifically, the *Rescission* incorrectly listed the period of review (POR) as January 1, 2012, through December 31, 2013. The correct POR is January 1, 2012, through December 31, 2012.

This notice serves as a correction.

Dated: January 27, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–02221 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often

[1] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2012,* 79 FR 3177 (January 17, 2014) (*Rescission*).

require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after February 2014, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity To Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity To Request A Review: Not later than the last day of February 2014,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

	Period of review
Antidumping Duty Proceedings	
Brazil:	
Frozen Warmwater Shrimp, A–351–838	2/1/13–1/31/14
Stainless Steel Bar, A–351–825	2/1/13–1/31/14
France: Uranium, A–427–818	2/1/13–1/31/14
India:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–533–817	2/1/13–1/31/14
Certain Preserved Mushrooms, A–533–813	2/1/13–1/31/14
Frozen Warmwater Shrimp, A–533–840	2/1/13–1/31/14
Stainless Steel Bar, A–533–810	2/1/13–1/31/14
Indonesia:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–560–805	2/1/13–1/31/14
Certain Preserved Mushrooms, A–560–802	2/1/13–1/31/14
Italy: Stainless Steel Butt-Weld Pipe Fittings, A–475–828	2/1/13–1/31/14
Japan:	
Carbon Steel Butt-Weld Pipe Fittings, A–588–602	2/1/13–1/31/14
Stainless Steel Bar, A–588–833	2/1/13–1/31/14
Malaysia: Stainless Steel Butt-Weld Pipe Fittings, A–557–809	2/1/13–1/31/14
Mexico: Large Residential Washers, A–201–842	8/3/12–1/31/14
Phlippines: Stainless Steel But-Weld Pipe Fittings, A–565–801	2/1/13–1/31/14
Republic of Korea:	
Certain-Cut-to-Length Carbon-Quality Steel Plate, A–580–836	2/1/13–1/31/14
Large Residential Washers, A–580–868	8/3/12–1/31/14
Socialist Republic of Vietnam:	
Frozen Warmwater Shrimp, A–552–802	2/1/13–1/31/14
Steel Wire Garment Hangers, A–552–812	8/2/12–1/31/14
Utility Scale Wind Towers, A–552–814	2/13/13–1/31/14
Thailand: Frozen Warmwater Shrimp, A–549–822	2/1/13–1/31/14
The People's Republic of China:	
Certain Preserved Mushrooms, A–570–851	2/1/13–1/31/14
Folding Metal Tables and Chairs[2], A–570–868	6/1/12–11/5/12
Frozen Warmwater Shrimp, A–570–893	2/1/13–1/31/14
Heavy Forged Hand Tools, With or Without Handles, A–570–803	2/1/13–1/31/14
Small Diameter Graphite Electrodes, A–570–929	2/1/13–1/31/14
Uncovered Innerspring Units, A–570–928	2/1/13–1/31/14
Utility Scale Wind Towers, A–570–981	2/13/13–1/31/13

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] On June 3, 2013 (78 FR 33061), this order was inadvertently omitted from the opportunity notice for June cases. This order has been revoked effective 11/6/2012.

	Period of review
Countervailing Duty Proceedings	
India:	
Certain Cut-to-Length Carbon-Quality Steel Plate, C–533–818	1/1/13–12/31/13
Prestressed Concrete Steel Wire Strand, C–533–829	1/1/13–12/31/13
Indonesia: Certain Cut-to-Length Carbon-Quality Steel Plate, C–560–806	1/1/13–12/31/13
Republic of Korea:	
Certain Cut-to-Length Carbon-Quality Steel Plate, C–580–837	1/1/13–12/31/13
Large Residential Washers, C–580–869	6/5/12–12/31/13
Socialist Republic of Vietnam:	
Steel Wire Garment Hangers, C–552–813	6/4/12–12/31/13
The People's Republic of China: Utility Scale Wind Towers, C–570–982	2/13/13–12/31/13
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Further, as explained in *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013), the Department has clarified its practice with regard to the conditional review of the non-market economy (NME) entity in administrative reviews of antidumping duty orders. The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.[4] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov*.[5] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of February 2014. If the Department does not receive, by the last day of February 2014, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

[3] *See also* the Enforcement and Compliance Web site at *http://trade.gov/enforcement/*.

[4] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[5] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 28, 2014.

Christian Marsh,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–02228 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Enforcement and Compliance, Formerly Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for March 2014

The following Sunset Reviews are scheduled for initiation in March 2014 and will appear in that month's Notice of Initiation of Five-Year Sunset Review (''Sunset Review'').

	Department contact
Antidumping Duty Proceedings	
1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) from India (A–533–847) (1st Review)	Charles Riggle (202) 482–0650.
1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) from China (A–570–934) (1st Review)	Charles Riggle (202) 482–0650.
Frontseating Service Valves from China (A–570–933) (1st Review)	David Goldberger (202) 482–4136.
Malleable Cast Iron Pipe Fittings from China (A–570–881) (2nd Review)	David Goldberger (202) 482–4136.
Polyvinyl Alcohol from China (A–570–879) (2nd Review)	David Goldberger (202) 482–4136.
Steel Threaded Rod from China (A–570–932) (1st Review)	Charles Riggle (202) 482–0650.
Polyvinyl Alcohol from Japan (A–588–861) (2nd Review)	David Goldberger (202) 482–4136.
Polyvinyl Alcohol from Republic of Korea (A–580–850) (2nd Review)	David Goldberger (202) 482–4136.

Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders is scheduled for initiation in March 2014.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in March 2014.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 24, 2014.

Christian Marsh,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–02227 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–919; A–602–806]

Electrolytic Manganese Dioxide From Australia and the People's Republic of China: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, Formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 3, 2013, the Department of Commerce (''the Department'') initiated the first sunset reviews of the antidumping duty (''AD'') orders on electrolytic manganese dioxide (''EMD'') from Australia and the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). Based on the notice of intent to participate and adequate substantive response filed by the domestic interested party, and the lack of response from any respondent interested party, the Department conducted expedited (120-day) sunset reviews of these AD orders, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the AD orders would likely lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Reviews'' section of this notice.

DATES: *Effective Date:* February 3, 2014.

FOR FURTHER INFORMATION CONTACT: Lori Apodaca or Howard Smith, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4551 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 14 and 18, 2008, the Department published the AD orders on EMD from Australia and the PRC,

respectively.[1] On September 3, 2013, the Department published the notice of initiation of the first sunset reviews of the AD orders on EMD from Australia and the PRC, pursuant to section 751(c) of the Act.[2] On September 12, 2013, pursuant to 19 CFR 351.218(d)(1), the Department received timely and complete notices of intent to participate in the sunset reviews for both orders from Erachem Comilog, Inc. and Tronox LLC (collectively ''Domestic Producers''). On October 2, 2013, pursuant to 19 CFR 351.218(d)(3), Domestic Producers filed a timely and adequate substantive response for both orders. The Department did not receive substantive responses from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of the AD orders on EMD from Australia and the PRC.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[3] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. The revised deadline for the final results of this sunset review is now January 21, 2014.

Scope of the Orders

The merchandise covered by these orders includes all manganese dioxide ($MnO_{[2]}$) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to these orders is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

[1] *See Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 48195 (August 18, 2008) (''*PRC Final Determination''*); *see also Notice of Final Determination of Sales at Less Than Fair Value and Termination of Critical-Circumstances Investigation: Electrolytic Manganese Dioxide from Australia,* 73 FR 47586 (August 14, 2008) (''*Australia Final Determination''*).

[2] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 54237 (September 3, 2013).

[3] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013).

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews is provided in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice.[4] The issues discussed in the I&D Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margins likely to prevail if the orders are revoked. The I&D Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the I&D Memorandum can be accessed at *http://enforcement.trade.gov/frn/*. The signed I&D Memorandum and the electronic versions of the I&D Memorandum are identical in content.

Final Results of Sunset Reviews

The Department determines that revocation of the AD orders on EMD from Australia and the PRC would be likely to lead to continuation or recurrence of dumping, with the following dumping margins likely to prevail:

Exporter/producer	Weighted-average percentage margin
PRC	
Guizhou Redstar Developing Import & Export Company, Ltd./ Guizhou Redstar Developing Dalong Manganese Industrial Co., Ltd.	149.92
PRC–Wide Entity (including Xiangtan Electrochemical Scientific Ltd.)	149.92
Australia	
Delta Australia Pty Ltd.	83.66
All Others	83.66

[4] *See* ''Issues and Decision Memorandum for the Expedited First Sunset Reviews of the Antidumping Duty Orders on Electrolytic Manganese Dioxide from Australia and the People's Republic of China,'' from Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, dated concurrently with this notice (''I&D Memorandum'').

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: January 16, 2014.

Christian Marsh,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–02240 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

AGENCY: Enforcement and Compliance, Formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year reviews (''Sunset Reviews'') of the antidumping and countervailing duty (''AD/CVD'') orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* February 1, 2014.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in *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).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–570–880	731–TA–1020	China	Barium Carbonate (2nd Review)	Charles Riggle, (202) 482–0650.
A–570–930	731–TA–1144	China	Circular Welded Austenitic Stainless Pressure Pipe (1st Review).	Charles Riggle, (202) 482–0650.
C–570–931	701–TA–454	China	Circular Welded Austenitic Stainless Pressure Pipe (1st Review).	David Goldberger, (202) 482–4136.
A–570–882	731–TA–1022	China	Refined Brown Aluminum Oxide (2nd Review).	David Goldberger, (202) 482–4136.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: ''*http://enforcement.trade.gov/sunset/.*'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''), can be found at 19 CFR 351.303.[1]

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after August 16, 2013.[3] The formats for the revised certifications are provided at the end of the *Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: the definition of factual information (19 CFR 351.102(b)(21), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt*, prior to submitting factual information in this segment. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied.

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in antidumping and countervailing duty proceedings: *Extension of Time Limits,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under part 351 of the Department's regulations expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013–09-20/html/2013-22853.htm*, prior to

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*''Final Rule''*) (amending 19 CFR 351.303(g)).

submitting factual information in these segments.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.[4]

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: January 24, 2014.

Christian Marsh,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–02226 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Enforcement and Compliance, Formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 3, 2014.

SUMMARY: The Department of Commerce (''Department'') hereby publishes a list of scope rulings and anticircumvention determinations made between July 1, 2013, and September 30, 2013. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–4735.

SUPPLEMENTARY INFORMATION:;

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis.[1] Our most recent notification of scope rulings was published on September 27, 2013.[2] This current notice covers all scope rulings and anticircumvention determinations made by Enforcement and Compliance between July 1, 2013, and September 30, 2013, inclusive. As described below, subsequent lists will follow after the close of each calendar quarter.

[1] *See* 19 CFR 351.225(o).

[2] *See Notice of Scope Rulings,* 78 FR 59653 (September 27, 2013).

Scope Rulings Made Between July 1, 2013, and September 30, 2013

Italy

A–475–818 and C–475–819: Certain Pasta From Italy

Requestor: Valdigrano di Flavio Pagani S.r.L (Valdigrano); Valdigrano's product made from dough that contains 2.5 percent egg white, by weight, is within the scope of the antidumping and countervailing duty orders because Valigrano's product contains less than two percent egg white content; July 18, 2013.

A–475–703: Granular Polytetrafluoroethylene Resin From Italy

Requestor: Industrial Plastics and Machine, Inc.; certain granular polytetrafluoroethylene resin products that are processed in Italy using raw unfilled granular polytetrafluoroethylene resin from Russia or the People's Republic of China, and in some cases also processed using glass fiber from Japan, are outside the scope of the antidumping duty order because record evidence indicates that these products do not undergo substantial transformation in Italy; July 17, 2013.

People's Republic of China

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Port-A-Cool LLC.; Port-A-Cool's Cyclone-model-specific louver assemblies are outside the scope of the order because the louvers in question, as imported, each contain all of the components of a louver (including non-aluminum extrusion parts) permanently assembled, completed, and ready for use. Moreover, the louvers are a complementary finished product that work in conjunction with the Cyclone air cooling system to direct airflow, but are not essential to the air cooling system itself; September 9, 2013.

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Law St. Enterprises, LLC.; its disappearing screens are within the scope of the antidumping and countervailing duty orders because they are composed of covered aluminum extrusions and further do not meet the exclusion for finished goods kits because they do not enter the United States as a packaged combination of parts to fully assemble a disappearing screen; September 12, 2013.

A–570–909: Certain Steel Nails From the People's Republic of China

Requestor: Cobra Anchors Co. Ltd.; zinc anchors are within the scope of the antidumping duty order under k(1) because the record reflects that the International Trade Commission included zinc anchors as an example of the product covered by the original investigation; September 19, 2013.

A–570–979 and C–570–980: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China

Requestor: OYAMA Life Impact Energy Co. Ltd.; solar cells in the OY340–XA Hybrid Solar Tablet Charger are within the scope of the antidumping duty and countervailing duty orders because the device does not meet the requirements of the exclusionary language in the scope; July 24, 2013.

A–570–866: Folding Gift Boxes From the People's Republic of China

Requestor: Procter & Gamble Inc.; Gucci brand gift boxes are not within the scope of the antidumping duty order as they meet the thickness exclusion language; August 19, 2013.

A–570–891: Hand Trucks and Certain Parts Thereof From the People's Republic of China

Requestor: Welcom Products; the MC2 Elite Magna Cart is not within the scope of the antidumping duty order because it is indistinguishable from the MC2 Magna Cart that had been previously found outside the order; September 4, 2013.

A–570–822: Helical Spring Lock Washers From the People's Republic of China

Requestor: United Steel and Fasteners, Inc.; AREMA washers imported by United Steel and Fasteners, Inc. are within the scope of antidumping duty order because the design of the AREMA washers facilitates the same functionality characteristics of helical spring lock washers as described by the scope of the order; July 10, 2013.

A–570–504: Petroleum Wax Candles From the People's Republic of China

Requestor: Jay Import Company, Inc.; The goat candle is not within the scope of the antidumping duty order (''Order'') because it is shaped like an animal and thus, meets the exclusion for figurine candles, while the four cherub candles are within the scope of the Order, because the only candle exclusions are for birthday or birthday numeral, figurine and utility candles, and these are not birthday numeral, figurine, or utility candles as determined by the Department of Commerce; August 27, 2013.

A–570–964: Seamless Refined Copper Pipe and Tube From the People's Republic of China

Requestor: Luvata Tube (Zhongshan) Ltd.; Certain Luvata's Unilloy tubes (by model number) are outside the scope of the PRC seamless pipe order because the nickel content of Unilloy tubes exceeds the limitations established by the definition of refined copper; September 16, 2013.

A–570–918: Steel Wire Garment Hangers From the People's Republic of China

Requester: Whitmor Inc.; space-saving lingerie and accessory hangers are outside the scope of the antidumping duty order because they are manufactured and used in manners distinct from subject merchandise. Specifically, these hangers are intended for use in the home and are not sold to dry cleaners, laundries, uniform rental services, or similar industrial operations. Moreover, the Department previously has found that hangers with unique designs similar to Whitmor Hangers renders them distinguishable in use from ''in-scope merchandise'' which is used for industrial laundries, uniform rental companies, dry cleaners, or to be taken away with garments from stores as described in the Petition;[3] August 20, 2013.

A–570–890: Wooden Bedroom Furniture From the People's Republic of China

Requestor: Dorel Home Products Group; Imagination Junior Loft Beds (fire truck and princess castle) are within the scope of the antidumping duty order because they are beds made substantially of wood; July 22, 2013.

A–570–890: Wooden Bedroom Furniture From the People's Republic of China

Requestor: Whalen Furniture Manufacturing, Inc.; modular room dividers are not within the scope of the antidumping duty order because they are similar to bookcases or wall unit systems which are excluded from the scope; August 29, 2013.

The Russian Federation

A–821–811: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation

Requestor: KCKK Mineral Fertilizer Plant, OJSC, part of the Uralchem, OJSC group of companies; a fertilizer product identified as NS 30:7 is covered by the antidumping duty order on solid fertilizer grade ammonium nitrate from the Russian Federation because it meets the physical characteristics of the merchandise subject to the order; August 6, 2013 (final).

Anticircumvention Determinations Made Between July 1, 2013, and September 30, 2013:

People's Republic of China

A–570–929: Small Diameter Graphite Electrodes From the People's Republic of China

Requestor: SGL Carbon LLC and Superior Graphite Co.; Imports from the People's Republic of China (PRC) of graphite electrodes, produced and/or exported by Sinosteel Jilin Carbon Co., Ltd. and Jilin Carbon Import & Export Company, with an actual or nominal diameter of 17 inches, and otherwise meeting the description of in-scope merchandise, constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope of the order; September 16, 2013.

Interested parties are invited to comment on the completeness of this list of completed scope and anticircumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, 14th Street and Constitution Avenue NW., APO/Dockets Unit, Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: January 28, 2014.

Christian Marsh,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–02229 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* Petition for the Imposition of Antidumping Duties on Steel Wire Garment Hangers From the People's Republic of China, dated July 31, 2007 (''Petition''), at 14.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD071

Pacific Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of opportunities to submit public comments.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) has announced its annual preseason management process for the 2014 ocean salmon fisheries. This notice informs

the public of opportunities to provide comments on the 2014 ocean salmon management measures.

DATES: Written comments on the salmon management alternatives adopted by the Pacific Council at its March 2014 meeting, and described in Preseason Report II, submitted electronically or in hard copy by 11:59 p.m. Pacific Time, March 30, 2014 will be considered in the Pacific Council's final recommendation for the 2014 management measures.

ADDRESSES: Documents will be available from Ms. Dorothy Lowman, Chair, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, telephone: 503–820–2280 (voice) or 503–820–2299 (fax), and posted on the Pacific Council Web site at *http://www.pcouncil.org.* You may submit comments, identified by NOAA–NMFS–2014–0005, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0005*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail: Ms. Dorothy Lowman, Chair, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.
- Fax: 503–820–2299, Attn: Mr. Mike Burner.
- Comments can also be submitted via email at *PFMC.comments@noaa.gov.*

Instructions: Comments sent by any other method, to any other address or individual may not be considered by NMFS or the Pacific Council. 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 and the Pacific Council 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: Mr. Mike Burner, telephone: 503–820–2280. For information on submitting comments via the Federal e-Rulemaking portal, contact Peggy Mundy, telephone: 206–526–4323.

SUPPLEMENTARY INFORMATION: The Pacific Council has published its annual notice of availability of reports; public meetings, and hearings for the 2014 ocean salmon fisheries (78 FR 73850, December 9, 2013). The Pacific Council will adopt alternatives for 2014 ocean salmon fisheries at its meeting, March 7–13, 2014 at the DoubleTree by Hilton Hotel in Sacramento, California. Details of this meeting are available on the Pacific Council's Web site (*www.pcouncil.org*) and will be published in the **Federal Register** in February 2014. On March 21, 2014, ''Preseason Report II—Proposed Alternatives and Environmental Assessment Part 2 for 2014 Ocean Salmon Fishery Regulations'' and public hearing schedule will be mailed to the public that have requested to receive these documents (see **ADDRESSES**) and posted on the Pacific Council Web site at *http://www.pcouncil.org.* The report will include a description of the salmon management alternatives and a summary of their biological and economic impacts.

Comments on the alternatives the Pacific Council adopts at its March 2014 meeting, and described in Preseason Report II, may be submitted in writing or electronically as described under Addresses, or verbally or in writing at any of the public hearings held on March 24–25, 2014, or at the Pacific Council's meeting, April 4–10, 2014, at the Hilton Hotel in Vancouver, Washington. Details of these meetings are available on the Pacific Council's Web site (*www.pcouncil.org*) and will be published in the **Federal Register**. Written and electronically submitted comments must be received no later than 11:59 p.m. Pacific Time, March 30, 2014 in order to be included in the briefing book for the April Council meeting where they will be considered in the adoption of the Pacific Council's final recommendation for the 2014 salmon fishery management measures. All comments received accordingly will be reviewed and considered by the Pacific Council and NMFS.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 29, 2014.

Sean F. Corson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–02169 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD105

Small Takes of Marine Mammals Incidental to Specified Activities; Cape Wind's High Resolution Survey in Nantucket Sound, MA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from Cape Wind Associates (CWA) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to pre-construction high resolution survey activities. CWA began pre-construction activities in 2012, but was unable to complete the entire survey. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to CWA to incidentally take, by Level B harassment only, marine mammals during the specified activity.

DATES: Comments and information must be received no later than March 5, 2014.

ADDRESSES: Comments on the application and this proposal should be addressed to Jolie Harrison, Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Magliocca@noaa.gov.* Comments sent via email, including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for comments sent to addresses other than those provided here.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of the application may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The following

associated documents are also available at the same internet address: 2011 Environmental Assessment, 2012 monitoring report. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On December 20, 2013, NMFS received an application from CWA for the taking of marine mammals incidental to high resolution survey activities. NMFS determined that the application was adequate and complete on December 20, 2013.

CWA proposes to conduct a high resolution geophysical survey in Nantucket Sound, Massachusetts. The proposed activity would occur during daylight hours over an estimated 109-day period beginning in April 2014. The following equipment used during the survey is likely to result in the take of marine mammals: Shallow-penetration subbottom profiler and medium-penetration subbottom profiler. Take, by Level B harassment only, of individuals of five species is anticipated to result from the specified activity.

NMFS issued CWA an IHA in 2011 (76 FR 80891, December 27, 2011) for survey work that was to be completed in 2012. However, subsequent to the issuance of that IHA, CWA found it necessary to divide their survey into two seasons. They completed approximately 20 percent of the survey in 2012 and obtained a second IHA to conduct the remaining 80 percent in 2013 (78 FR 19217, March 29, 2013). Due to scheduling adjustments, the work was not conducted in 2013 and this request is an extension of the original request. CWA is not proposing to change their survey activities in any way. However, the geotechnical portion of the survey was completed in 2012 and would not be continued during the 2014 season.

Description of the Specified Activity

CWA proposes to conduct a high resolution geophysical survey in order to acquire remote-sensing data around Horseshoe Shoal which would be used to characterize resources at or below the seafloor. The purpose of the survey would be to identify any submerged cultural resources that may be present and to generate additional data describing the geological environment within the survey area. The survey would satisfy the mitigation and monitoring requirements for ''cultural resources and geology'' in the environmental stipulations of the Bureau of Ocean Energy Management's lease. The survey is part of the first phase of a larger Cape Wind energy project, which involves the installation of 130 wind turbine generators on Horseshoe Shoal over a 2-year period. The survey would collect data along predetermined track lines using a towed array of instrumentation, which would include a side scan sonar, magnetometer, shallow-penetration subbottom profiler, multibeam depth sounder, and medium-penetration subbottom profiler. The proposed high resolution geophysical survey activities would not result in any disturbance to the sea floor.

Dates and Duration

Survey activities are necessary prior to construction of the wind turbine array and are scheduled to begin in the spring of 2014, continuing on a daily basis for up to five months. Survey vessels would operate during daytime hours only and CWA estimates that one survey vessel would cover about 17 nautical miles (31 kilometers) of track line per day. Therefore, CWA conservatively estimates that survey activities would take 109 days (28 days less than what was expected under the 2012 IHA). However, if more than one survey vessel is used, the survey duration would be considerably shorter. NMFS is proposing to issue an authorization that extends from April 1, 2014, to March 31, 2015.

Specified Geographic Region

Survey vessels are expected to depart from Falmouth Harbor, Massachusetts, or another nearby harbor on Cape Cod. In total, the survey would cover approximately 110 square kilometers (km^2). This area includes the future location of the wind turbine generators—an area about 8.4 km from Point Gammon, 17.7 km from Nantucket Island, and 8.9 km from Martha's Vineyard—and cables connecting the wind park to the mainland. The survey area within the wind park would be transited by survey vessels towing specialized equipment along primary track lines and perpendicular tie lines. Preliminary survey designs include primary track lines with northwest-southeast orientations and assume 30-meter (m) line spacing. Preliminary survey designs also call for tie lines to likely run in a west-east orientation covering targeted areas of the construction footprint where wind turbine generators would be located. The survey area along the interconnecting submarine cable route includes a construction and anchoring corridor, as part of the wind farm's area of potential effect. The total track line distance covered during the survey is estimated to be about 3,432 km (as opposed to the 4,292 km included in the 2012 IHA).

Multiple survey vessels may operate within the survey area and would travel at about 3 knots during data acquisition and approximately 15 knots during transit between the survey area and port. If multiple vessels are used at the same time, they would be far enough apart that sounds from the chirp and boomer would not overlap. The survey vessels would acquire data continuously throughout the survey area during the day and terminate survey activities

before dark, prior to returning to port. NMFS believes that the likelihood of a survey vessel striking a marine mammal is low considering the low marine mammal densities within Nantucket Sound, the relatively short distance from port to the survey site, the limited number of vessels, and the small vessel size. Vessel sounds during survey activities would result from propeller cavitations, propeller singing, propulsion, flow noise from water dragging across the hull, and bubbles breaking in the wake. The dominant sound source from vessels would be from propeller cavitations; however, sounds resulting from survey vessel activity are considered to be no louder than the existing ambient sound levels and sound generated from regular shipping and boating activity in Nantucket Sound (MMS, 2009).

Detailed Description of Activities

NMFS expects that acoustic stimuli resulting from the operation of the survey equipment have the potential to harass marine mammals. Background information on the characteristics and measurement of sound were provided in the 2013 proposed IHA notice (78 FR 7402, February 1, 2013) and have not changed. The dominant sources of sound during the proposed survey activities would be from the towed equipment used to gather seafloor data. Two of the seismic survey devices used during the high resolution geophysical survey emit sounds within the hearing range of marine mammals in Nantucket Sound: Shallow-penetration and medium-penetration subbottom profilers (known as a ''chirp'' and ''boomer,'' respectively). CWA would use a chirp to provide high resolution data of the upper 15 m of sea bottom. An EdgeTech 216S or similar model would be used. The chirp would be towed near the center of the survey vessel directly adjacent to the gunwale of the boat, about 1 to 1.5 m beneath the water's surface. Sources such as the chirp are considered non-impulsive, intermittent (as opposed to continuous) sounds. The frequency range for this instrument is generally 2 to 16 kilohertz (kHz)—a range audible by all marine mammal species in Nantucket Sound. The estimated sound pressure level at the source would be 201 dB re 1 µPa at 1 m with a typical pulse length of 32 milliseconds and a pulse repetition rate of 4 per second. NMFS does not consider the chirp to be a continuous sound source (best represented by vibratory pile driving or drilling). CWA would use a boomer to obtain deeper resolution of geologic layering that cannot be imaged by the chirp. An AP3000 (dual plate) boomer, or similar model would be used. The boomer would be towed about 3 to 5 m behind the survey vessel's stern at the water's surface. Unlike the chirp, the boomer emits an impulse sound, characterized by a relatively rapid rise-time to maximum pressure followed by a period of diminishing and oscillating pressures (Southall *et al.,* 2007). The boomer has a broad frequency range of 0.3 to 14 kHz—a range audible by all marine mammal species in Nantucket Sound. CWA performed sound source verification monitoring in 2012 on the type of chirp and boomer that would be used during the 2014 survey season. Underwater sound was recorded with two Autonomous Multichannel Acoustic Recorders, deployed 100 m apart, in the vicinity of the project area. The received 90-percent rms sound pressure levels (SPLs) from the subbottom profilers did not exceed 175 dB re 1uPa. The loudest source, the dual-plate boomer, produced a received 90-percent rms SPL of less than 140 dB re 1 uPa at a 500-m range. The distance to the 160-dB isopleth was 12 m for the dual-plate boomer and 10 m for the chirp.

Description of Marine Mammals in the Area of the Specified Activity

All marine mammals with possible or confirmed occurrence in the proposed activity area are listed in Table 1, along with their status under the Endangered Species Act (ESA) and MMPA. In general, large whales do not frequent Nantucket Sound, but they are discussed below because some species have been reported near the project vicinity.

TABLE 1—MARINE MAMMALS WITH POSSIBLE OR CONFIRMED OCCURRENCE IN THE PROPOSED ACTIVITY AREA

Common name	Scientific name	ESA Status	MMPA Status
Humpback whale	*Megaptera novaeangilae*	endangered	depleted.
Fin whale	*Balaenoptera physalus*	endangered	depleted.
North Atlantic right whale	*Eubaelena glacialis*	endangered	depleted.
Minke whale	*Balaenoptera acutorostrata*		
Atlantic white-sided dolphin	*Lagenorhynchus acutus*		
Harbor porpoise	*Phocoena phocoena*		
Gray seal	*Halichoerus grypus*		
Harbor seal	*Phoca vitulina*		

Sightings data indicate that whales rarely visit Nantucket Sound and there are no sightings of large whales on Horseshoe Shoal. Since 2002, no humpback whales have been observed anywhere in Nantucket Sound and there are no documented occurrences of fin whales within Nantucket Sound. Right whales are considered rare in Nantucket Sound and have not been sighted on Horseshoe Shoal. All of the right whales observed in Nantucket Sound during 2010 quickly transited the area and there is no evidence of any persistent aggregations around the proposed project area. The best available science indicates that humpback whales, fin whales, and right whales—although present in the New England region—are rare in Nantucket Sound and transient individuals may be occasionally found 20 km from the proposed project area; this is likely due to the shallow depths of Nantucket Sound and its location outside of the coastal migratory corridor.

Likewise, sightings data shows no record of long-finned pilot whales, striped dolphins, Atlantic spotted dolphins, common dolphins, Risso's dolphins, *Kogia* species, harp seals, or hooded seals in Nantucket Sound, although these stocks exist in the New England region. Therefore, CWA is neither requesting nor is NMFS proposing to authorize take of the aforementioned species.

Marine mammals with known occurrences in Nantucket Sound that could be harassed by high resolution geophysical survey activity in Nantucket Sound are listed in Table 2. These are the species for which take is being requested. Information on each species is summarized below. Further information on the biology and local distribution of these species and others in the region can be found in CWA's

application, which is available online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications,* and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/species.*

TABLE 2—MARINE MAMMALS THAT COULD BE IMPACTED BY SURVEY ACTIVITIES IN NANTUCKET SOUND

Common name	Scientific name	Abundance	Population status	Time of year in New England
Minke whale	*Balaenoptera actuorostrata*	20,741	n/a	April through October.
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	48,819	n/a	October through December.
Harbor porpoise	*Phocoena phocoena*	79,883	n/a	Year-round (peak Sept–Apr).
Gray seal	*Halichoerus grypis*	348,900	increasing	Year-round.
Harbor seal	*Phoca vitulina*	99,340	n/a	October through April.

Minke Whales

In the North Atlantic, minke whales are found from Canada to the Gulf of Mexico and concentrated in New England waters, particularly in the spring and summer months. Minke whales found in Nantucket Sound are part of the Canadian East Coast stock, which runs from the Davis Strait down to the Gulf of Mexico. The best available abundance estimate for this stock is 20,741 individuals. Sightings data indicate that minke whales prefer shallower waters when in the Cape Cod vicinity, but depths significantly greater than Nantucket Sound. Sightings per unit effort estimates for Nantucket Sound are 0.1 to 5.9 minke whales per 1,000 km of survey track for spring and summer. However, estimates may be biased due to heavier whale watching activities during those months. Minke whales are one of the most abundant whale species in the world and their population is considered stable throughout. The minke whale is not listed under the ESA or considered strategic under the MMPA.

Atlantic White-Sided Dolphin

Atlantic white-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, typically along the continental shelf and slope. In the western North Atlantic, they are found from North Carolina to Greenland. During summer months, Atlantic white-sided dolphins move north and closer to shore. Atlantic white-sided dolphins are rare in Nantucket Sound, but are found in deeper waters around Massachusetts and Rhode Island. In 2012, the estimated population size of the Western North Atlantic stock was about 48,819 animals. There is insufficient data to determine population trends, but Atlantic white-sided dolphins are not listed under the ESA, although they are considered strategic under the MMPA.

Harbor Porpoises

Harbor porpoises have a wide and discontinuous range that includes the North Atlantic and North Pacific. In the western North Atlantic, harbor porpoises are found from Greenland to Cape Hatteras, North Carolina. Harbor porpoises in U.S. waters are divided into 10 stocks, based on genetics, movement patterns, and management. Any harbor porpoises encountered during the proposed survey activities would be part of the Gulf of Maine/Bay of Fundy stock which has an estimated abundance of 79,883 animals. They congregate around the Gulf of Maine during summer months, but are otherwise dispersed along the east coast. No trend analyses exist for this species. Harbor porpoises are not listed under the ESA, although they are considered strategic under the MMPA.

Gray Seals

Gray seals inhabit temperate and sub-arctic waters. They are found from Maine to Long Island Sound, live on remote, exposed islands, shoals, and unstable sandbars, and are the second most common pinniped along the U.S. Atlantic coast. Three major populations exist in eastern Canada, northwestern Europe, and the Baltic Sea. The western North Atlantic stock is equivalent to the eastern Canada population and ranges from New York to Labrador. Pupping occurs on land or ice from late December through mid-February with peaks in mid-January. Muskeget Island (located between Martha's Vineyard and Nantucket Island) and Monomoy Island (at the eastern limit of Nantucket Sound) are the only gray seal breeding colonies in the U.S. and the southernmost gray seal breeding colonies in the world. These breeding colonies are about 24 km and 14 km from the proposed project site, respectively. Gray seals presently use the islands as areas to give birth and raise their pups. There is no defined migratory behavior for gray seals, so a large portion of the population may be present in Nantucket Sound year-round. Some adults move north during spring and summer, out of Nantucket Sound to the waters off Maine and Canada, but others have been observed in high abundance in Chatham Harbor, MA and other areas of lower Cape Cod during this time.

Incidental observations of seals were recorded during avian aerial surveys conducted independently by CWA and the Massachusetts Audubon Society. Between May 2002 and February 2004, CWA conducted about 46 aerial avian surveys in Nantucket Sound, with particular focus on Horseshoe Shoal. During this time, about 26,873 seals were observed throughout Nantucket Sound; about 56 of these were observed within the proposed project area over the three-year period. The current abundance estimate for the western North Atlantic stock is 348,900 animals. Gray seal numbers are increasing in coastal waters between southern Massachusetts and eastern Long Island. Their abundance is likely increasing throughout the western Atlantic, but the rate of increase is unknown. Gray seals are not listed under the ESA or considered strategic under the MMPA.

Harbor Seals

Harbor seals, also known as common seals, are found throughout coastal waters of the Atlantic Ocean and considered the most abundant pinniped on the U.S. east coast. The best available estimate for the harbor seal population along the New England coast is 99,340 (NMFS, 2011). They are most common around coastal islands, ledges, and sandbars above 30° N latitude and range from the Arctic down to Nantucket Sound. Harbor seals are seasonal visitors to Massachusetts; breeding and pupping occur through the spring and summer in Maine and Canada. Harbor seals typically over-winter in Massachusetts, but some remain in southern New England year-round. No pupping areas have been identified in southern New England. Extensive sand spits off Muskeget Island and neighboring Tuckernuck and Skiff Islands have been identified as preferred

haul-out spots for large numbers of harbor seals.

Harbor seal abundance estimates for Nantucket Sound are scarce. Barlas (1999) observed harbor seals on Cape Cod from October through April and saw abundance peak in March, with very few individuals using haul-out sites in Nantucket Sound. Waring (unpublished data, 2002) observed an increased abundance of harbor seals on Muskeget Island, Monomoy Island, and Tuckernuck Island in 1999 and 2000; however, harbor seals are not likely to be in the same area when gray seals are breeding.

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity have been observed to impact marine mammals. This discussion may also include reactions that we equate with a take and those that we do not equate with a take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measureable avoidance). This section also provides background information concerning potential effects of the specified activity, but does not consider either the specific manner in which the activity will be carried out or the mitigation that will be implemented, and how either of these will influence the anticipated impacts from this specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that we expect to be taken by this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, the ''Proposed Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

Use of subbottom profilers on Horseshoe Shoal may temporarily impact marine mammal behavior within the survey area due to elevated in-water sound levels. Marine mammals are continually exposed to many sources of sound. Naturally occurring sounds such as lightning, rain, sub-sea earthquakes, and biological sounds (for example, snapping shrimp, whale songs) are widespread throughout the world's oceans. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to: (1) Social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance, or received levels of sound depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson *et al.,* 1995). Type and significance of marine mammal reactions to sound are likely dependent on a variety of factors including, but not limited to, (1) the behavioral state of the animal (for example, feeding, traveling, etc.); (2) frequency of the sound; (3) distance between the animal and the source; and (4) the level of the sound relative to ambient conditions (Southall *et al.,* 2007).

Background information on sound, marine mammal hearing, and potential effects of the specified activity on marine mammals (i.e., hearing impairment, threshold shift, and behavioral disturbance) was provided in the 2013 proposed IHA notice 78 FR 7402 (February 1, 2013) and that information has not changed.

Anticipated Effects on Marine Mammal Habitat

The high resolution geophysical survey equipment would not come in contact with the seafloor and would not be a source of air or water pollution. Marine mammals may avoid the survey area temporarily due to ensonification, but survey activities are not expected to result in long-term abandonment of marine mammal habitat. A negligible area of seafloor would be temporarily disturbed during the collection of geotechnical data. The proposed activity is not expected to have any effects on important marine mammal habitat.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must prescribe, where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses (where relevant).

CWA proposed, with NMFS' guidance, the following mitigation measures to help ensure the least practicable adverse impact on marine mammals:

Establishment of an Exclusion Zone

During all survey activities involving the shallow-penetration and medium-penetration subbottom profilers, CWA would establish a 500-m radius exclusion zone around each survey vessel. This area would be monitored for marine mammals 60 minutes (as stipulated by the BOEMRE lease) prior to starting or restarting surveys, and during surveys, and 60 minutes after survey equipment has been turned off. Typically, the exclusion zone is based on the area in which marine mammals could be exposed to injurious (Level A) levels of sound. CWA's lease specifies a 500-m exclusion zone, which exceeds both the estimated Level A and Level B isopleths for marine mammal harassment. Thus, CWA's proposed exclusion zone would minimize impacts to marine mammals from increased sound exposures. Finally, the exclusion zone must not be obscured by fog or poor lighting conditions.

Shut Down and Delay Procedures

If a protected species observer sees a marine mammal within or approaching the exclusion zone prior to the start of surveying, the observer would notify the appropriate individual who would then be required to delay surveying (i.e., not initiate any sound sources that could result in the harassment of marine mammals) until the marine mammal moves outside of the exclusion zone or if the animal has not been resighted for 60 minutes. If a protected species observer sees a marine mammal within or approaching the exclusion zone during survey activities, the observer would notify the appropriate individual who would then be required to shut down the relevant sound sources until the marine mammal moves outside of the exclusion zone or if the animal has not been resighted for 60 minutes.

Soft-Start Procedures

A ''soft-start'' technique would be used at the beginning of survey activities each day (or following a shut down of the relevant sound sources) to allow any marine mammal that may be in the immediate area to leave before the sound sources reach full energy. Sound sources shall not commence at nighttime or when the exclusion zone cannot be effectively monitored.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures to ensure that NMFS

prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned
- The practicability of the measure for applicant implementation

Any mitigation measures(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal)

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of underwater impulse sounds, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only)

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of impulse sound, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only)

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of impulse sound, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only)

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an incidental take statement for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, where applicable, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. CWA submitted a marine mammal monitoring plan as part of the IHA application, which can be found in section 12 of CWA's application. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

- An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below
- An increase in our understanding of how many marine mammals are likely to be exposed to levels of impulse sound that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS
- An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:
  - Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information)
  - Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information)
  - Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli
- An increased knowledge of the affected species
- An increase in our understanding of the effectiveness of certain mitigation and monitoring measures

Visual Monitoring

CWA would designate at least one biologically-trained, on-site individual, approved in advance by NMFS, to monitor the area for marine mammals 60 minutes before, during, and 60 minutes after all survey activities and call for shut down of the sound source if any marine mammal is observed within or approaching the designated 500-m exclusion zone. Should a marine mammal not included in an incidental take authorization be observed at any time within the 500-m exclusion zone, shut down and delay procedures would be followed.

CWA would also provide additional monitoring efforts that would result in increased knowledge of marine mammal species in Nantucket Sound. At least one NMFS-approved protected species observer would conduct behavioral monitoring from the survey vessel for two days, every 14 days of survey activity, to estimate take and evaluate the behavioral impacts that survey activities have on marine mammals outside of the 500-m exclusion zone. In addition, CWA would also deploy an additional vessel with a NMFS-approved protected species observer to collect data on species presence and behavior before surveys begin and once a month during survey activities.

Protected species observers would be provided with the equipment necessary to effectively monitor for marine mammals (for example, high-quality binoculars, compass, and range-finder) in order to determine if animals have entered the harassment isopleths and to record marine mammal sighting information. Protected species observers must be able to effectively monitor the 500-m exclusion zone whenever the subbottom profilers are in use. Survey efforts would only take place during daylight hours and visibility must not be obscured by fog, lighting conditions, etc.

Reporting Measures

CWA would submit a report to NMFS within 90 days of expiration of the IHA or completion of surveying, whichever comes first. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. More specifically, the report would include the following information when a marine mammal is sighted:

- Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all survey operations and marine mammal sightings;
- Species, number, location, distance from the vessel, and behavior of any marine mammals, as well as associated survey activity (number of shut-downs or delays), observed throughout all monitoring activities;
- An estimate of the number (by species) of marine mammals that are known to have been exposed to the survey activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 uPa (rms) and/or 180 dB re 1 uPa (rms) for cetaceans and 190 dB re 1 uPa (rms) for pinnipeds with a discussion of any specific behaviors those individuals exhibited; and
- A description of the implementation and effectiveness of the mitigation measures of the IHA.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), CWA would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities may not resume until NMFS is able to review the circumstances of the unauthorized take. NMFS would work with CWA to determine what is necessary to minimize the likelihood of further unauthorized take and ensure MMPA compliance. CWA may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that CWA discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), CWA would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with CWA to determine whether modifications in the activities are appropriate.

In the event that CWA discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), CWA would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*), within 24 hours of the discovery. CWA would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

Monitoring Results From Previously Authorized Activities

CWA complied with the requirements under their 2012 IHA and did not conduct any activities under their 2013 IHA. CWA completed 28 days and 459 nautical transect miles of survey activity during 2012 and no living marine mammals were sighted. On July 10, 2012, a deceased harbor seal was seen by two protected species observers and survey equipment was immediately shut down. The observers determined that the seal had been deceased for 24–48 hours, based on signs of scavenger damage and bloating, which suggest moderate decomposition (Pugliares *et al.,* 2007). Both observers concurred that the animal was not injured due to survey activities; however, a 60-minute post watch was performed to ensure that no other protected species were in the vicinity. A full report was submitted to NMFS on July 11, 2012, within 24 hours of the initial sighting. No marine mammal takes were reported during the 2012 season. CWA's monitoring report is available online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Based on CWA's application and NMFS' subsequent analysis, the impact of the described survey activities may result in, at most, short-term modification of behavior by small numbers of marine mammals within the action area. Marine mammals may avoid the area or change their behavior at time of exposure to elevated sound levels.

Current NMFS practice regarding exposure of marine mammals to anthropogenic sound is that in order to avoid the potential for injury of marine mammals (for example, PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB re: 1 μPa or above, respectively (Level A harassment). This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur

(Southall *et al.,* 2007). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB re: 1 μPa for impulse sounds and 120 dB re: 1 μPa for non-pulse noise, but below the aforementioned thresholds. These levels are also considered precautionary. NMFS' current acoustic exposure criteria are summarized below in Table 3.

TABLE 3—NMFS' CURRENT ACOUSTIC CRITERIA, AS THEY PERTAIN TO THE SPECIFIED ACTIVITY

[Non-explosive sound]

Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 microPa-m (cetaceans)/190 dB re 1 microPa-m (pinnipeds) root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 microPa-m (rms).
Level B Harassment	Behavioral Disruption (for continuous noise)	120 dB re 1 microPa-m (rms).

CWA estimated the number of potential takes resulting from survey activities by considering species density, the zone of influence, and duration of survey activities. More specifically, take estimates were calculated by multiplying the estimated species density values (n) measured in individuals per square kilometers, by the area of the zone of influence in km^2, times the total number of survey days (d = 109). The zone of influence was calculated as a function of the distance a survey vessel with deployed boomer would travel in one survey day and the area around the boomer where sound levels reach or exceed 160 dB. For consistency with the previous IHAs, the take estimate is based on a zone of influence equal to 444 m (the initial estimate for the 160 dB isopleth for the boomer), although based on acoustic measurements taken at the beginning of the 2012 survey, the 160 dB isopleth is thought to be much smaller. This distance was applied consistently to all marine mammal species.

Estimated numbers of species potentially exposed to disturbing levels of sound from the boomer (the survey equipment with the largest 160 dB isopleth) were calculated for minke whales, Atlantic white-sided dolphins, harbor porpoises, gray seals, and harbor seals. These estimates were calculated by multiplying the low and high end of the ranges of species density by the boomer's zone of influence and the number of days of survey operation. CWA calculated seal density estimates based on aerial survey counts for seals observed swimming and/or foraging in open water within the activity area. CWA included an adjustment factor in these density calculations for seals not seen, but considered present during aerial surveys. Density estimates for seals based on haul out counts were not used due to the distance of haul outs from the activity area (about 20 km to Monomoy Island and 12 km to Muskeget Island). Gray seals and harbor seals congregating in these locations are not expected to hear sounds from the survey equipment at 160 dB or higher. The seals most likely to be exposed to potentially disturbing sounds are the individuals swimming and/or foraging within the zone of influence for the activated medium-penetration subbottom profiler.

CWA is requesting incidental take based on the highest estimated possible species exposures to potentially disturbing levels of sound from the boomer. No marine mammals are expected to be exposed to injurious levels of sound in excess of 180 dB during survey activities. CWA is requesting, and NMFS is proposing, Level B harassment of nine minke whales, 185 Atlantic white-sided dolphins, 110 harbor porpoises, 314 gray seals, and 79 harbor seals (Table 4). These numbers overestimate the number of animals likely to be taken because they are based on the highest density estimates and do not account for proposed mitigation measures (such as the 500-m exclusion zone, marine mammal monitoring, and ramp up procedures). These numbers indicate the maximum number of animals expected to occur within 444 m of the boomer. Estimated and proposed level of take of each species is less than one percent of each affected stock and therefore is considered small in relation to the stock estimates previously set forth.

TABLE 4—ESTIMATED TAKE OF MARINE MAMMALS BY THE SPECIFIED ACTIVITY

Common name	Estimated density	Estimated take by level B harassment	Abundance of stock	Percentage of stock potentially affected	Population trend
Minke whale	0.13–7.4 (species/1,000 km^2)	9	20,741	0.04	n/a.
Atlantic white-sided dolphin	0.13–164.3 (species/1,000 km^2)	185	48,819	0.38	n/a.
Harbor porpoise	0.13–98.1 (species/1,000 km^2)	110	79,883	0.01	n/a.
Gray seal	0.13–0.28 (species/km^2)	314	348,900	0.09	increasing.
Harbor seal	0.03–0.07 (species/km^2)	79	99,340	0.08	n/a.

Any impacts to marine mammal behavior from the specified activity are expected to be temporary. Animals may avoid the area around the survey vessels, thereby reducing exposure. Any disturbance to marine mammals is likely to be in the form of temporary avoidance or alteration of opportunistic

foraging behavior near the survey location.

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

In making a negligible impact determination, NMFS considers a number of factors which include, but are not limited to, number of anticipated injuries or mortalities (none of which would be authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur (for instance, will the takes occur in an area or time of significance for marine mammals, or are takes occurring to a small, localized population?). As described above, marine mammals would not be exposed to activities or sound levels which would result in injury (for instance, PTS), serious injury, or mortality. Anticipated impacts of survey activities on marine mammals are temporary behavioral changes due to avoidance of the area. All marine mammals in the vicinity of survey operations would be transient as no breeding, calving, pupping, or nursing areas, or haul-outs, overlap with the survey area. The closest pinniped haul-outs are about 20 km and 12 km away on Monomoy Island and Muskeget Island, respectively. Marine mammals approaching the survey area would likely be traveling or opportunistically foraging. Furthermore, the amount of take CWA requested and NMFS proposes to authorize likely overestimates the actual take that would occur; no marine mammal takes were observed during 28 days of survey activity in 2012. No affected marine mammals are listed under the ESA and only the Atlantic white-sided dolphin and harbor porpoise are considered strategic under the MMPA. Marine mammals are expected to avoid the survey area, thereby reducing exposure and impacts. No disruption to reproductive behavior is anticipated and there is no anticipated effect on annual rates of recruitment or survival of affected marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS preliminarily finds that the total marine mammal take from CWA's survey activities have a negligible impact on the affected species or stocks.

Small Numbers

The amount of take CWA requested, and NMFS proposes to authorize, is considered small (less than one percent) relative to the estimated populations of 20,741 minke whales, 48,819 Atlantic white-sided dolphins, 79,883 harbor porpoises, 348,900 gray seals, and 99,340 harbor seals. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

The proposed activity will have no effect on any ESA-listed species as none are expected to be in the action area. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA). The EA includes an analysis of the direct, indirect, and cumulative effects to marine mammals and other applicable environmental resources resulting from the issuance of a 1-year IHA and the potential issuance of additional authorization for incidental harassment for the ongoing project in 2012. This analysis is still considered relevant for the proposed IHA because the applicant's proposed activity has not changed. This EA is available on the NMFS Web site listed in the beginning of this document.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to CWA for conducting a high resolution geophysical survey in Nantucket Sound beginning in the spring of 2014, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

Cape Wind Associates, LLC (CWA), 20 Park Plaza, Suite 320, Boston, Massachusetts 02116, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(D)) to harass small numbers of marine mammals incidental to a high resolution geophysical survey conducted in Nantucket Sound, contingent upon the following conditions:

1. This Authorization is valid from April 1, 2014, through March 31, 2015.

2. This Authorization is valid only for CWA's activities associated with the high resolution geophysical survey operations that shall occur in the following specified area: Around Horseshoe Shoal in Nantucket Sound, as specified in CWA's 2013 IHA application.

3. *Species Impacted and Level of Takes*

(a). The incidental taking of marine mammals, by Level B harassment only, is limited to the following species in the waters of Nantucket Sound:

(i). Minke whale (*Balaenoptera actuorostrata*)—9

(ii). Atlantic white-sided dolphin (*Lagenorhynchus acutus*)—185

(iii). Harbor porpoise (*Phocoena phocoena*)—110

(iv). Gray seal (*Halichoerus grypis*)—314

(v). Harbor seal (*Phoca vitulina*)—79

(vi). If any marine mammal species are encountered during survey activities that are not listed here for authorized taking and are likely to be exposed to sound pressure levels (SPLs) greater than or equal to 160 dB re 1 μPa (rms), then the Holder of this Authorization must alter speed or course, power-down or shut-down survey activities to avoid take.

(b). The taking by injury (Level A harassment), serious injury, or mortality of any of the species listed in Condition 3(a) above or the taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

4. The methods authorized for taking, by Level B harassment only, are limited to the following acoustic sources, without an amendment to this Authorization:

(a). Shallow-penetration subbottom profiler; and

(b). Medium-penetration subbottom profiler.

5. The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service (NMFS) or his designee, at 301–427–8401.

6. *Mitigation Requirements:* The Holder of this Authorization is required to implement the following mitigation requirements when conducting the specified activities to achieve the least practicable impact on affected marine mammal species or stocks:

(a). Establishment of an exclusion zone—During all survey activities involving the shallow-penetration and medium-penetration subbottom profilers, a 500-m radius exclusion zone shall be established around each survey vessel. This area will be monitored for marine mammals 60 minutes prior to starting or restarting surveys, during surveys, and 60 minutes after survey equipment has been turned off. The exclusion zone must not be obscured by fog or poor lighting conditions.

(b). Shut down and delay procedures—If a protected species observer sees a marine mammal within or approaching the exclusion zone prior to the start of sound sources, the observer will notify the appropriate individual who will then be required to delay the start of sound sources or shut down sound sources until the marine mammal moves outside of the exclusion zone or if the animal has not been resighted for 60 minutes. If a protected species observer sees a marine mammal within or approaching the exclusion zone during survey activities, the observer will notify the appropriate individual who will then be required to shut down sound sources until the marine mammal moves outside of the exclusion zone or if the animal has not been resighted for 60 minutes.

(c). Soft-start procedures—A ''soft-start'' technique for sound sources shall be used at the beginning of survey activities each day (or following a shut down of the sound sources) to allow any marine mammal that may be in the immediate area to leave before the sound sources reach full energy. Sound sources shall not commence at nighttime or when the exclusion zone cannot be effectively monitored.

7. *Monitoring Requirements:* The Holder of this Authorization is required to implement the following monitoring requirements when conducting the specified activities to result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Visual monitoring—At least one biologically trained, on-site individual, approved in advance by NMFS, shall implement the mitigation measures that require real-time monitoring. Protected species observers (PSOs) shall monitor for marine mammals 60 minutes before, during, and 60 minutes after all survey activities and call for delay or shutdown if any marine mammal is observed approaching or within the 500-m exclusion zone. Should a marine mammal not included in an incidental take authorization be observed at any time within the 500-m exclusion zone, shut down and delay procedures shall be followed.

The Holder shall provide additional monitoring efforts to increase knowledge of marine mammal species in Nantucket Sound. At least one NMFS-approved protected species observer shall conduct behavioral monitoring from the survey vessel for 2 days, every 14 days of survey activity, to estimate take and evaluate the behavioral impacts that survey activities have on marine mammals outside of the 500-m exclusion zone. In addition, a separate vessel with a NMFS-approved protected species observer shall collect data on species presence and behavior before surveys begin and once a month during survey activities.

Protected species observers shall be provided with the equipment necessary to effectively monitor for marine mammals (*e.g.,* high-quality binoculars, compass, and range-finder) in order to determine if animals have entered into the harassment isopleths and to record marine mammal sighting information. Protected species observers must be able to effectively monitor the 500-m exclusion zone whenever the subbottom profilers are in use. Survey efforts shall only take place during daylight hours and visibility must not be obscured by fog, lighting conditions, etc.

8. *Reporting Requirements:* The Holder of this Authorization is required to:

(a). Submit a report on all activities and monitoring results to the Office of Protected Resources, NMFS, within 90 days of expiration of the IHA or completion of surveying, whichever comes first. This report must contain and summarize the following information:

(i). Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all survey operations and marine mammal sightings;

(ii). Species, number, location, distance from the vessel, and behavior of any marine mammals, as well as associated survey activity (number of shut-downs or delays), observed throughout all monitoring activities.

(iii). An estimate of the number (by species) of marine mammals that are known to have been exposed to the survey activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 180 dB re 1 μPa (rms) for cetaceans and 190 dB re 1 μPa (rms) for pinnipeds with a discussion of any specific behaviors those individuals exhibited.

(iv). A description of the implementation and effectiveness of the mitigation measures of the Incidental Harassment Authorization.

(b). Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, Maryland 20910, within 30 days after receiving comments from NMFS on the draft report. If NMFS decides that the draft report needs no comments, the draft report shall be considered the final report.

(c). In the unanticipated event that the survey operations clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), CWA shall immediately cease survey operations and report the incident to the Chief of the Permits and

Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolile.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator (*Mendy.Garron@noaa.gov*). The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) The name and type of vessel involved;

(iii) The vessel's speed during and leading up to the incident;

(iv) Description of the incident;

(v) Status of all sound source use in the 24 hours preceding the incident;

(vi) Water depth;

(vii) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(viii) Description of marine mammal observations in the 24 hours preceding the incident;

(ix) Species identification or description of the animal(s) involved;

(x) The fate of the animal(s); and

(xi) Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with CWA to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. CWA may not resume their activities until notified by NMFS via letter, email, or telephone.

(d). In the event that CWA discovers an injured or dead marine mammal, and the lead protected species observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), CWA will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolile.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with CWA to determine whether modifications to the activities are appropriate.

(e). In the event that CWA discovers an injured or dead marine mammal, and the lead protected species observer determines that the injury or death is not associated with or related to the activities authorized in Condition 2 of this Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), CWA shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the NMFS Northeast Stranding Hotline (866–755–6622) and/or by email to the Northeast Regional Stranding Coordinator (*Mendy.Garron@noaa.gov*), within 24 hours of the discovery. CWA shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

10. A copy of this Authorization must be in the possession of all contractors and protected species observers operating under the authority of this Incidental Harassment Authorization.

11. *Penalties and Permit Sanctions*

Any person who violates any provision of this Incidental Harassment Authorization is subject to civil and criminal penalties, permit sanctions, and forfeiture as authorized under the MMPA.

Request for Public Comments

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the Notice of Proposed IHA for CWA's high resolution geophysical survey. Please include with your comments any supporting data or literature citations to help inform our final decision on CWA's request for an MMPA authorization.

Dated: January 29, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–02162 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD089

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; affirmative finding annual renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has granted an affirmative finding annual renewal to the Government of Guatemala under the Marine Mammal Protection Act (MMPA). This affirmative finding renewal will allow yellowfin tuna and yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Guatemalan-flag purse seine vessels or purse seine vessels operating under Guatemalan jurisdiction to be imported into the United States. The affirmative finding annual renewal was based on review of documentary evidence submitted by the Government of Guatemala and obtained from the Inter-American Tropical Tuna Commission (IATTC).

DATES: The affirmative finding annual renewal is effective from April 1, 2013, through March 31, 2014.

FOR FURTHER INFORMATION CONTACT: Justin Greenman, West Coast Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Long Beach, CA 90802. Phone: 562–980–3264, Email: *justin.greenman@noaa.gov*.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.,* allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. NMFS reviews the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Guatemala or obtained from the IATTC and has determined that Guatemala has met the requirements under the MMPA to receive an annual renewal of their affirmative finding.

After consultation with the Department of State, the Assistant Administrator issued Guatemala's affirmative finding annual renewal, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Guatemalan-flag purse seine vessels or purse seine vessels operating under Guatemalan jurisdiction through March 31, 2014.

Dated: January 24, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries.

[FR Doc. 2014–02173 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD090

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; affirmative finding annual renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has issued an affirmative finding annual renewal for the Government of Spain under the Marine Mammal Protection Act (MMPA). This affirmative finding annual renewal will allow yellowfin tuna and yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Spanish-flag purse seine vessels or purse seine vessels operating under Spanish jurisdiction to be imported into the United States. The affirmative finding annual renewal was based on review of documentary evidence submitted by the Government of Spain and obtained from the Inter-American Tropical Tuna Commission (IATTC).

DATES: The affirmative finding annual renewal is effective from April 1, 2013, through March 31, 2014.

FOR FURTHER INFORMATION CONTACT: Justin Greenman, West Coast Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Long Beach, CA 90802. Phone: 562–980–3264 Email: *justin.greenman@noaa.gov*

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.,* allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request a new affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS reviews the affirmative finding and determines whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Spain and obtained from the IATTC and has determined that Spain has met the MMPA's requirements to receive an affirmative finding annual renewal.

After consultation with the Department of State, the Assistant Administrator issued an affirmative finding annual renewal to Spain, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Spanish-flag purse seine vessels or purse seine vessels operating under Spanish jurisdiction through March 31, 2014. Spain's five-year affirmative finding will remain valid through March 31, 2015, subject to subsequent annual reviews by NMFS.

Dated: January 24, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries.

[FR Doc. 2014–02181 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD088

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; new 5-year affirmative finding.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has issued a new 5-year affirmative finding for the Government of El Salvador under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna and yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Salvadoran-flag purse seine vessels or purse seine vessels operating under Salvadoran jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of El Salvador and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

DATES: The new 5-year affirmative finding is effective from April 1, 2013, through March 31, 2018.

FOR FURTHER INFORMATION CONTACT: Justin Greenman, West Coast Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Long Beach, CA 90802. Phone: 562–980–3264 Email: *justin.greenman@noaa.gov*

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.,* allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS reviews the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of El Salvador or obtained from the IATTC and the Department of State and has determined that El Salvador has met the MMPA's requirements to receive a new 5-year affirmative finding.

After consultation with the Department of State, the Assistant Administrator issued El Salvador's new 5-year affirmative finding, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Salvadoran-flag purse seine vessels or purse seine vessels operating under Salvadoran jurisdiction. El Salvador's affirmative finding will remain valid through March 31, 2018.

Dated: January 24, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries.

[FR Doc. 2014–02172 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC350

Takes of Marine Mammals Incidental to Specified Activities; St. George Reef Light Station Restoration and Maintenance at Northwest Seal Rock, Del Norte County, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we, NMFS, have issued an Incidental Harassment Authorization (Authorization) to the St. George Reef Lighthouse Preservation Society (Society) to take four species of marine mammals, by Level B harassment only, incidental to conducting helicopter operations, and lighthouse renovation and light maintenance activities on the St. George Reef Light Station on Northwest Seal Rock (NWSR) offshore of Crescent City, California in the northeast Pacific Ocean, from the period of November 2013 through December 2013.

DATES: This authorization is effective from November 25, 2013, through December 31, 2013.

ADDRESSES: A copy of the Authorization and application are available by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if: (1) We make certain findings; (2) the taking is limited to harassment; and (3) we provide a notice of a proposed authorization to the public for review.

We shall allow authorization for the incidental taking of small numbers of marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat (i.e., mitigation); and requirements pertaining to the monitoring and reporting of such takings. We have defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for our review of an application followed by a 30-day public notice and comment period on any proposed authorization for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, we must either issue or deny the authorization and must publish a notice in the

Federal Register within 30 days of our determination to issue or deny the authorization.

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

We received an application on May 8, 2012, from the Society for the taking by harassment, of marine mammals, incidental to conducting aircraft operations and restoration and maintenance activities on the St. George Reef Light Station (Station) for the 2013 season. We determined that application complete and adequate on November 27, 2012 and made the complete application available for public comment (see **ADDRESSES**) in January 2013.

The Society's restoration activities would: (1) Restore and preserve the Station on a monthly basis (November through December); and (2) perform periodic, annual maintenance on the Station's optical light system. The Station, which is listed in the National Park Service's National Register of Historic Places, is located on NWSR offshore of Crescent City, California in the northeast Pacific Ocean.

The specified activities would occur in the vicinity of a possible pinniped haul out site located on NWSR. Acoustic and visual stimuli generated by: (1) Helicopter landings/takeoffs; (2) noise generated during restoration activities (e.g., painting, plastering, welding, and glazing); (3) maintenance activities (e.g., bulb replacement and automation of the light system); and (4) human presence, may have the potential to cause any pinnipeds hauled out on NWSR to flush into the surrounding water or to cause a short-term behavioral disturbance. These types of disturbances are the principal means of marine mammal taking associated with these activities and the Society has requested an authorization to take 204 California sea lions (*Zalophus californianus*); 36 Pacific Harbor seals (*Phoca vitulina*); 172 Steller sea lions (*Eumetopias jubatus*); and six northern fur seals (*Callorhinus ursinus*) by Level B harassment.

To date, we have issued three 1-year Authorizations to the Society for the conduct of the same activities from 2009 to 2012. This will be the Society's fourth Authorization for the same activities for the remainder of the 2013 season.

Description of the Specified Activity and Specified Geographic Region

The Society would conduct aircraft operations, lighthouse restoration, and light maintenance activities between November 25, 2013, through December 31, 2013, at a maximum frequency of one session per month. The duration for each session would last no more than three days (e.g., Friday, Saturday, and Sunday).

The Station is located on a small, rocky islet (41°50′24″ N, 124°22′06″ W) approximately nine kilometers (km) (6.0 miles (mi)) in the northeast Pacific Ocean, offshore of Crescent City, California (Latitude: 41°46′48″ N; Longitude: 124°14′11″ W).

We outlined the purpose of the Society's activities in a previous notice for the proposed authorization (78 FR 1838, January 9, 2013). The proposed activities have not changed between the proposed authorization notice and this final notice announcing the issuance of the Authorization. For a more detailed description of the authorized action, including aircraft and acoustic source specifications, the reader should refer to the notice for the proposed authorization (78 FR 1838, January 9, 2013).

Comments and Responses

We published a notice of receipt of the Society's application and proposed Authorization in the **Federal Register** on January 9, 2013 (78 FR 1838). During the 30-day comment period, we received one comment from the Marine Mammal Commission (Commission) which recommended that we issue the requested Authorization, provided that the required monitoring and mitigation measures are carried out (e.g., restrictions on the timing and frequency of activities, restrictions on helicopter approaches, timing measures for helicopter landings, and measures to minimize acoustic and visual disturbances) as described in the notice of the proposed authorization (78 FR 1838, January 9, 2013) and the application. We have included all measures proposed in the notice of the proposed authorization (78 FR 1838, January 9, 2013) in the Authorization.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species likely to be harassed incidental to helicopter operations, lighthouse restoration, and lighthouse maintenance on NWSR are the California sea lion, the Pacific harbor seal, and the eastern Pacific stock of northern fur seal, and the eastern Distinct Population Segment (DPS) of Steller sea lion which NMFS has removed from the list of threatened species under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), effective in November, 2013. Steller sea lions and northern fur seals are not listed as threatened or endangered under the ESA but are categorized as depleted under the MMPA. California sea lions and Pacific harbor seals are not listed as threatened or endangered under the ESA nor are they categorized as depleted under the MMPA.

Potential Effects of the Activity on Marine Mammals

Acoustic and visual stimuli generated by: (1) Helicopter landings/takeoffs; (2) noise generated during restoration activities (e.g., painting, plastering, welding, and glazing); and (3) maintenance activities (e.g., bulb replacement and automation of the light system) may have the potential to cause Level B harassment of any pinnipeds hauled out on NWSR. The effects of sounds from helicopter operations and/or restoration and maintenance activities might include one of the following: temporary or permanent hearing impairment or behavioral disturbance (Southall, *et al.,* 2007).

The notice for the proposed Authorization (78 FR 1838, January 9, 2013) included a discussion of the effects of sounds from: (1) The sound levels produced by the helicopter; (2) behavioral reactions (or lack thereof) of pinnipeds to helicopter operations and light construction noise; (3) hearing impairment and other non-auditory physical effects; (4) behavioral reactions to visual stimuli; (5) and specific observations gathered during previous monitoring of the marine mammals present on NWSR. We have reviewed these data and determined them to be the best available information for the purposes of this Authorization.

To summarize, the effects of the Society's helicopter operations and restoration activities on the marine mammals present on NWSR would range from no response to a short-term startle response. These behavioral changes have the potential to cause the animals to haul-out leading to

temporary displacement from the island and we expect no permanent abandonment of NWSR by the animals. Finally, we anticipate that there will be no instances of injury or mortality during the project. No activities would occur on pinniped rookeries and we do not expect mother and pup separation or crushing of pups to occur.

Anticipated Effects on Marine Mammal Habitat

The notice for the proposed Authorization (78 FR 1838, January 9, 2013) included a discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates. While we anticipate that the specified activity may result in marine mammals avoiding NWSR during the helicopter operations and restoration activities, this impact to habitat is temporary and reversible. We consider the impacts of avoidance in the notice for the proposed Authorization (78 FR 1838, January 9, 2013) as behavioral modification.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

The Society has based the mitigation measures which they will implement during the proposed helicopter operations and restoration activities, on the following: (1) Protocols used during previous Authorizations for helicopter operations and restoration activities as approved by us; (2) recommended best practices in Richardson *et al.* (1995); and (3) reasonable and prudent measures implemented by the terms and conditions of previous section 7 ESA Biological Opinion (BiOp) Incidental Take Statement (ITS).

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities, the Society and/or its designees will implement the following mitigation measures for marine mammals:

(1) Limit the time and frequency of the restoration activities;

(2) Employ helicopter approach and timing techniques; and

(3) Avoidance of visual and acoustic contact with marine mammals by the Society and/or its designees.

Time and Frequency: The Society will conduct lighthouse restoration activities at maximum frequency of once per month between November 25, 2013 through December 31, 2013. Each restoration session will last no more than three days. Maintenance of the light beacon will occur only in conjunction with restoration activities.

Helicopter Approach and Timing Techniques: The Society shall ensure that helicopter approach patterns to the lighthouse will be such that the timing techniques are least disturbing to marine mammals. To the extent possible, the helicopter should approach NWSR when the tide is too high for the marine mammals to haulout on NWSR.

Since the most severe impacts (stampede) are precipitated by rapid and direct helicopter approaches, initial approach to the Station must be offshore from the island at a relatively high altitude (e.g., 244–305 meters; 800–1,000 feet,). Before the final approach, the helicopter shall circle lower, and approach from area where the density of pinnipeds is the lowest. If for any safety reasons (e.g., wind condition) such helicopter approach and timing techniques cannot be achieved, the Society must abort the restoration and maintenance activities for that day.

Avoidance of Visual and Acoustic Contact with Marine Mammals: The Society's members and restoration crews shall be instructed to avoid making unnecessary noise and not expose themselves visually to pinnipeds around the base of the lighthouse. The door to the lower platform (which is used at times by pinnipeds) shall remain closed and barricaded.

Mitigation Conclusions

We have carefully evaluated the Society's proposed mitigation measures and have considered a range of other measures in the context of ensuring that we have prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, we expect that the successful implementation of the measure would minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's mitigation measures, we have determined that the mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the Marine Mammal Protection Act states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The Act's implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for an authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

The Society continues to sponsor marine mammal monitoring to implement the mitigation measures that require real-time monitoring and to satisfy the monitoring requirements of the incidental harassment authorization. At least once during the period between November 15, 2013 through December 31, 2013, the Society will have a qualified biologist present during all three workdays at the Station. The biologist shall document use of the island by the pinnipeds, frequency, (i.e., dates, time, tidal height, species, numbers present, and any disturbances), and note any responses to potential disturbances. In the event of any observed Steller sea lion injury, mortality, or the presence of newborn pup, the Society will notify the NMFS SWRO Administrator and the NMFS Director of Office of Protected Resources immediately.

Aerial photographic surveys may provide the most accurate means of documenting species composition, age and sex class of pinnipeds using the project site during human activity periods. The Society will photograph the island from the same helicopter used to transport the Society's personnel to the island during restoration trips. A skilled photographer shall take photographs of all marine mammals hauled out on the island at an altitude greater than 300 meters (984 feet), prior to the first landing on each visit included in the monitoring program. The Society will provide to us

photographic documentation of marine mammals present at the end of each three-day work session for a before and after comparison. The Society will forward these photographs to a biologist capable of discerning marine mammal species.

The Society shall provide the data to NMFS in the form of a report with a data table, any other significant observations related to marine mammals, and a report of restoration activities (see Reporting). The Society will also provide the original photographs to us or other marine mammal experts for inspection and further analysis.

Reporting

The Society's personnel will record data to document the number of marine mammals exposed to helicopter noise and to document apparent disturbance reactions or lack thereof. The Society and NMFS will use the data to estimate numbers of animals potentially taken by Level B harassment.

Interim Monitoring Report

The Society will submit interim monitoring reports to the NMFS SWRO Administrator and the NMFS Director of Office of Protected Resources no later than 30 days after the conclusion of each monthly session. The interim report will describe the operations that were conducted and sightings of marine mammals near the project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring.

Each interim report will provide:

(i) A summary and table of the dates, times, and weather during all helicopter operations, and restoration and maintenance activities.

(ii) Species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to acoustic stimuli associated with the helicopter operations, restoration and maintenance activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

Final Monitoring Report

In addition to the interim reports, the Society will submit a draft Final Monitoring Report to us no later than 90 days after the project is completed to the Regional Administrator and the Director of Office of Protected Resources at NMFS Headquarters. Within 30 days after receiving comments from NMFS on the draft Final Monitoring Report, the Society must submit a Final Monitoring Report to the Regional Administrator and the NMFS Director of Office of Protected Resources. If the Society receives no comments from us on the draft Final Monitoring Report, we will consider the draft Final Monitoring Report to be the final version.

The final report will provide:

(i) A summary and table of the dates, times, and weather during all helicopter operations, and restoration and maintenance activities.

(ii) Species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to acoustic stimuli associated with the helicopter operations, restoration and maintenance activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the Authorization (if issued), such as an injury (Level A harassment), serious injury or mortality (e.g., stampede), the Society shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and to the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*).

The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until we are able to review the circumstances of the prohibited take. We will work with the Society to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Society may not resume their activities until notified by us via letter, email, or telephone.

In the event that the Society discovers an injured or dead marine mammal, and the biologist (if present) determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), the Society will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and to the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while we review the circumstances of the incident. We will work with the Society to determine whether modifications in the activities are appropriate.

In the event that the Society discovers an injured or dead marine mammal, and the lead biologist (if present) determines that the injury or death is not associated with or related to the activities authorized in the Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Society will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and to the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*), within 24 hours of the discovery. The Society will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

We anticipate and authorize take by Level B harassment only for the proposed helicopter operations and restoration and maintenance activities on NWSR. Acoustic (i.e., increased sound) and visual stimuli generated during these proposed activities may have the potential to cause marine mammals in the harbor area to experience temporary, short-term changes in behavior.

Based on pinniped survey counts conducted by CCR on NWSR in the spring of 1997, 1998, 1999, and 2000 (CCR, 2001), we estimate that approximately 204 California sea lions (calculated by multiplying the average monthly abundance of California sea lions (zero in April, 1997 and 34 in April, 1998) present on NWSR by 6 months of the restoration and maintenance activities), 172 Steller sea lions (NMFS' estimate of the maximum number of Steller sea lions that could be present on NWSR with a 95-percent confidence interval), 36 Pacific harbor seals (calculated by multiplying the maximum number of harbor seals present on NWSR (6) by 6 months), and 6 northern fur seals (calculated by multiplying the maximum number of northern fur seals present on NWSR (1) by 6 months) could be potentially affected by Level B behavioral harassment over the course of the Authorization. Estimates of the numbers of marine mammals that might be affected are based on consideration of the number of marine mammals that could be disturbed appreciably by approximately 51 hours of aircraft operations during the course of the activity. For this Authorization, we authorize the take of 204 California sea lions, 172 Stellar sea lions, 36 Pacific harbor seals, and 6 northern fur seals.

There is no evidence that the Society's planned activities could result in injury, serious injury or mortality within the action area. The required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality. Thus, we do not propose to authorize any injury, serious injury or mortality. We expect all potential takes to fall under the category of Level B harassment only.

Encouraging and Coordinating Research

The Society will continue to coordinate monitoring of pinnipeds during the helicopter operations and restoration activities which contribute to the basic knowledge of marine mammal biology on NWSR.

Negligible Impact and Small Numbers Analysis and Determination

We typically include our negligible impact and small numbers analyses and determinations under the same section heading of our **Federal Register** notices. Despite co-locating these terms, we acknowledge that negligible impact and small numbers are distinct standards under the MMPA and treat them as such. The analyses presented below do not conflate the two standards; instead, each standard has been considered independently and we have applied the relevant factors to inform our negligible impact and small numbers determinations.

We have defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, we consider:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment; and

(3) The context in which the takes occur (e.g., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

As mentioned previously, we estimate that four species of marine mammals could be potentially affected by Level B harassment over the course of this Authorization. For each species, these numbers are small numbers (each, less than or equal to two percent) relative to the population size. These incidental harassment take numbers represent approximately 0.14 percent of the U.S. stock of California sea lion, 0.42 percent of the eastern U.S. stock of Steller sea lion, 0.11 percent of the California stock of Pacific harbor seals, and 0.06 percent of the San Miguel Island stock of northern fur seal.

For reasons stated previously in this document and in the notice for the proposed Authorization (78 FR 1838, January 9, 2013), the specified activities associated with the Society's helicopter operations and restoration/maintenance activities are not likely to cause permanent threshold shift, or other non-auditory injury, serious injury, or death because:

(1) The likelihood that, given sufficient notice through relatively slow helicopter approaches, we expect marine mammals to gradually move away from a noise source that is annoying prior to its becoming potentially injurious; and

(2) The potential for temporary or permanent hearing impairment is relatively low and would likely be avoided through the incorporation of the required monitoring and mitigation measures.

We do not anticipate takes by Level A harassment, serious injury, or mortality to occur as a result of the Society's specified activities. We are not authorizing Level A harassment for this specified activity. We only anticipate short-term behavioral disturbance to occur due to the brief and sporadic duration of the activities; the availability of alternate areas near NWSR for marine mammals to avoid the resultant acoustic disturbance; and limited access to NWSR during the pupping season.

These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed activities to avoid the resultant acoustic and visual disturbances. Further, these proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact rates of recruitment or survival. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we have determined that the total taking from the proposed activities will have a negligible impact on the affected species or stocks; and that impacts to affected species or stocks of marine mammals would be mitigated to the lowest level practicable.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires us to determine that the taking will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in

the study area (northeastern Pacific Ocean) that implicate section 101(a)(5)(D) of the MMPA.

Endangered Species Act (ESA)

On October 23, 2013, NMFS announced the removal of the eastern distinct population segment of Steller sea lions from the list of threatened species under the ESA. With the delisting, federal agencies proposing actions that may affect the eastern Steller sea lions are no longer required to consult with NMFS under section 7 of the ESA.

National Environmental Policy Act (NEPA)

To meet our NEPA requirements for the issuance of an Authorization to the Society, we prepared an Environmental Assessment (EA) in 2010 that was specific to conducting aircraft operations and restoration and maintenance work on the St. George Reef Light Station. The EA, titled ''Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducting Aircraft Operations, Lighthouse Restoration and Maintenance Activities on St. George Reef Lighthouse Station in Del Norte County, California,'' evaluated the impacts on the human environment of our authorization of incidental Level B harassment resulting from the specified activity in the specified geographic region. At that time, we concluded that issuance of an Authorization November 1 through April 30, annually would not significantly affect the quality of the human environment and issued a Finding of No Significant Impact (FONSI) for the 2010 EA regarding the Society's activities. In conjunction with the Society's 2013 application, we have again reviewed the 2010 EA and determined that there are no new direct, indirect or cumulative impacts to the human and natural environment associated with the Authorization requiring evaluation in a supplemental EA and NMFS, therefore, reaffirms the 2010 FONSI. An electronic copy of the EA and the FONSI for this activity is available upon request (see **ADDRESSES**).

Determinations

We have determined that the impact of conducting the specific helicopter operations and restoration activities described in this notice and in the Authorization request in the specific geographic region in the northeastern Pacific Ocean may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

Authorization

As a result of these determinations, we, NMFS, have issued an Incidental Harassment Authorization to the Society to conduct helicopter operations and restoration and maintenance work on the St. George Reef Light Station on Northwest Seal Rock in the northeast Pacific Ocean from the period of November 25, 2013, through December 31, 2013, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: January 29, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–02164 Filed 1–31–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC837

Takes of Marine Mammals Incidental to Specified Activities; Seabird and Pinniped Research Activities in Central California, 2014–2015

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, we hereby give notification that the National Marine Fisheries Service has issued an Incidental Harassment Authorization (IHA) to Point Blue Conservation Science (Point Blue), to take marine mammals, by Level B harassment, incidental to conducting seabird and pinniped research activities in central California, January 2014 through January 2015.

DATES: Effective January 31, 2014, through January 30, 2015.

ADDRESSES: The public may obtain an electronic copy of the Point Blue's application, supporting documentation, the authorization, and a list of the references cited in this document by visiting: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. In the case of problems accessing these documents, please call the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

The Environmental Assessment and associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act of 1969, are also available at the same site.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if: (1) We make certain findings; (2) the taking is limited to harassment; and (3) we provide a notice of a proposed authorization to the public for review.

We shall grant an authorization for the incidental taking of small numbers of marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Also, the authorization must set forth the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings. We have defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

We received an application on July 17, 2013, from Point Blue requesting the

taking by harassment of small numbers of marine mammals incidental to conducting seabird and pinniped research activities on Southeast Farallon Island, Año Nuevo Island, Point Reyes National Seashore, San Francisco Bay, and the Russian River in central California. We determined the application complete and adequate on August 27, 2013.

Point Blue, along with partners Oikonos Ecosystem Knowledge, Point Reyes National Seashore with the National Park Service, and the Gulf of the Farallones National Marine Sanctuary would conduct this research under cooperative agreements with the U.S. Fish and Wildlife Service in consultation with the Gulf of the Farallones National Marine Sanctuary.

The proposed research activities would occur for one year, January 31, 2014, through January 30, 2015, and would involve annual monitoring and censusing of seabird colonies; seabird nesting habitat observations; nesting burrows restoration; breeding elephant seals observations; and the periodic resupply of a field station.

These proposed activities would occur in the vicinity of pinniped haul out sites and could likely result in the incidental take of marine mammals. We anticipate take, by Level B Harassment only, of individuals of either California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), or Steller sea lions (*Eumetopias jubatus*) to result from the specified activity.

This is the organization's fifth request for an Authorization. To date, we have issued an Incidental Harassment Authorization (Authorization) to Point Blue (formerly known as PRBO Conservation Science) for the conduct of similar activities from 2007 to 2013 (72 FR 71121, December 14, 2007; 73 FR 77011, December 18, 2008; 75 FR 8677, February 19, 2010; 77 FR 73989, December 7, 2012).

Description of the Specified Activity

Overview

Point Blue proposes to monitor and census seabird colonies; observe seabird nesting habitat; restore nesting burrows; observe breeding elephant and harbor seals; and resupply a field station annually in central California (i.e., Southeast Farallon Island, West End Island, Año Nuevo Island, Point Reyes National Seashore, San Francisco Bay, and the Russian River in Sonoma County).

The purpose of the seabird research is to continue a 30-year monitoring program of the region's seabird populations. Point Blue's long-term pinniped research program monitors pinniped colonies to understand elephant and harbor seal population dynamics and to contribute to the conservation of both species.

Dates and Duration

The Authorization would be effective from January 31, 2014 through January 30, 2015. Following is a brief summary of the dates and duration of the activities.

Seabird Research on Southeast Farallon Island: Daily observations of seabird colonies would occur at a maximum frequency of three 15-minute visits. Daily observations of breeding common murre (*Uria aalge*) colonies would occur at a maximum frequency of a single five-hour visit. These activities usually involve one or two observers conducting daily censuses of seabirds or conducting mark/recapture studies of breeding seabirds on the island.

Field Station Resupply on Southeast Farallon Island: Resupply of the field station would occur once every two weeks at a maximum frequency of 26 visits annually. Resupply activities involve personnel approaching either the North Landing or East Landing by motorboat to offload supplies.

Pinniped Research in Central California: Surveys of breeding northern elephant seals on Southeast Farallon and Año Nuevo Islands, the coastline of Point Reyes Peninsula, San Francisco Bay, and the Russian River, would occur in early December and late February, annually. At least three researchers would visit the sites at a maximum frequency of five times per year.

Seabird Research and Field Supply on Año Nuevo Island: Researchers would monitor seabird burrow nesting habitat quality, conduct habitat restoration, and resupply the field station from April through August at a maximum frequency of 20 visits annually. Occasionally, researchers would also conduct intermittent visits to the island throughout the year. These activities involve two to three researchers accessing the island by motorboat.

Seabird Research on Point Reyes National Seashore: The National Park Service in collaboration with Point Blue monitors seabird breeding and roosting colonies; conducts habitat restoration; removes non-native plants; monitors intertidal areas; and maintains coastal dune habitat. Seabird monitoring usually involves one or two observers conducting the survey by small boats along the shoreline. Researchers would visit the site at a maximum frequency of 20 times per year.

Specified Geographic Region

Point Blue will conduct their research activities within the vicinity of pinniped haul out sites in the following locations:

South Farallones Islands: The South Farallon Islands consist of Southeast Farallon Island located at 37°41′54.32″ N; 123°0′8.33″ W and West End Island. The South Farallon Islands have a land area of approximately 120 acres (0.49 square kilometers (km)) and are part of the Farallon National Wildlife Refuge. The islands are located near the edge of the continental shelf 28 miles (mi) (45.1 km) west of San Francisco, CA, and lie within the waters of the Gulf of the Farallones National Marine Sanctuary.

Año Nuevo Island: Año Nuevo Island located at 37°6′29.25″ N; 122°20′12.20″ W is one-quarter mile (402 meters (m)) offshore of Año Nuevo Point in San Mateo County, CA. The island lies within the Monterey Bay National Marine Sanctuary and the Año Nuevo State Marine Conservation Area.

Point Reyes National Seashore: Point Reyes National Seashore is approximately 40 miles (64.3 km) north of San Francisco Bay and also lies within the Gulf of the Farallones National Marine Sanctuary.

San Francisco Bay: The main part of San Francisco Bay measures approximately 3 to 12 miles (5 to 20 km) wide east-to-west and between 48 miles (77 km) and 60 miles (97 km) north-to-south.

Russian River: The Russian River coastline stretches for approximately 55 miles just south of San Francisco. Starting at Lake Mendocino, the Russian River flows south through valleys in Mendocino and Sonoma County, and empties into the Pacific Ocean at Jenner, California.

Detailed Description of Activities

We outlined the purpose of Point Blue's activities in a previous notice for the proposed authorization (78 FR 66686, November 6, 2013). The proposed activities have not changed between the proposed authorization notice and this final notice announcing the issuance of the Authorization. For a more detailed description of the authorized action, we refer the reader to the notice for the proposed authorization (78 FR 66686, November 6, 2013).

Comments and Responses

We published a notice of receipt of Point Blue's application and proposed Authorization in the **Federal Register** on November 5, 2013 (78 FR 66686). During the 30-day comment period, we

received one comment from the Marine Mammal Commission (Commission) which recommended that we issue the requested Authorization, provided that Point Blue carries out the required monitoring and mitigation measures as described in the notice of the proposed authorization (78 FR 66686, November 6, 2013) and the application. We have included all measures proposed in the notice of the proposed authorization (78 FR 66686, November 6, 2013) in the Authorization.

Description of the Marine Mammals in the Area of the Proposed Specified Activity

The marine mammals most likely to be harassed incidental to conducting seabird and pinniped research at the proposed research areas are primarily California sea lions, northern elephant seals, Pacific harbor seals, and to a lesser extent the eastern distinct population segment (DPS) of the Steller sea lion, which NMFS has removed from the list of threatened species under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), effective November 2013. The ESA does not categorize California sea lions, northern elephant seals, Pacific harbor seals as threatened or endangered and the MMPA categorizes these species as not depleted. On the other hand, despite the delisting of Steller sea lions as endangered under the ESA, NMFS still categorizes the species as a strategic stock and depleted species under the MMPA. The agency will consider designating the eastern stock of Steller sea lions as non-strategic and not depleted under the MMPA following review by the Alaska Scientific Review Group in 2014.

We refer the public to Carretta *et al.,* (2013) for general information on these species which we presented in the notice of the proposed authorization (78 FR 66686, November 6, 2013). The publication is available at: *http://www.nmfs.noaa.gov/pr/sars/pdf/po2012.pdf*.

Other Marine Mammals in the Proposed Action Area

California (southern) sea otters (*Enhydra lutris nereis*), listed as threatened under the ESA and categorized as depleted under the MMPA, usually range in coastal waters within 1.24 miles (2 km) of the shoreline. Point Blue has not encountered California sea otters during the course of their seabird or pinniped research activities over the past five years. This species is managed by the U.S. Fish and Wildlife Service and we do not consider it further in this notice of issuance of an Authorization.

Potential Effects on Marine Mammals

Acoustic and visual stimuli generated by: (1) Noise generated by motorboat approaches and departures; (2) noise generated during restoration activities and loading operations while resupplying the field station; and (3) human presence during seabird and pinniped research activities, have the potential to cause California sea lions, Pacific harbor seals, northern elephant seals, and Steller sea lions hauled out in areas within Southeast Farallon Island, West End Island, Año Nuevo Island, Point Reyes National Seashore, San Francisco Bay, and the Russian River to flush into the surrounding water or to cause a short-term behavioral disturbance for marine mammals.

We expect that acoustic and visual stimuli resulting from the proposed motorboat operations and human presence has the potential to harass marine mammals. We also expect that these disturbances would be temporary and result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

We included a summary and discussion of the ways that the types of stressors associated with Point Blue's specified activities (i.e., visual and acoustic disturbance) have the potential to impact marine mammals in a previous notice for the proposed authorization (78 FR 66686, November 6, 2013).

Vessel Strike: The potential for striking marine mammals is a concern with vessel traffic. However, it is highly unlikely that the use of small, slow-moving boats to access the research areas would result in injury, serious injury, or mortality to any marine mammal. Typically, the reasons for vessel strikes are fast transit speeds, lack of maneuverability, or not seeing the animal because the boat is so large. Point Blue's researchers will access areas at slow transit speeds in easily maneuverable boats negating any chance of an accidental strike.

Rookeries: No research activities would occur on pinniped rookeries and breeding animals are concentrated in areas where researchers would not visit. Therefore, we do not expect mother and pup separation or crushing of pups during flushing.

The potential effects to marine mammals described in the notice for the proposed authorization (78 FR 66686, November 6, 2013) did not take into consideration the proposed monitoring and mitigation measures described later in this document (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections).

Anticipated Effects on Habitat

We considered these impacts in detail in the notice for the proposed authorization (78 FR 66686, November 6, 2013). Briefly, we do not anticipate that the proposed research activities would result in any significant or long-term effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (i.e., fish and invertebrates). While we anticipate that the specified activity could potentially result in marine mammals avoiding certain areas due to temporary ensonification and human presence, this impact to habitat is temporary and reversible. We do not consider behavioral modification to cause significant or long-term consequences for individual marine mammals or their populations.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act, we must prescribe, where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

Point Blue has based the mitigation measures which they will implement during the proposed research, on the following: (1) Protocols used during previous Point Blue seabird and pinniped research activities as required by our previous authorizations and Incidental Take Statement for the Biological Opinion for these activities; (2) recommended best practices in Richardson *et al.* (1995); and (3) the conditions of their current five-year Scientific Research Permit (No. 17152–00).

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities Point Blue and/or its designees has proposed to implement the following mitigation measures for marine mammals:

(1) Abide by the conditions of NMFS Scientific Research Permit Number 17152–00.

(2) Postpone beach landings until pinnipeds that may be present on the beach have slowly entered the water.

(3) Select a pathway of approach to research sites that minimizes the number of marine mammals harassed.

(4) Avoid visits to sites used by pinnipeds for pupping.

(5) Monitor for offshore predators and do not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias)* or killer whales (*Orcinas orca)* are in the area. If Point Blue and/or its designees see predators in the area, they must not disturb the animals until the area is free of predators.

(6) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds.

(7) Conduct seabird observations at North Landing on Southeast Farallon Island in an observation blind, shielded from the view of hauled out pinnipeds.

(8) Crawl slowly to access seabird nest boxes on Año Nuevo Island if pinnipeds are within view.

(9) Coordinate research visits to intertidal areas of Southeast Farallon Island (to reduce potential take) and coordinate research goals for Año Nuevo Island to minimize the number of trips to the island.

(10) Coordinate monitoring schedules on Año Nuevo Island, so that areas near any pinnipeds would be accessed only once per visit.

(11) Have the lead biologist serve as an observer to evaluate incidental take.

We have carefully evaluated the applicant's proposed mitigation measures and have considered a range of other measures in the context of ensuring that we have prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, we expect that the successful implementation of the measure would minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by us should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of sound, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of sound, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of sound from motorboat approaches, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of Point Blue's proposed measures, we have determined that the mitigation measures provide the means of effecting the least practicable impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the MMPA states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The Act's implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for an authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

As part of its 2013 application, Point Blue proposes to sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the Authorization.

The Point Blue researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations on pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates, location, species, the researcher's activity, behavioral state, numbers of animals that were alert or moved greater than one meter, and numbers of pinnipeds that flushed into the water.

Point Blue has complied with the monitoring requirements under the previous authorizations for the 2007 through 2012 seasons. The results from previous Point Blue's monitoring reports support our findings that the proposed mitigation measures, which we also required under the 2007–2012 Authorizations provide the means of effecting the least practicable adverse impact on the species or stock. Point Blue will submit a monitoring report on the December 6, 2012 through December 5, 2013 research period by February, 2014. Upon receipt and review, we will post this annual report on our Web site at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Reporting

Point Blue will submit a final monitoring report to us no later than 90 days after the expiration of the Incidental Harassment Authorization, if we issue it. The final report will describe the operations conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The final report will provide:

(i) A summary and table of the dates, times, and weather during all seabird and pinniped research activities.

(ii) Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to acoustic or visual stimuli associated with the seabird and pinniped research activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and

interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (e.g., vessel-strike, stampede, etc.), Point Blue shall immediately cease the specified activities and immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Assistant West Coast Regional Stranding Coordinator at (562) 980–3264 (*Justin.Greenman@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including water depth, if applicable);
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Point Blue shall not resume its activities until we are able to review the circumstances of the prohibited take. We will work with Point Blue to determine what is necessary to minimize the likelihood of further prohibited take and ensure Marine Mammal Protection Act compliance. Point Blue may not resume their activities until notified by us via letter, email, or telephone.

In the event that Point Blue discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as we describe in the next paragraph), Point Blue will immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Assistant West Coast Regional Stranding Coordinator at (562) 980–3264 (*Justin.Greenman@noaa.gov*). The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We will work with Point Blue to determine whether modifications in the activities are appropriate.

In the event that Point Blue discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Point Blue will report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Assistant West Coast Regional Stranding Coordinator at (562) 980–3264 (*Justin.Greenman@noaa.gov*), within 24 hours of the discovery. Point Blue staff will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. Point Blue can continue their research activities.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

We propose to authorize take by Level B harassment only for the proposed pinniped and seabird research activities on Southeast Farallon Island, Año Nuevo Island, Point Reyes National Seashore, San Francisco Bay, and the Russian River in central California. Acoustic (i.e., increased sound) and visual stimuli generated during these proposed activities have the potential to cause marine mammals in the harbor area to experience temporary, short-term changes in behavior.

Based on Point Blue's previous research experiences, with the same activities conducted in the proposed research area, and on marine mammal research activities in these areas, we estimate that approximately 10,092 California sea lions, 526 harbor seals, 261 northern elephant seals, and 185 Steller sea lions could be affected by Level B behavioral harassment over the course of the effective period of the proposed Authorization.

The authorized take differs from Point Blue's original request for California sea lions (5,104), northern elephant seals (190), and Steller sea lions (20) because we have determined that they underestimated some of their take estimates. We base these new estimates for California sea lions, northern elephant seals, and Steller sea lions on historical data from previous monitoring reports and anecdotal data for the same activities conducted in the proposed research area. In brief, for each species, we created a statistical model to derive an estimate of the average annual increase of reported take based on a best fit regression analysis (i.e., linear or polynomial regression) of reported take from 2007 to 2012. Next, we added the predicted annual increase in take to a baseline of take reported for 2012 season to project the estimated take for each species for the 2013 Authorization. We carried through the same predicted annual increase in take for future Authorizations (2014–2017) to obtain a mean projected take for each species. Last, we analyzed the reported take for each activity by calculating the upper bound of the 99 percent confidence interval of the mean reported take (2007–2012) and mean projected take (2014–2017) for each species. Our use of the upper confidence interval represents the best available information that supports our precautionary deliberation of how much take could occur annually.

There is no evidence that Point Blue's planned activities could result in injury, serious injury or mortality within the action area. Moreover, the required mitigation and monitoring measures will minimize further any potential risk for injury, serious injury, or mortality. Thus, we do not propose to authorize any injury, serious injury or mortality. We expect all potential takes to fall under the category of Level B harassment only.

Encouraging and Coordinating Research

Point Blue will continue to coordinate monitoring of pinnipeds during the research activities occurring on Southeast Farallon Island, Año Nuevo Island, Point Reyes National Seashore, San Francisco Bay, and the Russian River in central California. Point Blue conducts bone fide research on marine mammals, the results of which may contribute to the basic knowledge of marine mammal biology or ecology, or are likely to identify, evaluate, or resolve conservation problems.

Negligible Impact

Negligible impact' is ''. . . an impact resulting from the specified activity that

cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' The lack of likely adverse effects on annual rates of recruitment or survival (i.e., population level effects) forms the basis of a negligible impact finding.

An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of any estimated Level A harassment takes, and the number of estimated mortalities.

In making a negligible impact determination, we consider:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment;

(3) The context in which the takes occur (e.g., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

For reasons stated previously in this document and based on the following factors, Point Blue's specified activities are not likely to cause long-term behavioral disturbance, abandonment of the haulout area, injury, serious injury, or mortality because:

(1) The effects of the pinniped and seabird research activities would be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

(2) The availability of alternate areas for pinnipeds to avoid the resultant acoustic and visual disturbances from the research operations. Results from previous monitoring reports also show that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after Point Blue conducted their pinniped and research activities.

(3) There is no potential for large-scale movements leading to injury, serious injury, or mortality because the researchers must delay ingress into the landing areas until after the pinnipeds present have slowly entered the water.

(4) The limited access of Point Blue's researchers to Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore during the pupping season.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of Point Blue's proposed activities, and we do not propose to authorize injury, serious injury or mortality. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed seabird and pinniped research activities to avoid the resultant acoustic and visual disturbances. Further, these proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact annual rates of recruitment or survival.

Small Numbers

As mentioned previously, we estimate that the research activities could potentially affect, by Level B harassment only, four species of marine mammals under our jurisdiction. For each species, these estimates are small (each, less than or equal to three percent) relative to the population size. These estimates represent approximately 3.4 percent of the U.S. stock of California sea lions, 0.21 percent of the California breeding stock of northern elephant seals, 1.74 percent of the California stock of Pacific harbor seals, and 0.32 percent of the eastern distinct population segment of Steller sea lions. Table 2 outlines the number of Level B harassment takes that we propose to authorize annually, the regional population estimates for marine mammals in the action area that could occur as a result of Point Blue's research activities annually.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we have determined that the total taking from the proposed activities will have a negligible impact on the affected species or stocks; and that impacts to affected species or stocks of marine mammals would be mitigated to the lowest level practicable.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires us to determine that the taking will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (northeastern Pacific Ocean) that implicate section 101(a)(5)(D) of the MMPA.

National Environmental Policy Act (NEPA)

To meet our NEPA requirements for the issuance of an Authorization to Point Blue, we prepared an Environmental Assessment (EA) titled ''Issuance of an Incidental Harassment Authorization to Point Blue Conservation Science and Partners to Take Marine Mammals by Harassment Incidental to Seabird and Pinniped Research Conducted in Central California.'' We provided relevant environmental information to the public through a previous notice for the proposed authorization (78 FR 66686, November 6, 2013) and considered public comments received in response prior to finalizing our EA and deciding whether or not to issue a Finding of No Significant Impact (FONSI). We conclude that issuance of an Incidental Harassment Authorization would not significantly affect the quality of the human environment and have issued a FONSI. Our EA and FONSI for this activity are available upon request (see **ADDRESSES**).

Authorization

As a result of these determinations, we have issued an Authorization to Point Blue for the take of marine mammals incidental to proposed seabird and pinniped research activities, provided they incorporate the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: January 29, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–02163 Filed 1–31–14; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, February 21, 2014.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, Enforcement Matters, and Examinations. In the event that the times, dates, or locations of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Allen,

Executive Assistant.

[FR Doc. 2014–02260 Filed 1–30–14; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, February 28, 2014.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, Enforcement Matters, and Examinations. In the event that the times, dates, or locations of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Allen,

Executive Assistant.

[FR Doc. 2014–02261 Filed 1–30–14; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, February 14, 2014.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, Enforcement Matters, and Examinations. In the event that the times, dates, or locations of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Allen,

Executive Assistant.

[FR Doc. 2014–02259 Filed 1–30–14; 11:15 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (''CFPB'' or the ''Bureau''), gives notice of a revised Privacy Act System of Records (''SORN''). In revising this SORN, the CFPB modifies the system location, system manager(s) and address; modifies the authorities section to clarify that the authority for operating the system stems in part from enforcement powers of the CFPB; modifies the Records Sources Categories to clarify the record sources; and consolidates two routine uses (previously routine uses 6 and 7) which include the disclosure of personally identifiable information (''PII'') from the system to the U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB or in representing the CFPB in a legal proceeding.

DATES: Comments must be received no later than March 5, 2014. The new system of records will be effective March 17, 2014, unless the comments received result in a contrary determination.

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

- *Electronic: privacy@cfpb.gov.*
- *Mail/Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time.. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Act''), Public Law 111–203, Title X, established the CFPB to administer and enforce federal consumer financial law. The system of records described in this notice, CFPB.004—CFPB Enforcement Database, enables the CFPB to carry out its responsibilities with respect to the enforcement of federal consumer financial law.

The report of the system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000,[1] and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled ''CFPB.004—CFPB Enforcement Database'' is published in its entirety below.

Dated: January 27, 2014.

Claire Stapleton,

Chief Privacy Officer, Bureau of Consumer Financial Protection.

CFPB.004

SYSTEM NAME:

CFPB Enforcement Database

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

[1] Although the CFPB, under 12 U.S.C. 5497(a)(4)(E), is not legally required to follow OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include:

(1) Individuals who are current or former directors, officers, employees, shareholders, agents, and independent contractors of covered persons or service providers, who are or have been the subjects of or otherwise associated with an investigation or enforcement action by the CFPB, or have been named in connection with suspicious activity reports or administrative enforcement orders or agreement. Covered persons and service providers include banks, savings associations, credit unions, thrifts, non-depository institutions, or other persons, offering, providing, or assisting with the provision of consumer financial products or services.

(2) Current, former, and prospective consumers who are or have been customers or prospective customers of, solicited by, or serviced by covered persons or service providers if such individuals have provided information, including complaints about covered persons or service providers, or are or have been witnesses in or otherwise associated with an enforcement action by the CFPB.

(3) Applicants, current and former directors, officers, employees, shareholders, agents, and independent contractors of persons and entities that have business relationships with covered persons or service providers who are or have been the subject of an enforcement action by the CFPB.

(4) Current, former, and prospective customers of persons and entities that have business relationships with covered persons or service providers that are or have been the subject of an enforcement action by the CFPB, and the customers are complainants against covered persons or service providers, or witnesses in or otherwise associated with an enforcement action.

(5) Other individuals who have inquired about or may have information relevant to an investigation or proceeding concerning a possible violation of federal consumer financial law. Information collected regarding consumer financial products and services is subject to the Privacy Act only to the extent that it concerns individuals; information pertaining to corporations and other business entities and aggregate, non-identifiable information is not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system includes:

Identifiable information about individuals such as name, address, email address, phone number, Social Security number, employment status, age, date of birth, financial information, credit information, and personal history. Records in this system are collected and generated during the investigation of potential violations and enforcement of laws and regulations under the jurisdiction of the CFPB and may include: (1) Records provided to the CFPB about potential or pending investigations, administrative proceedings, and civil litigation; (2) evidentiary materials gathered or prepared by the CFPB or obtained for use in investigations, proceedings, or litigation, and work product derived from or related thereto; (3) staff working papers, memoranda, analyses, databases, and other records and work product relating to possible or actual investigations, proceedings, or litigation; (4) databases, correspondence, and reports tracking the initiation, status, and closing of investigations, proceedings, and litigation; (5) correspondence and materials used by the CFPB to refer criminal and other matters to the appropriate agency or authority, and records reflecting the status of any outstanding referrals; (6) correspondence and materials shared between the CFPB and other federal and state agencies; (7) consumer complaints made or referred to the CFPB.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 111–203, Title X, Sections 1011 and 1012, and Subtitle E, Section 1051 *et seq.,* codified at 12 U.S.C. 5491, 5492, and 5561 *et seq.*

PURPOSE(S):

The information in the system is being collected to enable the CFPB to carry out its responsibilities with respect to enforcement of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act and other federal consumer financial law, including: (1) The investigation of potential violations of federal consumer financial law; (2) the pursuit of administrative or civil enforcement actions; and (3) the referral of matters, as appropriate, to the Department of Justice or other federal or state agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB Disclosure of Records and Information Rules, promulgated at 12 CFR 1070 *et seq.,* to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to: (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency; or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to, or amendment or correction of records;

(3) To the Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job or other activity on behalf of the CFPB or Federal Government and who have a need to access information in the performance of their duties or activities;

(6) The DOJ for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A grand jury pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its

introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(8) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(9) Appropriate agencies, entities, and persons, including but not limited to potential expert witnesses or witnesses in the course of investigations, to the extent necessary to secure information relevant to the investigation;

(10) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license; and

(11) An entity or person that is the subject of supervision or enforcement activities including examinations, investigations, administrative proceedings, and litigation, and the attorney or non-attorney representative for that entity or person.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by a variety of fields including, without limitation, the individual's name, address, account number, Social Security number, transaction number, phone number, date of birth, or by some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

The CFPB will manage all computer and paper files in the system as permanent records until the disposition schedule for these records is approved by the National Archives and Records Administration, at which time, the CFPB will dispose of such files in accordance with the schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Assistant Director of Enforcement, 1700 G Street NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in the CFPB's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from covered persons or service providers, including banks, savings associations, credit unions, thrifts, or non-depository institutions or other persons offering, providing, or assisting with the provision of consumer financial products or services; individuals who are current or former directors, officers, employees, shareholders, agents, and independent contractors of covered persons or service providers; current, former, and prospective consumers who are or have been customers or prospective customers of, solicited by, or serviced by covered persons or service providers; applicants, current and former directors, officers, employees, shareholders, agents, and independent contractors of persons and entities that have business relationships with covered persons or service providers; current, former, and prospective customers of persons and entities that have business relationships with covered persons or service providers; state and Federal agencies and others with information relevant to the enforcement of federal consumer financial laws.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of the records in this system are compiled for law enforcement purposes and are exempt from disclosure under CFPB's Privacy Act regulations and 5 U.S.C. 552a(k)(2). Federal criminal law enforcement investigatory reports maintained as part of this system may be the subject of exemptions imposed by the originating agency pursuant to 5 U.S.C. 552a(j)(2).

[FR Doc. 2014–02117 Filed 1–31–14; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of a Revised Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (CFPB), gives notice of the establishment of a Privacy Act System of Records.

DATES: Comments must be received no later than March 5, 2014. The new system of records will be effective March 17, 2014, unless the comments received result in a contrary determination.

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

- *Electronic: privacy@cfpb.gov*
- *Mail/Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7220.

SUPPLEMENTARY INFORMATION: As part of a biennial review of this System of Records, the CFPB revises its Privacy Act System of Records Notice (SORN) ''CFPB.010—Ombudsman System.'' In

revising this SORN, the CFPB modifies the retention and disposal of records in the system to reflect the Ombudsman's official Records Schedule on file with the National Archives and Records Administration; the categories of records in the system; and the record source categories for the system. Additionally, the CFPB makes several non-substantive changes to the system location and address; the system manager and address; the authority section; the routine use section; and the notification procedure section.

Section 1013(a)(5) of the Dodd-Frank Wall Street Reform and Consumer Protection Act Public Law 111–203, Title X, established an Ombudsman's Office to liaise between the CFPB and ''any affected person with respect to any problem that such party may have in dealing with the Bureau, resulting from the regulatory activities of the Bureau.'' The Ombudsman's Office is an independent, impartial, and confidential resource that will advocate for a fair process to resolve issues between the CFPB and an individual or a financial product or service provider. Records in this system allow the Ombudsman's Office to track inquiries submitted to the Ombudsman while they are being addressed. The CFPB Ombudsman's Office will maintain the records covered by this notice.

The report of the revised system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000,[1] and the Privacy Act, 5 U.S.C. 552a(r).

The revised system of records entitled ''CFPB.010—Ombudsman System'' is published in its entirety below.

Dated: January 27, 2014.

Claire Stapleton,

Chief Privacy Officer, Bureau of Consumer Financial Protection.

CFPB.010

SYSTEM NAME:

Ombudsman System.

SYSTEM LOCATION:

CFPB Ombudsman's Office, Consumer Financial Protection Bureau, 1700 G Street NW., Washington DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, which may include, without limitation: (1) Current or former officers, employees, shareholders, agents, and independent contractors of covered persons and service providers as defined by the Act; (2) those who submit inquiries to the CFPB Ombudsman's Office and their representatives; and (3) employees of the CFPB assigned to review and/or respond to any inquiries, as requested by the Ombudsman's Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in the system may contain, without limitation: (1) Correspondence (including letters, memoranda, faxes, telegrams, and emails) received and sent; (2) identifying information regarding the individual who submitted the inquiry, such as the individual's name, phone number, address, email address, and any other disclosed identifiable information; (3) information about the CFPB employee who is responsible for addressing the inquiry; (4) information regarding the status of the inquiry or otherwise related to the inquiry; and (5) relevant dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203, Title X, Section 1013, codified at 12 U.S.C. 5493.

PURPOSE:

The purpose of the information system is to enable the CFPB Ombudsman to efficiently and securely process information while providing assistance to individuals, financial product or service providers, or their representatives in resolving problems with the CFPB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB Disclosure of Records and Information Rules, promulgated at 12 CFR 1070 *et seq.,* to:

(1) Appropriate agencies, entities, and persons when (a) the CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to: (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency; or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) To the Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job or other activity on behalf of the CFPB Ombudsman's Office or Federal Government and who have a need to access information in the performance of their duties or activities;

(6) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ or the CFPB has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components; and

(7) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license.

[1] Although pursuant to section 1017(a)(4)(E) of the Consumer Financial Protection Act, Public Law 111–203, the CFPB is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by a variety of fields, including the name of the individual or type of financial product or service provider, the date of the inquiry, the inquiry control number, or some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized CFPB Ombudsman personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those CFPB Ombudsman personnel whose official duties require access.

RETENTION AND DISPOSAL:

Per N1–587–12–03, item 4, records in this system are deleted or destroyed ninety (90) days after the day on which the inquiry was closed by the Ombudsman.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Ombudsman, 1700 G Street NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR, ''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is collected from (1) current or former officers, employees, shareholders, agents, and independent contractors of covered persons and service providers as defined by the Act; (2) those who submit inquiries to the CFPB Ombudsman's Office and their representatives; and (3) employees of the CFPB assigned to review and/or respond to any inquiries, as requested by the Ombudsman's Office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2014–02118 Filed 1–31–14; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled School Turnaround AmeriCorps Grantee Progress Report for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Carla Ganiel, at 202–606–6773 or email to *cganiel@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on October 31, 2013. This comment period ended December 30, 2013. No public comments were received from this Notice.

Description: CNCS is seeking approval of School Turnaround AmeriCorps Grantee Progress Report, which is used by School Turnaround AmeriCorps grantees to provide information for CNCS staff to monitor grantee progress and to respond to requests from Congress and other stakeholders.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: School Turnaround AmeriCorps Grantee Progress Report.

OMB Number: TBD.

Agency Number: None.

Affected Public: School Turnaround AmeriCorps Grantees.

Total Respondents: 50.

Frequency: Biannual with one additional final report required at closeout of the grant.

Average Time per Response: 9 hours per submission.

Estimated Total Burden Hours: 900.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: January 27, 2014.

William Basl,

Director, AmeriCorps State and National.

[FR Doc. 2014–02099 Filed 1–31–14; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10489–013]

River Falls Municipal Utilities; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 10489–013.

c. *Date Filed:* November 27, 2013.

d. *Submitted By:* River Falls Municipal Utilities.

e. *Name of Project:* River Falls Hydroelectric Project.

f. *Location:* On the Kinnickinnic River, in Pierce county, Wisconsin.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. Potential *Applicant Contact:* Brian Hatch, City of River Falls, 222 Lewis Street, River Falls, WI 54022; (715) 425–0906; email—*bhatch@rfcity.org.*

i. *FERC Contact:* Bryan Roden-Reynolds at (202) 502–6618; or email at *bryan.roden-reynolds@ferc.gov.*

j. River Falls Municipal Utilities filed its request to use the Traditional Licensing Process on November 27, 2013, and provided public notice of its request on December 5, 2013. In a letter dated January 27, 2014, the Director of the Division of Hydropower Licensing approved River Falls Municipal Utilities' request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the Wisconsin State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating River Falls Municipal Utilities as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, and section 106 of the National Historic Preservation Act.

m. River Falls Municipal Utilities filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: January 27, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–02130 Filed 1–31–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped chronologically, in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Filed date	Presenter or requester
Prohibited:		
1. CP13–113–000	1–16–14	Phyllis S. Johnson.
Exempt:		
1. CP12–29–000	11–20–13	FERC Staff. [1]
2. P–12790–000	1–08–14	FERC Staff. [2]
3. CP13–483–000 CP13–492–000	1–08–14	FERC Staff. [3]
4. CP13–84–000	1–13–14	Hon. Bill Shuster.
5. CP13–499–000	1–15–14	Hon. James L. Seward.
6. P–12796–004	1–27–14	Wilma Reip.

[1] Telephone record.
[2] Email record.
[3] Telephone record.

Dated: January 27, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–02131 Filed 1–31–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–46–000]

Southwest Gas Storage Company; Notice of Request Under Blanket Authorization

Take notice that on January 16, 2014, Southwest Gas Storage Company (Southwest), 1300 Main Street, Houston, Texas 77002, filed in Docket No. CP14–46–000, an application pursuant to sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, requesting authorization to abandon in place an 1,100 horsepower (HP) compressor unit and related equipment, located at Southwest's Waverly Storage Compressor Station in Morgan County, Illinois. The authorizations are requested under Southwest's blanket certificate issued in Docket No. CP99–230–000,[1] all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southwest proposes to abandon in place the unit identified as W–10, with appurtenances. This unit was installed under the authority granted in FPC Docket No. CP71–73.[2] ANR intends to abandon its unit W–10 because it does not anticipate needing it at its present location for the foreseeable future, it has become increasingly expensive to maintain. The proposed abandonment activity will not involve ground disturbance or increases to operational air or noise emissions. The unit has not been used for over twelve months. The estimated cost to replicate the 1,100 HP compressor unit proposed to be abandoned is $8.5 million.

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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

[1] See Southwest Gas Storage Co., 86 FERC ¶ 62,232 (1999).

[2] See Panhandle Eastern Pipeline Company, 45 FPC 994 (1971).

Any questions concerning this application should be directed to Stephen Veatch, Sr., Director of Certificates, Southwest Gas Storage Company, 1300 Main Street, Houston, Texas, 77002, or call (713) 989–2024, fax (713) 989–1205, or email *stephen.veatch@energytransfer.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment date: March 28, 2014.

Dated: January 27, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–02129 Filed 1–31–14; 8:45 am]

BILLING CODE 6717–01–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 February 28, 2014.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Southern National Bancorp of Virginia., Inc.,* McLean, Virginia, to acquire 100 percent of the voting shares of Prince George's Federal Savings Bank, Upper Marlboro, Maryland, and thereby engage in operating a savings association pursuant to section 225.25(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 29, 2014.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2014–02165 Filed 1–31–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10320]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: the necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 1, 2014.

ADDRESSES: When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**). CMS–10320 Health Care Reform Insurance Web Portal Requirements 45 CFR Part 159.

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collections

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title:* Health Care Reform Insurance Web Portal Requirements 45 CFR Part 159; *Use:* In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services, Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

This information collection is mandated by Sections 1103 and 10102 of The Patient Protection and Affordability Care Act, Public Law 111–148 (ACA). Once all of the information is collected from insurance issuers of major medical health insurance (hereon referred to as issuers) and other affected parties, it will be displayed at *http://www.healthcare.gov.* Issuers are required to provide information quarterly, and healthcare.gov will be updated on a periodic schedule during each quarter. The information provided will help the general public make educated decisions about organizations providing private health care insurance.

In accordance with the provisions of the ACA referenced above, the U.S. Department of Health and Human Services created a Web site called healthcare.gov to meet these and other provisions of the law, and data collection was conducted for six months based upon an emergency information collection request. The interim final rule published on May 5, 2010 served as the emergency **Federal Register** notice for the prior information collection request. The Office of Management and Budget (OMB) reviewed the request under emergency processing and approved it on April 30, 2010. CMS will be submitting a new request to OMB for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

We are currently updating a system (hereon referred to as web portal) where state Departments of Insurance and issuers may log in using a custom user ID and password validation. The states may be asked to provide information on issuers in their state and various Web sites maintained for consumers. The issuers will be tasked with providing information on their major medical insurance products and plans. They will ultimately be given the choice to download a basic information template to enter data then upload into the web

portal; to manually enter data within the web portal itself; or to submit .xml files containing their information. Once the states and issuers submit their data, they will receive an email notifying them of any errors, and that their submission was received.

CMS is mandating the issuers verify and update their information on a quarterly basis and is requesting that States verify State-submitted information on an annual basis. In the event that an issuer enhances its existing plans, proposes new plans, or deactivates plans, the organization would be required to update the information in the web portal. Changes occurring during the three month quarterly periods will be allowed utilizing effective dates for both the plans and rates associated with the plans.

Form Number: CMS–10320 (OMB#: 0938–1086); *Frequency:* Reporting—Annually/Quarterly; *Affected Public:* health insurance issuers in the individual and small group markets; *Number of Respondents:* 801; *Total Annual Responses:* 3,051; *Total Annual Hours:* 27,833. (For policy questions regarding this collection contact Kim Heckstall at 410 786 1647.)

Dated: January 28, 2014.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–02124 Filed 1–31–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: ADP & Services Conditions for FFP for ACF.

OMB No.: 0970–0417.

Description: State child support agencies are required to establish and operate a federally approved statewide automated data processing and information retrieval system to assist in child support enforcement. States are required to submit an initial advance automated data processing planning document (APD) containing information to assist the Secretary of the Department of Health and Human Services in determining if the state computerized support enforcement system meets federal requirements and providing federal approval. States are also required to submit annually an updated APD for oversight purposes. Based on assessment of the information provided in the initial or updated APDs, states that do not meet federal requirement approval will need to complete an independent verification and validation.

The Advance Planning Document (APD) process, established in the rules at 45 CFR Part 95, Subpart F, is the procedure by which States request and obtain approval for Federal financial participation in their cost of acquiring Automatic Data Processing (ADP) equipment and services. State agencies that submit APD requests provide the Department of Health and Human Services (HHS) with the following information necessary to determine the States' needs to acquire the requested ADP equipment and/or services:

(1) A statement of need;

(2) A requirements analysis and feasibility study;

(3) A procurement plan;

(4) A proposed activity schedule; and,

(5) A proposed budget.

The proposed information collection, is authorized by (1) 42 U.S.C. 654A, which provides a state agency to have a single statewide automated data processing and information retrieval system and sets forth the requirements of that system; (2) 42 U.S.C. 654(16), which provides the state must submit an initial, and annually updated, advance automated data processing planning document for project approval; (3) 45 CFR 307.15, which provides the requirements for approval of advance planning documents; (4) 42 U.S.C. 652(d), which provides the Secretary with the authority to approve an APD and to assess the computerized support enforcement system status; 45 CFR 95.626, which determines when an Independent Verification and Validation must be completed.

HHS' determination of a State Agency's need to acquire requested ADP equipment or services is authorized at sections 602(a(5)), 652(a)(1), 1396(a)(4) and 1302 of United States Code.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
RFP and Contract	4	1.5	4	324
Emergency Funding Request	5	.1	2	1
Biennial Reports	54	1	1.50	81
Advance Planning Document	34	1.2	120	4,896
Operational Advance Planning Document	20	1	30	600
Independent Verification and Validation (ongoing)	3	4	10	120
Independent Verification and Validation (semiannually)	1	2	16	32
Independent Verification and Validation (quarterly)	1	4	30	120
System Certification	1	1	240	240

Estimated Total Annual Burden Hours: 6,414.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–02175 Filed 1–31–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0078]

Agency Information Collection Activities; Proposed Collection; Comment Request; Animal Drug User Fee Act Cover Sheet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the paperwork burden of animal drug sponsors to fill out the Animal Drug User Fee Act (ADUFA) cover sheet.

DATES: Submit either electronic or written comments on the collection of information by April 4, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Animal Drug User Fee Cover Sheet—(OMB Control Number 0910–0539)—Extension

Under section 740 of the FD&C Act (21 U.S.C. 379j-12), as amended by ADUFA (Pub. L. 108–130), FDA has the authority to assess and collect for certain animal drug user fees. Because the submission of user fees concurrently with applications and supplements is required, review of an application cannot begin until the fee is submitted. The types of fees that require a cover sheet are certain animal drug application fees and certain supplemental animal drug application fees. The ADUFA cover sheet (Form FDA 3546) is designed to provide the minimum necessary information to determine whether a fee is required for the review of an application or supplement, to determine the amount of the fee required, and to assure that each animal drug user fee payment and each animal drug application for which payment is made is appropriately linked to the payment that is made. The form, when completed electronically, will result in the generation of a unique payment identification number used in tracking the payment. FDA will use the information collected to initiate administrative screening of new animal drug applications and supplements to determine if payment has been received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FD&C Act section amended by ADUFA	FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
740(a)(1)	3546 (Cover Sheet)	17	1 time for each application.	17	1	17

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Respondents to this collection of information are new animal drug applicants or manufacturers. Based on FDA's database system, there are an estimated 173 manufacturers of products or sponsors of new animal drugs potentially subject to ADUFA. However, not all manufacturers or sponsors will have any submissions in a given year and some may have multiple submissions. The total number of annual responses is based on the average number of submissions received by FDA in fiscal years 2011–13. The estimated hours per response are based on past FDA experience with the various submissions. The hours per

response are based on the average of these estimates.

Dated: January 29, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–02190 Filed 1–31–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0017]

Agency Information Collection Activities; Proposed Collection; Comment Request; Voluntary National Retail Food Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the Voluntary National Retail Food Regulatory Program Standards.

DATES: Submit either electronic or written comments on the collection of information by April 4, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Voluntary National Retail Food Regulatory Program Standards (OMB Control Number 0910–0621—Extension)

The Voluntary National Retail Food Regulatory Program Standards (the Program Standards) define nine essential elements of an effective regulatory program for retail food establishments, establish basic quality control criteria for each element, and provide a means of recognition for those State, local, territorial, tribal and Federal regulatory programs that meet the Program Standards. The program elements addressed by the Program Standards are as follows: (1) Regulatory foundation; (2) trained regulatory staff; (3) inspection program based on Hazard Analysis and Critical Control Point (HACCP) principles; (4) uniform inspection program, (5) foodborne illness and food defense preparedness and response; (6) compliance and enforcement; (7) industry and community relations; (8) program support and resources; and (9) program assessment. Each standard includes a list of records needed to document conformance with the standard (referred to in the Program Standards document as ''quality records'') and has one or more corresponding forms and worksheets to facilitate the collection of information needed to assess the retail food regulatory program against that standard. The respondents are State, local, territorial, tribal, and potentially other Federal regulatory agencies. Regulatory agencies may use existing available records or may choose to develop and use alternate forms and worksheets that capture the same information.

In the course of their normal activities, State, local, territorial, tribal, and Federal regulatory agencies already collect and keep on file many of the records needed as quality records to document compliance with each of the Program Standards. Although the detail and format in which this information is collected and recorded may vary by jurisdiction, records that are kept as a usual and customary part of normal agency activities include inspection records, written quality assurance procedures, records of quality assurance checks, staff training certificates and other training records, a log or database of food-related illness or injury complaints, records of investigations resulting from such complaints, an inventory of inspection equipment, records of outside audits, and records of outreach efforts (e.g., meeting agendas and minutes, documentation of food safety education activities). No new recordkeeping burden is associated with these existing records, which are already a part of usual and customary program recordkeeping activities by State, local, territorial, tribal and Federal regulatory agencies, and which can serve as quality records under the Program Standards.

State, local, territorial, tribal and Federal regulatory agencies that enroll in the Program Standards and seek listing in the FDA National Registry are required to report to FDA on the completion of the following three management tasks outlined in the Program Standards: (1) Conducting a program self-assessment; (2) conducting a risk factor study of the regulated industry; and (3) obtaining an independent outside audit (verification audit). The results are reported to FDA on Form FDA 3519, ''FDA National Registry Report'' and Form FDA 3520, ''Permission to Publish in National Registry.'' These forms are provided in the Program Standards document, and are also provided on FDA's Web site at: *http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/ProgramStandards/default.htm.* If a

regulatory agency follows all the recordkeeping recommendations in the individual standards and their sample worksheets, it will have all the information needed to complete the forms.

In April 2012, the Conference for Food Protection recommended that FDA make two changes to the Program Standards. The changes have been incorporated into the 2013 version, the draft of which is available on FDA's Web site. The first change was the addition of a new criterion in Standard 9. In order to show conformance with Standard 9, jurisdictions must implement an intervention strategy to address risk factors identified in the risk factor study, and then assess the effectiveness of the intervention strategy through subsequent risk factor studies or other similar tools. The second change was the creation of an Administrative Procedures document. The procedures for enrolling and participating in the Program Standards were previously included in Standard 9, along with other criteria specific to conducting a risk factor study. Stakeholders requested that information pertaining to enrollment and participation in the Program Standards be included in a separate, stand-alone document. Therefore, the information about the administration of the Program Standards, previously in Standard 9, is now provided in the Administrative Procedures document.

FDA analyzed whether incorporation of these two changes alters its estimate of the recordkeeping and reporting burdens. FDA concluded that there will be no change to the annual recordkeeping burden estimate. In the course of their normal activities, State, local, territorial, tribal, and Federal regulatory agencies already implement and document intervention strategies to address identified risk factors at regulated food establishments. The intention of the new criterion in Standard 9 is twofold: (1) To ensure that development and implementation of the intervention strategy is guided by data collected through the risk factor study, or other similar tools and (2) to ensure that the regulatory agency considers the effectiveness of the implemented intervention strategy in light of subsequent data. FDA notes that jurisdictions have the option to analyze their inspection data as indicated by the Standard 9 criteria, in lieu of conducting a risk factor study. This is a less resource-intensive method for tracking risk factor trends over time. However, the Agency has not changed its estimate of 333 hours for Standard 9 shown in Table 2 of this document. The Agency will reevaluate its estimate based on data it receives in the future from participating jurisdictions. As stated in the preceding paragraph, the second change resulted in the relocation of existing information from Standard 9 to the Administrative Procedures document in the 2013 version of the Program Standards. Because there were no changes to content, there will be no changes to the annual recordkeeping burden. The two noted changes had no effect on the reporting burden hour estimates shown in Table 2 of this document.

Recordkeeping

FDA's recordkeeping burden estimate includes time required for a state, local, territorial, tribal, or Federal agency to review the instructions in the Program Standards, compile information from existing sources, and create any records recommended in the Program Standards that are not already kept in the normal course of the agency's usual and customary activities. Sample worksheets are provided to assist in this compilation. In estimating the time needed for the program self-assessment (Program Standards 1 through 8, shown in Table 1 of this document), FDA considered responses from four State and three local jurisdictions that participated in an FDA Program Standards Pilot study. Table 2 of this document shows the estimated recordkeeping burden for the completion of the baseline data collection, and Table 3 of this document shows the estimated recordkeeping burden for the verification audit.

TABLE 1—SELF-ASSESSMENT

Standard	Recordkeeping activity	Hours per record
No. 1: Regulatory Foundation	Self-Assessment: Completion of worksheet recording results of evaluations and comparison on worksheets.[1]	16
No. 2: Trained Regulatory Staff	Self-Assessment: Completion of CFP Field Training Manual and Documentation of Successful Completion—Field Training Process; completion of summary worksheet of each employee training records.[1 2]	19.3
No. 3: HACCP Principles	Self-Assessment: Completion of worksheet documentation[1]	4
No. 4: Uniform Inspection Program	Self-Assessment: Completion of worksheet documentation of jurisdiction's quality assurance procedures.[1 2]	19
No. 5: Foodborne Illness Investigation	Self-Assessment: Completion of worksheet documentation[1]	5
No. 6: Compliance Enforcement	Self-Assessment: Selection and review of 20 to 70 establishment files at 25 minutes per file. Estimate is based on a mean number of 45. Completion of worksheet.[1]	19
No. 7: Industry & Community Relations	Self-Assessment: Completion of worksheet[1]	2
No. 8: Program Support and Resources	Self-Assessment: Selection and review of establishment files[1]	8
Total		92.3

[1] Or comparable documentation.
[2] Estimates will vary depending on number of regulated food establishments and the number of inspectors employed by the jurisdiction.

TABLE 2—BASELINE DATA COLLECTION

Standard	Recordkeeping activity	Hours per record
No. 9: Program Assessment	Risk Factor Study and Intervention Strategy[1]	333

[1] Calculation based on mean sample size of 39 and average FDA inspection time for each establishment type. Estimates will vary depending on number of regulated food establishments within a jurisdiction and the number of inspectors employed by the jurisdiction.

TABLE 3—VERIFICATION AUDIT

Activity	Recordkeeping activity	Hours per record
Administrative Procedures	Verification Audit [1]	46.15

[1] We estimate that no more than 50% of time spent to complete self-assessment of all 9 Standards is spent completing verification audit worksheets. Time will be considerably less if less than 9 standards require verification audits.

FDA estimates the burden of this collection of information as follows:

TABLE 4—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Recordkeeping for FDA Worksheets [2]	500	1	500	94.29	47,145

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Or comparable documentation.

FDA bases its estimates of the number of recordkeepers and the hours per record on its experience with the Program Standards. As of September 30, 2013, 563 jurisdictions were enrolled in the Program Standards. However, based upon the level of ongoing support provided by FDA to enrolled jurisdictions and the number of forms submitted annually, FDA estimates that no more than 500 jurisdictions actively participate in the Program Standards during any given year. There are approximately 3,000 jurisdictions in the United States and its territories that have retail food regulatory programs. Enrollment in the Program Standards is voluntary and, therefore, FDA does not expect all jurisdictions to participate.

FDA bases its estimate of the hours per record on the recordkeeping estimates for the management tasks of self-assessment, risk factor study, and verification audit (Tables 1, 2, and 3 of this document) that enrolled jurisdictions must perform a total of 471.45 hours (92.3 + 333 + 46.15 = 471.45). Enrolled jurisdictions must conduct the work described in Tables 1, 2, and 3 over a 5-year period. Therefore FDA estimates that, annually, 500 recordkeepers will spend 94.29 hours (471.45 ÷ 5 = 94.29) performing the required recordkeeping for a total of 47,145 hours as shown in Table 4 of this document.

Reporting

FDA requires regulatory jurisdictions that participate in the Program Standards to submit two forms annually: Form FDA 3519, ''FDA National Registry Report,'' and Form FDA 3520, ''Permission to Publish in National Registry.'' Form FDA 3519 requires the name and address of the jurisdiction; completion dates for the self-assessment, risk factor study (original and update), and verification audit; names of the person(s) who completed the self-assessment, verification audit, risk factor study (baseline report), risk factor study (update), and action plan; signature of the program manager; and date the form was completed. Form FDA 3520 requires the name and address of the jurisdiction, contact information for the enrollee's designated contact person, completion date of the self-assessment, date of the verification audit report, name of the auditor, signature of the official completing the form, and date the form was completed.

The reporting burden in Table 5 of this document includes only the time necessary to fill out and send the forms, as compiling the underlying information (including self-assessment reports, baseline surveys, outside audits, and supporting documentation) is accounted for under the recordkeeping estimates in Table 4 of this document.

FDA estimates the reporting burden for this collection of information as follows:

TABLE 5—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission of ''FDA National Registry Report''	3519	500	1	500	0.1	50
Submission of ''Permission to Publish in National Registry''	3520	500	1	500	0.1	50
Request for documentation of successful completion of staff training	Conference for Food Protection Training Plan and Log	500	3	1,500	0.1	150
Total						250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases its estimates of the number of respondents and the hours per response on its experience with the Program Standards. As explained previously in this document, FDA estimates that no more than 500 regulatory jurisdictions will participate in the Program Standards in any given year. FDA estimates a total of 12 minutes annually for each enrolled jurisdiction to complete both forms. FDA bases its estimate on the small number of data elements on the two forms and the ease of availability of the information. FDA estimates that, annually, 500 regulatory jurisdictions will submit one Form FDA 3519 for a total of 500 annual responses. Each submission is estimated to take 0.1 hour per response for a total of 50 hours. FDA estimates that, annually, 500 regulatory jurisdictions will submit one Form FDA 3520 for a total of 500 annual responses. Each of these submissions is estimated to take 0.1 hour per response for a total of 50 hours. FDA estimates that, annually, 500 regulatory jurisdictions will submit three requests for documentation of successful completion of staff training using the CFP Training Plan and Log for a total of 1,500 annual responses. Each submission is estimated to take 0.1 hour per response for a total of 150 hours. Thus, the total reporting burden for this information collection is 250 hours.

Dated: *January 29, 2014.*

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–02191 Filed 1–31–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

American Glaucoma Society/Food and Drug Administration Workshop on Supporting Innovation for Safe and Effective Minimally Invasive Glaucoma Surgery; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''American Glaucoma Society (AGS)/FDA Workshop on Supporting Innovation for Safe and Effective Minimally Invasive Glaucoma Surgery.'' This workshop will address the current challenges in the assessment of implantable minimally invasive glaucoma surgical (MIGS) devices with a focus on clinical trial design and conduct. Glaucoma experts will present evidence to better define the appropriate patient population, as well as the appropriate evaluation of effectiveness and safety for MIGS devices. The primary goal of the workshop is to discuss the appropriate clinical trial design and conduct for MIGS devices in order to facilitate bringing these innovative technologies to the U.S. marketplace.

Date and Time: The public workshop will be held on February 26, 2014, from 1 p.m. to 6 p.m. Materials may be picked up starting at 12 noon.

Location: The public workshop will be held at the Washington Marriott at Metro Center, 775 12th St. NW., Washington, DC 20005.

Contact: Michelle Tarver, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2504, Silver Spring, MD 20993, 301–796–5620, FAX: 301–847–8126, email: *michelle.tarver@fda.hhs.gov.*

Registration: AGS will charge a registration fee to cover its share of the expenses associated with the workshop. The registration fee is $150 for AGS members and $300 for non-members in advance. Registration is available on a first-come, first-served basis. Persons interested in attending this public workshop may register online or by telephone. The deadline for online registration is February 10, 2014, at 5 p.m. EDT. There will be onsite registration on the day of the public workshop with the cost of onsite registration being $150 for AGS members and $500 for non-members. Early registration is recommended because facilities are limited.

If you need special accommodations due to a disability, please contact Ms. Susan Monahan at *susan.monahan@fda.hhs.gov* or 301–796–5661 no later than February 3, 2014.

To register for the public workshop, please visit the AGS Web site (*http://www.americanglaucomasociety.net/professionals/events/*). Those interested in attending but unable to access the electronic registration site should contact AGS Customer Service to register at 415–561–8587 or 866–561–8558 (toll free). Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. If there are any questions with registration, please contact the AGS administrative offices at 415–561–8587 or email to the attention of Amber Mendez at *ags@aao.org.* Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Food and beverages will be available for purchase by participants during the workshop breaks.

For more information on the workshop, please see the FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.)

Streaming Webcast of the Public Workshop: This public workshop will not be Webcast.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcript will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list).

SUPPLEMENTARY INFORMATION:

I. Background

Glaucoma is estimated to be the second leading cause of blindness worldwide. Management of this often chronic disease is a challenge for both patients and health care providers, requiring the use of multiple modalities including drops, lasers, and surgery. In recent years, innovative devices have been developed to decrease the risk of glaucoma surgery. These MIGS devices have moved the option for surgical intervention towards less severe forms of the disease. Hence, the appropriate clinical trial design and conduct for the evaluation of the safety and effectiveness of MIGS devices has become a topic of debate. At this workshop, we will discuss the important clinical trial components including subject enrollment criteria, safety parameters, and effectiveness endpoints. The workshop seeks to involve industry and academia in addressing the challenges in the development of appropriate clinical trials to adequately evaluate safety and

effectiveness for implantable MIGS devices. By bringing together relevant stakeholders, we hope to facilitate the improvement of regulatory science in this rapidly evolving product area.

FDA and AGS recognize the unique opportunity this workshop provides for all stakeholders of the ophthalmic device community to work together to improve trial design for the assessment of new MIGS devices, and, thereby, strengthen contributions to improved patient care and the protection of the public health.

II. Topics for Discussion at the Public Workshop

Topics to be discussed at the public workshop include, but are not limited to:

- Definition of MIGS and overview of these procedures;
- defining the patient population for implantable MIGS devices;
- determining effectiveness endpoints for implantable MIGS devices; and
- determining the appropriate safety parameters for implantable MIGS devices.

These topics will be presented by experts in the associated area, and will be discussed by panelists with extensive experience conducting glaucoma clinical research.

Dated: January 28, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–02146 Filed 1–31–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0124]

Science Board to the Food and Drug Administration: Request for Nominations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations to serve on the Science Board to FDA (Science Board).

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Nominations received on or before March 5, 2014, will be given first consideration for membership on the Science Board. Nominations received after March 5, 2014 will be considered for nomination to the Board should nominees still be needed.

ADDRESSES: You may submit your information by logging into the FDA advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Martha Monser, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4286, Silver Spring, MD 20993–0002, 301–796–4627, email: *martha.monser@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is requesting nominations to the Science Board. The Science Board will meet approximately three times a year. All meetings will be announced in the **Federal Register** at least 15 days prior to each public meeting.

I. General Function of the Committee

The Science Board shall provide advice primarily to the Commissioner and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board will provide advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science; and input into the Agency's research agenda; and on upgrading its scientific and research facilities and training opportunities. It will also provide, where requested, expert review of Agency sponsored intramural and extramural scientific research programs.

II. Desired Expertise

FDA is specifically seeing persons knowledgeable in the fields of food science, safety, and nutrition; chemistry; pharmacology; translational and clinical medicine and research; toxicology; biostatistics; medical devices; imaging; robotics; cell and tissue based products; regenerative medicine; public health and epidemiology; international health and regulation; product safety; product manufacturing sciences and quality; and other scientific areas relevant to FDA regulated products such as systems biology, informatics, nanotechnology, combination products and relevant areas of behavioral and social science. Members shall be chosen from academia and industry. The Science Board may also include technically qualified federal members.

III. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on the Science Board. Self-nominations are also accepted. Nominations must include a current, complete resume or curriculum vitae for each nominee, including a current business address and/or home address, telephone number, and email address if available. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

This notice is issued under the Federal Advisory Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: January 29, 2014.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2014–02155 Filed 1–31–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of changes in the meeting of the National Institute on Drug Abuse Special Emphasis Panel, February 6, 2014, 10:00 a.m. to February 6, 2014, 12:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, which was published in the **Federal Register** on January 10, 2014, 79, 8 FRN2014–00301.

The date of the meeting is changed to February 11, 2014. The meeting is closed to the public.

Dated: January 28, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–02103 Filed 1–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, February 27, 2014, 12:00 p.m. to February 27, 2014, 04:00 p.m., National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, which was published in the **Federal Register** on January 17, 2014, 79 FR 3212.

The date of the meeting has been changed to February 28, 2014. The time and location remains the same. The title of the meeting has been changed to the National Institute on Aging Special Emphasis Panel; Lung and Aging. The meeting is closed to the public.

Dated: January 28, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–02100 Filed 1–31–14; 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 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 contract proposals 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 or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; Clinical Trials Review Committee.

Date: February 24–25, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Keary A Cope, Ph.D. Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–435–2222, *copeka@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Molecular Imaging Techniques to Detect High Risk Atherosclerotic Plaque.

Date: February 25, 2014.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924 (Telephone Conference Call).

Contact Person: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0287, *carolko@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Review of Patient-Oriented Career Development Awards.

Date: February 27–28, 2014.

Time: 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel and Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Stephanie J Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0291, *stephanie.webb@nih.gov.*

(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: January 28, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–02104 Filed 1–31–14; 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 a meeting of the Board of Scientific Counselors, NHLBI.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL HEART, LUNG, AND BLOOD INSTITUTE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NHLBI.

Date: February 25, 2014.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 5A05, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Robert S Balaban, Ph.D., Director, Division of Intramural Research, Laboratory Research Program, NHLBI, NIH, Bldg 10, CRC, 4th Floor, Rm. 1581, 10 Center Drive, Bethesda, MD 20892, 301/496–3658.

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.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: January 28, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–02105 Filed 1–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board, February 26, 2014, 06:00 p.m. to February 28, 2014, 12:00 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on January 22, 2014, 79 FR 3600.

The meeting notice is amended to cancel the third day (February 28, 2014) of the meeting. The meeting is partially closed to the public.

Dated: January 28, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–02101 Filed 1–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Review of Archived Sample Applications.

Date: February 27–28, 2014.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences; Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709, (Virtual Meeting).

Contact Person: Sally Eckert-Tilotta, Ph.D., Scientific Review Administrator, National Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, Keystone Building, Room 3076, 530 Davis Drive, MSC K3–03, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 28, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–02107 Filed 1–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Integrative Neuroscience.

Date: February 18, 2014.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Prokaryotic Cell and Molecular Biology Study Section.

Date: February 20, 2014.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Dominique Lorang-Leins, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5108, MSC 7766, Bethesda, MD 20892, 301.326.9721, *Lorangd@mail.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics A Study Section.

Date: February 27–28, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Michael M Sveda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1114, MSC 7890, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Clinical Research and Field Studies of Infectious Diseases Study Section.

Date: February 27, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Psycho/Neuropathology, Lifespan Development, and Science Education.

Date: February 27–28, 2014.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: John H Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301)267–9270, *newmanjh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR13–025 and PAR13–026: Selected Topics in Transfusion Medicine.

Date: February 27–28, 2014.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Bukhtiar H Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, 301–806–7314, *shahb@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 28, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–02106 Filed 1–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Age-Related Functioning Across the Life Cycle.

Date: February 24, 2014.

Time: 1:00 p.m. to 3:00 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: Mary Ann Guadagno, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892, (301) 451–8011, *guadagma@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetics of Health and Disease Study Section.

Date: February 25–26, 2014.

Time: 8:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Cheryl M Corsaro, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology.

Date: February 26, 2014.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Wallace Ip, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, 301–435–1191, *ipws@mail.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.

Date: February 27–28, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: C. L. Albert Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, 301–435–1016, *wangca@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–231 Phenotyping Embryonic Lethal Knockout Mice (R01).

Date: February 27–28, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Maqsood A Wani, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 27, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–02109 Filed 1–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Service Conflicts.

Date: February 25, 2014.

Time: 1:00 p.m. to 3:30 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: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Pathway to Independence Awards–K99.

Date: February 26, 2014.

Time: 10:00 a.m. to 2:00 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: Megan Kinnane, Ph.D.; Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov*.

Name of Committee: National Institute of Mental Health, Special Emphasis Panel; Innovative Translational Treatment Research (PAR 11–177).

Date: February 26, 2014.

Time: 1:30 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: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: January 28, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–02108 Filed 1–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, April 01, 2014, 08:30 a.m. to April 01, 2014, 06:00 p.m., Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria, VA 22314, which was published in the **Federal Register** on January 14, 2014, 79 FR 2459.

This notice is being amended to change the start time to 8:00 a.m. The meeting is closed to the public.

Dated: January 28, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–02102 Filed 1–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project Meeting I (P01).

Date: February 4–5, 2014.

Time: 8:00 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: Shakeel Ahmad, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W122, Bethesda, MD 20892–8328, 240–276–6349, *ahmads@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.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE Review.

Date: February 11–12, 2014.

Time: 8:00 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: Wlodek Lopaczynski, MD, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Rockville, MD 20892, 240–276–6458, *lopacw@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.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project Meeting III (P01).

Date: February 12–13, 2014.

Time: 8:00 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: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Bethesda, MD 20892, 240–276–6457, *mh101v@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 Cancer Institute Special Emphasis Panel; NCI Omnibus: Drug Development.

Date: March 19–20, 2014.

Time: 4:00 p.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: Sonya Roberson, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center, Room 7W116, Bethesda, MD 20892, 240–276–6347, *robersos@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; R13 Review Applications.

Date: March 27, 2014.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W556, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Bratin K. Saha, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W556, Rockville, MD 20850, 240–276–6411, *sahab@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Advance Development of Informatics Technology.

Date: April 21, 2014.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Marvin L. Salin, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Bethesda, MD 20892–8329, 240–276–6369, *msalin@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Early Stage Development of Informatics Technology.

Date: April 22, 2014.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Marvin L. Salin, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Bethesda, MD 20892–8329, 240–276–6369, *msalin@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 27, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–02110 Filed 1–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0099]

Agency Information Collection Activities: Application for T Nonimmigrant Status, Form I–914, Application for Immediate Family Member of T–1 Recipient, Supplement A, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Supplement B; Revision of a Currently Approved Collection

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until April 4, 2014.

ADDRESSES: All submissions received must include OMB Control Number 1615–0099 in the subject box, the agency name and Docket ID USCIS–2006–0059. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2006–0059;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;* or

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://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 *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status, Application for Immediate Family Member of T–1 Recipient, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–914; Form I–914, Supplement A, and; Form I–914, Supplement B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–914 permits victims of severe forms of trafficking and their family members to demonstrate that they qualify for temporary nonimmigrant status pursuant to the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), and to receive temporary immigration benefits. USCIS is revising Form I–914 to make statutory changes required by the William Wilberforce Trafficking Victims Protection Act of 2008 (TVPRA 2008) and the Trafficking Victims Protection Act of 2013 (TVPRA 2013). Changes to the Form I–914 include:

- Clarifying physical presence includes being allowed entry into the U.S. to participate in investigative or judicial processes associated with an act or perpetrator of trafficking (TVPRA 2013).
- Implementing an exception from compliance with law enforcement requests for assistance due to physical or psychological trauma (TVPRA 2008).
- Implementing a new derivative category for the adult or minor children of a derivative of a principal who face a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement (TVPRA 2013).
- The requirement of a personal statement, including A numbers, passports and travel documents only if the applicant has them, ensuring address changes are sent directly to the Vermont Service Center in compliance with the Safe Address procedure to protect victims, explain the principal does not need to file a USCIS Form I–765, Application for Employment Authorization Document, and using the name as it appears on the birth certificate (these are not new collections, merely describing what is needed in plain language), and
- Adding language to clarify the role of law enforcement in the process, in order to speak to their main concerns and questions in plain language.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–914—926 responses at 2 hours and 15 minutes (2.25) per response; Supplement A—795 responses at 1 hour per response; Supplement B—200 responses at 3 hours and 30 minutes (3.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,711 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit

the Federal eRulemaking Portal site at: *http://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: January 28, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–02126 Filed 1–31–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers

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

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to modify the National Customs Automation Program (NCAP) test concerning Cargo Release functionality in the Automated Commercial Environment (ACE). Originally, the test was known as the Simplified Entry Test because the test simplified the entry process by reducing the number of data elements required to obtain release for cargo transported by air. The test continues to be modified to provide more capabilities to test participants allowing CBP to deliver enhanced functionality. This notice modifies the ACE Cargo Release test to include expansion to the ocean and rail modes of transportation. This notice invites more participants to join the test.

DATES: The ACE Cargo Release test modifications set forth in this document are effective no earlier than January 5, 2014. The test will run until approximately November 1, 2015.

ADDRESSES: Comments or questions concerning this notice and indication of interest in participation in ACE Cargo Release should be submitted, via email, to Susan Maskell at *susan.c.maskell@cbp.dhs.gov.* In the subject line of your email, please use, ''*Comment on ACE Cargo Release''.* The body of the email should include information regarding the identity of the ports where filings are likely to occur.

FOR FURTHER INFORMATION CONTACT: For policy related questions, contact Stephen Hilsen, Director, Business Transformation, ACE Business Office, Office of International Trade, at *stephen.r.hilsen@cbp.dhs.gov.* For technical questions, contact Susan Maskell, Client Representative Branch, ACE Business Office, Office of International Trade, at *susan.c.maskell@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

I. The National Customs Automation Program

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act). *See* 19 U.S.C. 1411. Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions.

CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace a specific legacy ACS function. Each release will begin with a test and, if the test is successful, will end with implementation of the functionality through the promulgation of regulations governing the new ACE feature and the retirement of the legacy ACS function.

The ACE Cargo Release test was previously known as the Simplified Entry Test because the test simplified the entry process by reducing the number of data elements required to obtain release for cargo transported by air. Through phased releases of ACE component functionality this test has been expanded to allow all eligible participants to join the test for an indefinite period regardless of the Customs-Trade Partnership Against Terrorism (C–TPAT) status of an importer self-filer or a customs broker.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in *Section VII,* entitled, ''*Development of ACE Prototypes''.* The procedures and criteria applicable to participation in the prior ACE tests remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

II. Authorization for the Test

The Customs Modernization Act provides the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The test described in this notice is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95–21.

III. Expansion of ACE Cargo Release Test to Ocean and Rail Modes of Transportation

This document is announcing CBP's plan to expand the ACE Cargo Release test which allows for the filing capabilities by importers and customs brokers for cargo transported by air to include filing capabilities by importers and customs brokers for cargo transported by ocean and rail.

Eligibility Requirements

To be eligible to apply for this test, the applicant must: (1) Be a self-filing importer who has the ability to file ACE Entry Summaries certified for cargo release or a broker who has the ability to file ACE Entry Summaries certified for cargo release; or (2) have evinced the intent to file entry summaries in ACE.

Parties seeking to participate in this test must use a software package that has completed Automated Broker Interface (ABI) certification testing for ACE and offers the simplified entry message set prior to transmitting data under the test. *See* the General Notice of August 26, 2008 (73 FR 50337) for a complete discussion on procedures for obtaining an ACE Portal Account. Importers not self-filing must be sure their broker has the capability to file entry summaries in ACE.

Document Image System (DIS)

Parties who file entry summaries in ACE are allowed to submit specified CBP and Partner Government Agency

(PGA) documents via a CBP-approved Electronic Data Interchange (EDI). A current listing of those documents may be found on the following Web site: *http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace_edi_messages/catair_main/abi_catair/catair_chapters/document_imaging_igs/*.

DIS provides for the storage of all submitted documents in a secure centralized location for the maintenance of associations with ACE entry summary transactions.

See 78 FR 44142 (July 23, 2013).

Test Participation Selection Criteria

The ACE Cargo Release test is open to all importers and customs brokers filing ACE Entry Summaries for cargo transported in the ocean and rail modes. Please note that participants must meet the eligibility requirements mentioned above and set forth in 76 FR 69755 (November 9, 2011).

CBP will endeavor to accept all new eligible applicants on a first come, first served basis; however, if the volume of eligible applicants exceeds CBP's administrative capabilities, CBP will reserve the right to select eligible participants in order to achieve a diverse pool in accordance with the selection standards set forth in 76 FR 69755.

Any party seeking to participate in this test must provide CBP, in their request to participate, their filer code and the port(s) at which they are interested in filing ACE Cargo Release transaction data. At this time, ACE Cargo Release data may be submitted only for entries filed at certain ports. A current listing of those ports may be found on the following Web site: *http://www.cbp.gov/linkhandler/cgov/trade/automated/modernization/whats_new/info_notice_trade.ctt/info_notice_trade.pdf*. CBP may expand to additional ports in the future.

Any changes and/or additions to the ports that are part of the ACE Cargo Release test will be posted to this page. *See http://www.cbp.gov/xp/cgov/trade/trade_transformation/simplified_entry/.*

Filing Capabilities

The filing capabilities for the ACE Cargo Release test set forth in 78 FR 66039 (November 4, 2013) continue to apply and are now expanded to include importers and customs brokers filing ACE Entry Summaries for cargo transported in the ocean and rail modes. The expansion of ACE Cargo Release filing capabilities for ocean and rail modes of transportation will allow for automated corrections and cancellations, split shipments, partial shipments, entry on cargo which has been moved by in-bond from the first U.S. port of unlading, entry for a full manifested bill quantity, and entries requiring Partner Government Agency (PGA) information, if the specified entries are covered in the Implementation Guidelines. *See http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace_edi_messages/catair_main/abi_catair/deployment_b/.* These new capabilities include functionality specific to the filing and processing of type ''01'' (consumption) and type ''11'' (informal) commercial entries for ocean and rail modes of transportation. The ACE Cargo Release filing capabilities serve to assist the importer in completion of entry as required by the provisions of 19 U.S.C. 1484(a)(1)(B).

Data Elements To Be Filed

In lieu of filing CBP Form 3461 data, the importer or broker acting on behalf of the importer must file the following 12 data elements (known as the ACE Cargo Release Data set) with CBP:

(1) Importer of Record Number.
(2) Buyer name and address.
(3) Buyer Employer Identification Number (consignee number).
(4) Seller name and address.
(5) Manufacturer/supplier name and address.
(6) HTS 10-digit number.
(7) Country of origin.
(8) Bill of lading/house air waybill number.
(9) Bill of lading issuer code.
(10) Entry number.
(11) Entry type.
(12) Estimated shipment value.

In the ocean and rail environment, the entry filer, at his option, may also provide the additional three (3) data elements:

(13) Ship to party name and address (optional).
(14) Consolidator name and address (optional).
(15) Container stuffing location (optional).

To enable enhanced functionality in ACE Cargo Release, the entry filer may provide an additional three (3) data elements in certain situations:

(16) Port of Entry (if an in-bond number is provided in the entry submission, the planned port of entry must also be provided).
(17) In-Bond (if applicable).
(18) Bill Quantity (if bill of lading quantity is specified in the entry, it becomes the entered and released quantity for that bill. If the bill quantity is not specified, full bill quantity will be entered and released for that bill).

Data element (1) and data elements (6) through (12) are defined in the same manner as when they are used for entry filing on the CBP Form 3461. Data elements (2) through (5) and (13) through (15) are defined in accordance with the provisions of 19 CFR 149.3.

The ACE Cargo Release Data set may be filed at any time prior to arrival of the cargo in the United States port of arrival with the intent to unlade. This data fulfills merchandise entry requirements and allows for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery.

Functionality

Upon receipt of the ACE Cargo Release data, CBP will process the submission and will subsequently transmit its cargo release decision to the filer. If a subsequent submission is submitted to CBP, CBP's decision regarding the original submission is no longer controlling.

The merchandise will then be considered to be entered upon its arrival in the port with the intent to unlade, as provided by current 19 CFR 141.68(e).

Test Duration

This ACE Cargo Release test modifications set forth in this document are effective no earlier than January 5, 2014. The test will run until approximately November 1, 2015, and is open to type ''01'' (consumption) and type ''11'' (informal) commercial entries filed in the ocean and rail modes of transportation at specified ports. Expansion to other modes will be announced via a separate **Federal Register** notice.

IV. Misconduct under the Test

The terms for misconduct under the ACE Cargo Release Test set forth in 78 FR 66039 (November 4, 2013) continue to apply and are now expanded to include importers and customs brokers filing ACE Entry Summaries for cargo transported in the ocean and rail modes.

V. Previous Notices

All requirements and aspects of the ACE test discussed in previous notices are hereby incorporated by reference into this notice and continue to be applicable, unless changed by this notice.

VI. Paperwork Reduction Act

The collection of information contained in this ACE Cargo Release test have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB number 1651–0024.

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

VII. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 70 FR 5199 (February 1, 2005); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).

Date: January 28, 2014.

Richard F. DiNucci,

Acting Assistant Commissioner, Office of International Trade.

[FR Doc. 2014–02218 Filed 1–31–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FW–HQ–FHC–2014–N019; FXFR133409NFHP0–134–FF09F1000]

Proposed Information Collection; National Fish Habitat Action Plan Project Funding Process

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service, Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by April 4, 2014.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (email). Please include ''1018–NFHAP'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

We receive annual appropriations to implement the National Fish Habitat Action Plan. We use these funds to:

- Support our participation in the National Fish Habitat Board and activities of the Board.
- Support Action Plan coordination and leadership at the Regional level.
- Implement habitat-based cost-shared projects.

Funds used to implement habitat-based cost-shared projects (project funds) are subject to reallocation each year. The Director allocates the available project funding among Fish Habitat Partnerships (FHPs) consistent with the goals and strategies of the National Fish Habitat Board. In FY 2014, we will implement a competitive, performance-based process to allocate project funds. We will distribute project funds among FHPs in two categories: (1) Stable operational support and (2) competitive, performance-based funds to encourage strategic conservation delivery. To determine which projects receive funding, we will collect the following information:

Justification for Stable Operational Support ($75,000 per year). To be eligible to receive stable operational support, FHPs must submit a justification that provides an overview of all projects and activities over the previous 3 years and anticipated projects and activities over the next 3 years. The justification should concisely describe these projects and activities as well as how these projects and activities (both individually and collectively) have contributed, or are expected to contribute, to achieving FHP goals and leverage partner resources and capabilities.

Accomplishments Report and Work Plan. To compete for performance-based funds, FHPs must submit:

- *Accomplishments Report* that provides a detailed description of all

projects and activities of the FHP over the previous 3 years.

• *Work Plan* consisting of a prioritized list of new or ongoing habitat projects over the next year. The work plan will include, but not be limited to, project title, funds requested, anticipated partner contributions, measurable goals and objectives, and proposed conservation actions that will produce desired conservation outcomes and achieve project goals and objectives.

Application. FHPs will solicit proposals for Service funding. Applicants must submit an application that describes in substantial detail project locations, benefits, funding, and other characteristics.

Performance and Financial Reports. Persons or entities receiving project funding must submit annual performance and financial reports that contain information necessary for us to track costs and accomplishments. Performance reports will include:

• A comparison of actual accomplishments to the goals and objectives established for the reporting period, the results/findings, or both;

• If the goals and objectives were not met, the reasons why, including analysis and explanation of cost overruns or high unit costs compared to the benefit received to reach an objective; and

• Performance metrics, such as the number of stream miles or acres of riparian habitat restored or protected by the project, the number of fish passage barriers removed, and the aquatic species benefitted by the project.

II. Data

OMB Control Number: 1018–XXXX. This is a new collection.

Title: National Fish Habitat Action Plan Project Funding.

Service Form Number: None.

Type of Request: Request for a new OMB Control Number.

Description of Respondents: Fish Habitat Partnerships recognized by the National Fish Habitat Board; individuals; businesses and organizations; and State, local, and tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually or on occasion.

Activity	Number of respondents	Number of responses	Completion time per response (hours)	Total annual burden hours
Justification for Stable Operational Support	18	18	5	90
Accomplishments Report and Work Plan	18	18	20	360
Application	100	100	20	2,000
Financial and Performance Reports	100	100	20	2,000
TOTALS	236	236	.....	4,450

Estimated Annual Nonhour Burden Cost: None.

III. Comments

We invite comments concerning this information collection on:

• Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

• The accuracy of our estimate of the burden for this collection of information;

• Ways to enhance the quality, utility, and clarity of the information to be collected; and

• Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 28, 2014.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2014–02127 Filed 1–31–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DR.5B711.IA000814]

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Class III Gaming Compact taking effect.

SUMMARY: This notice publishes the Class III Gaming Compact between the Mashpee Wampanoag Tribe and the Commonwealth of Massachusetts taking effect.

DATES: *Effective Date:* February 3, 2014.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Compact between the Commonwealth of Massachusetts (State) and the Mashpee Wampanoag provides for limited annual payments to the State for statewide and regional exclusivity. The term of the compact is 20 years from the date of the facility's opening with an automatic renewal of 20 years without modifications. The Secretary took no action on the Compact within 45 days of its submission by the Tribe and the State. Therefore, the compact is considered to have been approved, but only to the extent that the Compact is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Dated: January 24, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–02183 Filed 1–31–14; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–14640; PX.DYOSE1318.00.1]

Notice of Availability of Record of Decision for Restoration of Mariposa Grove of Giant Sequois, Yosemite National Park, California

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR part 1505.2), the Department of the Interior, National Park Service (NPS), has prepared and approved a Record of Decision for the Final Environmental Impact Statement (Final EIS) for the Restoration Plan for Mariposa Grove of Giant Sequoias. The requisite no-action ''wait period'' was initiated on November 1, 2013, with the Environmental Protection Agency's **Federal Register** notice of the filing of the Final EIS.

Decision: The NPS has selected Alternative 2 (identified as ''preferred'' in the Final EIS) for implementation as the approved Restoration Plan for Mariposa Grove. Key components of the approved plan are as follows: (1) The existing parking lot in the lower Mariposa Grove area will be relocated to a visitor contact area at the South Entrance to the park, about two miles from the Grove; (2) parking will be consolidated into a 295-space parking and transit hub, with a park shuttle available to transport visitors from the South Entrance to the lower Grove area; (3) a hiking trail to the Grove and new accessible trails within the lower Grove area and near the Grizzly Giant tree will be constructed; (4) adverse effects to cultural resources will be ameliorated according to a Memorandum of Agreement executed with the State Historic Preservation Officer; and (5) ecological restoration actions will be undertaken to improve hydrologic flows, water infiltration, and reduce erosion.

Three other alternatives were evaluated, the full range of foreseeable environmental consequences was assessed, and appropriate mitigation measures were identified. Alternative 2 (selected for implementation) was deemed to be the ''environmentally preferred'' course of action.

Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Attn: Division of Project Management, Yosemite National Park, P.O. Box 700–W, 5083 Foresta Road, El Portal, CA 95318 or via telephone request at (209) 379–1202.

Signed: December 16, 2013.

Christine S. Lehnertz,

Regional Director, Pacific West Region.

[FR Doc. 2014–02157 Filed 1–31–14; 8:45 am]

BILLING CODE 4312–FF–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Number 1010–0006; MMAA104000]

Information Collection: Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf and Pipeline Rights of Way; Submitted for OMB Review; Comment Request

ACTION: 30-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Ocean Energy Management (BOEM) is notifying the public that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR Part 556, Leasing of Sulphur or Oil and Gas in the OCS; 30 CFR Part 550, Subpart J, Pipelines and Pipeline Rights-of-Way; and 30 CFR Part 560, OCS Oil and Gas Leasing. This notice provides the public a second opportunity to comment on the paperwork burden of this collection.

DATES: Submit written comments by March 5, 2014.

ADDRESSES: Submit comments on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_submission@omb.eop.gov* (email). Please provide a copy of your comments to the BOEM Information Collection Clearance Officer, Arlene Bajusz, Bureau of Ocean Energy Management, 381 Elden Street, HM–3127, Herndon, Virginia 20170 (mail) or *arlene.bajusz@boem.gov* (email). Please reference ICR 1010–0006 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Office of Policy, Regulations, and Analysis at *arlene.bajusz@boem.gov* (email) or (703) 787–1025 (phone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 556, Leasing of Sulphur or Oil and Gas in the OCS; 30 CFR Part 550, Subpart J, Pipelines and Pipeline Rights-of-Way; and 30 CFR Part 560 OCS Oil and Gas Leasing.

Forms: BOEM–0150, 0151, 0152, 2028, 2028A, 2030.

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 to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas 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; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. Also, the Energy Policy and Conservation Act of 1975 (EPCA) prohibits certain lease bidding arrangements (42 U.S.C. 6213(c)).

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and Office of Management and Budget (OMB) Circular A–25 authorize Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) implementing policy, the Bureau of Ocean Energy Management (BOEM) is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. Instruments of transfer of a lease or interest are subject to cost recovery, and BOEM regulations specify the filing fee for these transfer applications.

This notice concerns the reporting and recordkeeping requirements of BOEM regulations at 30 CFR 556, Leasing of Sulphur or Oil and Gas in the OCS; 30 CFR 550, Subpart J, Pipelines and Pipeline Rights-of-Way; 30 CFR 560, OCS Oil and Gas Leasing; as well as the related Notices to Lessees and Operators (NTLs) that clarify and provide additional guidance on some aspects of these regulations. This ICR also concerns the use of the following forms to process bonds, transfer interest in leases, and file relinquishments:

• BOEM–0150, Assignment of Record Title Interest in Federal OCS Oil and Gas Lease,

• BOEM–0151, Assignment of Operating Rights Interest in Federal OCS Oil and Gas Lease,

• BOEM–0152, Relinquishment of Federal OCS Oil and Gas Lease,

• BOEM–2028, OCS Mineral Lessee's and Operator's Bond,

• BOEM–2028A, OCS Mineral Lessee's and Operator's Supplemental Bond,

• BOEM–2030, OCS Pipeline Right-of-Way Grant Bond.

BOEM uses the information collected to determine if applicants are qualified to hold leases in the OCS, assign a qualification number to avoid respondent submission of information already on file, develop the semiannual List of Restricted Joint Bidders, ensure the qualification of transferees and track operators on leaseholds, document that a leasehold or geographical subdivision has been surrendered by the record title holder, and ensure that adequate funds are secured to complete existing and future bond obligations.

We will protect information from respondents considered proprietary according to section 26 of the OCS Lands Act, the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2 and 30 CFR 556.10(d)). No items of a sensitive nature are collected. Responses are mandatory or are required to obtain a benefit.

Frequency: On occasion or annual.

Description of Respondents: Respondents comprise Federal oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: We expect the annual reporting burden estimate for this collection to be 17,882 hours. The following table details the individual components and respective hour burden estimates of this ICR.

Citation 30 CFR part 556 and NTLs	Reporting requirement *	Non-Hour Cost Burdens **		
		Hour burden	Average number of annual responses	Annual burden hours
All Subparts				
Subparts A, C, E, H, L, M	None	Not applicable.		0
Subparts G, H, I, J: 37; 53; 68; 70; 71; 72; 73.	Request approval for various operations or submit plans or applications.	Burden included with other approved collections in 30 CFR Part 550 (Subpart A 1010–0114, Subpart B 1010–0151) and in BSEE 30 CFR 250 (Subpart A 1014–0022, Subpart D 1014–0018).		0
Subparts B through F				
Subpart B: All sections	Submit general suggestions and relevant information in response to request for comments on proposed 5-year leasing program, including information from States/local governments..	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
	Submit suggestions and specific information in response to request for comments on proposed 5-year leasing program, including information from States/local governments.***	4	69	276
Subpart D: All sections	Submit general response to Call for Information and Nominations on areas for leasing of minerals in specified areas in accordance with an approved leasing program, including information from States/local governments.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
	Submit specific response to Call for Information and Nominations on areas for leasing of minerals in specified areas in accordance with an approved leasing program, including information from States/local governments.***	4	80 (20 responses/sale × 2 sales/call × 2 calls/year).	320
Subpart F: 31	States or local governments submit comments/recommendations on size, timing or location of proposed lease sale.	4	25 responses	100
Subtotal			174 responses	696 hours

Citation 30 CFR part 556 and NTLs	Reporting requirement*	Non-Hour Cost Burdens**		
		Hour burden	Average number of annual responses	Annual burden hours
Subpart G				
Subpart G: 35; 46(d), (e)	Establish a Company File for pre-qualification; submit updated information, submit qualifications for lessee/bidder, request exception.	2	107 responses	214
41; 43; 46(g)	Submit qualification of bidders for joint bids and statement or report of production, along with supporting information/appeal.	2	100 responses	200
44; 46; 47	Submit bids and required information, including GDIS & maps in manner specified. Make available to BOEM.	5	2,000 bids	10,000
47(c)	File agreement to accept joint lease on tie bids.	31/2	2 agreements	7
47(e)(1), (e)(3)	Request for reconsideration of bid rejection.	Not considered IC as defined in 5 CFR 1320.3(h)(9).		0
47(f), (i); 50	Execute lease (includes submission of evidence of authorized agent and request for dating of leases; lease stipulations).	1	852 leases	852
Subtotal			3,061 responses	11,273 hours
Subpart I				
Subpart I: 52(f)(2), (g)(2)	Submit authority for Regional Director to sell Treasury or alternate type of securities.	2	12 submissions	24
53(a), 53(b); 54	OCS Mineral Lessee's and Operator's Bond (Form BOEM–2028).	⅓	135 responses	45 (rounded)
53(c), (d), (f); 54(e)	Demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of security, or request reduction in amount of supplemental bond required.	3½	166 submissions	581
54	OCS Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond (Form BOEM–2028A).	1/4	141 responses	35
55	Notify BOEM of any lapse in previous bond/action filed alleging lessee, surety, or guarantor is insolvent or bankrupt.	1	4 notices	4
56	Provide plan/instructions to fund lease-specific abandonment account and related information; request approval to withdraw funds.	12	2 submission	24
57	Provide third-party guarantee, indemnity agreement, financial information, related notices, reports, and annual update; notify BOEM if guarantor becomes unqualified.	19	46 submissions	874
57(d)(3); 58	Notice of and request approval to terminate period of liability, cancel bond, or other security.	1/2	378 requests	189

Citation 30 CFR part 556 and NTLs	Reporting requirement*	Non-Hour Cost Burdens**		
		Hour burden	Average number of annual responses	Annual burden hours
59(c)(2)	Provide information to demonstrate lease will be brought into compliance.	16	5 responses	80
Subtotal			889 responses	1,856 hours
Subpart J				
Subpart J: 62; 63; 64; 65; 67	File application and required information for assignment or transfer for approval/comment on filing fee (Forms BOEM–0150 and BOEM–0151).	2 forms @ 30 min ea = 1 hr.	1,414 applications/forms.	1,414
		1,414 Title/Rights (Transfer) Assignments @$ $198 = $279,972		
63; 64(a)(8)	Submit non-required documents, for record purposes, which respondents want BOEM to file with the lease document. [Accepted on behalf of lessees as a service, BOEM does not require nor need the filings.].	0	11,518 documents.	0
		11,518 @$ $29 = $334,022		
64(a)(7)	File required instruments creating or transferring working interests, etc., for record purposes.	1	2,369 filings	2,369
Subtotal			15,301 responses.	3,783 hours
			$613,994 non-hour cost burdens	
Subpart K				
Subpart K: 76; 92(a)	File written request for relinquishment (Form BOEM–152).	1	247 relinquishments.	247
77(c)	Comment on lease cancellation (BOEM expects 1 in 10 years).	1	1 comment	1
Subtotal			248 responses	248 hours
Subpart N				
Subpart N: 92(a)	Request a bonus or royalty credit; submit supporting documentation.	1	1 request	1
95	Request approval to transfer bonus or credit to another party; submit supporting information..	1	1 request	1
Subtotal			2 responses	2 hours.
30 CFR 550 Subpart J	Reporting requirement*	Hour burden	Average number of annual responses	Annual burden hours
550.1011(a)	Provide surety bond (Form BOEM–2030) and required information..	GOM 1/4	52 forms	13
		Pacific 3½	3 forms	11
TOTAL			55 responses	24 hours.

Citation 30 CFR Part 560	Reporting requirement *	Hour burden	Average number of annual responses	Annual burden hours
124(a)	Request BOEM to reconsider field assignment of a lease.	Exempt under 5 CFR 1320.4(a)(2), (c).		0
TOTAL REPORTING		19,730 Responses		17,882 Hours
		$613,994 Non-Hour Cost Burdens		

* In the future, BOEM may require electronic filing of certain submissions.
** Fees are subject to modifications annually per inflation.
*** Existing requirement, previously overlooked.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: $613,994.

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: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.,*) 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.

To comply with the public consultation process, on November 4, 2013, BOEM published a **Federal Register** notice (78 FR 66066) announcing that we would submit this ICR to OMB for approval. This notice provided the required 60-day comment period. We received one comment, but it was not relevant to the information collection.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 24, 2014.

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulations, and Analysis.

[FR Doc. 2014–02195 Filed 1–31–14; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–451 and 731–TA–1126–1127 (Review)]

Lightweight Thermal Paper From China and Germany; Notice of Commission Determination 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 and antidumping duty orders on lightweight thermal paper from China and Germany 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 Date:* January 23, 2014.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), 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 this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On January 23, 2014, 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 response to its notice of institution (78 FR 60313, October 1, 2013) was adequate and that the respondent interested party group response with respect to Germany was adequate, and decided to conduct a full review of the antidumping duty order on lightweight thermal paper from Germany. The Commission found that the respondent interested party group response with respect to subject imports from China was inadequate. However, the Commission determined to conduct full reviews concerning the orders on lightweight thermal paper from China to promote administrative efficiency in light of its decision to conduct a full review with respect to Germany.[1] 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.

[1] Commissioners Shara L. Aranoff and F. Scott Kieff did not participate in these adequacy determinations.

Issued: January 28, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–02151 Filed 1–31–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Television Sets, Television Receivers, Television Tuners, and Components Thereof,* DN 2999; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Cresta Technology Corporation on January 28, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain television sets, television receivers, television tuners, and components thereof. The complaint names as respondents Silicon Laboratories, Inc. of Austin, TX; Samsung Electronics Co., Ltd. of Korea; Samsung Electronics America, Inc. of Ridgefield Park, NJ; LG Electronics Inc. of Korea; LG Electronics U.S.A. of Englewood Cliffs, NJ; MaxLinear, Inc. of Carlsbad, CA; Sharp Corporation of Japan; Sharp Electronics Corporation of Mahwah, NJ; and VIZIO Inc. of Irvine, CA. The complainant requests that the Commission issue a permanent limited exclusion order, and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2999'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: January 29, 2014.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–02160 Filed 1–31–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1020 (Second Review)]

Barium Carbonate From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on barium carbonate from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is March 5, 2014. Comments on the adequacy of responses may be filed with the Commission by April 18, 2014. For further information concerning the conduct of this review 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 Date:* February 3, 2014.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.— On October 1, 2003, the Department of Commerce issued an antidumping duty order on imports of barium carbonate from China (68 FR 56619). Following the five-year reviews by Commerce and the Commission, effective March 17, 2009, Commerce issued a continuation of the antidumping duty order on imports of barium carbonate from China 74 FR 11348 (March 17, 2009). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first five-year review determination, the Commission defined one *Domestic Like Product* consisting of barium carbonate, regardless of form or grade, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first five-year determination, the Commission defined the *Domestic Industry* as all producers of barium carbonate.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. § 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 14–5–305, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 5, 2014. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 18, 2014. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided In Response To This Notice Of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2007.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2013, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2013 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company

transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2013 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2007, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Dated: January 27, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–01897 Filed 1–31–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–454 and 731–TA–1144 (Review)]

Welded Stainless Steel Pressure Pipe From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping and countervailing duty orders on welded stainless steel pressure pipe from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is March 5, 2014. Comments on the adequacy of responses may be filed with the Commission by April 18, 2014. 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 February 3, 2014.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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:

Background.—On March 17, 2009, the Department of Commerce issued an antidumping duty order on imports of welded stainless steel pressure pipe from China (74 FR 11351). On March 19, 2009, the Department of Commerce issued a countervailing duty order on imports of welded stainless steel pressure pipe from China (74 FR 11712). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined one *Domestic Like Product* consisting of small-diameter welded pressure pipe with an outside diameter

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 14–5–307, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

not greater than 14 inches, as coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all producers of small-diameter welded pressure pipe with an outside diameter not greater than 14 inches.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. The *Order Date* concerning the antidumping duty order is March 17, 2009, and the *Order Date* concerning the countervailing duty order is March 19, 2009.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 5, 2014. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is April 18, 2014. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response To This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the

Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2013, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2013 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2013 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

AUTHORITY: These reviews are being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 27, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–01891 Filed 1–31–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1022 (Second Review)]

Refined Brown Aluminum Oxide From China; Institution of A Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on refined brown aluminum oxide from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is March 5, 2014. Comments on the adequacy of responses may be filed with the Commission by April 18, 2014. For further information concerning the conduct of this review 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 February 3, 2014.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 19, 2003, the Department of Commerce issued an antidumping duty order on imports of refined brown aluminum oxide from China (68 FR 65249). Following the five-year reviews by Commerce and the Commission, effective March 13, 2009, Commerce issued a continuation of the antidumping duty order on imports of refined brown aluminum oxide from China (74 FR 10884). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first five-year review determination, the Commission defined the *Domestic Like Product* as all merchandise corresponding to Commerce's scope, as well as any refined brown aluminum oxide where particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch, as long as this product has been crushed, screened, and sorted into consistent sizes.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Like Product* as all U.S. producers of refined brown aluminum oxide, with the exception of Great Lakes Minerals, which was excluded from the domestic industry as a related party. In its expedited first five-year review determination, the Commission defined one *Domestic Industry* as consisting of all domestic producers of refined brown aluminum oxide.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO)

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 14–5–306, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 5, 2014. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 18, 2014. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided In Response To This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2007.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2013, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales,

internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2013 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2013 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2007, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 27, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–01894 Filed 1–31–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–909]

Certain Non-Volatile Memory Devices and Products Containing Same Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 27, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Macronix International Co., Ltd. of Taiwan and Macronix America, Inc. of Milpitas, California. A revised complaint was filed on December 31, 2013, and a letter supplementing the revised complaint was filed on January 14, 2014. The revised complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain non-volatile memory devices and products containing the same by reason of infringement of U.S. Patent No. 6,552,360 (''the '360 patent''); U.S. Patent No. 6,100,557 (''the '557 patent''); and 6,002,630 (''the '630 patent''). The revised complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order and cease and desist orders.

ADDRESSES: The revised complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at http://www.usitc.gov. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2013).

Scope of Investigation: Having considered the revised complaint, the

U.S. International Trade Commission, on January 28, 2014, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain non-volatile memory devices and products containing the same by reason of infringement of one or more of claims 1–8 of the '360 patent; claims 1–3, 7, and 9–13 of the '557 patent; and claims 1–6 and 10–16 of the '630 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Macronix International Co., Ltd., No. 16, Li-Hsin Road, Science Park, Hsin-chu, Taiwan.

Macronix America, Inc., 680 North McCarthy Boulevard, Suite 200, Milpitas, CA 95035.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the revised complaint is to be served:

Spansion, Inc., 915 DeGuigne Drive, Sunnyvale, CA 94085.

Spansion LLC, 915 DeGuigne Drive, Sunnyvale, CA 94085.

Spansion (Thailand) Ltd., 229 Moo 4 Changwattana Road, Pakkred, Nonthaburi 11120, Thailand.

Beats Electronics LLC, 1601 Cloverfield Boulevard, Suite 5000N, Santa Monica, CA 90404.

Delphi Automotive PLC, Courteney Road, Hoath Way, Gillingham, Kent ME8 0RU, United Kingdom.

Delphi Automotive Systems, LLC, 5725 Delphi Drive, Troy, MI 48098.

Harman International Industries, Inc., 400 Atlantic Street, Suite 1500, Stamford, CT 06901.

Harman Becker Automotive Systems, Inc., 39001 West 12 Mile Road, Farmington Hills, MI 48331.

Harman Becker Automotive Systems GmbH, Becker-Goering-Strasse 16, 76307 Karlsbad, Germany.

Ruckus Wireless, Inc., 350 West Java Drive, Sunnyvale, CA 94089.

Tellabs, Inc., 1415 West Diehl Road, Naperville, IL 60563.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the revised complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the revised complaint and the notice of investigation. Extensions of time for submitting responses to the revised complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the revised complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the revised complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the revised complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: January 29, 2014.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–02154 Filed 1–31–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–14–003]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 7, 2014 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. No. 731–TA–1123 (Review) (Steel Wire Garment Hangers from China). The Commission is currently scheduled to complete and file its determination and views of the Commission on February 18, 2014.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: January 28, 2014.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–02189 Filed 1–30–14; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1123–0009]

Agency Information Collection Activities: Information Collection Renewal; Comments Requested: Inspection of Records Relating to Visual Depictions of Simulated Sexually Explicit Performances

ACTION: 60-Day Notice of Information Collection.

The Department of Justice (DOJ), Criminal Division, Child Exploitation and Obscenity Section (CEOS) will submit the following information collection renewal to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection renewal is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until

April 4, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated number of respondents, estimated public burden or associated response time, suggestions, or need additional information, please contact Andrew G. Oosterbaan, Chief, Child Exploitation and Obscenity Section, Criminal Division, United States Department of Justice, Washington, DC 20530, email: *admin.ceos@usdoj.gov*, phone: (202) 514–5780. This is not a toll-free number.

Written comments and suggestions from the public and affected agencies concerning the collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) How to enhance the quality, utility, and clarity of the information to be collected; and

(4) How to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Summary of Information Collection:

(1) *Type of Information Collection:* Renewal of a currently approved collection.

(2) *Title:* Inspection of Records Relating to Visual Depictions of Actual and Simulated Sexually Explicit Performances

(3) *Agency form number, if any:* None

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Abstract: This is a renewal of an existing information collection implementing the record-keeping, labeling, and inspection requirements of 28 CFR part 75.

Need for Collection:

The information collection documents the record-keeping, labeling, and inspection requirements for producers of visual depictions of actual and simulated sexually explicit conduct, and the certification regime for the exemption from these requirements, in certain circumstances, for producers of visual depictions of simulated sexually explicit conduct and visual depictions of actual sexually explicit conduct constituting the lascivious exhibition of the genitals or pubic area of a person. These statutory requirements of 28 CFR part 75, codified at 18 U.S.C. 2257 and 2257A, are designed to ensure that visual depictions of sexually explicit conduct are produced in accordance with laws and regulations, and without the involvement of minors under 18 years of age.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The Department is unable to estimate with any precision the number of entities producing visual depictions of actual or simulated sexually explicit conduct. As a partial indication, the Department's 2008 regulatory review, including the information collection request and PRA Supporting Statement (RIN 1105–AB19), cited data collected by the U.S. Census Bureau in 2002. Employing the same method of analysis, according to data collected by the U.S. Census Bureau in 2007, there were 11,974 establishments engaged in motion picture and video production in the United States. Based on a rough assumption that 10% of the establishments are engaged in the production of visual depictions of simulated sexually explicit conduct, the Department estimates that approximately 1,974 motion picture and video producing establishments are required to comply with these statutory requirements. (The Department does not certify this estimate.)

Additionally, the statute provides an exemption from these requirements applicable in certain circumstances, and it requires producers to submit certifications to qualify for this exemption. From March 18, 2009, the effective date of the certification regime, to the present, the Department has received approximately 1400 certification letters. For the entities that qualify for the exemption, the Department estimates that it would take less than 20 hours per year to prepare the biennial certification required for the exemption.

(6) *An estimate of the total public burden (in hours) associated with the collection:* If OMB were to assume that 3,000,000 visual depictions of actual or simulated sexually explicit conduct are created each year and that it requires 6 minutes to complete the record-keeping requirement for each depiction, the record-keeping requirements would impose a burden of 300,000 hours. If, however, OMB were to assume that producers of 90% of these depictions qualify for the statutory exemption from these requirements, the requirements would only impose a burden of 30,000 hours (These estimates were included in the Department's 2008 regulatory review, including the information collection request and PRA Supporting Statement (RIN 1105–AB19). The Department does not certify the accuracy of these numbers.)

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 Street NE., Washington, DC 20530.

January 28, 2014.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2014–02092 Filed 1–31–14; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1103—NEW]

Office of Community Oriented Policing Services; Agency Information Collection Activities; Proposed New Collection; Comments Requested; Drug Endangered Children Tracking System User Survey

ACTION: 30-Day Notice.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This notice was previously published in the **Federal Register** Volume 78, Number 226, on November 22, 2013, allowing a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 5, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Danielle Ouellette, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your

comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Proposed new collection; comments requested.

(2) *Title of the Form/Collection:* Drug Endangered Children Tracking System User Survey.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* System users, both law enforcement and child welfare workers, will be asked to provide customer service feedback regarding the Colorado Alliance for Drug Endangered Children Tracking System (DECSYS). Through a cooperative agreement with the COPS Office, the Colorado Alliance for Drug Endangered Children will gather this feedback in order to assess how agencies are using DECSYS, what training is being provided, challenges, and many other factors.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:*

(6) It is estimated that 50 respondents annually will complete the form in approximately 10 minutes (.17 hours).

(7) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 8.5 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: January 28, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–02090 Filed 1–31–14; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110—NEW]

Agency Information Collection Activities: Proposed Collection, Comments Requested; New Collection; Uniform Crime Reporting Data Collection Instrument Pretesting and Burden Estimation General Clearance

ACTION: 30-day notice.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 228, page 70577, on November 26, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 5, 2014 This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time should be directed to Mrs. Amy C. Blasher, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Uniform Crime Reporting Data Collection Instrument Pretesting and Burden Estimation General Clearance.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* New collection; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, tribal, and federal law enforcement agencies. Abstract: This clearance provides the UCR Program the ability to conduct pretests which evaluate the validity and reliability of information collection instruments and determine the level of burden state and local agencies have in reporting crime data to the FBI. The Paperwork Reduction Act only allows for nine respondents in pretesting activities. This clearance request expands the pretesting sample to 30 persons for each of the ten information collections administered by the UCR Program. Further, the clearance will allow for a brief 5-minute cost and burden assessment for the 18,000 law enforcement agencies participating in the UCR Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are a potential of 18,000 law enforcement agency respondents; calculated estimates indicate 5 minutes for the agency participation cost and burden assessments. There are 300 respondents; calculated estimates

indicate 60 minutes for the UCR forms pretesting assessments.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 1,800 hours, annual burden, associated with this information collection.

If additional information is required contact Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: January 28, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–02089 Filed 1–31–14; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0314]

Agency Information Collection Activities: Proposed collection; Comments Requested; Renewal with change of a previously approved collection: Firearm Inquiry Statistics Program

ACTION: 30-day notice.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 225, page 69875 on Thursday, November 21, 2013, allowing for a 60 day comment period. One inquiry related to the uses of FIST data was received to which BJS responded.

The purpose of this notice is to allow for an additional 30 days for public comment until March 5, 2014. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden or associated response time, should be directed to The Officer of Management and Budget, Officer of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of this information collection

(1) *Type of information collection:* Reinstatement with change of a previously approved collection.

(2) *The title of the Form/Collection:* Firearm Inquiry Statistics Program

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Not applicable.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State and local agencies. State and local agencies responsible for maintaining records on the number of background checks for firearm transfers or permits that were issued, processed, tracked, or conducted during the calendar year are asked to provide information about: The number of applications and denials for firearm transfers received or tracked by the agency; reasons why an application was denied; information on arrests that occurred when a denied person who submitted a false application or had an outstanding warrant was arrested by the checking agency or another agency that was notified (state agency responders only); appeals to an agency and court for reconsideration of a denial (state agency responders only); and reversals of a denial decision (state agency responders only). Through its Firearm Inquiry Statistics Program, the Bureau of Justice Statistics collects information on firearm background checks conducted by state and local agencies and combines this information with the Federal Bureau of Investigation's National Instant Criminal Background Check System transaction data to produce a national estimate of the number of applications received and denied and of the reasons for denial. The information is also combined with data obtained from the Bureau of Alcohol, Tobacco, Firearms, and Explosives on appeals of denied applications and arrests for falsified documents. The Bureau of Justice Statistics uses this information in published reports and in responding to queries from the U.S. Congress, Executive Office of the President, state officials, researchers, students, the media, the general public, and others interested in criminal justices statistics.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 761 responses at 25 minutes each. Respondents have the option to provide responses using either paper or web-based questionnaires. The burden estimate is based on the results of the field test of the 2012 Firearm Inquiry Statistics Program survey instrument and feedback received from the 2012 data collection, as well as the Bureau of Justice Statistic's extensive history conducting the FIST data collection.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 317 annual total burden hours associated with the collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Avenue, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: January 28, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–02091 Filed 1–31–14; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0042]

Proposed Information Collection; Representative of Miners, Notification of Legal Identity, and Notification of Commencement of Operations and Closing of Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Representative of Miners, Notification of Legal Identity, and Notification of Commencement of Operations and Closing of Mines.

DATES: All comments must be received on or before April 4, 2014.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number [MSHA–2013–0039].
- *Regular Mail:* Send comments to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939.
- *Hand Delivery:* MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, 30 U.S.C. 813, authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners.

The Mine Act establishes miners' rights that may be exercised through a representative. Title 30, Code of Federal Regulations (30 CFR) Part 40 contains procedures that a person or organization must follow to be identified by the Secretary as a representative of miners. The regulations define what is meant by ''representative of miners,'' a term that is not defined in the Mine Act.

Title 30 CFR 40.2 requires a representative of miners to file the information specified in 30 CFR 40.3 with the MSHA district manager and the mine operator. Title 30 CFR 40.3 requires the following information to be filed with MSHA:

(1) The name, address, and telephone number of the representative of miners. If the representative is an organization, the name, address, and telephone number of the organization and the title of the official or position, who is to serve as the representative and his or her telephone number.

(2) The name and address of the operator of the mine where the represented miners work and the name, address, and Mine Safety and Health Administration identification number, if known, of the mine.

(3) A copy of the document evidencing the designation of the representative of miners.

(4) A statement that the person or position named as the representative of miners is the representative for all purposes of the Act; or if the representative's authority is limited, a statement of the limitation.

(5) The names, addresses, and telephone numbers, of any representative to serve in his absence.

(6) A statement that copies of all information filed pursuant to this section have been delivered to the operator of the affected mine, prior to or concurrently with the filing of this statement.

(7) A statement certifying that all information filed is true and correct followed by the signature of the representative of miners.

Title 30 CFR 40.4 requires that a copy of the information provided the operator pursuant to section 40.3 be posted upon receipt by the operator on the mine bulletin board and maintained in a current status. Once the required information has been filed, a representative retains his or her status unless and until his or her designation is terminated.

Under 30 CFR 40.5, a representative who becomes unable to comply with the requirements of Part 40 must file a written statement with the appropriate MSHA district manager terminating his or her designation.

Section 109(d) of the Mine Act requires each operator of a coal or other mine to file with the Secretary of Labor (Secretary), the name and address of such mine, the name and address of the person who controls or operates the mine, and any revisions in such names and addresses.

MSHA's regulations in 30 CFR Part 41 provides for the mandatory use of MSHA Form 2000–7, Legal Identity Report, for notifying MSHA of the legal identity of the mine operator. The legal identity of a mine operator is fundamental to enable the Secretary to properly ascertain the identity of persons and entities charged with violations of mandatory standards. It is also used in the assessment of civil penalties. Because of turnover in mining company ownership, and because of the statutory considerations regarding penalty assessments, the operator is required to file information regarding ownership interest in other mines held by the operator and relevant persons in a partnership, corporation, or other organization. This information is also necessary to the Office of the Solicitor in determining proper parties to actions arising under the Mine Act.

Additionally, MSHA Form 7000–51, Mine Operator Identification Request, is used to allow mine operators to request an MSHA mine identification number for each mine. Mine operators request mine identification numbers prior to completing and submitting the required MSHA Form 2000–7. Therefore, allowing mine operators to submit MSHA Form 7000–51 electronically facilitates this process.

Notification of Commencement of Operations and Closing of Mines: Under 30 CFR 56.1000 and 57.1000, operators of metal and nonmetal mines must notify MSHA when the operation of a mine will commence or when a mine is closed. Openings and closings of mines are dictated by the economic strength of the mined commodity, and by weather conditions prevailing at the mine site during various seasons.

MSHA must be aware of mine openings and closings so that its resources can be used efficiently in achieving the requirements of the Mine Act. Section 103(a) of the Mine Act requires that each underground mine be

inspected in its entirety at least four times a year, and each surface mine at least two times per year. Mines that operate only during warmer weather must be scheduled for inspection during the spring, summer, and autumn seasons. Mines are sometimes located a great distance from MSHA field offices and the notification required by this standard can prevent wasted time and trips.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Representative of Miners, Notification of Legal Identity, and Notification of Commencement of Operations and Closing of Mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- 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.

This information collection request is available on *http://www.msha.gov/regs/fedreg/informationcollection/informationcollection.asp.* The information collection request will be available on MSHA's Web site and on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Representative of Miners, Notification of Legal Identity, and Notification of Commencement of Operations and Closing of Mines. MSHA has updated the data in respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0042.

Affected Public: Business or other for-profit.

Number of Respondents: 10,196.

Frequency: On occasion.

Number of Responses: 10,196.

Annual Burden Hours: 2,029 hours.

Annual Respondent or Recordkeeper Cost: $2,419.

MSHA Forms: MSHA Form 2000–7, Legal Identity Report; MSHA Form 7000–51, Mine Operator Identification Request;

MSHA Form 2000–238, Representative of Miners Designation Form.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 28, 2014.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2014–02073 Filed 1–31–14; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (14–011)]

NASA Advisory Council; Human Exploration and Operations Committee; Research Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–462, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Research Subcommittee of the Human Exploration and Operations Committee (HEOC) of the NASA Advisory Council (NAC). This Subcommittee reports to the HEOC. The meeting will be held for the purpose of organizing the activities of the Subcommittee and fact-finding with respect to the research activities within the NASA Human Exploration and Operations Mission Directorate.

DATES: Monday, February 24, 2014, 9:00 a.m. to 4:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 7H41A, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Carpenter, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546 (202) 358–0826, or *bcarpenter@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 888–469–2054 or toll number 210–234–0017, pass code 7872138, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/*, the meeting number is 998 592 996, and the password is February2420!4

The agenda for the meeting includes the following topics:

—Role of Research in NASA's Human Exploration and Operations Directorate
—International Space Station Resource Planning
—Space Life and Physical Sciences Research Planning

Attendees will be requested 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 in 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, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Dr. Bradley Carpenter via email at *bcarpenter@nasa.gov* or by fax at (202) 358–2886. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Dr. Carpenter at (202) 358–0826.

It is imperative that the meeting be held on these dates to accommodate the

scheduling priorities of the key participants

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2014–02145 Filed 1–31–14; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–010)]

Performance Review Board, Senior Executive Service (SES)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Membership of SES Performance Review Board.

SUMMARY: The Civil Service Reform Act of 1978, Public Law 95–454 (Section 405) requires that appointments of individual members to the Performance Review Board (PRB) be published in the **Federal Register**.

The performance review function for the SES in NASA is being performed by the NASA PRB and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator and members of the PRB. The following individuals are serving on the Board and the Committee:

Performance Review Board

Chairperson, Chief of Staff, NASA Headquarters
Executive Secretary, Director, Workforce Management and Development Division, NASA Headquarters
Associate Administrator, NASA Headquarters
Associate Deputy Administrator, NASA Headquarters
Associate Administrator for Human Exploration and Operations Directorate, NASA Headquarters
Associate Administrator for Science Mission Directorate, NASA Headquarters
Associate Administrator for Aeronautics Research Mission Directorate, NASA Headquarters
Associate Administrator for Space Technology Mission Directorate, NASA Headquarters
Associate Administrator for Mission Support Directorate, NASA Headquarters
Associate Administrator for Communications, NASA Headquarters
Associate Administrator for Diversity and Equal Opportunity, NASA Headquarters
Associate Administrator for Education, NASA Headquarters
Associate Administrator for International and Interagency Relations, NASA Headquarters
Associate Administrator for Legislative and Intergovernmental Affairs, NASA Headquarters
Assistant Administrator for Human Capital Management, NASA Headquarters
Chief Financial Officer, NASA Headquarters
Chief Information Officer, NASA Headquarters
Chief Engineer, NASA Headquarters
Chief, Safety and Mission Assurance, NASA Headquarters
Chief Technologist, NASA Headquarters
Chief Scientist, NASA Headquarters
General Counsel, NASA Headquarters
Director, Ames Research Center
Director, Dryden Flight Research Center
Director, Glenn Research Center
Director, Goddard Space Flight Center
Director, Johnson Space Center
Director, Kennedy Space Center
Director, Langley Research Center
Director, Marshall Space Flight Center
Director, Stennis Space Center

Senior Executive Committee

Chairperson, Deputy Administrator, NASA Headquarters
Chair, Executive Resources Board, NASA Headquarters
Chair, NASA Performance Review Board, NASA Headquarters
Associate Administrator, NASA Headquarters
Associate Deputy Administrator, NASA Headquarters
Associate Administrator for Diversity and Equal Opportunity, NASA Headquarters

Charles F. Bolden, Jr.,

Administrator.

[FR Doc. 2014–02095 Filed 1–31–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2014–014]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 5, 2014. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: *request.schedule@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for the timely transfer into the National Archives of

historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, Bureau of Economic Analysis (DAA–0375–2013–0002, 15 items, 15 temporary items). Records of the Balance of Payments Division including correspondence, methodology files, special studies, surveys, and preliminary records gathered to produce economic tables and adjustments.

2. Department of Commerce, Bureau of Economic Analysis (DAA–0375–2013–0003, 8 items, 8 temporary items). Records of the Direct Investment Division including methodology files, publications, correspondence, special projects, and international transaction surveys.

3. Department of Commerce, National Oceanic and Atmospheric Administration (DAA–0370–2013–0001, 9 items, 9 temporary items). Records related to export administration regulations, including endorsements, inventories, and summary reports.

4. Department of Defense, Office of the Secretary of Defense (DAA–0330–2013–0011, 1 item, 1 temporary item). Guest books containing the signatures and personal comments of high-level visitors to the Secretary of Defense and Deputy Secretary of Defense.

5. Department of Defense, Office of the Secretary of Defense (DAA–0330–2013–0017, 1 item, 1 temporary item). Master files of an electronic information system used to file complaints against postsecondary educational institutions.

6. Department of Defense, Office of the Secretary of Defense (DAA–0330–2013–0019, 1 item, 1 temporary item). Master files of electronic information systems used to review and adjudicate personnel security actions.

7. Department of Defense, Defense Commissary Agency (DAA–0506–2013–0002, 4 items, 4 temporary items). Master files of an electronic information system used by the agency's Office of Inspector General to manage investigations of fraud, waste, and abuse in commissary operations. Also included are policy and procedure records for use of the system.

8. Department of Defense, Defense Health Agency (DAA–0330–2013–0007, 1 item, 1 temporary item). Master files of an electronic information system used to support the treatment of traumatic brain injuries.

9. Department of Defense, Defense Logistics Agency (DAA–0361–2013–0007, 2 items, 2 temporary items). Records used to create recommendations to improve efficiency.

10. Department of Defense, Defense Logistics Agency (DAA–0361–2013–0008, 5 items, 5 temporary items). Records related to the inventory and control of small arms.

11. Department of Education, Federal Student Aid (DAA–0441–2013–0002, 10 items, 10 temporary items). Student aid applications, data files, and financial records related to the Federal student loan program.

12. Department of Health and Human Services, Office of the Secretary (DAA–0468–2013–0014, 1 item, 1 temporary item). Master files of electronic information systems containing patient medical care and tracking records.

13. Department of Homeland Security, Agency-wide (DAA–0563–2012–0002, 30 items, 18 temporary items). Public affairs records of the Department and its component agencies including biographies and speeches not at the executive level, background files for press conference records, copies of audiovisual recordings, and routine communications. Proposed for permanent retention are biographies and speeches at the executive level, press conference records, master files of audiovisual recordings, and significant publications.

14. Department of Justice, Agency-Wide (DAA–0060–2013–0006, 5 items, 5 temporary items). Master files of an electronic information system containing copies of shared documents, account certifications, and system logs.

15. Department of Justice, Federal Bureau of Investigation (DAA–0065–2013–0003, 3 items, 3 temporary items). Master files and outputs of an electronic system used to track and manage surveillance requests.

16. Department of Labor, Bureau of Labor Statistics (DAA–0257–2013–0001, 2 items, 1 temporary item). Electronic copies of economic research papers. Proposed for permanent retention are the paper copies of these records.

17. Department of the Treasury, Internal Revenue Service (DAA–0058–2014–0001, 1 item, 1 temporary item). Taxpayer offers used to settle tax liability cases.

18. Department of the Treasury, Internal Revenue Service (DAA–0058–2014–0002, 1 item, 1 temporary item). Master files of an electronic information system used to reduce the payment of fraudulent tax refunds.

19. Department of the Treasury, Internal Revenue Service (DAA–0058–2014–0003, 1 item, 1 temporary item). Forms used to extract data from compliance systems.

20. Department of the Treasury, Internal Revenue Service (N1–590–12–1, 21 items, 19 temporary items). Records of the Joint Board for the Enrollment of Actuaries including enrollment applications, disciplinary files, reports, correspondence, and related master files of electronic information systems used to track and store case data. Proposed for permanent retention are meeting minutes and organization files.

21. Administrative Office of the United States Courts, Agency-wide

(DAA–0116–2014–0001 3 items, 2 temporary items). Administrative records relating to routine audits, subject files, and general correspondence. Proposed for permanent retention is the correspondence of the Director or the Deputy Director.

22. Administrative Office of the United States Courts, United States Courts of Appeals (DAA–0276–2013–0003, 1 item, 1 temporary item). Circuit mediation records relating to cases.

23. Christopher Columbus Fellowship Foundation, Agency-wide (N1–508–14–1, 15 items, 6 temporary items). Compliance reports, general program correspondence, application records, award records, and routine photographs. Proposed for permanent retention are board of trustees records, correspondence of the executive director, publications, posters, video recordings, and captioned photographs.

24. Court Services and Offenders Supervision Agency for the District of Columbia, Community Supervision Services (DAA–0562–2013–0013, 1 item, 1 temporary item). Master files of an electronic information system used to manage and track closed offender records.

25. National Aeronautics and Space Administration, Agency-wide (DAA–0255–2014–0001, 2 items, 2 temporary items). Employment records of the agency's exchanges, recreational associations, and child care and educational development centers.

26. National Archives and Records Administration, Agency-wide (DAA–0064–2014–0001, 2 items, 1 temporary item). Email records from staff accounts. Proposed for permanent retention are senior agency officials' emails.

27. Securities and Exchange Commission, Division of Economic and Risk Analysis (N1–266–12–01, 15 items, 14 temporary items). Taxonomy development records, organizational information records, academic literature reviews, risk assessment models, and reports supporting rulemaking. Proposed for permanent retention are taxonomies used in the data reporting system.

28. U.S. Commission on Civil Rights, Agency-wide (N1–453–12–1, 103 items, 76 temporary items). Records related to the 10 business units of the agency including congressional affairs, public affairs, equal employment opportunity programs, human resources, administrative services, information technology, and regional programs. Also included are records of the Office of the Staff Director, Office of the General Counsel, Office of Civil Rights Evaluation, and Rankin Civil Rights Library. Proposed for permanent retention are Commission meeting files of the staff director, transcripts of Commission meetings, executive session files, hearing and briefing records, commissioners' correspondence, special project files, congressional committee files, legislative history files, speech files, biographical files, reports to Congress, project case files, and organizational planning and structure files.

Dated: January 27, 2014.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2014–02178 Filed 1–31–14; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

Public Availability of the National Endowment for the Humanities FY 2013 Service Contract Inventory

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Public Availability of FY 2013 Service Contract Inventory.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the National Endowment for the Humanities (NEH) is publishing this notice to advise the public of the availability of the FY 2013 Service Contract Inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2013. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 and December 19, 2011 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/omb/procurement-service-contract-inventories.* NEH has posted its FY 2013 inventory documents on its Web site at the following link: *http://www.neh.gov/about/legal/reports.*

FOR FURTHER INFORMATION CONTACT: Barry Maynes in the Administrative Services Office at 202–606–8233 or *bmaynes@neh.gov.*

Dated: January 28, 2014.

Michael P. McDonald,

General Counsel and Federal Register Liaison Officer.

[FR Doc. 2014–02186 Filed 1–31–14; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On December 19, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. After considering all comments received, the permit was issued on at the close of business on January 21 2014 to: Ari Friedlaender, Permit No. 2014–028.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2014–02086 Filed 1–31–14; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 301 and Forms ATS and ATS–R, SEC File No. 270–451, OMB Control No. 3235–0509.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the

previously approved collection of information discussed below.

Regulation ATS provides a regulatory structure for alternative trading systems. Regulation ATS allows an alternative trading system to choose between registering as a broker-dealer and complying with Regulation ATS, or registering as a national securities exchange. Regulation ATS provides the regulatory framework for those alternative trading systems that choose to be regulated as broker-dealers. Rule 301 of Regulation ATS contains certain notice and reporting requirements, as well as additional obligations that apply only to alternative trading systems with significant volume. The Rule requires all alternative trading systems that wish to comply with Regulation ATS to file an initial operation report on Form ATS. The initial operation report requires information regarding operation of the system including the method of operation, access criteria and the types of securities traded. Alternative trading systems are also required to supply updates on Form ATS to the Commission, describing material changes to the system, and quarterly transaction reports on Form ATS–R. Alternative trading systems are also required to file cessation of operations reports on Form ATS.

An alternative trading system with significant volume is required to comply with requirements for fair access and systems capacity, integrity, and security. Under Rule 301, such alternative trading system is required to establish written standards for granting access to its system. In addition, such alternative trading system is required to make and keep records of all grants of access including, for all subscribers, the reasons for granting such access, and all denials or limitations of access and reasons, for each applicant, for denying or limiting access. Regulation ATS requires alternative trading systems to preserve any records made in the process of complying with the capacity, integrity, and security requirements. In addition, such alternative trading systems are required to notify Commission staff of material systems outages and significant systems changes.

The Commission uses the information provided pursuant to the Regulation ATS to monitor the growth and development of alternative trading systems, and to monitor whether the systems promote fair and orderly securities markets and operate in a manner that is consistent with the federal securities laws. In particular, the information collected and reported to the Commission by alternative trading systems enables the Commission to evaluate the operation of alternative trading systems with regard to national market system goals, and monitor the competitive effects of these systems to ascertain whether the regulatory framework remains appropriate to the operation of such systems. Without the information provided on Forms ATS and ATS–R, the Commission would not have readily available information on a regular basis in a format that would allow it to oversee the securities markets.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there will be approximately 95 respondents.

An estimated 95 respondents will file an average total of 598 responses per year, which corresponds to an estimated aggregated annual response burden of 2,872.50 hours (comprised of 2,156 hours professional labor and 716.5 hours para-professional labor). At an average cost per burden hour of approximately $379 for professional labor and $63 for para-professional labor, the resultant total related cost of compliance for these respondents is $862,263.50 per year ((2,156 professional burden hours multiplied by $379 = $817,124) plus (716.5 para-professional burden hours multiplied by $63 = $45,139.50).

An estimated 7 respondents will commence operations as an ATS each year, necessitating the filing of an initial operation report on Form ATS. The Commission estimates that the average compliance burden for each respondent would be 20 hours, comprising 13 hours of in-house professional work and 7 hours of clerical work. Thus, the total compliance burden per year is 140 hours (7 responses × 20 hours = 140 hours). The total cost of compliance for the annual burden is $37,576 ($379 × 13 hours per response + $63 × 7 hours per response = $5,368 per response; $5,368 × 7 responses = $37,576).

An estimated 95 respondents will file an estimated two periodic amendments to their initial operation report on Form ATS each year, an estimated total of 190 amendments. The Commission estimates that the average compliance burden for each amendment would be 6 hours, comprising 4.5 hours of in-house professional work and 1.5 hours of clerical work. Thus, the total compliance burden per year is 1,140 hours (190 responses × 6 hours = 1,140 hours). The total cost of compliance for the annual burden is $342,000 ($379 × 4.5 hours per response + $63 × 1.5 hours per response = $1,800 per response; $1,800 × 190 responses = $342,000).

An estimated 95 respondents will file four quarterly reports on Form ATS–R each year for an estimated total of 380 responses. The Commission estimates that that the average compliance burden for each filing would be 4 hours, comprising 3 hours of in-house professional work and 1 hour of clerical work. Thus, the total compliance burden per year is 1,520 hours (380 responses × 4 hours = 1,520 hours). The total cost of compliance for the annual burden is $456,000 ($379 × 3 hours per response + $63 × 1 hours per response = $1,200 per response; $1,200 × 380 responses = $456,000).

An estimated 5 respondents will be required to file a cessation of operations report on Form ATS each year. The Commission estimates that the average compliance burden for each response would be 2 hours, comprising 1.5 hours of in-house professional work and 0.5 hours of clerical work. Thus, the total compliance burden per year is 10 hours (5 responses × 2 hours = 10 hours). The total cost of compliance for the annual burden is $3,000 ($379 × 1.5 hours per response + $63 × 0.5 hours per response = $600 per response; $600 × 5 responses = $3,000).

An estimated 2 respondents will meet certain volume thresholds requiring them to establish written standards for granting access to their systems. The Commission estimates that the average compliance burden for each response would be 10 hours of in-house professional work at $379 per hour. Thus, the total compliance burden per year is 20 hours (2 responses × 10 hours = 20 hours). The total cost of compliance for the annual burden is $7,580 ($379 × 10 hours per response × 2 responses = $7,580).

An estimated 2 respondents will meet certain volume thresholds requiring them to make and keep records of (1) all grants of access including, for all subscribers, the reasons for granting such access; and (2) all denials or limitations of access and reasons, for each applicant, for denying or limiting access. The Commission estimates that the average compliance burden for each response would be 10 hours of in-house professional work at $379 per hour. Thus, the total compliance burden per year is 20 hours (2 respondents × 10 hours = 20 hours). The total cost of compliance for the annual burden is $7,580 ($379 × 10 hours per response × 2 respondents = $7,580).

An estimated 2 respondents will meet certain volume thresholds requiring them to keep records relating to any steps taken to comply with systems capacity, integrity, and security requirements under Rule 301. The

Commission estimates that the average compliance burden for each response would be 10 hours of in-house professional work at $379 per hour. Thus, the total compliance burden per year is 20 hours (2 respondents × 10 hours = 20 hours). The total cost of compliance for the annual burden is $7,580 ($379 × 10 hours per response × 2 respondents = $7,580).

An estimated 2 respondents will meet certain volume thresholds requiring them to provide a notice to the Commission to report any system outages, and these notice obligations will be triggered an estimated 5 times per year for each respondent. The Commission estimates that the average compliance burden for each response would be 0.25 hours of in-house professional work at $379 per hour. Thus, the total compliance burden per year is 2.5 hours (2 respondents × 5 responses each × 0.25 hours = 2.5 hours). The total cost of compliance for the annual burden is $947.50 ($379 × 0.25 hours per response × 10 responses = $947.50).

Compliance with Rule 301 is mandatory. The information required by the Rule 301 is available only to the examination of the Commission staff, state securities authorities, and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 522 (''FOIA''), and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

Regulation ATS requires alternative trading systems to preserve any records, for at least three years, made in the process of complying with the systems capacity, integrity, and security 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 public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 28, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02143 Filed 1–31–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form BD–N/Rule 15b11–1, SEC File No. 270–498, OMB Control No. 3235–0556.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 15b11–1 (17 CFR 240.15b11–1) requires that futures commission merchants and introducing brokers registered with the Commodity Futures Trading Commission that conduct a business in security futures products must notice-register as broker-dealers pursuant to Section 15(b)(11)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). Form BD–N (17 CFR 249.501b) is the Form by which these entities must notice register with the Commission.

The total annual burden imposed by Rule 15b11–1 and Form BD–N is approximately 16 hours, based on approximately 60 responses (2 initial filings + 58 amendments). Each initial filing requires approximately 30 minutes to complete and each amendment requires approximately 15 minutes to complete. There is no annual cost burden.

The Commission will use the information collected pursuant to Rule 15b11–1 to understand the market for securities futures product and fulfill its regulatory obligations.

Completing and filing Form BD–N is mandatory in order for an eligible futures commission merchant or introducing broker to conduct a business in security futures products. Compliance with Rule 15b11–1 does not involve the collection of confidential information.

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

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 28, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02144 Filed 1–31–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30895; File No. 812–14182]

The Ohio National Life Insurance Company, et al.; Notice of Application

January 28, 2014.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice.

SUMMARY: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act''), for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 6(c) of the Act for an exemption from rule 12d1–2(a) under the Act. *Summary of the Application:* Applicants request an order that would (a) permit certain series of registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts (''UITs'') that are within or outside the same ''group of

investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the acquiring company and (b) permit certain series of registered open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: The Ohio National Life Insurance Company (''ONLIC''), Ohio National Life Assurance Corporation (''ONLAC''), National Security Life and Annuity Company (''National Security,'' and collectively with ONLIC and ONLAC, the ''Insurance Companies'') (including any insurance company controlling, controlled by or under common control with the Insurance Companies), Ohio National Investments, Inc. (the ''Adviser''), and Ohio National Fund, Inc. (the ''Fund'') (collectively, ''Applicants'').

DATES: *Filing Dates:* The application was filed on July 23, 2013 and amended on December 13, 2013.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 24, 2014, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Kimberly A. Plante, Esq., Ohio National Fund, Inc., One Financial Way, Montgomery, OH 45242.

FOR FURTHER INFORMATION CONTACT: Kay-Mario Vobis, Senior Counsel, at (202) 551–6728, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the ''Company'' name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Fund is a Maryland corporation registered under the Act as an open-end management investment company and is comprised of multiple portfolios, each of which has its own investment objective, policies and restrictions.[1] Shares of the Portfolios are not offered directly to the public. Shares of the Portfolios are offered through separate accounts that are registered as UITs under the Act (''Registered Separate Accounts'') or accounts that are exempt from registration under the Act (''Unregistered Separate Accounts,'' and together with the Registered Separate Accounts, ''Separate Accounts'') of the Insurance Companies and serve as the underlying funding vehicles for the variable life insurance contracts and variable annuity contracts (the ''Contracts'') issued by the Insurance Companies. Shares of the Portfolios may also be offered to certain of the general accounts of the Insurance Companies or to other Portfolios.

2. The Adviser is an Ohio corporation registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'') and serves as investment adviser to the Fund and each Portfolio. The Adviser is a wholly-owned subsidiary of Ohio National Life.

3. ONLIC is organized as a stock life insurance company under the laws of Ohio and is a wholly-owned subsidiary of Ohio National Financial Services, Inc. ONLAC is organized as a stock life insurance company under the laws of Ohio and is a wholly-owned stock subsidiary of ONLIC. National Security is incorporated under the laws of the State of New York and is also a wholly-owned stock subsidiary of ONLIC.

4. Applicants request relief to permit: (a) Certain Portfolios (each, a ''Fund of Funds,'' and collectively, the ''Funds of Funds'') to acquire shares of registered open-end management investment companies and UITs that are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds of Funds (the ''Unaffiliated Investment Companies'' and ''Unaffiliated Trusts,'' respectively, and together, the ''Unaffiliated Funds'');[2] (b) the Unaffiliated Investment Companies, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934, as amended (the ''Exchange Act'', and any such broker or dealer, a ''Broker''), to sell shares of the Unaffiliated Investment Companies to the Funds of Funds in excess of the limitations in section 12(d)(1)(B) of the Act; (c) the Funds of Funds to acquire shares of certain other Portfolios in the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds of Funds (the ''Affiliated Funds,'' and together with the Unaffiliated Funds, the ''Underlying Funds'');[3] and (d) the Affiliated Funds, their principal underwriters and any Broker to sell shares of the Affiliated Funds to the Funds of Funds in excess of the limitations in section 12(d)(1)(B) of the Act. Applicants also request an order under sections 6(c) and 17(b) of the Act exempting the transactions described in (a) through (d) above from section 17(a) of the Act to the extent necessary to permit an Underlying Fund that is an affiliated person of a Fund of Funds to sell its shares to, and redeem its shares from, the Fund of Funds.

5. Applicants also request an exemption to the extent necessary to permit a Fund of Funds that invests in Underlying Funds in reliance on section 12(d)(1)(G) of the Act (a ''Section 12(d)(1)(G) Fund of Funds''), and that is eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act, to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').

[1] Applicants request that the order extend to any existing or future portfolio of the Fund and any existing or future registered open-end management investment company or portfolio thereof that currently or subsequently is part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Fund and is, or will be, advised by the Adviser or any other investment adviser controlling, controlled by, or under common control with the Adviser (together with the existing portfolios of the Fund, the ''Portfolios''). All entities that currently intend to rely on the requested order are named as Applicants and any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] Certain of the Unaffiliated Funds may have received exemptive relief or are otherwise permitted to list and trade their shares on a national securities exchange at negotiated prices (''ETFs'').

[3] Certain of the Underlying Funds currently pursue, or may in the future pursue, their investment objectives through a master-feeder arrangement in reliance on section 12(d)(1)(E) of the Act. In accordance with condition 12, a Fund of Funds may not invest in an Underlying Fund that operates as a feeder fund unless the feeder fund is part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as its corresponding master fund or the Fund of Funds. If a Fund of Funds invests in an Affiliated Fund that operates as a feeder fund and the corresponding master fund is not within the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds and Affiliated Fund, the master fund would be an Unaffiliated Fund for purposes of the application and its conditions.

Applicants' Legal Analysis

A. Investments in Underlying Funds—Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company (an ''acquiring company'') from acquiring shares of another investment company (an ''acquired company'') if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any Broker from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) of the Act if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) of the Act to the extent necessary to permit the Funds of Funds to acquire shares of the Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) of the Act and to permit the Unaffiliated Investment Companies and Affiliated Funds, their principal underwriters and any Broker to sell shares of the Unaffiliated Investment Companies and Affiliated Funds to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B) of the Act, which include concerns about undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds, excessive layering of fees, and overly complex fund structures. Accordingly, Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed structure will not result in the exercise of undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. Applicants note that the concerns about undue influence do not arise in connection with a Fund of Funds' investment in the Affiliated Funds, since the Affiliated Funds are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds of Funds. To limit the control that a Fund of Funds or its affiliated persons may have over an Unaffiliated Fund, Applicants submit that condition 1 prohibits the Group [4] and the Sub-Adviser Group [5] from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that condition 2 precludes a Fund of Funds, the Adviser, any Sub-Adviser, promoter or principal underwriter of a Fund of Funds, and any person controlling, controlled by or under common control with any of those entities (each, a ''Fund of Funds Affiliate'') from taking advantage of an Unaffiliated Fund, with respect to transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or the Unaffiliated Fund's investment adviser(s), sponsor, promoter, principal underwriter and any person controlling, controlled by or under common control with any of those entities (each, an ''Unaffiliated Fund Affiliate'').

6. Condition 5 precludes a Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) from causing an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (an ''Affiliated Underwriting'').[6]

7. As an additional assurance that an Unaffiliated Investment Company understands the implications of an investment by a Fund of Funds under the requested order, prior to an investment in the shares of the Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute an agreement (the ''Participation Agreement'') stating, without limitation, that their respective boards of directors or trustees (for any entity, the ''Board'') and their investment advisers understand the terms and conditions of the order and agree to fulfill their respective responsibilities under the order. Applicants note that an Unaffiliated Investment Company (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain its right at all times to reject any investment by a Fund of Funds.[7]

8. Applicants do not believe that the proposed arrangement will result in excessive layering of fees. With respect to investment advisory fees, Applicants state that, in connection with the approval of any investment advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (for any Board, the ''Disinterested Trustees''), will find that the advisory or management fees charged to a Fund of Funds under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Applicants further state that the Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b–1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or an affiliated person of the Adviser by an Unaffiliated Investment Company, in connection with the

[4] The Adviser and any person controlling, controlled by or under common control with the Adviser, any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by the Adviser or any person controlling, controlled by or under common control with the Adviser are, collectively, the ''Group.''

[5] Any investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds (each, a ''Sub-Adviser''), any person controlling, controlled by or under common control with a Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by a Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser are, collectively, the ''Sub-Adviser Group.''

[6] An ''Underwriting Affiliate'' is an officer, director, member of an advisory board, Adviser, Sub-Adviser, or employee of the Fund of Funds, or a person of which any such officer, director, Adviser, Sub-Adviser, member of an advisory board, or employee is an affiliated person. However, any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate.

[7] An Unaffiliated Investment Company, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

investment by the Fund of Funds in the Unaffiliated Fund.

9. Applicants state that, with respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in Rule 2830 of the NASD Conduct Rules (''NASD Conduct Rule 2830''),[8] if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to funds of funds as set forth in NASD Conduct Rule 2830.

10. Applicants represent that each Fund of Funds will represent in the Participation Agreement that no Insurance Company sponsoring a Registered Separate Account funding Contracts will be permitted to invest in the Fund of Funds unless the Insurance Company has certified to the Fund of Funds that the aggregate of all fees and charges associated with each Contract that invests in the Fund of Funds, including fees and charges at the Separate Account, Fund of Funds, and Underlying Fund levels, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the Insurance Company.

11. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Acquires such securities in compliance with section 12(d)(1)(E) of the Act and either is an Affiliated Fund or is in the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as its corresponding master fund; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

B. Investments in Underlying Funds—Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and its affiliated persons or affiliated persons of such persons. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds may be deemed to be under common control and therefore affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Funds may be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these and other possible affiliations, section 17(a) of the Act could prevent an Underlying Fund from selling shares to, and redeeming shares from, a Fund of Funds.[9]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) of the Act if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act, as the terms are fair and reasonable and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Fund.[10] Applicants also state that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

C. Other Investments by Section 12(d)(1)(G) Funds of Funds

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act; (ii) the acquiring company holds only securities of acquired companies that are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered UITs in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered UIT that relies on section 12(d)(1)(G) of the Act to

[8] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by FINRA.

[9] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Funds of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

[10] To the extent purchases and sales of shares of an ETF occur in the secondary market (and not through principal transactions directly between a Fund of Funds and an ETF), relief from section 17(a) of the Act would not be necessary. The requested relief is intended to cover, however, transactions directly between ETFs and a Fund of Funds. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an ETF could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because the investment adviser to the ETF or an entity controlling, controlled by or under common control with the investment adviser to the ETF is an investment adviser to the Fund of Funds.

acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

3. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Section 12(d)(1)(G) Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Section 12(d)(1)(G) Funds of Funds to invest in Other Investments. Applicants assert that permitting the Section 12(d)(1)(G) Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) of the Act were designed to address.

4. Consistent with its fiduciary obligations under the Act, each Section 12(d)(1)(G) Fund of Funds' Board will review the advisory fees charged by the Section 12(d)(1)(G) Fund of Funds' investment adviser(s) to ensure that the fees are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Section 12(d)(1)(G) Fund of Funds may invest.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

Investments in Underlying Funds by Funds of Funds

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of a Sub-Adviser Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group or a Sub-Adviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, then the Group or the Sub-Adviser Group (except for any member of the Group or the Sub-Adviser Group that is a Separate Account) will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. A Registered Separate Account will seek voting instructions from its Contract owners and will vote its shares of an Unaffiliated Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either: (i) Vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares; or (ii) seek voting instructions from its Contract owners and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. This condition will not apply to a Sub-Adviser Group with respect to an Unaffiliated Fund for which the Sub-Adviser or a person controlling, controlled by, or under common control with the Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Investment Company) or as the sponsor (in the case of an Unaffiliated Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to assure that the Adviser and any Sub-Adviser are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Investment Company, including a majority of the Disinterested Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated

Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

7. Each Unaffiliated Investment Company will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth (a) the party from whom the securities were acquired, (b) the identity of the underwriting syndicate's members, (c) the terms of the purchase, and (d) the information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit of section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their respective Boards and investment advisers understand the terms and conditions of the order and agree to fulfill their respective responsibilities under the order. At the time of its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Disinterested Trustees, shall find that the advisory fees charged to the Fund of Funds under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Adviser, or an affiliated person of the Sub-Adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-Adviser or an affiliated person of the Sub-Adviser by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund (a) acquires such securities in compliance with section 12(d)(1)(E) of the Act and either is an Affiliated Fund or is in the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as its corresponding master fund; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

Other Investments by Section 12(d)(1)(G) Funds of Funds

13. The Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Section 12(d)(1)(G) Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02142 Filed 1–31–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, February 6, 2014 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 matter at the Closed Meeting.

Commissioner Stein, 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:

Settlement of an injunctive action;

institution and settlement of administrative proceedings; 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: January 30, 2014.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2014–02339 Filed 1–30–14; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, February 5, 2014 at 3:00 p.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

• The Commission will consider whether to approve the 2014 budget of the Public Company Accounting Oversight Board and will consider the related annual accounting support fee for the Board under Section 109 of the Sarbanes-Oxley Act of 2002.

• The Commission will consider whether to adopt rules revising the disclosure, reporting, and offering process for asset-backed securities. The revisions would require asset-backed issuers to provide enhanced disclosures including information for certain asset classes about each asset in the underlying pool in a standardized, tagged format and revise the shelf offering process and eligibility criteria for asset-backed securities.

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: January 29, 2014.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2014–02251 Filed 1–30–14; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71416; File No. SR-Phlx-2014–05]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Inbound Routing of Options Orders

January 28, 2014.

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 January 15, 2014, 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 permit the Exchange to receive inbound orders in options routed through Nasdaq Execution Services, LLC (''NES'') from affiliated exchanges, as described in detail below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to permit the receipt of inbound orders routed from affiliated exchanges in options through NES. The Exchange filed a proposed rule change to use NES rather than Nasdaq Options Services LLC (''NOS'') for the outbound routing of options orders and the Exchange also updated its equities and options rules to reflect the use of a third party unaffiliated routing broker.[3]

Now, the Exchange proposes to continue to receive orders from its affiliated exchanges. Specifically, the Exchange proposes to receive options orders, through NES directly from the options market of NASDAQ OMX BX, Inc. (''BX'') [4] as well as from The NASDAQ Options Market (''NOM''),[5] under the same terms and conditions as NOS currently does. BX and NASDAQ have filed to use NES for outbound routing,[6] as well as to receive options orders routed from PHLX through NES.[7]

NOS and NES are broker-dealers and members of NASDAQ, PHLX and BX. Currently, NOS provides all options routing functions for BX Options, PHLX, and the NOM. BX, NASDAQ, NOM, PHLX and NOS are affiliates.[8] Accordingly, the affiliate relationship between PHLX and NOS, its member, raises the issue of an exchange's affiliation with a member of such exchange. Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.[9] Similarly,

[3] *See* SR–Phlx–2014–04.

[4] Securities Exchange Act Release No. 67956 (June 13, 2013), 78 FR 36810 (June 19, 2013) (SR–Phlx–2013–42).

[5] Securities Exchange Act Release No. 65399 (September 26, 2011), 76 FR 60955 (September 30, 2011) (SR–Phlx–2011–111). NOM is a facility of The NASDAQ Stock Market LLC (''NASDAQ'').

[6] *See* SR–BX–2014–003 and SR–NASDAQ–2014–007.

[7] *See* SR–BX–2014–004 and SR–NASDAQ–2014–008.

[8] *See* Securities Exchange Act Release Nos. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01) (order approving NASDAQ OMX's acquisition of BX); and 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (order approving NASDAQ OMX's acquisition of PHLX).

[9] *See* Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR–NASDAQ–2008–098); and 62736 (August

under this proposal, the affiliate relationship between PHLX and NES raises this issue.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, the Exchange previously proposed, and the Commission approved, limitations and conditions on NOS's affiliation with the Exchange.[10] Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously proposed, and the Commission approved,[11] NOS's affiliation with the Exchange to permit the Exchange to accept inbound orders that NOS routes in its capacity as a facility of BX and NASDAQ, subject to certain limitations and conditions. The Exchange now proposes to permit PHLX to accept inbound options orders that NES (rather than NOS) routes in its capacity as a facility of BX and NASDAQ, subject to the same limitations that currently apply to PHLX accepting inbound orders from BX and NOM through NOS, as follows:

• First, the Exchange and FINRA maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[12] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NES's compliance with certain Exchange rules.[13] Pursuant to the Regulatory Contract, however, PHLX retains ultimate responsibility for enforcing its rules with respect to NES.

• Second, FINRA will monitor NES for compliance with the Exchange's trading rules, and will collect and maintain certain related information.[14]

• Third, FINRA will provide a report to the Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or Exchange rules.

• Fourth, the Exchange has in place PHLX Rule 985(c), which requires The NASDAQ OMX Group, Inc., as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

By meeting the above conditions, the Exchange will have set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as demonstrate that NES cannot use any information advantage it may have because of its affiliation with the Exchange.

For several weeks, the Exchange has been working with the Financial Regulatory Authority (''FINRA'') and The Options Clearing Corporation (''OCC'') to secure the necessary approvals for NES to perform these functions. The Exchange has now secured those approvals. The Exchange seeks to complete this process and implement this proposal in January or February.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(5) of the Act[16] in particular, in that it is designed to promote just and equitable principles of trade, 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, because the proposed rule change will allow the Exchange to continue to receive inbound orders from an affiliate (NES rather than NOS), acting in its capacity as a facility of BX and NASDAQ, in a manner consistent with prior approvals and established protections. The Exchange believes that these conditions establish mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as ensure that NES cannot use any information it may have because of its affiliation with the Exchange to its advantage.

(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. Receiving orders through NES rather than NOS does not raise any issues of intra-market competition because it involves inbound routing from an affiliated exchange. Nor does it result in a burden on competition among exchanges, because there are many competing options exchanges that provide routing services, including through an affiliate.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[17] and subparagraph (f)(6) of Rule 19b–4 thereunder.[18]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection

17, 2010), 75 FR 51861 (August 23, 2010) (SR–NASDAQ–2010–100). *See also* Securities Exchange Act Release No. 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008) (SR–NASDAQ–2008–061) (Permitting NOS to be affiliated with PHLX).

[10] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[11] *See* Securities Exchange Act Release No. 67956 (June 13, 2013), 77[sic] FR 36810 (June 19, 2013) (SR–Phlx–2013–42).

[12] 17 CFR 240.17d–2.

[13] NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[14] Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of BX and Nasdaq routing orders to PHLX) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(a)(ii).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

of investors; or (iii) 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 Number SR–Phlx–2014–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2014–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–2014–05 and should be submitted on or before February 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02132 Filed 1–31–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71422; File No. SR–OCC–2013–22]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change To Make a Non-Material Housekeeping Rule Change So That OCC's Membership Qualifications Accurately Reflect Current Operational Practices

January 28, 2014.

I. Introduction

On December 6, 2013, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2013–22 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on December 23, 2013.[3] The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The rule change modifies OCC's membership standards to reflect current operational practices. Prior to electronic trading, clearing members were required to have the operational capacity to manually compare trades and reconcile unconfirmed and advisory trades, in accordance with applicable exchange rules and procedures, on a timely and efficient basis so that financial markets, and specifically clearing operations, functioned in a prompt and accurate manner. Accordingly, Article V, Section 1, Interpretations and Policies .02(b) of OCC's By-Laws required clearing member applicants to have such operational capacity as a condition to admission as a clearing member. However, OCC only receives matched trades from exchanges so manual trade comparison and reconciliation by clearing members no longer occurs.

III. Discussion

Section 19(b)(2)(C) of the Act[4] directs the Commission to approve a self-regulatory organization's proposed rule change if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency registered with the Commission foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[6] The Commission believes that these clarifications will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions by ensuring that OCC's By-Laws and membership standards reference only necessary requirements for operational capacity and current applicable industry standards.

IV. Conclusion

On the basis of the foregoing, the Commission concludes that the proposal is consistent with the requirements of the Act, particularly the requirements of Section 17A of the Act,[7] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–OCC–2013–22) be and hereby is *approved.*[9]

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 71090 (Dec. 17, 2013), 78 FR 77525 (Dec. 23, 2013) (SR–FOCC–2013–22).

[4] 15 U.S.C. 78s(b)(2)(C).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1(b)(3)(B) and (F).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(2).

[9] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02138 Filed 1–31–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71419; File No. SR–NASDAQ–2014–007]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Outbound Routing

January 28, 2014

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 January 15, 2014, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 use Nasdaq Execution Services, LLC (''NES'') as opposed to Nasdaq Options Services LLC (''NOS'') for outbound order routing from The NASDAQ Options Market (''NOM''), as explained further below. The Exchange also proposes to permit the Exchange to route equities and options orders through NES either directly or through a third party routing broker-dealer, as explained further below.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change 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 purpose of the proposal is to update the Exchange's rules to reflect the ability to route orders to other exchanges using either the Exchange's affiliated broker-dealer or a third party unaffiliated broker-dealer, which the Exchange may choose to use for efficiency and potential cost savings.

Today, the relevant Exchange rules provide that the Exchange shall route orders in options via NOS and in equities via NES. Both NOS and NES are affiliates and members of Nasdaq. As a result, certain conditions have been imposed on the existing routing arrangements.[3]

Replacing NOS With NES

The Exchange proposes to amend its rules to provide that it shall use NES for routing orders in options rather than NOS. The Exchange has determined to use NES for outbound routing in options, in addition to equities. The Exchange originally set up its affiliated broker-dealers as two separate entities. Now, the Exchange believes that this is unnecessary and costly. Accordingly, pursuant to NOM Rules, Chapter VI, Section 11, NES will now be the outbound routing broker for NOM. As the new Routing Facility for options, NES will operate the same way as NOS currently does, in terms of routing options orders to destination options exchanges. This is substantially similar to NYSEArca's use of its affiliate Archipelago Securities LLC for order routing in both equities and options.

Third-Party Routing Broker

The Exchange also proposes to codify in its rules the ability to use a third-party routing broker to route to away exchanges, rather than routing directly through NES, for both equities and options. To date, the Exchange has used a third-party routing broker in equities and is amending Rule 4758 to clarify this and incorporate the use of a third-party routing broker expressly into that rule. Specifically, today, the Exchange routes equities orders to away markets through NES, which, in turn, sometimes routes directly to away markets; in addition, sometimes when the Exchange routes equities orders through NES today, NES routes those orders through a third-party routing broker.

In options, the Exchange currently routes options orders to NOS, which routes directly to away markets. The Exchange proposes to use NES, rather than NOS, as explained above, and to have NES route either directly to other options exchanges or to a third-party routing broker (which will, in turn, route to other options exchanges). The Exchange proposes to amend Chapter VI, Section 11 of NOM's rules accordingly.

Regardless of whether a third-party routing broker is used in either equities or options, all routing will go through NES, but the Exchange could determine to direct NES to route orders to certain exchanges using a routing broker rather than routing an order directly.

The Exchange previously stated that from time to time, it may use non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.,* third-party Routing Brokers).[4] In those cases, orders are submitted to the third-party Routing Broker through the affiliated routing broker, and the third-party Routing Broker routes the orders to the routing destination in its name.

Under this proposal, the relevant rules would now expressly provide that the Exchange could use one or more third-party unaffiliated routing broker-dealers (''routing brokers''). Specifically, the Exchange proposes to amend NOM Rules, Chapter VI, Section 11, which applies to options, to refer to such routing brokers. The Exchange proposes to similarly amend Rule 4758(b) respecting equities. The Exchange proposes to further amend its rules with respect to certain policies and procedures. Specifically, NOM Rules, Chapter VI, Section 11(e) and Nasdaq Rule 4758 currently provide that the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the Routing Facility, and any other entity, including any affiliate of the Routing Facility. The Exchange

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, e.g.,* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–04 and SR–NASDAQ–2007–080) at 14533.

[4] *See* Securities Exchange Act Release Nos. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012) (SR–NASDAQ–2012–057) at note 6; and 68395 (December 10, 2012), 77 FR 74530 (December 14, 2012) (SR–NASDAQ–2012–134) at note 4.

proposes to amend those rules to provide that, where there is a routing broker, the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker (and if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services).[5] This way, this provision extends to the routing broker, if one is used.

In both the proposed equities and options rules, the Exchange proposes to provide that the Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority. This is similar to the existing provisions that do not permit the Exchange to be the designated examining authority for its affiliated routing brokers.[6]

The Exchange also proposes to expressly state in Rule 4758(b)(1) and NOM Rules, Chapter VI, Section 11(e) that the Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges. In addition, the routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order. This is consistent with, but more specific than, the current language that states that routing is performed under the direction of the Exchange.[7]

The Exchange may determine to use a different routing broker by product or by destination exchange, depending upon the costs and technological efficiencies involved. The proposal is intended to allow the Exchange to structure its routing arrangements accordingly. At a minimum, the Exchange anticipates using a routing broker to access certain markets where the Exchange finds that the costs of maintaining a membership (for NES) and/or the costs of connectivity and execution do not make sense in light of the number or types of orders the Exchange typically routes to that particular market. These costs necessarily determine the ultimate costs to the Exchange of routing to a market, and, in turn, affect how the Exchange chooses to recoup those costs through its own transaction fees.[8] Sometimes, it will not make economic sense for NES to access an exchange directly. Accordingly, the Exchange intends to use a routing broker where the Exchange determines that it is appropriate. In addition to costs, the Exchange will also consider ease of connectivity and execution as well as general reliability in selecting a routing broker.

For several weeks, the Exchange has been working with the Financial Regulatory Authority (''FINRA'') and The Options Clearing Corporation (''OCC'') to secure the necessary approvals for NES to perform these functions. The Exchange has now secured those approvals. The Exchange seeks to complete this process and implement this proposal in January or early February.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, 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 providing an alternative routing arrangement. The proposal should remove impediments to and perfect the mechanism of a free and open market and a national market system by providing customer order protection and by facilitating trading at away exchanges so customer orders trade at the best market price. The proposal should also protect investors and the public interest by fostering compliance with the Options Order Protection and Locked/Crossed Market Plan. The Exchange also believes that the proposal to use NES rather than NOS for options routing is designed to promote just and equitable principles of trade and to protect investors and the public interest, by eliminating the costs and inefficiencies associated with operating a separate broker-dealer for options routing. In addition, the Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because there are specific protections pertaining to the routing broker in light of the potential conflict of interest where the member routing broker could have access to information regarding other members' orders or the routing of those orders. These protections include the Exchange's control over all routing logic as well as the confidentiality of routing information.[11]

(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 proposal is pro-competitive because it enables broker-dealers other than NOS and NES to provide routing services to the Exchange, which has the potential to reduce the Exchange's costs of routing orders and, potentially, the fees the Exchange charges for routed orders. The proposal does not raise issues of intra-market competition, because the Exchange's decision to route through a particular routing broker would impact all participants equally.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

[5] This is substantially similar to NYSEArca Rule 6.96(a)(8).

[6] *See* NOM Chapter VI, Section 11(e) (which currently provides that NOS is a broker-dealer that is a member of an unaffiliated SRO which is the designated examining authority for the broker-dealer) and Rule 4758(b)(4) (which currently provides that the designated examining authority of NES shall be a self-regulatory organization unaffiliated with the Nasdaq Stock Market LLC or any of its affiliates). This is also substantially similar to NYSEArca Rule 6.96(a)(7).

[7] This is based on NYSEArca Rule 6.96(a)(1)(A).

[8] For these reasons, today, transaction fees for orders vary depending on the market where an order is ultimately executed. *See e.g.,* NASDAQ Rule 7000 series and NOM Rules, Chapter XV.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* proposed Rules 4758(b)(1) and (8) and NOM Rules, Chapter VI, Section 11(e).

[12] 15 U.S.C. 78s(b)(3)(a)(ii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 Number SR–NASDAQ–2014–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–007 and should be submitted on or before February 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02135 Filed 1–31–14; 8:45 am]

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Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71424; File No. SR–CBOE–2014–004]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend a Pilot Program To List and Trade P.M.-Settled S&P 500 Index Option Products

January 28, 2014.

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 January 16, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a pilot program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

On February 8, 2013, the Exchange received approval of a rule change that established a Pilot Program that allows the Exchange to list options on the S&P 500 Index whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''SPXPM'').[3] On July 31, 2013, the Exchange received approval of a rule change that amended the Pilot Program to allow the Exchange to list options on the Mini-SPX Index (''XSP'') whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''P.M.-settled'')[4] (together, SPXPM and P.M.-settled XSP to be referred to herein as the ''Pilot Products'').[5] This pilot period is currently scheduled to expire on February 8, 2014. The Exchange hereby proposes to extend the duration of this pilot period to end on November 3, 2014.

During the course of the Pilot Program and in support of the extension of the Pilot Program, the Exchange has submitted to the Commission reports regarding the Pilot Program which detail the Exchange's experience with the Pilot Program, pursuant to the SPXPM Approval Order and the P.M.-settled XSP Approval Order. Specifically, the Exchange has submitted a Pilot Program report to the Commission at least two months prior to the expiration date of the Pilot Program (the ''annual report'').

[3] *See* Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR–CBOE–2012–120) (the ''SPXPM Pilot Program Approval Order'').

[4] *See* Securities Exchange Act Release No. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR–CBOE–2013–055) (the ''P.M.-settled XSP Approval Order'').

[5] For more information on SPXPM, P.M.-settled XSP or the Pilot Program, *see* the SPXPM Approval Order and the P.M.-settled XSP Approval Order.

The annual report has contained an analysis of volume, open interest, and trading patterns. The analysis examines trading in Pilot Products as well as trading in the securities that comprise the underlying index. In addition, for series that exceed certain minimum open interest parameters, the annual report provides analysis of index price volatility and share trading activity. In addition to the annual report, the Exchange provides the Commission with periodic interim reports while the Pilot Program is in effect that contains some, but not all, of the information contained in the annual report. The annual report is provided to the Commission on a confidential basis.

The annual report contains the following volume and open interest data:

(1) monthly volume aggregated for all trades;

(2) monthly volume aggregated by expiration date;

(3) monthly volume for each individual series;

(4) month-end open interest aggregated for all series;

(5) month-end open interest for all series aggregated by expiration date; and

(6) month-end open interest for each individual series.

In addition to the annual report, the Exchange provides the Commission with interim reports of the information listed in Items (1) through (6) above periodically as required by the Commission while the Pilot Program is in effect. These interim reports are also provided on a confidential basis. The annual report also contains the information noted in Items (1) through (6) above for Expiration Friday, A.M.-settled S&P 500 index options traded on CBOE.

In addition, the annual report contains the following analysis of trading patterns in the Pilot Products options series in the Pilot Program:

(1) a time series analysis of open interest; and

(2) an analysis of the distribution of trade sizes.

Also, for series that exceed certain minimum parameters, the annual report contains the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays:

(1) a comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data includes a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by the CBOE Volatility Index (VIX), is provided; and

(2) a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. The data includes a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods are determined by the Exchange and the Commission. In proposing to extend the Pilot Program, the Exchange will continue to abide by the reporting requirements described herein, as well as in the SPXPM Approval Order and the P.M.-settled XSP Approval Order.

The Exchange proposes the extension of the Pilot Program in order to continue to give the Commission more time to consider the impact of the Pilot Program. To this point, CBOE believes that the Pilot Program has been well-received by its Trading Permit Holders (''TPHs'') and the investing public and the Exchange would like to continue to provide investors with the ability to trade SPXPM and P.M.-settled XSP. All terms regarding the trading of the Pilot Products shall continue to operate as described in the SPXPM Approval Order and the P.M.-settled XSP Approval Order. The Exchange merely proposes herein to extend the term of the Pilot Program to November 3, 2014.

The November 3, 2014 end date was selected because that is the currently-scheduled end date for another pilo21t [sic] program regarding permissible exercise settlement values for Flexible Exchange Index Options (''FLEX Index Options'') (the ''FLEX Index Options Pilot Program''),[6] and aligning the end dates for the Pilot Program and the FLEX Index Options Pilot Program would make the submission and review of annual reports for the two pilot programs easier for both the Exchange and the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed extension of the Pilot Program will continue to provide greater opportunities for investors. Further, the Exchange believes that it has not experienced any adverse effects or meaningful regulatory concerns from the operation of the Pilot Program. As such, the Exchange believes that the extension of the Pilot Program does not raise any unique or prohibitive regulatory concerns. Also, the Exchange believes that such trading has not, and will not, adversely impact fair and orderly markets on Expiration Fridays for the underlying stocks comprising the S&P 500 index. The extension of the Pilot Program will continue to provide investors with the opportunity to trade the desirable products of SPXPM and P.M.-settled XSP, while also providing the Commission further opportunity to observe such trading of the Pilot Products.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the continuation of the Pilot Program will impose any unnecessary or inappropriate burden on intramarket competition because it will continue apply equally to all CBOE market participants and the Pilot Products will be available to all CBOE market participants. The Exchange believes there is sufficient investor interest and demand in the Pilot Program to warrant its extension. The Exchange believes that, for the period that the Pilot Program has been in operation, it has

[6] *See* Securities Exchange Act Release No. 70752 (October 24, 2013), 78 FR 65023 (October 30, 2013) (SR–CBOE–2013–099).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

provided investors with desirable products with which to trade. Furthermore, the Exchange believes that it has not experienced any adverse market effects or regulatory concerns with respect to the Pilot Program. The Exchange further does not believe that the proposed extension of the Pilot Program will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on CBOE. To the extent that the continued trading of the Pilot Products may make CBOE a more attractive marketplace to market participants at other exchanges, such market participants may elect to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The existing Pilot Program currently expires on February 8, 2014. The Commission believes that waiving the 30-day operative delay to the extent necessary to allow the proposal to become operative on February 8, 2014 is consistent with the protection of investors and the public interest, as it will allow the Pilot Program to continue uninterrupted after its current expiration date, thereby avoiding investor confusion that could result from a temporary interruption in the Pilot Program. For this reason, the Commission designates the proposed rule change to be operative on February 8, 2014.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–CBOE–2014–004 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–CBOE–2014–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–CBOE–2014–004 and should be submitted on or before February 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02140 Filed 1–31–14; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[12] 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).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71423; File No. SR–CBOE–2014–008]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule

January 28, 2014.

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 January 17, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 amend its Fees Schedule regarding subcabinet trades. Subcabinet trades are limit orders with a price of at least $0 but less than $1 per options contract (per Exchange Rule 6.54, Interpretation and Policy .03). These trades are often executed in order to close out positions prior to expiration and therefore remove the risks or capital costs associated with open positions.

The Exchange hereby proposes to explicitly state that the Exchange will assess no transaction fees or surcharges for subcabinet trades. This is because the Exchange believes that enabling market participants to close out positions at no cost allows those market participants to reduce risk associated with near-worthless positions and free up capital for other trading purposes. This serves to increase volume and profit opportunity in CBOE's non-subcabinet options series and across all CBOE products, which benefits both the Exchange and all of the Exchange's market participants. The Exchange desires to make clear that it will assess the Sales Value Fee for subcabinet trades, as the Sales Value Fee is assessed on transactions when the Exchange must pay some outside party (pursuant to Section 31 of the Exchange Act, or to another exchange) in relation to such transactions.

The Exchange has a number of fee-related programs that provide for reduced or limited fees based on achieving certain volume thresholds.[3] As the Exchange proposes to state that it will not assess fees for subcabinet trades, the Exchange also proposes to state that subcabinet trades will also not count towards any volume thresholds or volume threshold calculations.[4] The Exchange has determined that it is not economically viable to count transactions for which fees are not assessed towards the volume thresholds of programs that offer lowered fees based on reaching those volume thresholds.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes that it is reasonable to not assess fees for subcabinet trades because market participants executing such trades will not have to pay a fee for such transactions. The Exchange believes that it is equitable and not unfairly discriminatory to not assess fees or surcharges for subcabinet trades because subcabinets are of such minimal economic value that assessing almost any fee would render such transactions not economically viable for the market participants holding the positions, thereby causing the inefficiency of positions being left open merely because it is more expensive to close them. The Exchange believes that enabling market participants to close out positions at no cost allows those market participants to reduce risk associated with near-worthless positions and free up capital for other trading purposes. This serves to increase volume and profit opportunity in CBOE's non-subcabinet options series and across all CBOE products, which benefits both the Exchange and all of the Exchange's market participants. Also, all market participants will be able to avoid being assessed fees for subcabinet trades.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to exclude volume from subcabinet trades towards the Exchange Fee Programs because such trades are not assessed fees. It does not make economic sense (nor is it economically viable) to count transactions towards programs that provide lower fees when such transactions are not assessed fees, and it seems fair to exclude subcabinet trades from such programs when subcabinet trades are not being assessed fees. Similarly, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess the Sales Value Fee for subcabinet trades, as the Sales Value Fee is assessed on transactions when the Exchange must pay some outside party (pursuant to Section 31 of the Exchange Act, or to another exchange) in relation to such transactions. In this circumstance, the Exchange believes that it would not be economically viable to pay fees to those outside parties when no fee is being assessed by the Exchange for such transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. CBOE does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all market participants are able to avoid being assessed fees for subcabinet trades, and because the exclusion of subcabinet trades from counting towards the Exchange Fee Programs applies to all market participants to whom such programs apply. CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only affects trading on CBOE. Indeed, explicitly stating that subcabinet trades will not be assessed fees may encourage other exchanges to do the same, causing greater competition. To the extent that the proposed rule change makes CBOE a more attractive trading venue for market participants on other exchanges, such market participants may elect to become CBOE market participants.

[3] For these purposes, these programs are the Liquidity Provider Sliding Scale, the CBOE Proprietary Products Sliding Scale, and the Customer Large Trade Discount, (*see* the tables bearing those names on the Exchange Fees Schedule for more details on those programs) as well as the program, described in Footnote 25 of the Fees Schedule, that provides rebates to Floor Broker Trading Permit Holders for executing certain amounts of customer open outcry contracts in multiply-listed options in a month (together, the ''Exchange Fee Programs'').

[4] The Exchange will append the footnote number 32, which includes this statement, to the tables on the Fees Schedule that apply to the Exchange Fee Programs.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and paragraph (f) of Rule 19b–4 [8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2014–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2014–008. 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–CBOE–2014–008 and should be submitted on or before February 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02139 Filed 1–31–14; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71417; File No. SR–Phlx–2014–04]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Outbound Routing

January 28, 2014.

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 January 15, 2014, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to use Nasdaq Execution Services, LLC (''NES'') as opposed to Nasdaq Options Services LLC (''NOS'') for outbound order routing, as explained further below. The Exchange also proposes to use NES as opposed to NOS to handle the stock component of a Complex Order, including Complex Orders submitted into the Price Improvement XL (''PIXL'') System. In addition, the Exchange proposes to route equities and options orders through NES either directly or through a third party routing broker-dealer, as explained further below.

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 purpose of the proposal is to update the Exchange's rules to reflect the ability to route orders to other exchanges using either the Exchange's affiliated broker-dealer or a third party unaffiliated broker-dealer, which the Exchange may choose to use for efficiency and potential cost savings.

Today, the relevant Exchange rules provide that the Exchange shall route orders in options via Nasdaq Options Services LLC (''NOS'') and in equities [3] via Nasdaq Execution Services LLC (''NES''). Both NOS and NES are affiliates and member organizations of Phlx. As a result, certain conditions

[3] The Exchange operates an equities market known as PSX.

have been imposed on the existing routing arrangements.[4]

Replacing NOS With NES

The Exchange proposes to amend its rules to provide that it shall use NES for routing orders in options rather than NOS. The Exchange has determined to use NES for outbound routing in options, in addition to equities. The Exchange originally set up its affiliated broker-dealers as two separate entities. Now, the Exchange believes that this is unnecessary and costly. Accordingly, pursuant to Rule 1080(m)(iii), NES will now be the outbound routing broker for Phlx options. As the new Routing Facility for options, NES will operate the same way as NOS currently does, in terms of routing options orders to destination options exchanges pursuant to Rule 1080(m). This is substantially similar to NYSEArca's use of its affiliate Archipelago Securities LLC for order routing in both equities and options.

In addition to outbound order routing, NOS also, with Commission approval,[5] currently executes and reports the underlying security component of a Complex Order, pursuant to Rule 1080.08(h). A Complex Order is an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy.[6] A Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying security (stock or Exchange Traded Fund Share (''ETF'')) coupled with the purchase or sale of options contract(s).[7] Members of FINRA or the NASDAQ Stock Market (''NASDAQ'') are required to have a Uniform Service Bureau/Executing Broker Agreement (''AGU'') with NOS in order to trade Complex Orders containing a stock/ETF component; firms that are not members of FINRA or NASDAQ are required to have a Qualified Special Representative (''QSR'') arrangement with NOS in order to trade Complex Orders containing a stock/ETF component. Under this proposal, members will now be required to have an AGU or QSR with NES. In terms of NOS' role in the execution of such Complex Orders, the Exchange electronically communicates the underlying security component of a Complex Order to NOS, its designated broker-dealer, for immediate execution. The execution cannot occur on PHLX along with the option component, because the PHLX options market does not trade equities like stocks or ETFs. Such execution and reporting occurs otherwise than on the Exchange and is handled by NOS pursuant to applicable rules regarding equity trading. NES will now perform this function and this paragraph will be amended accordingly.

Rule 1080(n)(ii)(J) will be amended in a similar fashion. This subparagraph covers Complex Orders with a stock/ETF component entered into PIXL, which is a process whereby members electronically submit orders they represent as agent against principal interest or other interest that they represent as agent. The submitted orders are stopped at a price and are subsequently entered into an auction seeking price improvement. In 2013, the Exchange began accepting Complex Orders into PIXL, including those with a stock/ETF component.[8] NOS' role is the same as for Complex Orders not entered into PIXL, in that NOS executes the stock/ETF component. NES will now perform this function and this paragraph will be amended accordingly. Additionally, the Exchange represents that its prior representations in connection with the performance of executing the stock/ETF component of both PIXL and non-PIXL Complex Orders by NOS will apply to NES, including the representations relating to compliance with Regulation SHO.[9]

Third-Party Routing Broker

The Exchange also proposes to codify in its rules the ability to use a third-party routing broker to route to away exchanges, rather than routing directly through NES, for both equities and options. To date, the Exchange has used a third-party routing broker in equities and is amending Rule 3315 to clarify this and incorporate the use of a third-party routing broker expressly into that rule. Specifically, today, the Exchange routes equities orders to away markets through NES, which, in turn, sometimes routes directly to away markets; in addition, sometimes when the Exchange routes equities orders through NES today, NES routes those orders through a third-party routing broker.

In options, the Exchange currently routes options orders to NOS, which routes directly to away markets. The Exchange proposes to use NES, rather than NOS, as explained above, and to have NES route either directly to other options exchanges or to a third-party routing broker (which will, in turn, route to other options exchanges). The Exchange proposes to amend Rule 1080(m) accordingly.

Regardless of whether a third-party routing broker is used in either equities or options, all routing will go through NES, but the Exchange could determine to direct NES to route orders to certain exchanges through a routing broker rather than routing an order directly.

The Exchange previously stated that from time to time, it may use non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.,* third-party Routing Brokers).[10] In those cases, orders are submitted to the third-party Routing Broker through the affiliated routing broker, and the third-party Routing Broker routes the orders to the routing destination in its name.

Under this proposal, the relevant rules would now expressly provide that the Exchange could use one or more third-party unaffiliated routing broker-dealers (''routing brokers''). Specifically, the Exchange proposes to amend Rule 1080(m)(iii)(A), which applies to options, to refer to such routing brokers. The Exchange proposes to similarly amend Rule 3315(b)(1) respecting equities. The Exchange proposes to further amend its rules with respect to certain policies and procedures. Specifically, Rules 1080(m)(iii)(C) and 3315(b)(8) currently provide that the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the Routing Facility, and any other entity, including any affiliate of the Routing Facility. The Exchange proposes to amend those rules to provide that, where there is a routing broker, the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker (and if the

[4] *See, e.g.,* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26751 (June 3, 2009) (SR–Phlx–2009–32) at 26756.

[5] Securities Exchange Act Release No. 63777 (January 26, 2011), 76 FR 5630 (February 1, 2011) (SR–Phlx–2010–157).

[6] *See* Rule 1080.08(a)(i).

[7] *Id.*

[8] Securities Exchange Act Release No. 69845 (June 25, 2013), 78 FR 39429 (July 1, 2013) (SR–Phlx–2013–46).

[9] *Id. See also* Securities Exchange Act Release Nos. 63777 (January 26, 2011), 76 FR 5630 (February 1, 2011) (SR–Phlx–2010–157); and 63967 (February 25, 2011), 76 FR 12206 (March 4, 2011) (SR–Phlx–2011–27).

[10] *See* Securities Exchange Act Release Nos. 68393 (December 10, 2012), 77 FR 74520 (December 14, 2012) (SR–Phlx–2012–134) at note 4; and 67654 (August 14, 2012), 77 FR 50187 (August 20, 2012) (SR–Phlx–2012–81) at note 6.

routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services).[11] This way, this provision extends to the routing broker, if one is used.

In both the proposed equities and options rules, the Exchange proposes to provide that the Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority. This is similar to the existing provisions that do not permit the Exchange to be the designated examining authority for its affiliated routing brokers.[12]

The Exchange also proposes to expressly state in Rule 1080(m)(iii)(G) and Rule 3315(b)(1) that the Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges. In addition, the routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order. This is consistent with, but more specific than, the current language that states that routing is performed under the direction of the Exchange.[13]

The Exchange may determine to use a different routing broker by product or by destination exchange, depending upon the costs and technological efficiencies involved. The proposal is intended to allow the Exchange to structure its routing arrangements accordingly. At a minimum, the Exchange anticipates using a routing broker to access certain markets where the Exchange finds that the costs of maintaining a membership (for NES) and/or the costs of connectivity and execution do not make sense in light of the number or types of orders the Exchange typically routes to that particular market. These costs necessarily determine the ultimate costs to the Exchange of routing to a market, and, in turn, affect how the Exchange chooses to recoup those costs through its own transaction fees.[14] Sometimes, it will not make economic sense for NES to access an exchange directly. Accordingly, the Exchange intends to use a routing broker where the Exchange determines that it is appropriate. In addition to costs, the Exchange will also consider ease of connectivity and execution as well as general reliability in selecting a routing broker.

For several weeks, the Exchange has been working with the Financial Regulatory Authority (''FINRA'') and The Options Clearing Corporation (''OCC'') to secure the necessary approvals for NES to perform these functions. The Exchange has now secured those approvals. The Exchange seeks to complete this process and implement this proposal in January or February.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(5) of the Act[16] in particular, in that it is designed to promote just and equitable principles of trade, 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 providing an alternative routing arrangement. The proposal should remove impediments to and perfect the mechanism of a free and open market and a national market system by providing customer order protection and by facilitating trading at away exchanges so customer orders trade at the best market price. The proposal should also protect investors and the public interest by fostering compliance with the Options Order Protection and Locked/Crossed Market Plan. The Exchange also believes that the proposal to use NES rather than NOS for options routing is designed to promote just and equitable principles of trade and to protect investors and the public interest, by eliminating the costs and inefficiencies associated with operating a separate broker-dealer for options routing. In addition, the Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because there are specific protections pertaining to the routing broker in light of the potential conflict of interest where the member routing broker could have access to information regarding other members' orders or the routing of those orders. These protections include the Exchange's control over all routing logic as well as the confidentiality of routing information.[17] The proposal to use NES rather than NOS for Complex Order-related functions is consistent with promoting just and equitable principles of trade and protecting investors and the public interest, because it merely substitutes one affiliated broker-dealer for another. For the same reason, compliance with Regulation SHO will not be affected.

(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 proposal is pro-competitive because it enables broker-dealers other than NOS and NES to provide routing services to the Exchange, which has the potential to reduce the Exchange's costs of routing orders and, potentially, the fees the Exchange charges for routed orders. The proposal does not raise issues of intra-market competition, because the Exchange's decision to route through a particular routing broker would impact all participants equally.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

[11] This is substantially similar to NYSEArca Rule 6.96(a)(8).

[12] *See* Phlx Rule 1080(m)(iii)(A) (which currently provides that NOS is a broker-dealer that is a member of an unaffiliated self-regulatory organization which is the designated examining authority for the broker-dealer) and Rule 3315(b)(4) (which currently provides that the designated examining authority for NES shall be a self-regulatory organization unaffiliated with the exchange or any of its affiliates). This is also substantially similar to NYSEArca Rule 6.96(a)(7).

[13] This is based on NYSEArca Rule 6.96(a)(1)(A).

[14] For these reasons, today, transaction fees for orders vary depending on the market where an order is ultimately executed. *See e.g.,* Section V of the NASDAQ OMX PHLX Pricing Schedule.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* proposed Rules 1080(m)(iii)(G) and 3315(b)(1).

[18] 15 U.S.C. 78s(b)(3)(a)(ii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the

Continued

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 Number SR–Phlx–2014–04 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–2014–04. 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–2014–04 and should be submitted on or before February 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02133 Filed 1–31–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71420; File No. SR–BX–2014–004]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Inbound Routing of Options Orders

January 28, 2014.

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 January 15, 2014, NASDAQ OMX BX, Inc. (''BX'' 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 permit the Exchange to receive inbound orders in options routed through Nasdaq Execution Services, LLC (''NES'') from affiliated exchanges, as described in detail below.

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 purpose of the filing is to permit the receipt of inbound orders routed from affiliated exchanges in options through NES. The Exchange filed a proposed rule change to use NES rather than Nasdaq Options Services LLC (''NOS'') for the outbound routing of options orders and the Exchange also updated its equities and options rules to reflect the use of a third party unaffiliated routing broker.[3]

Now, the Exchange proposes to continue to receive orders from its affiliated exchanges. Specifically, the Exchange proposes to receive options orders, through NES directly from the options market of NASDAQ OMX PHLX LLC (''PHLX'')[4] as well as from The NASDAQ Options Market (''NOM''),[5] under the same terms and conditions as NOS currently does. NASDAQ and PHLX have filed to use NES for outbound routing,[6] as well as to receive options orders routed from PHLX through NES.[7]

NOS and NES are broker-dealers and members of The NASDAQ Stock Market LLC (''NASDAQ''), PHLX and BX. Currently, NOS provides all options routing functions for BX Options, PHLX, and NOM. BX, NASDAQ, NOM, PHLX, NES and NOS are affiliates.[8] Accordingly, the affiliate relationship between BX and NOS, its member, raises the issue of an exchange's affiliation with a member of such exchange. Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair

Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–BX–2014–003.

[4] Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030).

[5] *Id.*

[6] *See* SR–NASDAQ–2014–007 and SR–Phlx–2014–004.

[7] *See* SR–NASDAQ–2014–008 and SR–Phlx–2014–005.

[8] *See* Securities Exchange Act Release Nos. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01) (order approving NASDAQ OMX's acquisition of BX); and 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (order approving NASDAQ OMX's acquisition of PHLX).

competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.[9] Similarly, under this proposal, the affiliate relationship between BX and NES raises this issue.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, the Exchange previously proposed, and the Commission approved, limitations and conditions on NOS's affiliation with the Exchange.[10] Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously proposed, and the Commission approved,[11] NOS's affiliation with the Exchange to permit the Exchange to accept inbound orders that NOS routes in its capacity as a facility of PHLX and NOM, subject to certain limitations and conditions. The Exchange now proposes to permit BX to accept inbound options orders that NES (rather than NOS) routes in its capacity as a facility of PHLX and NOM, subject to the same limitations that currently apply to BX accepting inbound orders from PHLX and NOM through NOS, as follows:

• First, the Exchange and FINRA maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[12] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NES's compliance with certain Exchange rules.[13] Pursuant to the Regulatory Contract, however, BX retains ultimate responsibility for enforcing its rules with respect to NES.

• Second, FINRA will monitor NES for compliance with the Exchange's trading rules, and will collect and maintain certain related information.[14]

• Third, FINRA will provide a report to the Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or Exchange rules.

• Fourth, the Exchange has in place BX 2140(c) which requires The NASDAQ OMX Group, Inc., as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

By meeting the above conditions, the Exchange will have set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as demonstrate that NES cannot use any information advantage it may have because of its affiliation with the Exchange.

For several weeks, the Exchange has been working with the Financial Regulatory Authority (''FINRA'') and The Options Clearing Corporation (''OCC'') to secure the necessary approvals for NES to perform these functions. The Exchange has now secured those approvals. The Exchange seeks to complete this process and implement this proposal in January or February.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(5) of the Act[16] in particular, in that it is designed to promote just and equitable principles of trade, 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, because the proposed rule change will allow the Exchange to continue to receive inbound orders from an affiliate (NES rather than NOS), acting in its capacity as a facility of PHLX and NOM, in a manner consistent with prior approvals and established protections. The Exchange believes that these conditions establish mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as ensure that NES cannot use any information it may have because of its affiliation with the Exchange to its advantage.

(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. Receiving orders through NES rather than NOS does not raise any issues of intra-market competition because it involves inbound routing from an affiliated exchange. Nor does it result in a burden on competition among exchanges, because there are many competing options exchanges that provide routing services, including through an affiliate.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[17] and subparagraph (f)(6) of Rule 19b–4 thereunder.[18]

[9] *See* Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR–NASDAQ–2008–098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR–NASDAQ–2010–100). *See also* Securities Exchange Act Release No. 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008) (SR–NASDAQ–2008–061)(Permitting NOS to be affiliated with PHLX).

[10] Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030).

[11] *Id.*

[12] 17 CFR 240.17d–2.

[13] NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[14] Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of PHLX and NOM routing orders to BX) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(a)(ii).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the

Continued

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 Number SR–BX–2014–004 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–BX–2014–004. 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–BX–2014–004 and should be submitted on or before February 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02136 Filed 1–31–14; 8:45 am]

BILLING CODE 8011–01–P

Commission. The Exchange has satisfied this requirement.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71425; File No. SR–NYSEArca–2014–04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend its Rules by Revising the Order of Priority of Bids and Offers When Executing Orders in Open Outcry

January 28, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 15, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its rules by revising the order of priority of bids and offers when executing orders in open outcry. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules governing the priority of bids and offers on the Consolidated Book by revising the order of priority of bids and offers for orders in open outcry. Specifically, the Exchange proposes to afford priority to bids and offers represented by Market Makers and Floor Brokers (''Crowd Participants'') over certain equal-priced bids and offers of non–Customers[4] on the Consolidated Book[5] during the execution of an order in open outcry on the floor of the Exchange.

Current Rule 6.75(a) provides that any bids displayed on the Consolidated Book have priority over same-priced bids represented in open outcry. Such priority is also described in Rule 6.47, which governs crossing orders in open outcry. Floor Broker crossing transactions, as defined in Rule 6.47, may not trade ahead of equal and better-priced bids or offers on the Consolidated Book.

Because of the priority afforded to the Consolidated Book, Crowd Participants who have negotiated a large transaction ultimately may not participate in the execution. Crowd Participants could negotiate a transaction with an understanding of the make-up of bids and offers on the Consolidated Book at the beginning of open outcry. However, as the trade is executed, the Consolidated Book could update with newly-arriving electronically-entered

[4] A non-Customer is a market participant who does not meet the definition of Customer as defined in paragraph (c)(6) of Rule 15c3–1 under the Securities Exchange Act of 1934, as amended. *See* Rule 6.1(b)(29).

[5] The term ''Consolidated Book'' means the Exchange's electronic book of limit orders for the accounts of Public Customers and broker-dealers, and Quotes with Size. *See* Rule 6.1(b)(37).

bids and offers that have priority. Given the speed at which quotes can flicker in the Consolidated Book, Crowd Participants who have agreed to a transaction in open outcry do not know if they will actually participate on the trade until after execution.

In order to provide greater opportunity for bids and offers of Crowd Participants to participate in an open outcry transaction and therefore promote larger-sized negotiated transactions, the Exchange proposes to restructure its priority rules. As proposed, bids and offers of Crowd Participants would have priority over equal-priced bids and offers of non-Customers on the Consolidated Book that are ranked in time priority behind any equal-priced Customer bids and offers on the Consolidated Book. As proposed, equal-priced Customer interest would continue to be afforded priority over Crowd Participants in the execution of an open outcry transaction. In addition, consistent with the existing price/time priority presently applicable to bids and offers on the Consolidated Book, equal-priced non-Customer bids and offers ranked in time priority ahead of Customer interest will also be afforded priority over Crowd Participants in the execution of an open outcry transaction. The Exchange believes the proposed rule change strikes the appropriate balance between encouraging larger negotiated transactions in open outcry while at the same time protecting Customer interest on the Consolidated Book, and any interest that has time priority over such protected Customer interest.

To effect this proposed revision to its priority rules, the Exchange proposes to amend its rules as follows:

Rule 6.75. Priority and Order Allocation Procedures—Open Outcry. Rule 6.75(a) presently states that the highest bid shall have priority but where two or more bids for the same option contract represent the highest price and one such bid is displayed on the Consolidated Book, such bid shall have priority over any bid at the post (*i.e.,* the trading crowd). The Exchange proposes to amend Rule 6.75(a) by limiting the priority of bids in the Consolidated Book over bids in the trading crowd to just those bids for Customers along with non-Customers that are ranked in time priority ahead of such Customers.

The Exchange notes that the changes made to subsection (a) dealing with the priority of ''bids'' will also effect a corresponding change to the meaning of subsection (b) dealing with ''offers'', although there will be no change to the rule text in subsection (b).

Rule 6.76. Order Ranking and Display—OX. Rule 6.76 governs order ranking, display and allocation of orders on the OX system. The Exchange is proposing new subparagraph (d) outlining the priority of bids and offers on the Consolidated Book against orders executed via open outcry in the Trading Crowd. The proposed text provides a step-by step-description of the order of priority afforded bids and offers of both Customers and non-Customers on the Consolidated Book. The priority described in proposed subparagraph (d) is consistent with the proposed changes to Rule 6.75.

The Exchange also proposes to include language in subparagraph (d) specifying certain OTP Holder obligations under Section 11(a) of the Act. Specifically, pursuant to Section 11(a)(1)(G) of the Exchange Act and Rule 11a1–1(T) thereunder (the ''G Rule''), OTP Holders may effect transactions on the Trading Floor for its own account [sic], the account of an associated person, or an account with respect to which it or an associated person has investment discretion provided that such transaction yields priority in execution to orders for the account of persons who are not OTP Holders or associated with OTP Holders. The proposed rule text will confirm that notwithstanding the proposed change to the priority rules governing open outcry trading, an OTP Holder effecting a transaction on the Trading Floor for its own account, the account of an associated person, or an account with respect to which it or an associated person has investment discretion pursuant to the ''G Rule'' must still yield priority to all equal-priced bids or offers on the Consolidated Book.[6] The proposed rule text is based on the rules of the Chicago Board Options Exchange, Inc. (''CBOE'') and NYSE MKT LLC (''NYSE MKT'') on behalf of NYSE Amex Options.[7]

The Exchange believes that including a description of open outcry priority procedures in Rule 6.76 will serve as a useful cross reference to the priority procedures of Rule 6.75. Including such a cross reference is consistent with similar rule structure by the CBOE and NYSE MKT.[8]

Rule 6.47. Crossing Orders—OX. Rule 6.47 outlines the procedures used when a Floor Broker attempts to cross two orders in open outcry. Under current rules, Floor Brokers must trade against all equal-priced Customer and non-Customer bids and offers on the Consolidated Book before effecting a cross transaction in the Trading Crowd. The Exchange proposes to make applicable changes to Rule 6.47 to conform the priority rules applicable to open outcry cross transactions to the proposed changes to Rule 6.75(b) [sic]. Accordingly, the Exchange proposes to amend the procedures for each crossing scenario described in Rule 6.47 by stating that Floor Brokers, when crossing two orders in open outcry, must yield priority to equal and better-priced Customer bids or offers on the Consolidated Book along with any non-Customer bids and offers ranked ahead of such Customers bids and offers.

Pursuant to these proposed rule changes, Floor Brokers would continue to be required to trade against equal and better-priced Customer bids and offers on the Consolidated Book along with bids and offers of non-Customers that are ranked ahead of such Customers before attempting a cross transaction. Consistent with the proposed change to Rule 6.75(a), Floor Brokers would not be required to trade against equal-priced non-Customer bids and offers that are ranked behind such Customer and non-Customer bids and offers. The Exchange believes that affording priority to Crowd Participants ahead of such non-Customer interest on the Consolidated Book will create an increased incentive for block-sized transactions on the Trading Floor.

Examples

The revised priority and order allocation procedures would be applied as follows.

Ranking of bids on the Consolidated Book (assume this for all examples)

Customer #1—$1.00 bid × 100
Non-Customer #1—$1.00 bid × 50
Customer #2—$1.00 bid × 100
Non-Customer #2—$1.00 bid × 200
Non-Customer #3—$1.00 bid × 100

Example 1

A Floor Broker enters the trading crowd with an order to sell 1000 contracts and after calling for a market, Crowd Participants respond with a collective bid of $1.00 for 1000 contracts. Under current rules, the Floor Broker would be required to execute against all five bids on the Consolidated Book for a total of 550 contracts, thereby limiting the Crowd Participants to 450 contracts.

[6] The Exchange notes that at this time, none of the OTP Holders that currently operate on the Exchange's Trading Floor as Floor Brokers enter orders for their own account, the account of an associated person, or an account with respect to which it or an associated person has investment discretion. The Exchange notes, however, that FINRA, on behalf of NYSE Regulation, monitors whether Floor Brokers comply with Section 11(a) of the Act.

[7] *See* CBOE Rule 6.45A(b)(i)(D) and NYSE MKT Rule 910NY.

[8] *See* CBOE Rule 6.45A(b) and NYSE MKT Rule 964NY(e).

Pursuant to the proposed revised order of priority, the Floor Broker would execute the order as follows:

Customer #1—100 contracts
Non-Customer #1—50 contracts
Customer #2—100 contracts
Trading Crowd—750 contracts

As such, the Floor Broker would execute 750 contracts with Crowd Participants instead of 450 contracts. Consistent with proposed changes to Rule 6.75(a), the Floor Broker yielded priority to all equal-priced Customer interest (Customers #1 and #2), along with bids of non-Customers ranked ahead of such equal priced Customers (non-Customer #1). After affording priority to such bids on the Consolidated Book, the Floor Broker executed the balance of the order against bids from participants in the trading crowd. Because there was sufficient size to execute the entire balance of the order in the Trading Crowd, there is no further allocation to the non-Customers ranked behind Customer interest on the Consolidated Book.

Example 2

A Floor Broker enters the trading crowd with an order to sell 1300 contracts and a contra order to buy 500 contracts. After calling for a market, Crowd Participants respond with a bid of $1.00 for 500 contracts. The Floor Broker then announces his intent to execute a Non-Facilitation Cross at $1.00 pursuant to Rule 6.47(a). Under current rules, the Floor Broker would be required to execute against all five bids on the Consolidated Book for a total of 550 contracts, thereby limiting the Crowd Participants and the Floor Broker cross order to an aggregate of 750 contracts. Pursuant to the proposed revised order of priority, the Floor Broker would execute his sell order as follows:

Customer #1—100 contracts
Non-Customer #1—50 contracts
Customer #2—100 contracts
Trading Crowd—500 contracts
Broker Cross—500 contracts
Non-customer—#2 50 contracts

Consistent with proposed changes to Rule 6.75(a), the Floor Broker yielded priority to all equal-priced Customer interest (Customers #1 and #2), along with bids of non-Customers ranked ahead of those equal-priced Customers (non-Customer #1). After affording priority to such bids on the Consolidated Book, the Floor Broker traded with members of the trading crowd and then crossed his sell order against his contra-side buy order. The Floor Broker then traded the balance of his sell order against the non-Customer bids that were ranked behind Customer interest on the Consolidated Book. The non-Customer bids were executed pursuant to their ranking on the Consolidated Book based on time priority.

Example 3

A Floor Broker enters the trading crowd with an Agency Order to sell 1000 contracts and a buy order for the proprietary account of an OTP Firm to facilitate the entire size of the Agency Order (''Facilitation Order''). After calling for a market, Crowd Participants respond with a bid of $1.00 for 1000 contracts. The Floor Broker then announces his intent to execute a Facilitation Cross at $1.00 pursuant to Rule 6.47(b). Under current rules, the Floor Broker would be required to first execute against all five bids on the Consolidated Book for a total of 550 contracts, leaving 450 contracts to be allocated between the Facilitation Order and the trading crowd. Of the 450 remaining contracts, the Facilitation Order would be allocated 180 contracts (40% of 450) with 270 going to the trading crowd. Pursuant to the proposed revised order of priority, the Floor Broker would execute his sell order as follows:

Customer #1—100 contracts
Non-Customer #1—50 contracts
Customer #2—100 contracts
Firm Facilitation—300 contracts
Trading Crowd—450 contracts

Consistent with proposed changes to Rule 6.75(a), the Floor Broker yielded priority to all equal-priced Customer bids (Customers #1 and #2), along with bids of non-Customers ranked ahead of those equal-priced Customers (non-Customer #1). After affording priority to such bids on the Consolidated Book, the Floor Broker was left with 750 contracts. The Facilitation order is entitled to participate on 40% of the balance of the Agency Order (300 contracts) and the balance of 450 contracts would be allocated to members of the trading crowd.

The Exchange believes that providing greater opportunity for large-sized orders to execute in open outcry while also protecting Customer interest will encourage participants to send more liquidity to Floor Brokers, thereby resulting in a larger pool of liquidity on the Exchange that would not otherwise be available electronically. The Exchange further believes that the proposed change in priority will provide an incentive for Crowd Participants, including Floor-based Market Makers, to provide deeper liquidity when participating in open outcry transactions as there will be greater certainty of an execution. The Exchange notes that affording priority to Crowd Participants over non-Customers is not a new or novel idea. Other hybrid markets such as the CBOE and NYSE Amex Options afford Crowd Participants priority over non-Customer electronic bids and offers on their respective market.[9] The only substantive difference between the priority procedures being proposed in this filing and those presently in place at the CBOE and NYSE Amex Options is that the Exchange proposes to afford priority to bids and offers of non-Customers on the Consolidated Book, ranked ahead of any equal-priced Customers on the Consolidated Book, over members of the trading crowd. On the CBOE and NYSE Amex Options, crowd participants have priority over all equal priced non-Customers in the Consolidated Book.

Non-Substantive Rule Changes

The Exchange is also proposing to make non-substantive changes to existing rule text contained in Rules 6.47 and 6.75. Currently, the terms ''Book'' and ''Consolidated Book'' are both used in Rule 6.47 when referring to the Exchange's electronic book of limit orders for the accounts of Public Customers and broker-dealers, and Quotes with Size. The Exchange now proposes to standardize the rule language by replacing ''Book'' with the defined term ''Consolidated Book''.[10] In addition, Rules 6.47 and 6.75 currently use the terms ''in'' and ''on'' when referring to orders, quotes or bids and offers contained on/in the Consolidated Book. The Exchange now proposes to standardize the rule language by replacing ''in'' with ''on'' whenever referring to orders, quotes and bids and offers on the Consolidated Book.

Implementation

The Exchange will announce the implementation date of the proposed rule change by Trader Update to be published no later than 90 days following approval. The implementation date will be no later than 90 days following the issuance of the Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[11] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market by restructuring relative priorities between bids and offers made on the floor compared to non-Customers in the Consolidated Book in order to provide an incentive both for Floor Brokers to represent orders in open outcry and for Floor-based Market Makers to participate in open outcry transactions. The Exchange believes that

[9] *Supra* Note No. 7.

[10] *See* NYSE Arca Rule 6.1(b)(37).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

the negotiated nature of open outcry transactions lends itself to larger-sized transactions than the liquidity that is generally available electronically and the proposed rule change would encourage greater participation in such open outcry trading by reducing the potential that a negotiated transaction would be broken up. The Exchange therefore believes that affording priority to Crowd Participants ahead of certain non-Customer interest on the Consolidated Book creates an opportunity for increased participation on open outcry transactions, which should result in larger-sized negotiated transactions, while at the same time protecting Customer interest. The Exchange believes that this in turn will lead to greater competition for orders creating a more robust open outcry market, which should benefit investors who choose to send orders to the Exchange. The Exchange further believes that protecting non-Customer interest on the Consolidated Book that is ranked ahead of Customer interest is consistent with just and equitable principles of trade because it maintains the Exchange's existing price/time priority rules by protecting interest that has time priority over Customer interest that has priority.

In addition, the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act,[13] in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, the economically efficient execution of securities transactions. The Exchange notes that the proposed rule change is also consistent with Section 11(a) of the Act and the rules thereunder. The Exchange believes that affording priority to OTP Holders present in the trading crowd over certain electronic non-Customer orders raises no novel issues under Section 11(a) and the rules thereunder from a compliance, surveillance or enforcement perspective. In other words, OTP Holders on the Floor are currently required to comply and are subject to review for compliance with Section 11(a), and the rules thereunder, when executing transactions in open outcry and notwithstanding the proposed rule change, they will still be required to comply with Section 11(a) and the rules thereunder. For example, in cases where an OTP Holder acting as a Floor Broker is trading for his own account and attempts to execute a transaction at the same price as one or more orders on the Consolidated Book, the Floor Broker, if he can rely on no exception other than the ''G'' exception (Section 11(a)(1)(G); Rule 11a1–1(T)), must, in addition to complying with the other requirements of the ''G'' exemption, yield to all orders in the Consolidated Book at the same price if the Floor Broker has no ability to determine that an order in the Consolidated Book is not the order of a non-OTP Holder.[14]

The restrictions set forth in NYSE Arca Rule 6.76(d)(4) would not limit in any way the obligation of OTP Holders, while acting as a Floor Broker or otherwise, to comply with Section 11(a) or the rules thereunder. For example, Floor Brokers cannot avoid or circumvent their obligations under Section 11(a) when executing a transaction on the floor simply by transferring that order to another OTP Holder on the floor or to an OTP Holder off the floor of the Exchange. OTP Holders must ensure compliance with Section 11(a) and the rules thereunder, including by relying upon an exemption such as those listed above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that competition for participation in open outcry transactions will be enhanced by allowing the Crowd Participants to compete at price points that were previously unavailable because of non-Customer orders on the Consolidated Book, thereby promoting competition by encouraging participation in large-sized negotiated transactions. In addition, because this proposal seeks to adopt rules that are more closely aligned with those of other Exchanges [sic] operating a hybrid market, the Exchange does not believe that the proposed rule changes will create an undue burden on other markets. Rather, the Exchange believes that not approving this proposed rule change would place the Exchange at a competitive disadvantage vis-à-vis other Exchanges that operate a trading floor.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission solicits comment on the impact of NYSE Arca's proposal to revise its priority scheme with respect to non-Customer orders on the Exchange's Consolidated Book during the execution of an order in open outcry on the Exchange's floor. Commenters are invited to address the impact, if any, of the proposed rule change on competition on the Exchange's floor and on its Consolidated Book, including the impact, if any, on market participants' incentives to post interest on the Consolidated Book, and the reasons for any such view. In the Notice, the Exchange argues that the proposal would create an opportunity for increased crowd participation in open outcry transactions and would lead to greater competition for orders brought to the Exchange's floor. Commenters are invited to address these arguments. Further, in the Notice, the Exchange states that the proposal will more closely align the Exchange's rules with those of other exchanges operating a hybrid market. Commenters also are invited to provide their views on the differences and/or similarities between NYSE Arca's proposal and the pertinent CBOE and NYSE MKT priority rules and how, if at all, the overall priority structure of the three exchanges (public

[13] 15 U.S.C. 78k–1(a)(1)(C).

[14] The Exchange notes that only orders that are represented by a Floor Broker are eligible for crossing via the Solicited Order procedures. If the Floor Broker represents an order for its own account, the account of an associated person, or an account with respect to which it or an associated person has investment discretion, the member order must satisfy the requirements of Section 11(a) of the Act and the rules thereunder. The Exchange has previously represented that OTP Holders (members) may not rely on the exception found in Section 11(a)(1)(G) of the Act when utilizing the Solicited Order procedures. *See* Securities Exchange Act Release No. 54238 (July 28, 2006) 71 FR 44758, 44763 at n.43 (August 7, 2006).

customer/pro rata in comparison to price/time) impacts their view. 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–NYSEArca-2014–04 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–NYSEArca-2014–04. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2014–04, and should be submitted on or before February 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02141 Filed 1–31–14; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71418; File No. SR–NASDAQ–2014–008]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Inbound Routing of Options Orders

January 28, 2014.

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 January 15, 2014, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 permit the NASDAQ Options Market (''NOM'') to receive inbound orders in options routed through Nasdaq Execution Services, LLC (''NES'') from affiliated exchanges, as described in detail below.

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 purpose of the filing is to permit the receipt of inbound orders routed from affiliated exchanges in options through NES. The Exchange filed a proposed rule change to use NES rather than Nasdaq Options Services LLC (''NOS'') for the outbound routing of options orders and the Exchange also updated its equities and options rules to reflect the use of a third party unaffiliated routing broker.[3]

Now, the Exchange proposes to continue to receive orders from its affiliated exchanges. Specifically, the Exchange proposes to receive options orders, through NES directly from the options market of NASDAQ OMX PHLX LLC (''PHLX'') [4] as well as from NASDAQ OMX BX, Inc. (''BX''),[5] under the same terms and conditions as NOS currently does. BX and PHLX have filed to use NES for outbound routing,[6] as well as to receive options orders routed from PHLX through NES.[7]

NOS and NES are broker-dealers and members of NASDAQ, PHLX and BX. Currently, NOS provides all options routing functions for BX Options, PHLX, and NOM. BX, NASDAQ, NOM, PHLX, NES and NOS are affiliates.[8] Accordingly, the affiliate relationship between NASDAQ and NOS, its member, raises the issue of an exchange's affiliation with a member of such exchange. Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.[9] Similarly, under this proposal, the affiliate relationship between NASDAQ and NES raises this issue.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, the Exchange previously proposed, and the Commission approved, limitations and conditions on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–NASDAQ–2014–007.

[4] Securities Exchange Act Release No. 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008) (SR–NASDAQ–2008–061).

[5] Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030).

[6] *See* SR–BX–2014–003 and SR–Phlx–2014–004.

[7] *See* SR–BX–2014–004 and SR–Phlx–2014–005.

[8] *See* Securities Exchange Act Release Nos. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01) (order approving NASDAQ OMX's acquisition of BX); and 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (order approving NASDAQ OMX's acquisition of PHLX).

[9] *See* Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR–NASDAQ–2008–098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR–NASDAQ–2010–100). *See also* Securities Exchange Act Release No. 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008)(SR–NASDAQ–2008–061)(Permitting NOS to be affiliated with PHLX).

NOS's affiliation with the Exchange. Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously proposed, and the Commission approved,[10] NOS's affiliation with the Exchange to permit the Exchange to accept inbound orders that NOS routes in its capacity as a facility of PHLX and BX, subject to certain limitations and conditions. The Exchange now proposes to permit NOM to accept inbound options orders that NES (rather than NOS) routes in its capacity as a facility of PHLX and BX, subject to the same limitations that currently apply to NOM accepting inbound orders from PHLX and BX through NOS, as follows:

• First, the Exchange and FINRA maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[11] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NES's compliance with certain Exchange rules.[12] Pursuant to the Regulatory Contract, however, NASDAQ retains ultimate responsibility for enforcing its rules with respect to NES.

• Second, FINRA will monitor NES for compliance with the Exchange's trading rules, and will collect and maintain certain related information.[13]

• Third, FINRA will provide a report to the Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or Exchange rules.

• Fourth, the Exchange has in place NASDAQ 2140(c) which requires The NASDAQ OMX Group, Inc., as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

By meeting the above conditions, the Exchange will have set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as demonstrate that NES cannot use any information advantage it may have because of its affiliation with the Exchange.

For several weeks, the Exchange has been working with the Financial Regulatory Authority (''FINRA'') and The Options Clearing Corporation (''OCC'') to secure the necessary approvals for NES to perform these functions. The Exchange has now secured those approvals. The Exchange seeks to complete this process and implement this proposal in January or February.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(5) of the Act[15] in particular, in that it is designed to promote just and equitable principles of trade, 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, because the proposed rule change will allow the Exchange to continue to receive inbound orders from an affiliate (NES rather than NOS), acting in its capacity as a facility of PHLX and BX, in a manner consistent with prior approvals and established protections. The Exchange believes that these conditions establish mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as ensure that NES cannot use any information it may have because of its affiliation with the Exchange to its advantage.

(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. Receiving orders through NES rather than NOS does not raise any issues of intra-market competition because it involves inbound routing from an affiliated exchange. Nor does it result in a burden on competition among exchanges, because there are many competing options exchanges that provide routing services, including through an affiliate.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

[10] *See* Securities Exchange Act Release Nos. 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008) (SR–NASDAQ–2008–061); and 69755 (June 13, 2013), 78 FR 36800 (June 19, 2013) (SR–NASDAQ–2013–070).

[11] 17 CFR 240.17d–2.

[12] NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[13] Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of PHLX and BX routing orders to NOM) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(a)(ii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2014–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).*

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–008 and should be submitted on or before February 24, 2014

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02134 Filed 1–31–14; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71421; File No. SR–BX–2014–003]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Outbound Routing

January 28, 2014.

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 January 15, 2014, NASDAQ OMX BX, Inc. (''BX'' 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 use Nasdaq Execution Services, LLC (''NES'') as opposed to Nasdaq Options Services LLC (''NOS'') for outbound order routing from the BX Options market, as explained further below. The Exchange also proposes to permit the Exchange to route equities and options orders through NES either directly or through a third party routing broker-dealer, as explained further below.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.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.

[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

The purpose of the proposal is to update the Exchange's rules to reflect the ability to route orders to other exchanges using either the Exchange's affiliated broker-dealer or a third party unaffiliated broker-dealer, which the Exchange may choose to use for efficiency and potential cost savings.

Today, the relevant Exchange rules provide that the Exchange shall route orders in options via NOS and in equities via NES. Both NOS and NES are affiliates and members of BX. As a result, certain conditions have been imposed on the existing routing arrangements.[3]

Replacing NOS With NES

The Exchange proposes to amend its rules to provide that it shall use NES for routing orders in options rather than NOS. The Exchange has determined to use NES for outbound routing in options, in addition to equities. The Exchange originally set up its affiliated broker-dealers as two separate entities. Now, the Exchange believes that this is unnecessary and costly. Accordingly, pursuant to BX Rules, Chapter VI, Section 11, NES will now be the outbound routing broker for BX Options. As the new Routing Facility for options, NES will operate the same way as NOS currently does, in terms of routing options orders to destination options exchanges. This is substantially similar to NYSEArca's use of its affiliate Archipelago Securities LLC for order routing in both equities and options.

Third-Party Routing Broker

The Exchange also proposes to codify in its rules the ability to use a third-party routing broker to route to away exchanges, rather than routing directly through NES, for both equities and options. To date, the Exchange has used a third-party routing broker in equities and is amending Rule 4758 to clarify this and incorporate the use of a third-party routing broker expressly into that rule. Specifically, today, the Exchange routes equities orders to away markets through NES, which, in turn, sometimes routes directly to away markets; in addition, sometimes when the Exchange routes equities orders through NES today, NES routes those orders through a third-party routing broker.

[3] *See, e.g.,* Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) at 39280.

In options, the Exchange currently routes options orders to NOS, which routes directly to away markets. The Exchange proposes to use NES, rather than NOS, as explained above, and to have NES route either directly to other options exchanges or to a third-party routing broker (which will, in turn, route to other options exchanges). The Exchange proposes to amend Chapter VI, Section 11 of BX Options rules accordingly.

Regardless of whether a third-party routing broker is used in either equities or options, all routing will go through NES, but the Exchange could determine to direct NES to route orders to certain exchanges using a routing broker rather than routing an order directly.

The Exchange previously stated that from time to time, it may use non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.,* third-party Routing Brokers).[4] In those cases, orders are submitted to the third-party Routing Broker through the affiliated routing broker, and the third-party Routing Broker routes the orders to the routing destination in its name.

Under this proposal, the relevant rules would now expressly provide that the Exchange could use one or more third-party unaffiliated routing broker-dealers (''routing brokers''). Specifically, the Exchange proposes to amend BX Options Rules, Chapter VI, Section 11, which applies to options, to refer to such routing brokers. The Exchange proposes to similarly amend Rule 4758(b) respecting equities. The Exchange proposes to further amend its rules with respect to certain policies and procedures. Specifically, BX Options Rules, Chapter VI, Section 11(e) and BX Rule 4758 currently provide that the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the Routing Facility, and any other entity, including any affiliate of the Routing Facility. The Exchange proposes to amend those rules to provide that, where there is a routing broker, the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker (and if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services).[5] This way, this provision extends to the routing broker, if one is used.

In both the proposed equities and options rules, the Exchange proposes to provide that the Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority. This is similar to the existing provisions that do not permit the Exchange to be the designated examining authority for its affiliated routing brokers.[6]

The Exchange also proposes to expressly state in Rule 4758(b)(1) and BX Options Rules, Chapter VI, Section 11(e) that the Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges. In addition, the routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order. This is consistent with, but more specific than, the current language that states that routing is performed under the direction of the Exchange.[7]

The Exchange may determine to use a different routing broker by product or by destination exchange, depending upon the costs and technological efficiencies involved. The proposal is intended to allow the Exchange to structure its routing arrangements accordingly. At a minimum, the Exchange anticipates using a routing broker to access certain markets where the Exchange finds that the costs of maintaining a membership (for NES) and/or the costs of connectivity and execution do not make sense in light of the number or types of orders the Exchange typically routes to that particular market. These costs necessarily determine the ultimate costs to the Exchange of routing to a market, and, in turn, affect how the Exchange chooses to recoup those costs through its own transaction fees.[8] Sometimes, it will not make economic sense for NES to access an exchange directly. Accordingly, the Exchange intends to use a routing broker where the Exchange determines that it is appropriate. In addition to costs, the Exchange will also consider ease of connectivity and execution as well as general reliability in selecting a routing broker.

For several weeks, the Exchange has been working with the Financial Regulatory Authority (''FINRA'') and The Options Clearing Corporation (''OCC'') to secure the necessary approvals for NES to perform these functions. The Exchange has now secured those approvals. The Exchange seeks to complete this process and implement this proposal in January or February.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, 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 providing an alternative routing arrangement. The proposal should remove impediments to and perfect the mechanism of a free and open market and a national market system by providing customer order protection and by facilitating trading at away exchanges so customer orders trade at the best market price. The proposal should also protect investors and the public interest by fostering compliance with the Options Order Protection and Locked/Crossed Market Plan. The Exchange also believes that the proposal to use NES rather than NOS for options routing is designed to promote just and equitable principles of trade and to protect investors and the public interest, by eliminating the costs and inefficiencies associated with operating a separate broker-dealer for options routing. In addition, the Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because there are specific protections pertaining to the routing broker in light of the potential conflict of interest where the

[4] *See* Securities Exchange Act Release Nos. 67280 (June 27, 2012), 77 FR 39552 (July 3, 2012) (SR–BX–2012–034) at note 6; and 68394 (December 10, 2012), 77 FR 74524 (December 14, 2012) (SR–BX–2012–073) at note 4.

[5] This is substantially similar to NYSEArca Rule 6.96(a)(8).

[6] *See* BX Options Chapter VI, Section 11(e) (which currently provides that NOS is a broker-dealer that is a member of an unaffiliated SRO which is the designated examining authority for the broker-dealer) and Rule 4758(b)(4) (which currently provides that the designated examining authority of NES shall be a self-regulatory organization unaffiliated with the Exchange or any of its affiliates). This is also substantially similar to NYSEArca Rule 6.96(a)(7).

[7] This is based on NYSEArca Rule 6.96(a)(1)(A).

[8] For these reasons, today, transaction fees for orders vary depending on the Market where an order is ultimately executed. *See e.g.,* BX Rule 7000 series and BX Options Rules, Chapter XV.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

member routing broker could have access to information regarding other members' orders or the routing of those orders. These protections include the Exchange's control over all routing logic as well as the confidentiality of routing information.[11]

(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 proposal is pro-competitive because it enables broker-dealers other than NOS and NES to provide routing services to the Exchange, which has the potential to reduce the Exchange's costs of routing orders and, potentially, the fees the Exchange charges for routed orders. The proposal does not raise issues of intra-market competition, because the Exchange's decision to route through a particular routing broker would impact all participants equally.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 Number SR–BX–2014–003 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–BX–2014–003. 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–BX–2014–003 and should be submitted on or before February 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02137 Filed 1–31–14; 8:45 am]

BILLING CODE 8011–01–P

[11] *See* proposed Rules 4758(b)(1) and (8) and BX Options Rules, Chapter VI, Section 11(e).

[12] 15 U.S.C. 78s(b)(3)(a)(ii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13829 and #13830]

Illinois Disaster Number IL–00043

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Illinois (FEMA—4157—DR), dated 11/26/2013.

Incident: Severe storms, straight-line winds, and tornadoes.

Incident Period: 11/17/2013.

Effective Date: 01/24/2014.

Physical Loan Application Deadline Date: 02/03/2014.

EIDL Loan Application Deadline Date: 08/26/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Illinois, dated 11/26/2013 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 02/03/2014.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator, for Disaster Assistance.

[FR Doc. 2014–02120 Filed 1–31–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans Interest Rate for Second Quarter FY 2014.

In accordance with the Code of Federal Regulations 13—Business Credit and Assistance § 123.512, the following

interest rate is effective for Military Reservist Economic Injury Disaster Loans approved on or after January 21, 2014.

Military Reservist Loan Program, 4.000%

Dated: January 27, 2014.

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–02122 Filed 1–31–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Quiet Aircraft Technology Incentive for Commercial Air Tour Operators in Grand Canyon National Park

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Release of FAA-held allocations for quiet aircraft technology in Grand Canyon National Park.

SUMMARY: The Moving Ahead for Progress in the 21st Century Act (MAP–21) directs the Administrator of the Federal Aviation Administration (FAA) and the Secretary of the Interior to provide incentives for commercial air tour operators in Grand Canyon National Park that convert to quiet aircraft technology. The FAA holds a limited number of flight allocations that are authorized under 14 CFR part 93, Subpart U, ''Special Flight Rules in the Vicinity of Grand Canyon National Park.'' The FAA, in consultation with the National Park Service (NPS), intends to provide these allocations to commercial air tour operators that currently hold allocations in proportion to the number of quiet aircraft technology operations that are flown by respective operators in the first six months of calendar year 2014. This is a one-time release of FAA-held allocations that will be available to operators for quiet aircraft technology flights during the 2014 air tour season and beyond. The FAA and NPS are continuing to make progress on additional quiet aircraft technology incentives for commercial air tour operators in Grand Canyon National Park.

FOR FURTHER INFORMATION CONTACT: Keith Lusk—Mailing address: Federal Aviation Administration, P.O. Box 92007, Los Angeles, California 90009–2007. Telephone: (310) 725–3808. Email address: *Keith.Lusk@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority

1. Sec. 35001(b)(2) in title V of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141 signed July 6, 2012, directs the Administrator of the Federal Aviation Administration (FAA) and the Secretary of the Interior to provide incentives for commercial air tour operators that convert to quiet aircraft technology (QT), such as increasing the flight allocations for such operators on a net basis consistent with section 804(c) of the National Parks Air Tour Management Act of 2000 (title VIII of Pub. L. 106–181), provided that the cumulative impact of such operations does not increase noise at Grand Canyon National Park (''the park''). Appendix A of 14 CFR Part 93, Subpart U, ''Special Flight Rules in the Vicinity of Grand Canyon National Park,'' contains procedures for determining the QT designation for aircraft in the park.

2. Under 14 CFR Part 93, Subpart U, an allocation is defined as authorization to conduct a commercial air tour in the Grand Canyon National Park Special Flight Rules Area (SFRA). Sec. 93.319 and 93.321 provide for the authorized annual number and the management of allocations, and Sec. 93.325 requires air tour operators to file quarterly reports with the FAA and specifies the content of those reports. Since the effective date of this regulation, a limited number of authorized annual allocations have reverted from commercial air tour operators to the FAA.

3. This **Federal Register** Notice announces the FAA's intent, in consultation with the NPS, to release the allocations it currently holds, amounting to 49 allocations in the Dragon and Zuni Point corridors of the park and 1672 allocations elsewhere in the park SFRA, to commercial air tour operators that currently hold allocations in proportion to the number of QT operations that are flown by the respective operators in these areas during the first six months of calendar year 2014. These allocations are within the total annual number that are authorized to be flown in the Dragon and Zuni Point corridors and elsewhere in the SFRA, respectively, under 14 CFR Part 93, Subpart U. They will be used for operations using QT, as defined in Appendix A of 14 CFR Part 93, Subpart U.

II. Description of Quiet Aircraft Technology Incentive

1. The FAA currently holds 49 out of a total of 44,960 annual allocations authorized to be flown by commercial air tour operators in the Dragon and Zuni Point corridors of the park and 1672 out of a total of 49,011 annual allocations authorized to be flown elsewhere in the SFRA. The FAA intends to provide these allocations to commercial air tour operators that currently hold allocations in proportion to the number of QT operations that are flown by the respective operators in these areas of the park during the first six months of 2014. Consistent with Sec. 93.321(b)(4)(ii), allocations provided in the Dragon and Zuni Point corridors may be transferred for use outside of these corridors, while allocations provided for use elsewhere in the SFRA may not be transferred into the Dragon and Zuni Point corridors.

2. Consistent with the FAA and NPS approach to QT incentives, the FAA has selected the first six months of calendar year 2014 as the basis for the release of FAA held allocations to recognize the progress made to date by operators that have already invested in QT and to encourage additional QT operations in 2014. The FAA will use the first and second quarter operator reports required under Sec. 93.325 to determine the numbers of QT operations by each operator in the Dragon and Zuni Point corridors and elsewhere in the SFRA, respectively. An operation will be considered QT if conducted in an aircraft that meets the noise limits identified in Appendix A of 14 CFR Part 93, Subpart U. Aircraft meeting those noise limits are listed in Appendices I and II of FAA Advisory Circular AC–93–2, ''Noise Levels for Aircraft Used for Commercial Operations in Grand Canyon National Park Special Flight Rules Area.'' The FAA's receipt of the second quarter reports, due by the end of July, will enable the FAA to complete its analysis and provide its allocations by September to round out the 2014 air tour season. In the FAA's experience, additional allocations have not been needed by operators earlier than September. This is a one-time release of FAA-held allocations that will be available to operators for quiet aircraft technology flights during the 2014 air tour season and beyond. The additional allocations and the condition that they be used for QT operations will be reflected in the operations specifications of individual operators.

III. Environmental Considerations

As provided in MAP–21, the cumulative impact of operations using FAA-held allocations does not increase noise at the park. The 49 FAA allocations in the Dragon and Zuni Point corridors are 0.1% of the total 44,960 allocations authorized in those corridors. The 1672 FAA allocations

comprise 3.4% of the total 49,011 allocations authorized elsewhere in the SFRA. In addition, there are 254,013 air tour operations authorized as of 2013 under contract with the Hualapai tribe that are exempt from allocations—bringing the total authorized number of air tour operations in the park to 347,984. The 1721 total FAA allocations are 0.5% of the total 347,984 authorized air tour operations. Analysis shows that such a small number of QT operations on existing routes will not cumulatively increase noise at the park and will not diminish the substantial restoration of natural quiet. The provision of FAA-held allocations to commercial air tour operators through amendments to their operations specifications is categorically excluded from more detailed environmental review.

Issued in Hawthorne, CA on: January 28, 2014.

Dale Bouffiou,

Deputy Regional Administrator, Western-Pacific Region, Federal Aviation Administration.

[FR Doc. 2014–02184 Filed 1–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2014–0011–N–1]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection request (ICR). Before submitting this ICR for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than April 4, 2014.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0552.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via email to Mr. Brogan at *Robert.Brogan@dot.gov*, or to Ms. Toone at *Kim.Toone@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Locomotive Cab Sanitation Standards

OMB Control Number: 2130–0552

Type of Request: Extension of a currently approved collection

Abstract: The collection of information is used by FRA to promote rail safety and the health of railroad workers by ensuring that all locomotive crew members have access to toilet/sanitary facilities—on as needed basis—which are functioning and hygienic. Also, the collection of information is used by FRA to ensure that railroads repair defective locomotive toilet/sanitary facilities within 10 calendar days of the date on which these units becomes defective.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: One-time.

Respondent Universe: 744 railroads.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response (seconds)	Total annual burden hours
229.137 (d)—Defective Locomotive Toilet Facility—Tagging.	744 railroads	11,700 tags/notices	90	293

CFR section	Respondent universe	Total annual responses	Average time per response (seconds)	Total annual burden hours
229.137 (e) Defective But Sanitary Locomotive Toilet Facility—Tagging.	744 railroads	7,956 tags/notices	90	199
229.137 (f) Switching or Transfer Service—Defective Locomotive Toilet Facility—Notation on Daily Inspection Report.	744 railroads	93,600 notations	30	780

Total Estimated Responses: 113,256.

Total Estimated Annual Burden: 1,272 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Dated: Issued in Washington, DC., on January 23, 2014.

Rebecca Pennington,

Chief Financial Officer.

[FR Doc. 2014–02176 Filed 1–31–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 19, 2014.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Wednesday, February 19, 2014, at 12 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: January 29, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–02167 Filed 1–31–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 19, 2014.

FOR FURTHER INFORMATION CONTACT: Linda Rivera at 1–888–912–1227 or (202) 317–3337.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, February 19, 2014 at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Linda Rivera. For more information please contact: Ms. Rivera at 1–888–912–1227 or (202) 317–3337, or write TAP Office, 1111 Constitution Avenue NW., Room 1509- National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: January 29, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–02171 Filed 1–31–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, February 20, 2014.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley or Patti Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, February 20, 2014, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley or Ms. Patti Robb. For

more information please contact Ms. Smiley or Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: January 29, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–02174 Filed 1–31–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans Health Administration; Funding Availability Under Supportive Services for Veteran Families Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a Notice of Funding Availability in the **Federal Register** on January 14, 2014, that contained an error. Specifically, the table on page 2539 mistakenly listed one of the priority 1 Continuums of Care (CoCs) as ''GA–500 Atlanta/Roswell/DeKalb/Fulton.'' GA–500 has split into three CoCs: GA–500—Atlanta, GA–502—Fulton County, and GA–508—DeKalb County.

This document corrects the error by replacing, on line 12 of the table, ''GA–500'' with ''GA–500'', ''GA–502'', and GA–508'' in the first column; replacing ''Atlanta/Roswell/DeKalb, Fulton Counties CoC'' with ''Atlanta CoC'', ''FultonCounty/Roswell CoC'', and ''DeKalb County CoC'' in the second column; and replacing ''6,000,000'' with ''3,000,000'', ''1,500,000'', and ''1,500,000''.

FOR FURTHER INFORMATION CONTACT: John Kuhn, Supportive Services for Veteran Families Program Office, National Center on Homelessness Among Veterans, 4100 Chester Avenue, Suite 201, Philadelphia, PA 19104; (877) 737–0111 (this is a toll-free number); *SSVF@va.gov.*

Dated: January 29, 2014.

William F. Russo,

Deputy Director, Office of Regulation and Policy, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2014–02147 Filed 1–31–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Intent to Grant an Exclusive License

AGENCY: Office of Research and Development, Department of Veterans Affairs.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA), Office of Research and Development (ORD), intends to grant to Xenex Healthcare Services, LLC, 121 Interpark Suite 104, San Antonio, TX 78216, USA, an exclusive license to practice the following: U.S. Provisional Patent Application Serial No. 61/678,558, ''Using Pulsed Xenon technology to clean reusable medical equipment and track cleaning using RFID technology,'' filed August 1, 2012, and any subsequent non-provisional patent application(s) that will claim the benefit of U.S. Provisional Patent Application Serial No. 61/678,558, ''Using Pulsed Xenon technology to clean reusable medical equipment and track cleaning using RFID technology.'' Copies of the published patent applications may be obtained from the U.S. Patent and Trademark Office at *www.uspto.gov.*

DATES: Comments must be received within fifteen (15) days from the date of this published Notice.

ADDRESSES: Written comments may be submitted through *www.regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Director of Technology Transfer Program, Office of Research and Development (10P9TT), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 443–5640. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: It is in the public interest to license this invention to Xenex Healthcare Services, LLC, to facilitate the development and commercialization of a device to clean medical equipment and track cleaned equipment. 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 404.7. The prospective exclusive license may be granted, unless VA ORD receives written evidence and argument within 15 days from the date of this published Notice, which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Approved: January 27, 2014.

Jose D. Riojas,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2014–02180 Filed 1–31–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Amendments To Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71237; File No. PCAOB–2013–03)

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Amendments To Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications

January 6, 2014.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on December 23, 2013, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rules described in items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On December 4, 2013, the Board adopted amendments to conform the Board's rules and forms to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') and make certain updates and clarifications (collectively, the ''proposed rules''). The text of the proposed rules is set out below.

Amendments to Board Rules, Interim Quality Control Standards, and Ethics Code

The Board is amending Sections 1, 2, 3, 4, 5, and 7 of its rules, Sections 1000.08(m) and 1000.43, Appendix I of the Interim Quality Control Standards, and its Ethics Code as set out below. Language deleted by these amendments is bracketed. Language that is added is set in Italic.

Rules of the Board

SECTION 1. GENERAL PROVISIONS

Rule 1001. Definitions of Terms Employed in Rules

When used in the Rules, unless the context otherwise requires:

* * * * *

(a)(v) Audit

The term ''audit'' means an examination of the financial statements*, reports, documents, procedures, controls, or notices* of any issuer*, broker, or dealer* by an independent public accounting firm in accordance with the rules of the Board or the Commission [(or, for the period preceding the adoption of applicable Rules of the Board under Section 103 of the Act, in accordance with then applicable generally accepted auditing standards for such purposes)], for the purpose of expressing an opinion on *the financial* [such] statements *or providing an audit report.*

[Note: Effective [insert effective date of Rule 4020T], pursuant to Rule 4020T, when used in Rule 3502, Section 5 of the Rules of the Board, or the definition of ''disciplinary proceeding'' in Rule 1001(d)(i), the term ''audit'' has the meaning provided in Section 110 of the Act.]

(a)(vi) Audit Report

The term ''audit report'' means a document*, report, notice,* or other record—

(1) prepared following an audit performed for purposes of compliance by an issuer*, broker, or dealer* with the requirements of the securities laws; and

(2) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report*, notice,* or other document*, procedures, or controls;* or

(ii) asserts *that* no such opinion can be expressed.

[Note: Effective [insert effective date of Rule 4020T], pursuant to Rule 4020T, when used in Rule 3502, Section 5 of the Rules of the Board, or the definition of ''disciplinary proceeding'' in Rule 1001(d)(i), the term ''audit report'' has the meaning provided in Section 110 of the Act.]

(a)(vii) Audit Services

(1) With respect to issuers, t[T]he term ''audit services'' means professional services rendered for the audit of an issuer's annual financial statements, and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years;[.]

(2) With respect to brokers and dealers, the term ''audit services'' means professional services rendered for the audit of a broker's or dealer's annual financial statements, supporting schedules, supplemental reports, and for the report on either a broker's or dealer's compliance report or exemption report, as described in Rule 17a–5(g) under the Exchange Act.

(f)(iii) Foreign Auditor Oversight Authority

The term ''foreign auditor oversight authority'' means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.

* * * * *

(n)(i) *Reserved*

* * * * *

(o)(i) Other Accounting Services

The term ''other accounting services'' means assurance and related services that are reasonably related to the performance of the audit or review of the [issuer's] *client's* financial statements, other than audit services.

* * * * *

(p)(i) Person Associated With a Public Accounting Firm (and Related Terms)

The terms ''person associated with a public accounting firm'' (or with a ''registered public accounting firm'' or ''applicant'') and ''associated person of a public accounting firm'' (or of a ''registered public accounting firm'' or ''applicant'') mean any individual proprietor, partner, shareholder, principal, accountant, or professional employee of a public accounting firm, or any independent contractor *or entity* that, in connection with the preparation or issuance of any audit report—

(1) shares in the profits of, or receives compensation in any other form from, that firm; or

(2) participates as agent *or otherwise* on behalf of such accounting firm in any activity of that firm;

provided, however, that these terms do not include a person engaged only in clerical or ministerial tasks*, or, for purposes of completing a registration application on Form 1, Part IX of an annual report on Form 2, or Part IV of a Form 4 filed to succeed to the registration status of a predecessor, these terms do not include* [or] a person whom the public accounting firm reasonably believes is a person primarily associated with another registered public accounting firm.

Note: Section 2(a)(9)(C) of the Act provides that, for purposes of, among other things, Section 105 of the Act, and the Board's rules thereunder, the terms defined in Rule 1001(p)(i) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except that:

(1) the authority to conduct an investigation of such person under Section 105(b) of the Act shall apply only with respect to any act or practice, or omission to act, by the person while such person was associated or seeking

to become associated with a registered public accounting firm; and

(2) the authority to commence a disciplinary proceeding under Section 105(c)(1) of the Act, or impose sanctions against such person under Section 105(c)(4) of the Act, shall apply only with respect to:

(i) conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

(ii) non-cooperation, as described in Section 105(b)(3) of the Act, with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.

(p)(ii) Play a Substantial Role in the Preparation or Furnishing of an Audit Report

The phrase ''play a substantial role in the preparation or furnishing of an audit report'' means—

(1) to perform material services that a public accounting firm uses or relies on in issuing all or part of its audit report [with respect to any issuer], or

(2) to perform the majority of the audit procedures with respect to a subsidiary or component of any issuer*, broker, or dealer,* the assets or revenues of which constitute 20% or more of the consolidated assets or revenues of such issuer*, broker, or dealer* necessary for the principal *auditor* [accountant] to issue an audit report [on the issuer].

Note 1: For purposes of paragraph (1) of this definition, the term ''material services'' means services, for which the engagement hours or fees constitute 20% or more of the total engagement hours or fees, respectively, provided by the principal *auditor* [accountant] in connection with the issuance of all or part of its audit report [with respect to any issuer]. The term does not include non-audit services provided to non-audit clients.

Note 2: For purposes of paragraph (2) of this definition, the phrase ''subsidiary or component'' is meant to include any subsidiary, division, branch, office or other component of an issuer*, broker, or dealer,* regardless of its form of organization and/or control relationship with the issuer*, broker, or dealer.*

Note 3: For purposes of determining ''20% or more of the consolidated assets or revenues'' under paragraph (2) of this Rule, this determination should be made at the beginning of the issuer's*, broker's, or dealer's* fiscal year using prior year information and should be made only once during the issuer's*, broker's, or dealer's* fiscal year.

* * * * *

(p)[(iii)]*(v)* Party

The term ''party'' means the interested division, any person named as a respondent in an order instituting proceedings or notice of a hearing, any applicant named in the caption of any order, or any person seeking Board review of a decision.

* * * * *

(p)(vi) Professional Standards

The term ''professional standards'' means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 19(b) of the Securities Act [of 1933, as amended by the Act], or prescribed by the Commission under section 19(a) of the Securities Act [of 1933] or section 13(b) of the [Securities] Exchange Act [of 1934]; and

(ii) relevant to audit reports for particular issuers*, brokers, or dealers,* or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing Title II of the Act) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers*, brokers, or dealers;* and

(ii) are established or adopted by the Board under section 103(a) of the Act, or are promulgated as rules of the Commission.

[Note: Effective [insert effective date of Rule 4020T], pursuant to Rule 4020T, when used in Rule 3502, Section 5 of the Rules of the Board, or the definition of ''disciplinary proceeding'' in Rule 1001(d)(i), the term ''professional standards'' has the meaning provided in Section 110 of the Act.]

* * * * *

(s)[(iii)]*(vi)* Secretary

The term ''Secretary'' means the Secretary of the Board.

(s)(iv) Suspension

The term ''suspension'' means a temporary disciplinary sanction, which lapses by its own terms, prohibiting—

(1) a registered public accounting firm from preparing or issuing, or participating in the preparation or issuance of, any audit report [with respect to any issuer]; or

(2) a person from being associated with a registered public accounting firm.

* * * * *

SECTION 2. REGISTRATION AND REPORTING

Part 1—Registration of Public Accounting Firms

Rule 2100. Registration Requirements for Public Accounting Firms

[Effective October 22, 2003 (or, for foreign public accounting firms, July 19, 2004),] *E*[e]ach public accounting firm that—

(a) prepares or issues any audit report with respect to any issuer*, broker, or dealer;* or

(b) plays a substantial role in the preparation or furnishing of an audit report with respect to any issuer*, broker, or dealer* must be registered with the Board.

Note 1: As set forth in Section 106(a)(1) of the Act, registration with the Board pursuant to this Rule will not by itself provide a basis for subjecting a foreign public accounting firm to the jurisdiction of the U.S. federal or State courts, other than with respect to controversies between such firms and the Board.

Note 2: The issuance of a consent to include an audit report for a prior period by a public accounting firm, which does not currently have and does not expect to have an engagement with an issuer*, broker, or dealer* to prepare or issue, or to play a substantial role in the preparation or furnishing of an audit report with respect to any issuer, *broker, or dealer* will not by itself require a public accounting firm to register under Rule 2100.

Rule 2106. Action on Applications for Registration.

(a) Standard for Approval.

After reviewing the application for registration, any additional information provided by the applicant, and any other information obtained by the Board, the Board will determine whether approval of the application for registration is consistent with the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports [for companies the securities of which are sold to, and held by and for, public investors].

* * * * *

Rule 2107. Withdrawal from Registration

* * * * *

(d) Board Action

Within 60 days of Board receipt of a completed Form 1–WD, the Board may order that withdrawal of registration be delayed for a period of up to eighteen months from the date of such receipt if the Board determines that such withdrawal would be inconsistent with the Board's responsibilities under the Act, including its responsibilities to conduct—

(1) inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers*, brokers, or dealers;* or

* * * * *

SECTION 3. AUDITING AND RELATED PROFESSIONAL PRACTICE STANDARDS

Part 1—General Requirements

Rule 3101. Certain Terms Used in Auditing and Related Professional Practice Standards

* * * * *

[(c) The documentation requirement in paragraph (a)(2) is effective for audits of financial statements or other engagements with respect to fiscal years ending on or after November 15, 2004.]

Rule 3200T. Interim Auditing Standards

In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with generally accepted auditing standards, as described in the AICPA Auditing Standards Board's Statement of Auditing Standards No. 95, as in existence on April 16, 2003 (Codification of Statements on Auditing Standards, AU § 150 (AICPA 2002)), to the extent not superseded or amended by the Board.

[Note: Under Section 102(a) of the Act, public accounting firms are not required to be registered with the Board until 180 days after the date of the determination of the Commission under section 101(d) that the Board has the capacity to carry out the requirements of Title I of the Act (the ''mandatory registration date''). The Board intends that, during the period preceding the mandatory registration date, the Interim Auditing Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.]

[Rule 3201T. Temporary Transitional Provision for PCAOB Auditing Standard No. 2, ''An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements.'']

[(a) Notwithstanding Auditing Standard No. 2, in connection with the audit of an issuer that does not file Management's annual report on internal control over financial reporting in reliance on SEC Release No. 34–50754, Order Under Section 36 of the Securities Exchange Act of 1934 Granting an Exemption from Specified Provisions of Exchange Act Rules 13a–1 and 15d–1 (November 30, 2004), a registered public accounting firm and its associated persons need not:]

[(1) Date the auditor's report on management's assessment of the effectiveness of internal control over financial reporting with the same date as the auditor's report on the issuer's financial statements, provided that the date of the auditor's report on management's assessment of the effectiveness of internal control over financial reporting is later than the date of the auditor's report on the issuer's financial statements; or]

[(2) Add a paragraph to the auditor's separate report on the financial statements of an issuer that refers to a separate report on management's assessment of the effectiveness of internal control over financial reporting.]

[(b) This temporary rule will expire on July 15, 2005.]

Rule 3300T. Interim Attestation Standards

In connection with an engagement (i) described in the AICPA's Auditing Standards Board's Statement on Standards for Attestation Engagements No. 10 (Codification of Statements on Auditing Standards, AT § 101.01 (AICPA 2002)) and (ii) related to the preparation or issuance of audit reports [for issuers], a registered public accounting firm, and its associated persons, shall comply with the AICPA Auditing Standards Board's Statements on Standards for Attestation Engagements, and related interpretations and Statements of Position, as in existence on April 16, 2003, to the extent not superseded or amended by the Board.

[Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Attestation Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.]

Rule 3400T. Interim Quality Control Standards

A registered public accounting firm, and its associated persons, shall comply with quality control standards, as described in—

(a) the AICPA's Auditing Standards Board's Statements on Quality Control Standards, as in existence on April 16, 2003 (AICPA Professional Standards, QC §§ 20–40 (AICPA 2002)), to the extent not superseded or amended by the Board; and

(b) the AICPA SEC Practice Section's Requirements of Membership (d), [(f)(first sentence),] (l), (m), (n)(1) and (o), as in existence on April 16, 2003 (AICPA SEC Practice Section Manual § 1000.08(d), [(f),] (j), (m), (n)(1) and (o)), to the extent not superseded or amended by the Board.

Note: The AICPA SEC Practice Section's Requirements of Membership only apply to those registered public accounting firms that were members of the AICPA SEC Practice Section on April 16, 2003.

[Note: The second sentence of requirement (f) of the AICPA SEC Practice Section's Requirements of Membership provided for the AICPA's peer review committee to ''authorize alternative procedures'' when the requirement for a concurring review could not be met because of the size of the firm. This provision is not adopted as part of the Board's Interim Quality Control Standards. After the effective date of the Interim Quality Control Standards, requests for authorization of alternative procedures to a concurring review may, however, be directed to the Board.]

[Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Quality Control Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.]

Part 5—Ethics *and Independence*

Rule 3500T. Interim Ethics and Independence Standards

(*a*) In connection with the preparation or issuance of any audit report, a

registered public accounting firm, and its associated persons, shall comply with ethics standards, as described in the AICPA's Code of Professional Conduct Rule 102, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 102 and 191 (AICPA 2002)), to the extent not superseded or amended by the Board.

[Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Ethics Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.]

(b) In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with independence standards—

(1) as described in the AICPA's Code of Professional Conduct Rule 101, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 101 and 191 (AICPA 2002)), to the extent not superseded or amended by the Board; and

(2) Standards Nos. 2 and 3, and Interpretation 99–1 of the Independence Standards Board, to the extent not superseded or amended by the Board.

Note: The Board's Interim Independence Standards do not supersede the Commission's auditor independence rules. See Rule 2–01 of Reg. S–X, 17 CFR 210.2–01. Therefore, to the extent that a provision of the Commission's rule is more restrictive—or less restrictive—than the Board's Interim Independence Standards, a registered public accounting firm must comply with the more restrictive rule.

Rule 3501. Definitions of Terms Employed in Section 3, Part 5 of the Rules

When used in Section 3, Part 5 of the Rules, unless the context otherwise requires:

* * * * *

(a)(v) Audit Committee

The term ''audit committee'' means a committee (or equivalent body) established by and among the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of the entity and audits of the financial statements of the entity; if no such committee exists with respect to the entity, the entire board of directors of the entity. For audits of non-issuers, if no such committee or board of directors (or equivalent body) exists with respect to the entity, ''audit committee'' means the person(s) who oversee(s) the accounting and financial reporting processes of the entity and audits of the financial statements of the entity.

* * * * *

(i)(ii) Investment Company Complex

(1) The term ''investment company complex'' includes—

* * * * *

(iii) Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act [of 1940] (15 U.S.C. § 80a–(c)) that has an investment adviser or sponsor included in this definition by either paragraph (i) or (ii) of this definition.

* * * * *

Subpart 1—Independence

Rule 3520. Auditor Independence

A registered public accounting firm and its associated persons must be independent of the firm's audit client throughout the audit and professional engagement period.

Note 1: Under Rule 3520, a registered public accounting firm or associated person's independence obligation with respect to an audit client [that is an issuer] encompasses not only an obligation to satisfy the independence criteria *applicable to the engagement* set out in the rules and standards of the PCAOB, but also an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in the rules and regulations of the Commission under the federal securities laws.

Note 2: Rule 3520 applies only to those associated persons of a registered public accounting firm required to be independent of the firm's audit client by standards, rules or regulations of the *Board or* Commission or other applicable independence criteria.

Rule 3523. Tax Services for Persons in Financial Reporting Oversight Roles

A registered public accounting firm is not independent of *an issuer* [its] audit client if the firm, or any affiliate of the firm, during the professional engagement period provides any tax service to a person in a financial reporting oversight role at the *issuer* audit client, or an immediate family member of such person, unless—

(a) the person is in a financial reporting oversight role at the *issuer* audit client only because he or she serves as a member of the board of directors or similar management or governing body of the audit client;

(b) the person is in a financial reporting oversight role at the *issuer* audit client only because of the person's relationship to an affiliate of the entity being audited—

(1) whose financial statements are not material to the consolidated financial statements of the entity being audited; or

(2) whose financial statements are audited by an auditor other than the firm or an associated person of the firm; or

(c) the person was not in a financial reporting oversight role at the issuer audit client before a hiring, promotion, or other change in employment event and the tax services are—

(1) provided pursuant to an engagement in process before the hiring, promotion, or other change in employment event; and

(2) completed on or before 180 days after the hiring or promotion event.

Note: In an engagement for an *issuer* audit client whose financial statements for the first time will be required to be audited pursuant to the standards of the PCAOB, the provision of tax services to a person covered by Rule 3523 before the earlier of the date that the firm: (1) signed an initial engagement letter or other agreement to perform an audit pursuant to the standards of the PCAOB, or (2) began procedures to do so, does not impair a registered public accounting firm's independence under Rule 3523.

Rule 3524. Audit Committee Pre-approval of Certain Tax Services

In connection with seeking audit committee pre-approval to perform for an *issuer* audit client any permissible tax service, a registered public accounting firm shall—

* * * * *

Rule 3525. Audit Committee Pre-approval of Non-audit Services Related to Internal Control Over Financial Reporting

In connection with seeking audit committee pre-approval to perform for an *issuer* audit client any permissible non-audit service related to internal control over financial reporting, a registered public accounting firm shall—

* * * * *

[Rule 3600T. Interim Independence Standards.]

[In connection with the preparation or issuance of any audit report, a registered

public accounting firm, and its associated persons, shall comply with independence standards]—

[(a) as described in the AICPA's Code of Professional Conduct Rule 101, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 101 and 191 (AICPA 2002)), to the extent not superseded or amended by the Board; and]

[(b) Standards Nos. 1, 2, and 3, and Interpretations 99–1, 00–1, and 00–2, of the Independence Standards Board, to the extent not superseded or amended by the Board.]

[Note: The Board's Interim Independence Standards do not supersede the Commission's auditor independence rules. See, e.g., Rule 2–01 of Reg. S–X, 17 CFR 240.2–01. Therefore, to the extent that a provision of the Commission's rule is more restrictive—or less restrictive—than the Board's Interim Independence Standards, a registered public accounting firm must comply with the more restrictive rule.]

[Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Independence Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.]

Part 7—Establishment of Professional Standards

Rule 3700. Advisory Groups

* * * * *

(c) Selection of Members of Advisory Groups.

Members of advisory groups will be selected by the Board, in its sole discretion, based upon nominations, including self-nominations, received from any person or organization.

Note: The Board will announce, from time to time, periods during which it will receive nominations to an advisory group. During those periods, nominations may be submitted by any person or organization, including, but not limited to, any investor, any accounting firm, any issuer, *broker, dealer,* and any institution of higher learning.

* * * * *

SECTION 4. INSPECTIONS

Rule 4009. Firm Response to Quality Control Defects

* * * * *

(d) The portions of the Board's inspection report that deal with criticisms of or potential defects in quality control systems that the firm has not addressed to the satisfaction of the Board shall be made public by the Board—

(1) upon the expiration of the 12-month period described in paragraph (a) of this rule if the firm fails to make any submission pursuant to paragraph (a); or

(2) upon the expiration of the period in which the firm may seek Commission review of any board determination made under paragraph (c) of this rule, if the firm does not seek Commission review of the Board determination; or

(3) *in the event the firm requests Commission review of the determination, upon completion of the Commission's processes related to that request unless otherwise directed by the Commission* [unless otherwise directed by Commission order or rule, 30 days after the firm formally requests Commission review pursuant to Section 104(h)(1)(B) of the Act].

Rule 4020T. Interim Inspection Program Related to Audits of Brokers and Dealers

* * * * *

(b) Definitions

When used in this rule, the term ''interim program,'' means the interim program of inspection described in paragraph (c). [When used in this rule, Rule 3502, Section 5 of the Rules of the Board, or the definition of ''disciplinary proceeding'' in Rule 1001(d)(i), the terms ''audit,'' ''audit report,'' and ''professional standards'' have the meaning provided in Section 110 of the Act.]

* * * * *

SECTION 5. INVESTIGATIONS AND ADJUDICATIONS

Part 1—Inquiries and Investigations

Rule 5102. Testimony of Registered Public Accounting Firms and Associated Persons in Investigations

* * * * *

(c) Conduct of Examination

* * * * *

(4) Examinations of Registered Public Accounting Firms

A registered public accounting firm subject to an accounting board demand shall designate one or more individuals who consent to testify on its behalf, and *shall* [may] set forth, for each individual designated, the matters on which the individual will testify. The individuals so designated shall testify as to matters known or reasonably available to the registered public accounting firm.

* * * * *

Rule 5105. Requests for Testimony or Production of Documents from Persons Not Associated With Registered Public Accounting Firms

(a) Testimony

The Board, and the staff of the Board designated in an order of formal investigation, may issue an accounting board request for the testimony of any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation.

(1) Requests for Testimony

An accounting board request for testimony pursuant to subparagraph (a) of this Rule shall—

* * * * *

(iii) if the person to be examined is an issuer*, broker, dealer, partnership,* [an] association, [a] governmental agency, or other organized entity, provide a description with reasonable particularity of the matters on which examination is requested.

(2) Conduct of Examination and Transcript

An examination requested pursuant to this Rule shall be conducted consistent with Rules 5102(c) and a transcript shall be prepared consistent with Rule 5102(d). If the person to be examined is an issuer, *broker, dealer,* [or a] partnership*,* [or] association*,* or governmental agency, the person to be examined shall designate one or more individuals who consent to testify on its behalf and [may] *shall* set forth, for each individual designated, the matters on which the individual will testify. The individuals so designated shall testify as to matters known or reasonably available to the organization.

(b) Documents

The Board, and the staff of the Board designated in an order of formal investigation, may issue an accounting board request to any person, including any issuer, *broker, or dealer* for the production of any document that is relevant or material to an investigation, with appropriate notice, subject to the needs of the investigation. A request issued pursuant to this Rule shall set forth a reasonable time and place for production, subject to the needs of the investigation.

* * * * *

Rule 5108. Confidentiality of Investigatory Records

(a) Informal inquiries and formal investigations, and any documents, testimony or other information prepared or received by or specifically for the Board or the staff of the Board in connection with such inquiries and investigations, shall be confidential in the hands of the Board, unless and until presented in connection with a public proceeding or released in accordance with Section 105(c) of the Act, and the Board's Rules thereunder; *provided, however,* that the Board may make such information available—

(1) to the Commission; and

(2) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of the Act or to protect investors, to the following—

(a) the Attorney General of the United States;

(b) the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act), other than the Commission, *and the Director of the Federal Housing Finance Agency,* with respect to an audit report for an institution subject to the jurisdiction of such regulator;

(c) State attorneys general in connection with any criminal investigation; [and]

(d) any appropriate State regulatory authority;

(e) a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization; and

(f) any foreign auditor oversight authority, concerning a public accounting firm with respect to which it has been empowered by a foreign government to inspect or otherwise enforce laws, if:

(i) *the foreign auditor oversight authority provides:*

(A) such assurances of confidentiality as the Board may request;

(B) a description of the applicable information systems and controls of the foreign auditor oversight authority; and

(C) a description of the laws and regulations of the foreign government of the foreign auditor oversight authority that are relevant to information access; and

(ii) the Board determines that it is appropriate to share such information.

* * * * *

Rule 5110. Noncooperation with an Investigation

* * * * *

(b) Special and Expedited Procedures

Disciplinary proceedings instituted *solely* pursuant to Rule 5200(a)(3) for noncooperation with an investigation shall be subject to special and expedited procedures as described in Rules 5201(b)(3), 5300(b), 5302(d), 5421(b), 5422(a)(2), 5422(d), 5445(b), and 5460(a)(2)(ii).

Rule 5112. Coordination and Referral of Investigations

* * * * *

(b) Board Referrals of Investigations

The Board may refer any investigation*:*

(1) to the Commission*;* [and,]

(2) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization; and

(3) in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of any other Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act) *or the Director of the Federal Housing Finance Agency,* to such regulator.

* * * * *

Part 2—Disciplinary Proceedings

Rule 5200. Commencement of Disciplinary Proceedings

(a) Grounds for Commencement of Disciplinary Proceedings

The Board may commence a disciplinary proceeding when—

* * * * *

(2) it appears to the Board, as the result of an investigation or otherwise, that a hearing is warranted to determine whether a registered public accounting firm, *or any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person of such firm,* [the supervisory personnel of such a firm,] has failed reasonably to supervise an associated person, either as required by the Rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under the Act, or professional standards, and *that* such associated person *has* commit*ted*[s] a violation of the Act, or *of* any [of] such rules, laws, or standards;

* * * * *

Rule 5201. Notification of Commencement of Disciplinary Proceedings

* * * * *

(b) Content of Order Instituting Proceedings

An order instituting proceedings issued pursuant to subparagraph (a) shall include a short and plain statement of the matters of fact and law to be considered and determined with respect to each person charged, including—

* * * * *

(3) in the case of a proceeding instituted *solely* pursuant to Rule 5200(a)(3)*,* [(i)] the conduct alleged to constitute the failure to cooperate with an investigation[; and (ii) a hearing date].

* * * * *

Rule 5204. Determinations in Disciplinary Proceedings

(a) Burden of Proof

In any disciplinary proceeding instituted pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5200(a)(3), the interested division shall bear the burden of proving an alleged violation or failure to supervise by a preponderance of the evidence. *A respondent raising an affirmative defense shall bear the burden of proving that affirmative defense by a preponderance of the evidence.*

(b) Initial Decision of a Hearing Officer

* * * * *

Note: Unless the Board has directed otherwise, the Board expects hearing officers in proceedings instituted pursuant to Rule 5200(a)(1) or Rule 5200(a)(2) to prepare initial decisions within 60 days after the deadline for filing post-hearing briefs or other submissions; the Board expects hearing officers in proceedings instituted *solely* pursuant to Rule 5200(a)(3) to prepare initial decisions within 30 days after *the* deadline for filing post-hearing briefs; and the Board expects hearing officers in proceedings pursuant to Rule 5500 to prepare initial decisions within 45 days after the deadline for filing post-hearing briefs or other submissions.

* * * * *

Rule 5205. Settlement of Disciplinary Proceedings Without a Determination After Hearing

* * * * *

(c) Consideration of Offers of Settlement

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Note: In a hearing on disapproval of registration, an offer of settlement will be considered and handled by the Director of Registration and Inspections in accordance with Rule 520*5*[6] as if the Director of Registration and Inspections were the Director of Enforcement and Investigations.

Part 3—Disciplinary Sanctions

Rule 5300. Sanctions

(a) Sanctions in Proceedings Instituted Pursuant to Rule 5200(a)(1) or Rule 5200(a)(2)

If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to the applicable limitations under Section 105(c)(5) of the Act, including—

* * * * *

(4) a civil money penalty for each such violation, in an amount *not to exceed the maximum amount authorized by Sections 105(c)(4)(D)(i) and 105(c)(4)(D)(ii) of the Act, including penalty inflation adjustments published in the Code of Federal Regulations at 17 CFR part 201, subpart E;* [equal to—]

[(i) not more than $100,000 for a natural person or $2,000,000 for any other person; and]

[(ii) in any case to which Section 105(c)(5) of the Act applies, not more than $750,000 for a natural person or $15,000,000 for any other person;]

* * * * *

(b) Sanctions in Proceedings Instituted Pursuant to Rule 5200(a)(3)

* * * * *

Note *1:* Rule 5300 does not preclude the imposition of any sanction, on consent, in the context of a settlement, notwithstanding that the sanction is not listed in the Rule.

Note 2: The maximum penalty amounts authorized by the Act are periodically adjusted for inflation by the Commission, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and vary depending upon the date the violation occurs. The maximum penalty amounts are published at 17 CFR § 201 Subpart E.

Part 4—Rules of Board Procedure

General

Rule 5407. Filing of Papers: Signature Requirement and Effect

Following the issuance of an order instituting proceedings, [every filing of] a party who represents himself or herself shall sign his or her individual name and state the date and his or her address and telephone number on every filing. *Every filing of a*[A] party represented by counsel shall be signed by at least one counsel of record in his or her name and shall state that counsel's business address and telephone number.

* * * * *

Prehearing Rules

Rule 5420. Stay Requests

(a) Leave To Participate To Request a Stay

The Board or the hearing officer may grant leave to participate on a limited basis only to an authorized representative of the Commission, an authorized representative of the United States Department of Justice, an authorized representative of a United States Attorney, an appropriate state regulatory authority, *an appropriate self-regulatory organization,* or an authorized representative of any criminal prosecutorial authority of any State or any other political subdivision of a State for the purpose of requesting a stay during the pendency of a Commission investigation or proceeding, a criminal investigation or prosecution, *a self-regulatory organization,* or a state regulatory proceeding, arising out of the same or similar facts that are at issue in the pending Board or disciplinary proceeding. Motions for leave to participate shall be in writing, shall set forth the nature and extent of the movant's interest in the proceeding, and, except where good cause for late filing is shown, shall be filed not later than 20 days prior to the date fixed for the commencement of the hearing. A stay granted pursuant to this Rule may be granted for such a period and upon such conditions as the Board or the hearing officer deems appropriate.

(b) Stay to Protect Ongoing Commission Investigation

Upon a showing that a stay requested pursuant to this Rule is necessary to protect an ongoing Commission investigation, the motion for the stay shall be granted.

(c) Other Stays

Upon a showing that such a stay is in the public interest or for the protection of investors, the motion for the stay shall be favored.

Rule 5421. Answer to Allegations

* * * * *

(b) When to File

Unless additional time is granted by the hearing officer or the Board, a party filing an answer as provided in paragraph (a) of this Rule shall do so within 20 days after service upon the party of an order instituting proceedings pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5500, and within 5 days after service upon the party of an order instituting proceedings *solely* pursuant to Rule 5200(a)(3). If the order instituting proceedings is amended, the Board or the hearing officer may require that an amended answer be filed and, if such an answer is required, shall specify a date for the filing thereof.

* * * * *

Rule 5422. Availability of Documents for Inspection and Copying

(a) Documents to be Available for Inspection and Copying

* * * * *

(2) Proceedings Commenced *Solely* Pursuant to Rule 5200(a)(3)

* * * * *

(b) Documents That May Be Withheld

(1) The interested division may decline to make available for inspection and copying—

(i) any document prepared by, a member of the Board or of the Board's staff*, or persons retained by the Board or Board staff to provide services in connection with the investigation, disciplinary proceeding, or hearing on disapproval of registration, provided that the document* [that] has not been disclosed to any person other than Board members, Board staff, or persons retained by the Board or Board staff *as described above* [to provide services in connection with the investigation, disciplinary proceeding, or hearing on disapproval of registration];

(ii) any document accessed from generally available public sources, such as legal research or other subscription databases, databases of securities filings, databases of periodicals, and public Web sites, except to the extent that the interested division intends to introduce such documents as evidence;

(iii*i*) any other document that is privileged, including any other document protected by the attorney work product doctrine;

(iv[ii]) any document that would disclose the identity of a confidential source; and

([i]v) any other document that the staff identifies for the hearing officer's consideration as to whether the document may be withheld as not relevant to the subject matter of the proceeding or otherwise for good cause shown.

* * * * *

(c) Procedures Concerning Withheld Documents

(1) The interested division shall, at the time it makes documents available to a respondent under this rule, provide the respondent with a log of documents withheld pursuant to paragraph (b)(1)(ii*i*) of this Rule. The log shall provide the same information that a person would be required to supply to the Board under Rule 5106 in connection with a privilege assertion. On a motion by any respondent, a hearing officer may, in his or her discretion, require the interested division to submit any document listed on the log for inspection by the hearing officer in camera. A hearing officer may order that any such document be made available to a respondent for inspection and copying only if the hearing officer determines that the document is not a document described in paragraph (b)(1)(ii*i*).

(2) The interested division shall, at the time it makes documents available to a respondent under this rule, provide the hearing officer and each respondent with a list of documents withheld pursuant to paragraph (b)(1)(iv[ii]) or (b)(1)([i]v) of this Rule and a brief description of the reason for withholding each document. The list provided to the respondent may be redacted as necessary to protect interests related to the interested division's reason for withholding the document. The hearing officer may require the interested division to submit any such document for inspection by the hearing officer in camera. The hearing officer may order that any such document be made available to the respondent for inspection and copying only if the hearing officer determines that—

(i) with respect to any document withheld pursuant to paragraph (b)(1)(i*v*[ii])—

(A) producing the document would not have the effect of identifying a confidential source; or

(B) the document contains material, exculpatory evidence, provided, however, that to the extent such evidence can be disclosed without disclosing the identity of a confidential source, such identity shall not be disclosed.

(ii) with respect to any document withheld pursuant to paragraph (b)(1)([i]v)—

(A) the document is relevant to the subject matter of the proceeding and no good cause exists for withholding it; or

(B) the document contains material, exculpatory evidence.

(d) Timing of Inspection and Copying

Unless otherwise ordered by the Board or the hearing officer, the interested division shall make documents available for inspection and copying to any respondent who is not in default under Rule 5409 no later than 14 days after the institution of proceedings pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5500, and no later than 7 days after proceedings have been instituted *solely* pursuant to Rule 5200(a)(3).

* * * * *

Rule 5426. Prior Sworn Statements of Nonparty Witnesses in Lieu of Live Testimony

At a hearing, any person wishing to introduce a prior, sworn statement of a nonparty witness otherwise admissible in the proceeding, in lieu of live testimony may make a motion setting forth the reasons therefor. If only part of a statement is offered in evidence, the hearing officer may require that all relevant portions of the statement be introduced. If all of a statement is offered in evidence, the hearing officer may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement *of a nonparty witness* in lieu of live testimony may be granted if—

* * * * *

Rule 5427. Motion for Summary Disposition

(a) For Interested Division

After a party has filed an answer and documents have been made available to that respondent for inspection and copying pursuant to Rule 5422, or after service of a motion for summary disposition by the respondent, the interested division may make a motion for summary disposition *of any or all allegations of the order instituting proceedings* [the proceedings] with respect to that respondent.

(b) For Respondent

A respondent party may at any time make a motion for summary disposition of *any or all allegations of the order instituting proceedings* [the proceeding] with respect to that respondent.

(c) Pre-motion Conference Required

A party seeking summary disposition shall request and attend a pre-motion conference with the hearing officer before filing its motion for summary disposition.

(1) Due-date for Filing

At the pre-motion conference, the hearing officer will schedule a due-date for the submission of the motion for summary disposition and may, but is not required to, schedule a due-date for the submission of a response to the motion for summary *disposition* [judgment].

(2) Review and Decide Procedure

If the hearing officer has not scheduled a due-date for a response to the motion for summary *disposition* [judgment], upon review of the motion the hearing officer may decide to deny the motion or to require a response to the motion. A hearing officer shall not grant a motion for summary disposition until after the due-date for filing a response to the motion has passed.

* * * * *

Rule 5442. Evidence: Objections and Offers of Proof

(a) Objections

Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling. Such exceptions will be deemed waived on appeal to the Board, however, unless raised—

(1) pursuant to interlocutory review in accordance with Rule 5461;

(2) in a proposed finding or conclusion filed *in a post-hearing brief or other submission filed* pursuant to Rule 5445; or

(3) in a petition for Board review of an initial decision filed in accordance with Rule 5460.

* * * * *

Rule 5445. Post-hearing Briefs and Other Submissions

* * * * *

(b) In any proceeding instituted *solely* pursuant to Rule 5200(a)(3), the hearing officer may, in his or her discretion, render an initial decision without allowing for post-hearing briefs or other

submissions, or may allow for such briefs or other submissions according to an expedited schedule.

Appeals to the Board

Rule 5460. Board Review of Determinations of Hearing Officers

(a) Petition for Review of Initial Decision by Hearing Officers

Any party to a hearing may obtain Board review of an initial decision by filing a petition for review that—

(1) sets forth specific findings and conclusions of the initial decision as to which exception is taken, together with the supporting reasons for each exception; and

(2) is filed—

(i) in a proceeding instituted pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5500, within 30 days after service of the initial decision on the petitioner or within 10 days after the filing of a petition for review by another party, whichever is later; or

(ii) in a proceeding instituted *solely* pursuant to Rule 5200(a)(3), within 10 days after service of the initial decision on the petitioner.

* * * * *

(e) Summary Affirmance

The Board may summarily affirm an initial decision based upon the petition for review [and any response thereto], without further briefing, if it finds that no issue raised in the petition for review warrants further consideration by the Board.

Note: *For purposes of Rule 5460(a), with respect to any party that has entered an appearance and provided an electronic mail address as required by Rule 5401, service of the initial decision is deemed to occur on the date the Secretary transmits the initial decision to that electronic mail address.*

Rule 5462. Briefs Filed with the Board

(a) Briefing Schedule Order

Upon a timely and valid petition for review, or upon its own timely motion to review an initial decision, other than review ordered pursuant to Rule 5469, the Board shall issue a briefing schedule order directing the parties to file opening briefs and specifying particular issues, if any, as to which briefing should be limited or directed. Unless otherwise provided, opening briefs shall be filed within 40 days of the date of the briefing schedule order. Opposition briefs shall be filed within 30 days after the date opening briefs are due. Reply briefs may be filed within 14 days after the date opposition briefs are due. No briefs in addition to those specified in the briefing schedule order may be filed except with leave of the Board. The briefing schedule order shall be issued—

(1) at the time the Board orders review on its own initiative pursuant to Rule 5460(b), or orders interlocutory review on its own motion pursuant to Rule 546*1(a)*[0]; or

(2) within 21 days, or such longer time as provided by the Board, after—

(i) the last day permitted for filing a petition for review pursuant to Rule 5*460(a)*[204(d)];

(ii) certification of a ruling for interlocutory review pursuant to Rule 5461(b).

* * * * *

SECTION 7. FUNDING

Rule 7103. Assessment of Accounting Support Fees.

* * * * *

(c) Petition for Correction

Any issuer, broker, or dealer who disagrees with the class in which it has been placed, or with the calculation by which its share of the accounting support fee was determined, may petition the Board for a correction of the share of the accounting support fee it was allocated. Any such petition shall include an explanation of the nature of the claimed mistake in classification or calculation in writing and must be filed with the Board, on or before the 60th day after the invoice is sent, or within such longer period as the Board allows for good cause shown. After a review of such a petition, the Board will determine whether the allocation is consistent with Section 109 of the Act and the Board's rules thereunder and provide the issuer*, broker, or dealer* a written explanation of its decision. The provisions of Rule 7104 shall be suspended while such a petition is pending before the Board.

* * * * *

Rule 7104. Collection of Accounting Support Fees.

* * * * *

(b) Determination of Payment of Accounting Support Fees by Registered Accounting Firm

* * * * *

[Note 3: For purposes of Rule 7104, the term ''audit'' means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report. For purposes of Rule 7104, the term ''audit report'' means a document, report, notice, or other record (1) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and (2) in which a public accounting firm either (i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or (ii) asserts no such opinion can be expressed.]

* * * * *

Quality Control—Interim Standards

SEC Practice Section (SECPS)—Requirements of Membership

SECPS § 1000.08(m)—Notification of the Commission of Resignations and Dismissals from Audit Engagements for Commission Registrants

(1) When the member firm has been the auditor for an SEC registrant (as defined in Appendix D, SECPS § 1000.38) that is required to file current reports on Form 8–K and has resigned, declined to stand for re-election or been dismissed, report the fact that the client-auditor relationship has ceased directly in writing to the former SEC client, with a simultaneous copy to the Office of the Chief Accountant of the Securities and Exchange Commission, unless the former client reports the change in auditors in a timely filed Form 8–K.[fn4] *Such report shall be sent to the former SEC client and to the Office of the Chief Accountant by the end of the fifth business day following the member firm's determination that the client-auditor relationship has ended, if the issuer has not reported the change in auditors to the SEC in a timely filed Form 8–K.*

(2) When the member firm has been the auditor for an SEC registrant (as defined in Appendix D, SECPS § 1000.38) *that is not required to file current reports on Form 8–K* and has resigned, declined to stand for re-election or been dismissed, report the fact that the client-auditor relationship has ceased directly in writing to the former SEC client, with a simultaneous copy to the Office of the Chief Accountant of the Securities and Exchange Commission.[fn5] Such report shall be sent to the former SEC client and to the Office of the Chief Accountant by the end of the fifth business day following the member firm's determination that the client-auditor relationship has ended, irrespective of whether or not the registrant has reported the change in

auditors in a timely filed [Form 8–K] *report.*

Fn4 See Appendix I, SECPS § 1000.43, for standard form of such report.

Fn5 See Appendix I, SECPS § 1000.43, for standard form of such report.

.43 APPENDIX I—STANDARD FORM OF LETTER CONFIRMING THE CESSATION OF THE CLIENT-AUDITOR RELATIONSHIP

(Date)
Mr. John Doe
Chief Financial Officer
XYZ Corporation
Anytown, USA
Dear Mr. Doe:

This is to confirm that the client-auditor relationship between XYZ Corporation (Commission File Number X–XXXX) and Able Baker & Co. has ceased.
Sincerely,
Able Baker & Co.

CC: Office of the Chief Accountant, SECPS Letter File, Securities and Exchange Commission
SECPSletters@sec.gov
[Mail Stop 9–5]
100 F Street NE.,
[450 Fifth Street NW.,]
Washington, D.C. 20549

The SEC has indicated that member firms may satisfy the SECPS notification requirements by *e-mailing* [faxing] a copy of the SECPS letter to the SEC-Office of the Chief Accountant ([202–942–9656; Attn: SECPS Letter File/Mail Stop 9–5] *SECPSletters@sec.gov*). A copy of the [fax log] *e-mail* should be retained by the sender as documentation of timely filing [and a back-up copy of the letter should be sent by regular mail to the SEC]. The SEC strongly encourages sending the notification letter by [fax and will accept the date of the fax as the notification date] *e-mail* to *SECPSletters@sec.gov. The SEC staff will accept the date the e-mail is received as the notification date.* If [a fax] *e-mail* transmission is not available, alternatively, by order of preference, the SECPS notification letter may be sent to the SEC via (1) *fax to (202) 772–9252, (2)* U.S. Postal Service overnight delivery, ([2]*3*) commercial overnight courier, or ([3]*4*) certified mail, ''return receipt requested.''

The exact name of the registrant[,] *and* the Commission File Number as it appears on the cover page of the Form 10–K[, and the complete SEC address, as shown above,] should be used in the *e-mail* [letter and on the envelop]. If the cessation of the client-auditor relationship affects multiple SEC registrants (e.g., a parent with publicly-registered subsidiaries, series of mutual funds), the exact name of each registrant and each Commission File Number should be set forth in the SECPS [letter] *e-mail.*

* * * * *

Ethics Code

EC2. Definitions

* * * * *

(e) Honoraria

The term ''honoraria'' means anything with more than a nominal value, whether provided in cash or otherwise, and which is provided in exchange for a speech, panel participation, publication or lecture. Neither the waiver of conference fees nor acceptance of a modest speakers-only meal constitutes ''honoraria.'' [Note:] Items *and meals* which are provided to all conference participants[, including speakers,] are not [provided ''in exchange for'' a speech and thus not] considered to be ''honoraria.''

(f) Practice

The term ''practice'' means—

(1) knowingly acting as an agent or attorney for, or otherwise representing any other person in any formal or informal appearance before the Board or Commission with respect to Board-related matters; or

(2) making any oral or written communication on behalf of any other person to, and with the intent to influence, the Board or Commission with respect to Board-related matters.

Note: For purposes of this definition, participating in the financial reporting process as the officer or director of an issuer*, broker, or dealer* or participating in an audit of *the* financial statements *of an issuer, broker, or dealer* does not, in and of itself, constitute practice before the Board or the Commission.

* * * * *

EC5. Investments

* * * * *

(d) Board members and professional staff shall [annually] disclose their holdings, and the holdings of their spouses, spousal equivalents, and dependents, in securities of issuers (including exchange-traded options and futures) *to the Ethics Officer.*

(1) [For initial disclosures, statements shall be filed with the Ethics Officer w] *W*ithin the first 60 days of commencement of service with the Board*; and* [, or 60 days from the effective date of this Code, whichever is later.]

(2) *On an annual basis, on May 1 or another date that may be prescribed by the Ethics Officer.* [Subsequent disclosures shall be filed with the Ethics Officer on May 1, commencing the first year following the initial disclosure.]

(3) Disclosure statements by Board Members shall be made available to the public.

(4) Disclosure statements by professional staff shall remain confidential.

* * * * *

EC7. Gifts, Reimbursements, Honoraria and Other Things of Value

* * * * *

(b) No Board member or staff shall accept payment for or reimbursement of official travel-related expenses from any organization, except—

(1) for travel that is in direct connection with the employee's participation in an educational forum; and

(2) the educational forum is principally sponsored by and the travel-related expenses are paid or reimbursed by—

(A) a federal, state or local governmental body, or an association of such bodies,

(B) an accredited institution of higher learning,

(C) an organization exempt from taxation under 501(c)(3) of the Internal Revenue Code, provided such organization is not principally funded from one or more public accounting firms*,* [or] issuers, *brokers, or dealers,* or

(D) institutions equivalent to those in EC 7(b)(2)(A)–(C) outside the United States.

EC8. Disqualification

(a) If a Board member or professional staff becomes, or reasonably should become, aware of facts which would lead a reasonable person to believe that he or she, or his or her spouse, spousal equivalent, or dependents, may have a financial *or personal* interest [or other similar relationship] which might affect or reasonably create the appearance of affecting his or her independence or objectivity with respect to the Board's function or activities, then he or she shall, at the earliest possible date—

(1) disclose such circumstances and facts, as set forth in subsection (b); and

(2) recuse himself or herself from further Board functions or activities involving or affecting the financial [interest] or *personal interest* [relationship].

* * * * *

EC12. Post-Employment Restrictions

(a) Negotiating Prospective Employment

(1) Board members and professional staff may not negotiate prospective

employment with a public accounting firm, [or] issuer, *broker, or dealer,* without first disclosing (pursuant to the procedures in Section EC8(b)) the identity of the prospective employer and recusing himself or herself from all Board matters directly affecting that prospective employer.

(2) For purposes of this section, ''negotiating prospective employment'' means participating in an employment interview; discussing an offer of employment; or accepting an offer of employment, even if the precise terms are still to be developed. Submitting a resume or job application to a group of employers or receiving an unsolicited inquiry of interest that is rejected, do not alone constitute ''negotiating prospective employment.''

* * * * *

Amendments to Board Forms

The amended Form 1, Form 1–WD, Form 2, Form 3, and Form 4 are set forth below.

FORMS

Form 1—Application for Registration

General Instructions

1. The definitions in the Board's rules apply to this form. Italicized terms in the instructions to this form are defined in the Board's rules. See Rule 1001.

2. Any public accounting firm applying to the Board for registration pursuant to Section 102 of the Act must file this form with the Board. See Rule 2101.

3. In addition to these instructions, the rules contained in Section 2 of the Board's rules govern applications for registration. Please read these rules and the instructions carefully before completing this form.

4. Unless otherwise directed by the Board, applicants must submit this form, and all exhibits to the form, to the Board electronically by completing the Web-based version of Form 1. Form 1 is available on the Board's Web site at: *http://www.pcaobus.org/Registration/index.aspx.* See Rule 2101.

5. This form must be accompanied by a registration fee in accordance with Section 102(f) of the Act. The amount of the required fee is available at *http://www.pcaobus.org/Registration/index.aspx.* An application for registration will not be deemed received by the Board until the registration fee has been paid. See Rule 2102.

6. An applicant may request confidential treatment of any portion of its application for registration that has not otherwise been publicly disclosed and that either contains information reasonably identified by the applicant as proprietary information or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. An applicant that requests confidential treatment must identify the portion of the application that it desires to keep confidential, and include, as Exhibit 99.1 to the application for registration, a representation that, to the applicant's knowledge, the information for which confidential treatment is requested has not otherwise been publicly disclosed, and a detailed explanation of the grounds on which the information is considered proprietary or a detailed explanation of the basis for asserting that the information is protected by law from public disclosure and a copy of the specific provision of law that the applicant claims protects the information from public disclosure. If the Firm fails to include Exhibit 99.1, or includes an Exhibit 99.1 that fails to comply with Rule 2300(c)(2), the request for confidential treatment may be denied solely on the basis of that failure. The Board will normally grant confidential treatment requests for information concerning non-public disciplinary proceedings. The Board will determine whether or not to grant other confidential treatment requests on a case-by-case basis. See Rule 2300(c).

7. If an applicant is prohibited by the law(s) of a non-U.S. jurisdiction from submitting to the Board information requested by all or a part of an Item to this form, the applicant shall so indicate by making a notation under the relevant item number of the form and furnishing, as Exhibit 99.2 to the application for registration, the following information: (i) a copy of the relevant portion of the conflicting non-U.S. law, (ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law; and (iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict.

8. Where this form requires disclosure of a sum of money, such amount must be stated in U.S. dollars and rounded to the nearest thousand. If such amount was received or paid in a currency other than U.S. dollars, the amount must be converted to U.S. dollars.

9. Where this form requires non-historical (i.e., current) information, applicants may submit the information as of a date not earlier than 90 days prior to submission of the application. Such information will be deemed current for purposes of this form.

10. Information submitted as part of this form, including any exhibit to this form, must be in the English language.

PART I—Identity of the Applicant

Item 1.1 Name of Applicant

State the legal name of the applicant; if different, also state the name or names under which the applicant (or any predecessor for which the applicant is the successor in interest with respect to the entity's liabilities) issues audit reports, or has issued any audit report during the five years prior to the date of this application.

Item 1.2 Applicant Contact Information

State the physical address (and, if different, mailing address) of the applicant's headquarters office. State the telephone number and facsimile number of the applicant's headquarters office. If available, state the Web site address of the applicant.

Item 1.3 Primary Contact and Signatories

State the name, title, physical business address (and, if different, business mailing address), telephone number, fax number, and email address of a partner or authorized officer of the applicant who will serve as the applicant's primary contact with the Board regarding this application. Provide the same information for every person whose signature appears in Part VIII or Part IX of this form, if any of those persons are different from the primary contact.

Item 1.4 Applicant's Form of Organization

State the applicant's legal form (e.g., proprietorship, partnership, limited liability partnership) and the jurisdiction (e.g., the state of the United States or comparable non-U.S. jurisdiction) under the law of which the applicant is organized or exists.

Item 1.5 Applicant's Offices

If the applicant has more than one office, furnish, as Exhibit 1.5, the physical address (and, if different, mailing address) of each of the applicant's offices.

Item 1.6 Associated Entities of Applicant

State the name and physical address (and, if different, mailing address) of all associated entities of the applicant that engage in the practice of public accounting or preparing or issuing audit reports, or comparable reports prepared

for clients that are not issuers. Do not include any person listed in Item 7.1.

Item 1.7 Applicant's Licenses

List every license or certification number issued to the applicant authorizing it to engage in the business of auditing or accounting. For each such license or certification number, furnish the name of the issuing state, agency, board, or other authority.

Part II—Listing of Applicant's Public Company Audit Clients and Related Fees

Item 2.1 Issuers for Which Applicant Prepared Audit Reports During the Preceding Calendar Year

List the names of all issuers for which the applicant prepared or issued any audit report dated during the calendar year preceding the calendar year in which this application is filed. In addition to the issuer's name, this list must include, with respect to each issuer—

a. The issuer's business address (as shown on its most recent filing with the Commission), and CIK number.

b. The date of the audit report.

c. The total amount of fees billed for audit services for the issuer's fiscal year for which the audit report was issued.

d. The total amount of fees billed for other accounting services for the issuer's fiscal year for which the audit report was issued.

e. The total amount of fees billed for non-audit services for the issuer's fiscal year for which the audit report was issued.

Note: Only fees billed by the principal auditor (i.e., the public accounting firm that issued the audit report) need be disclosed in response to this Item. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item. For investment company issuers, the fees disclosed in response to paragraphs (c)–(e) of this Item should include all fees for services rendered to the issuer, to the issuer's investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and to any entity controlling, controlled by, or under common control with, the adviser that provides ongoing services to the issuer.

Item 2.2 Issuers for Which Applicant Prepared Audit Reports During the Current Calendar Year

List the names of all issuers for which the applicant prepared or issued any audit report dated during the current calendar year. (Do not include audit reports the applicant expects to prepare or issue during this calendar year, but that have not yet been issued. These are called for in Item 2.3 below.) In addition to the issuer's name, include, with respect to each issuer—

a. The issuer's business address (as shown on its most recent filing with the Commission), and CIK number.

b. The date of the audit report.

c. The total amount of fees billed for audit services for the issuer's fiscal year for which the audit report was issued.

d. The total amount of fees billed for other accounting services for the issuer's fiscal year for which the audit report was issued.

e. The total amount of fees billed for non-audit services for the issuer's fiscal year for which the audit report was issued.

Note: Only fees billed by the principal auditor (i.e., the public accounting firm that issued the audit report) need be disclosed in response to this Item. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item. For investment company issuers, the fees disclosed in response to paragraphs (c)–(e) of this Item should include all fees for services rendered to the issuer, to the issuer's investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and to any entity controlling, controlled by, or under common control with, the adviser that provides ongoing services to the issuer.

Item 2.3 Issuers for Which Applicant Expects to Prepare Audit Reports During the Current Calendar Year

List the names of all issuers for which the applicant expects to prepare or issue any audit report dated during the calendar year in which this application is filed. In addition to the issuer's name, include, with respect to each issuer, the issuer's business address (as shown on its most recent filing with the Commission), and CIK number.

Note: An applicant may presume that it is expected to prepare or issue an audit report for an issuer (i) if it has been engaged to do so, or (ii) if it issued an audit report during the preceding calendar year for an issuer, absent an indication from the issuer that it no longer intends to engage the applicant.

Item 2.4 Issuers for Which Applicant Played, or Expects to Play, a Substantial Role in Audit

For applicants that did not prepare or issue an audit report dated during the preceding or current calendar year, and that do not expect to prepare or issue an audit report dated during the current calendar year, list the names of all issuers for which the applicant played, or expects to play, a substantial role in the preparation or furnishing of an audit report dated during the preceding or current calendar year. In addition to the issuer's name, this list must include, with respect to each issuer—

a. The issuer's business address (as shown on its most recent filing with the Commission), and CIK number.

b. The name of the public accounting firm that issued, or is expected to issue, the audit report.

c. The date of the audit report, if it has been issued.

d. The type of substantial role played by the applicant with respect to the audit report.

Note: Applicants that disclosed the name of an issuer in response to any of Items 2.1–2.3 need not respond to this Item. In responding to the part of this Item that asks about issuers for which the applicant expects to play a substantial role in the preparation or furnishing of an audit report, an applicant may conclude that it is expected to play a substantial role in the preparation or furnishing of an audit report for an issuer (i) if it has been engaged to do so, or (ii) if it played a substantial role in the preparation and furnishing of an audit report during the preceding calendar year, absent an indication from the issuer or principal accounting firm that it no longer intends to engage the applicant.

Part III—Listing of Applicant's Broker or Dealer Audit Clients and Related Fees

Item 3.1 Brokers and Dealers for Which Applicant Prepared Audit Reports During the Preceding Calendar Year

List the names of all brokers and dealers for which the applicant prepared or issued any audit report dated during the calendar year preceding the calendar year in which this application is filed. In addition to the broker's or dealer's name, this list must include, with respect to each broker or dealer—

a. The broker's or dealer's business address, and the broker's or dealer's CRD number, and CIK number, if any.

b. The date of the audit report.

c. The total amount of fees billed for audit services for the broker's or dealer's fiscal year for which the audit report was issued.

d. The total amount of fees billed for other accounting services for the

broker's or dealer's fiscal year for which the audit report was issued.

e. The total amount of fees billed for non-audit services for the broker's or dealer's fiscal year for which the audit report was issued.

Note: Only fees billed by the principal auditor (i.e., the public accounting firm that issued the audit report) need be disclosed in response to this Item. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item.

Item 3.2 Brokers and Dealers for Which Applicant Prepared Audit Reports During the Current Calendar Year

List the names of all brokers or dealers for which the applicant prepared or issued any audit report dated during the current calendar year. (Do not include audit reports the applicant expects to prepare or issue during this calendar year, but that have not yet been issued. These are called for in Item 3.3 below.) In addition to the broker's or dealer's name, include, with respect to each broker or dealer—

a. The broker's or dealer's business address, and the broker's or dealer's CRD number, and CIK number, if any.

b. The date of the audit report.

c. The total amount of fees billed for audit services for the broker's or dealer's fiscal year for which the audit report was issued.

d. The total amount of fees billed for other accounting services for the broker's or dealer's fiscal year for which the audit report was issued.

e. The total amount of fees billed for non-audit services for the broker's or dealer's fiscal year for which the audit report was issued.

Note: Only fees billed by the principal auditor (i.e., the public accounting firm that issued the audit report) need be disclosed in response to this Item. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item.

Item 3.3 Brokers and Dealers for Which Applicant Expects to Prepare Audit Reports During the Current Calendar Year

List the names of all brokers and dealers for which the applicant expects to prepare or issue any audit report dated during the calendar year in which this application is filed. In addition to the broker's or dealer's name, include, with respect to each broker or dealer, the broker's or dealer's business address, and the broker's or dealer's CRD number, and CIK number, if any.

Note: An applicant may conclude that it is expected to prepare or issue an audit report for a broker or dealer (i) if it has been engaged to do so, or (ii) if it issued an audit report during the preceding calendar year for a broker or dealer, absent an indication from the broker or dealer that it no longer intends to engage the applicant.

Item 3.4 Brokers and Dealers for Which Applicant Played, or Expects to Play, a Substantial Role in Audit

For applicants that did not prepare or issue an audit report dated during the preceding or current calendar year, and that do not expect to prepare or issue an audit report dated during the current calendar year, list the names of all brokers and dealers for which the applicant played, or expects to play, a substantial role in the preparation or furnishing of an audit report dated during the preceding or current calendar year. In addition to the broker's or dealer's name, this list must include, with respect to each broker or dealer—

a. The broker's or dealer's business address, and the broker's or dealer's CRD number, and CIK number, if any.

b. The name of the public accounting firm that issued, or is expected to issue, the audit report.

c. The date of the audit report, if it has been issued.

d. The type of substantial role played by the applicant with respect to the audit report.

Note: Applicants that disclosed the name of a broker or dealer in response to any of Items 3.1–3.3 need not respond to this Item. In responding to the part of this Item that asks about brokers and dealers for which the applicant expects to play a substantial role in the preparation or furnishing of an audit report, an applicant may conclude that it is expected to play a substantial role in the preparation or furnishing of an audit report for a broker or dealer (i) if it has been engaged to do so, or (ii) if it played a substantial role in the preparation and furnishing of an audit report during the preceding calendar year, absent an indication from the broker or dealer or principal accounting firm that it no longer intends to engage the applicant.

Part IV—Statement of Applicant's Quality Control Policies

Item 4.1 Applicant's Quality Control Policies

Furnish, as Exhibit 4.1, a narrative, summary description, in a clear, concise and understandable format, of the quality control policies of the applicant for its accounting and auditing practices, including procedures used to monitor compliance with independence requirements.

Part V—Listing of Certain Proceedings Involving the Applicant

Item 5.1 Certain Criminal, Civil and Administrative Proceedings

a. Indicate whether or not the applicant or any associated person of the applicant is a defendant or respondent—

1. in any pending criminal proceeding, or was a defendant in any such proceeding in which a judgment was rendered against the applicant or such person, whether by plea or after trial, during the previous five years;

2. in any pending civil or alternative dispute resolution proceeding initiated by a governmental entity (including a non-U.S. jurisdiction) arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer, broker, or dealer, or was a defendant or respondent in any such proceeding in which a judgment or award was rendered against the applicant or such person, whether by consent or otherwise, during the previous five years;

3. in any pending administrative or disciplinary proceeding arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer, broker, or dealer or was a respondent in any such proceeding in which a finding of violation was rendered, or a sanction entered, against the applicant or such person, whether by consent or otherwise, during the previous five years. Administrative or disciplinary proceedings include those of the Commission; the Board; any other federal, state, or non-U.S. agency, board, or administrative or licensing authority; and any professional association or body. Investigations that have not resulted in the commencement of a proceeding need not be included;

Note: Foreign public accounting firm applicants need only disclose such proceedings for the applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least ten hours of audit services for any issuer, broker, or dealer during the last calendar year.

b. In the event of an affirmative response to Item 5.1.a, furnish the following information with respect to each such proceeding:

1. The name, filing date, and case or docket number of the proceeding.

2. The name and address of the court, tribunal, or body in which such proceeding was filed.

3. The names of all defendants or respondents in such proceeding who are also the applicant, any person listed in Part VII, or any person associated with the applicant at the time that the events in question occurred.

4. The name of the issuer, broker, or dealer, or other client that was the subject of the audit report or comparable report.

5. With respect to each person named in Item 5.1.b.3, the statutes, rules, or other requirements such person was found to have violated (or, in the case of a pending proceeding, is charged with having violated).

6. With respect to each person named in Item 5.1.b.3, the outcome of the proceeding, including any sentence or sanction imposed. (If no judgment or award has yet been rendered, enter the word ''pending.'')

c. Indicate whether or not any employee, partner, shareholder, principal, member, or owner of the applicant, or any person or entity with which the applicant has a contractual or other arrangement to receive consulting or other professional services, is currently subject to a Board disciplinary sanction suspending or barring the person from being an associated person of a registered public accounting firm.

d. Indicate whether or not the applicant or any employee, partner, shareholder, principal, member, or owner of the applicant, or any person or entity with which the applicant has a contractual or other arrangement to receive consulting or other professional services, is currently subject to a (1) Commission order suspending or denying the privilege of appearing or practicing before the Commission, or (2) court-ordered injunction prohibiting appearance or practice before the Commission.

e. In the event of an affirmative response to Item 5.1.c or Item 5.1.d, furnish the following with respect to each such person:

1. The name of the person (including the applicant) subject to the order or sanction.

2. If other than the applicant, a description of the person's job title and duties performed for the applicant.

3. The date of the relevant order and an indication whether it was a Board order, a Commission order, or a court order.

4. If a court order, the name of the court and the name and case or docket number of the proceeding.

Item 5.2 Pending Private Civil Actions

a. Indicate whether or not the applicant or any associated person of the applicant is a defendant or respondent in any pending civil proceeding or alternative dispute resolution proceeding initiated by a non-governmental entity involving conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer, broker, or dealer.

b. In the event of an affirmative response to Item 5.2.a, furnish the following information with respect to each such proceeding:

1. The name, filing date, and case or docket number of the proceeding.

2. The name and address of the court, tribunal or body in which such proceeding was filed.

3. The names of all defendants or respondents in such proceeding who are also the applicant, any person listed in Part VII, or any person associated with the applicant at the time that the events in question occurred.

4. The name of the issuer*, broker, or dealer,* or other client that was the subject of the audit report or comparable report.

5. With respect to each person named in Item 5.2.b.3, the statutes, rules, or other requirements such person is alleged to have violated.

Note: Foreign public accounting firm applicants need only disclose such proceedings for the applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least ten hours of audit services for any issuer*, broker, or dealer* during the last calendar year.

Item 5.3 Applicant's Discretionary Statement Regarding Proceedings Involving the Applicant's Audit Practice

With respect to any case or proceeding listed in response to Items 5.1 or 5.2, the applicant may, at its discretion, furnish, as Exhibit 5.3, a statement or statements describing the proceeding and the reasons that, in the applicant's view, such proceeding should not be a basis for the denial of its application for registration.

Part VI—Listing of Filings Disclosing Accounting Disagreements With Public Company Audit Clients and Issues With Broker or Dealer Audit Clients

Item 6.1 Existence of Disagreements With Issuers

a. Indicate whether or not the applicant has been the former accountant with respect to any disclosure of a disagreement with an issuer made by such issuer during the current or preceding calendar year in a filing with the Commission pursuant to Item 304(a)(1)(iv) of Regulation S–K, 17 CFR 229.304(a)(1)(iv).

b. Indicate whether or not the applicant has been the former accountant with respect to any filing made by an issuer during the current or preceding calendar year with the Commission containing a letter submitted by the applicant to the Commission pursuant to Item 304(a)(3) of Regulation S–K, 17 CFR 229.304(a)(3), in which the applicant stated that it disagreed with a statement of the issuer in response to Item 304(a).

Item 6.2 Listing of Disagreements With Issuers

In the event of an affirmative response to Items 6.1.a or 6.1.b, furnish the following information with respect to each such filing:

a. The name of the issuer.

b. The name and date of the filing containing the disclosure of the disagreement or the applicant's letter.

Item 6.3 Copies of Filings

Furnish, as Exhibit 6.3, a copy of every filing described in Item 6.2.

Item 6.4 Existence of Issues With Brokers or Dealers

Indicate whether or not the applicant has been the former accountant with respect to a notice of any issues relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission made by a broker or dealer during the current or preceding calendar year in a filing with the Commission pursuant to Rule 17a-5(f)(3)(v)(B), 17 CFR § 240.17a-5(f)(3)(v)(B).

Item 6.5 Listing of Issues With Brokers or Dealers

In the event of an affirmative response to Item 6.4, furnish the following information with respect to each such filing:

a. The name of the broker or dealer, and the broker's or dealer's CRD number, and CIK number, if any.

b. The name and date of the filing containing the notice.

Item 6.6 Copies of Filings

Furnish, as Exhibit 6.6, a copy of every filing described in Item 6.5.

Part VII—Roster of Associated Accountants

Item 7.1 Listing of Accountants Associated With Applicants

List the names of all accountants associated with the applicant who participate in or contribute to the preparation of audit reports. For each such person, list every license or certification number (if any) authorizing him or her to engage in the business of auditing or accounting. For each such license or certification number, furnish the name of the issuing state, agency, board, or other authority.

Note: For purposes of this Item, applicants that are not foreign public accounting firms must list all accountants who are persons associated with the applicant and who provided at least ten hours of audit services for any issuer, broker, or dealer during the last calendar year. Applicants that are foreign public accounting firms must list all accountants who are a proprietor, partner, principal, shareholder, officer, or manager of the applicant and who provided at least ten hours of audit services for any issuer, broker, or dealer during the last calendar year.

Item 7.2 Number of Firm Personnel

State the—

a. Total number of accountants employed by the applicant.

b. Total number of certified public accountants, or accountants with comparable licenses from non-U.S. jurisdictions, employed by the applicant.

c. Total number of personnel employed by the applicant.

Part VIII—Consents of Applicant

Item 8.1 Consent To Cooperate With the Board and Statement of Acceptance of Registration Condition

Furnish, as Exhibit 8.1, a statement, signed on behalf of the applicant by an authorized partner or officer of the applicant in accordance with Rule 2104, in the following form—

a. [Name of applicant] consents to cooperate in and comply with any request for testimony or the production of documents made by the Public Company Accounting Oversight Board in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002.

b. [Name of applicant] agrees to secure and enforce similar consents from each of its associated persons as a condition of their continued employment by or other association with the firm.

c. [Name of applicant] understands and agrees that cooperation and compliance, as described in the firm's consent in paragraph (a), and the securing and enforcement of such consents from its associated persons in accordance with paragraph (b), shall be a condition to the continuing effectiveness of the registration of the firm with the Public Company Accounting Oversight Board.

Note 1: Other than the insertion of the name of the applicant in paragraphs (a), (b), and (c) of this Item, Exhibit 8.1 must be in the exact words contained in this instruction. The consents required by paragraph (b) of this Item must be in the exact words of Note 2 below and must be secured by the applicant not later than 45 days after submitting this application or, for persons who become associated persons of the firm subsequent to the submission of this application, at the time of the person's association with the firm. Consents required by paragraph (b) of this Item are not required to be furnished as an exhibit to this form.

Note 2: Other than the insertion of the name of the associated person, the consents required by paragraph (b) of this Item must state: [Name of associated person] consents to cooperate in and comply with any request for testimony or the production of documents made by the Public Company Accounting Oversight Board in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002. [Name of associated person] understands and agrees that this consent is a condition of their continued employment by or other association with [name of applicant].

Note 3: For applicants that are foreign public accounting firms, the term ''associated persons'' as used in this Item means all accountants who are a proprietor, partner, principal, shareholder, officer, or manager of the applicant and who provided at least ten hours of audit services for any issuer broker, or dealer during the last calendar year.

Part IX—Signature of Applicant

Item 9.1 Signature of Partner or Authorized Officer

The application must be signed on behalf of the applicant by an authorized partner or officer of the applicant in accordance with Rule 2104. The signer must certify that he or she has reviewed the application; that the application is, based on the signer's knowledge, complete and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading, and that the signer is authorized to execute the application on behalf of the applicant. The signature must be accompanied by the name of the signer, the capacity in which the signer signed the application, and the date of signature.

Part X—Exhibits

To the extent applicable under the foregoing instructions, each application must be accompanied by the following exhibits:

Exhibit 1.5 Listing of Offices

Exhibit 4.1 Statement of Quality Control Policies

Exhibit 5.3 Discretionary Statements Regarding Proceedings Involving Audit Practice

Exhibit 6.3 Securities and Exchange Commission Filings Disclosing Accounting Disagreements With Public Company Audit Clients

Exhibit 6.6 Securities and Exchange Commission Filings Disclosing Issues With Brokers or Dealers

Exhibit 8.1 Consent of Applicant for Registration

Exhibit 99.1 Request for Confidential Treatment

Exhibit 99.2 Evidence of Conflicting Non-U.S. Law

Note: Where an exhibit consists of more than one document, each document must be numbered consecutively (e.g., Exhibit 4.1.1, Exhibit 4.1.2, Exhibit 4.1.3, etc.), and the applicant must provide a list of the title or description of each document comprising the exhibit.

* * * * *

Form 1–WD

Request for Leave To Withdraw From Registration

General Instructions

1. The definitions in the Board's rules apply to this form. Italicized terms in the instructions to this form are defined in the Board's rules. *See* Rule 1001.

2. Any registered public accounting firm seeking to withdraw from registration with the Board must file this form with the Board.

3. In addition to these instructions, the Board's Rule 2107 governs applications for leave to withdraw from registration. Please read Rule 2107 and the instructions carefully before completing this form.

4. Unless otherwise directed by the Board, a registered public accounting firm seeking to withdraw from registration must submit this form to the Board electronically by completing the Web-based version of Form 1–WD. The

date of such submission shall be deemed the date of Board receipt of the Form.

5. Pursuant to Rule 2107, any Form 1–WD filed with the Board shall be non-public. A registered public accounting firm may submit with Form 1–WD a request for Board notification in the event that the Board is requested by subpoena or other legal process to disclose the Form 1–WD. The Board will make reasonable attempts to honor any such request, although the Board will make public the fact that the firm has requested to withdraw from registration.

6. Information submitted as part of this form must be in the English language.

Part I—Identity of the Registered Public Accounting Firm

Item 1.1 Name of the Firm Requesting Leave to Withdraw

State the legal name of the firm requesting leave to withdraw; if different, also state the name or names under which the firm (or any predecessor) issues audit reports, or has issued any audit report during the period of the firm's registration with the Board.

Item 1.2 Firm Contact Information

State the physical address (and, if different, mailing address) of the firm's headquarters office. State the telephone number and facsimile number of the firm's headquarters office.

Item 1.3 Primary Contact and Signatories

State the name, title, physical business address (and, if different, business mailing address), telephone number, facsimile number, and email address of a partner or authorized officer of the firm who will serve as the firm's primary contact with the Board regarding this application. Provide the same information for every person whose signature appears in Part III or Part V of the form, if any of those persons are different from the primary contact.

Part II—Description of Ongoing Regulatory or Law Enforcement Proceedings

Item 2.1 Description of Ongoing Regulatory or Law Enforcement Proceedings

Identify all ongoing federal, state, or local investigative, disciplinary, regulatory, criminal, or other law enforcement proceedings that are known to the firm, including to any of the firm's partners or officers, and that address in whole or in part (1) conduct of the firm or (2) audit-related conduct of any of the firm's associated persons. For each such proceeding, state—

a. The identity of the federal, state, or local authority conducting the proceeding;

b. The caption or other identifying information of the proceeding;

c. The date that the firm or a partner or officer of the firm first became aware of the proceeding;

d. The firm's understanding of the current status of the proceeding; and

e. The conduct of the firm and the firm's associated persons that the proceeding addresses.

Part III—Certification of Nonparticipation in Audits

Item 3.1 Statement of Nonparticipation in Audits

Furnish a statement, dated and signed on behalf of the firm by an authorized partner or officer of the firm, in the following form—

On behalf of [name of firm], I certify that [name of firm] is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

Note: Other than the insertion of the name of the firm the statement must be in the exact words contained in this instruction.

Part IV—Reasons for Seeking Leave To Withdraw (Optional)

Item 4.1 Description of Reasons for Seeking Leave To Withdraw

Describe, if you choose to do so, the reason or reasons that the firm seeks leave to withdraw from registration.

Part V—Signature of Firm Seeking Leave To Withdraw

Item 5.1 Signature of Authorized Partner or Officer

The request for leave to withdraw from registration must be signed on behalf of the firm by an authorized partner or officer of the firm. The signer must certify that he or she has reviewed the application; that the application is, based on the signer's knowledge, complete and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statement made, in light of the circumstances under which such statements were made, not misleading, and that the signer is authorized to execute the application on behalf of the firm. The signature must be accompanied by the title of the signer and the date of the signature.

* * * * *

Form 2—Annual Report Form

General Instructions

1. Submission of this Report. A registered public accounting firm must use this Form to file with the Board the annual report required by Section 102(d) of the Act and Rule 2200 and to file any amendments to an annual report. Unless otherwise directed by the Board, the Firm must file this Form, and all exhibits to this Form, electronically with the Board through the Board's Web-based system.

2. Defined Terms. The definitions in the Board's rules apply to this Form. Italicized terms in the instructions to this Form are defined in the Board's rules. In addition, as used in the instructions to this Form, the term ''the Firm'' means the registered public accounting firm that is filing this Form with the Board.

3. When Report is Considered Filed. Annual reports on this Form are required to be filed each year on or before June 30, subject to the qualification in Rule 2201 concerning any firm that has its application for registration approved by the Board in the period between and including April 1 and June 30. An annual report is considered filed when the Firm has submitted to the Board a Form 2 in accordance with Rule 2200 that includes the signed certification required in Part X of Form 2.

4. Period Covered by this Report. Annual reports on this Form shall cover a 12-month period from April 1 to March 31, subject to the qualification in Part VIII of Form 2 relating to the first annual report filed by a firm that becomes registered after December 31, 2009. In the instructions to this Form, this is the period referred to as the ''reporting period.''

5. Amendments to this Report. Amendments shall not be filed to update information in a filed Form 2 that was correct at the time the Form was filed, but only to correct information that was incorrect at the time the Form was filed or to provide information that was omitted from the Form and was required to be provided at the time the Form was filed. When filing a Form 2 to amend an earlier filed Form 2, the Firm must supply not only the corrected or supplemental information, but must include in the amended Form 2 all information, affirmations, and certifications that were

required to be included in the original Form 2. The Firm may access the originally filed Form 2 through the Board's Web-based system and make the appropriate amendments without needing to re-enter all other information.

Note: The Board will designate an amendment to an annual report as a report on ''Form 2/A.''

6. Rules Governing this Report. In addition to these instructions, the rules contained in Part 2 of Section 2 of the Board's rules govern this Form. Please read these rules and the instructions carefully before completing this Form.

7. Requests for Confidential Treatment. The Firm may, by marking the Form in accordance with the instructions provided, request confidential treatment of any information submitted in Part VI, Part VII, or Exhibit 99.3 of this Form that has not otherwise been publicly disclosed and that either contains information reasonably identified by the Firm as proprietary information or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. See Rule 2300. Foreign registered public accounting firms may also request confidential treatment for Item 3.2 and Exhibit 3.2, though U.S. firms may not do so. If the Firm requests confidential treatment, it must identify the information in Part VI, Part VII, or Exhibit 99.3 (or, for a foreign registered public accounting firm, Item 3.2 and Exhibit 3.2) that it desires to keep confidential, and include, as Exhibit 99.1 to this Form, a representation that, to the Firm's knowledge, the information for which confidential treatment is requested has not otherwise been publicly disclosed, and a detailed explanation of the grounds on which the information is considered proprietary or a detailed explanation of the basis for asserting that the information is protected by law from public disclosure and a copy of the specific provision of law that the Firm claims protects the information from public disclosure. If the Firm fails to include Exhibit 99.1, or includes an Exhibit 99.1 that fails to comply with Rule 2300(c)(2), the request for confidential treatment may be denied solely on the basis of the failure. The Board will normally grant confidential treatment requests for information concerning non-public disciplinary proceedings. The Board will determine whether or not to grant other confidential treatment requests on a case-by-case basis. See Rule 2300(c).

8. Assertions of Conflicts with Non-U.S. Law. If the Firm is a foreign registered public accounting firm, the Firm may, unless otherwise directed by the Board pursuant to Rule 2207(e), decline to provide certain information and affirmations required by this Form if the Firm could not provide such information or affirmations without violating non-U.S. law and the Firm proceeds in accordance with Rule 2207. The Firm may withhold responsive information and affirmations on that basis from any Part of the Form other than Parts I, II, and X and Items 3.1.a, 3.1.b, 3.1.d, and 4.1. If the firm withholds responsive information or affirmations, the Firm must indicate, in accordance with the instructions in the relevant Part of the Form, the particular Items with respect to which the Firm has withheld responsive information or a required affirmation. The Firm may not use the Form to make any general assertion that a particular requirement may conflict with non-U.S. law, but only to indicate that, on the basis of an asserted conflict, the Firm has in fact withheld from this Form required information or a required affirmation.

9. Language. Information submitted as part of this Form, including any exhibit to this Form, must be in the English language.

Part I—Identity of the Firm and Contact Persons

In Part I, the Firm should provide information that is current as of the date of the certification in Part X.

Item 1.1 Name of the Firm

a. State the legal name of the Firm.

b. If different than its legal name, state the name or names under which the Firm issues audit reports, or issued any audit report during the reporting period.

c. If the Firm's legal name at the beginning of the reporting period was different than the name provided under Item 1.1.a, state that legal name and any other legal name the Firm had during the reporting period. Include the legal name of any registered public accounting firm that merged into, or was acquired by, the Firm during the reporting period.

Item 1.2 Contact Information of the Firm

a. State the physical address (and, if different, mailing address) of the Firm's headquarters office.

b. State the telephone number and facsimile number of the Firm's headquarters office. If available, state the Web site address of the Firm.

Item 1.3 Primary Contact With the Board

State the name, business title, physical business address (and, if different, business mailing address), business telephone number, business facsimile number, and business email address of a partner or authorized officer of the Firm who will serve as the Firm's primary contact with the Board, including for purposes of the annual report filed on this Form and any special reports filed on Form 3.

Part II—General Information Concerning This Report

Item 2.1 Reporting Period

State the reporting period covered by this report.

Note: The reporting period, which the Firm should enter in Item 2.1, is the period beginning on April 1 of the year before the year in which the annual report is required to be filed and ending March 31 of the year in which the annual report is required to be filed. That is the period referred to where this Form refers to the ''reporting period.'' Note, however, the special instruction at the beginning of Part VIII concerning the first annual report filed by certain firms.

Item 2.2 Amendments

If this is an amendment to a report previously filed with the Board—

a. Indicate, by checking the box corresponding to this item, that this is an amendment.

b. Identify the specific Item numbers of this Form (other than this Item 2.2) as to which the Firm's response has changed from that provided in the most recent Form 2 or amended Form 2 filed by the Firm with respect to the reporting period.

Part III—General Information Concerning the Firm

Item 3.1 The Firm's Practice Related to the Registration Requirement

a. Indicate whether the Firm issued any audit report with respect to an issuer during the reporting period.

b. In the event of an affirmative response to Item 3.1.a, indicate whether the issuers with respect to which the Firm issued audit reports during the reporting period were limited to employee benefit plans that file reports with the Commission on Form 11–K.

c. In the event of a negative response to Item 3.1.a, indicate whether the Firm played a substantial role in the preparation or furnishing of an audit report with respect to an issuer during the reporting period.

d. Indicate whether the Firm issued any audit report with respect to any

broker or dealer during the reporting period.

e. In the event of a negative response to Item 3.1.d, indicate whether the Firm played a substantial role in the preparation or furnishing of an audit report with respect to a broker or dealer during the reporting period.

Item 3.2 Fees Billed to Issuer Audit Clients

a. Of the total fees billed by the Firm to all clients for services that were rendered in the reporting period, state the percentage (which may be rounded, but no less specifically than to the nearest five percent) attributable to fees billed to issuer audit clients for—

1. Audit services;
2. Other accounting services;
3. Tax services; and
4. Non-audit services.

b. Indicate, by checking the appropriate box, which of the following two methods the Firm used to calculate the percentages reported in Item 3.2.a—

1. The Firm used as a denominator the total fees billed to all clients for services rendered during the reporting period and used as numerators (for each of the four categories) total fees billed to issuer audit clients for the relevant services rendered during the reporting period.

2. The Firm used as a denominator the total fees billed to all clients in the Firm's fiscal year that ended during the reporting period and used as numerators (for each of the four categories) total issuer audit client fees as determined by reference to the fee amounts disclosed to the Commission by those clients for each client's fiscal year that ended during the reporting period (including, for clients who have not made the required Commission filings, the fee amounts required to be disclosed).

c. If the Firm has used a reasonable method to estimate the components of the calculations described in Item 3.2.b, rather than using the specific data, check this box and attach Exhibit 3.2 briefly describing the reasons for doing so and the methodology used in making those estimates.

Note: In responding to Item 3.2, careful attention should be paid to the definitions of the italicized terms, which are found in Board Rules 1001(i)(iii) (issuer), 1001(a)(v) (audit), 1001(a)(vii) (audit services), 1001(o)(i) (other accounting services), 1001(t)(i) (tax services), and 1001(n)(ii) (non-audit services). The definitions of the four categories of services correspond to the Commission's descriptions of the services for which an issuer must disclose fees paid to its auditor. Compare the descriptions of services in Item 9(e) of Commission Schedule 14A (17 CFR 240.14a–101) under the headings ''Audit Fees,'' ''Audit-Related Fees,'' ''Tax Fees,'' and ''All Other Fees'' with, respectively, the Board's definitions of Audit Services, Other Accounting Services, Tax Services, and Non-Audit Services.

Item 3.3 Foreign Registered Public Accounting Firm's Designation of U.S. Agent

a. If the Firm is a foreign registered public accounting firm that has designated to the Commission or Board an agent in the United States upon whom the Commission or the Board may serve any request to the Firm under Section 106 of the Act or any process, pleading, or other papers in any action against the Firm to enforce Section 106 of the Act, check here and enter the name and address of the designated agent.

b. If the Firm is a foreign registered public accounting firm and did not check the box for Item 3.3.a, indicate by checking ''yes'' or ''no'' whether the Firm has, since July 21, 2010, (1) performed material services upon which another registered public accounting firm relied in the conduct of an audit or interim review, (2) issued an audit report, (3) performed audit work, or (4) performed interim reviews.

Note: If the Firm checks ''yes'' for Item 3.3.b, the Firm must immediately provide to the Commission or the Board the designation required by Section 106(d)(2) of the Act.

Note: If the Firm checks ''no'' for Item 3.3.b, and the Firm later performs any of the activities identified in Section 106(d)(2) of the Act, the Firm must immediately provide to the Commission or the Board the designation required by Section 106(d)(2) of the Act.

Note: If the Firm has previously designated an agent for service to the Commission or Board, the Firm must immediately communicate any change in the name or address of the agent to the Commission or Board.

Part IV—Audit Clients and Audit Reports

Item 4.1 Audit Reports Issued by the Firm for Issuers

a. Provide the following information concerning each issuer for which the Firm issued any audit report(s) during the reporting period—

1. The issuer's name;
2. The issuer's CIK number, if any; and
3. The date(s) of the audit report(s).

b. If the Firm identified any issuers in response to Item 4.1.a., indicate, by checking the box corresponding to the appropriate range set out below, the total number of Firm personnel who exercised the authority to sign the Firm's name to an audit report, for an issuer, during the reporting period. If the Firm checks the box indicating that the number is in the range of 1–9, provide the exact number.

1–9
10–25
26–50
51–100
101–200
More than 200

Note: In responding to Item 4.1(a), careful attention should be paid to the definition of issuer. The Firm should not, for example, overlook the fact that investment companies may be issuers, or that employee benefit plans that file reports on Commission Form 11–K are issuers.

Note: In responding to Item 4.1, do not list any issuer more than once. For each issuer provide in Item 4.1.a.3 the audit report dates (as described in AU 530, Dating of the Independent Auditor's Report) of all such audit reports for that issuer including each date of any dual-dated audit report.

Note: In responding to Item 4.1.a.3, it is not necessary to provide the date of any consent to an issuer's use of an audit report previously issued for that issuer, except that, if such consents constitute the only instances of the Firm issuing audit reports for a particular issuer during the reporting period, the Firm should include that issuer in Item 4.1 and include the dates of such consents and indicate whether the dates provided correspond to the issuance of a consent to the use of a previously-issued audit report in Item 4.1.a.3.

Item 4.2 Issuer Audit Reports With Respect to Which the Firm Played a Substantial Role During the Reporting Period

a. If no issuers are identified in response to Item 4.1.a, but the Firm played a substantial role in the preparation or furnishing of an audit report for an issuer that was issued during the reporting period, provide the following information concerning each issuer with respect to which the Firm did so—

1. The issuer's name;
2. The issuer's CIK number, if any;
3. The name of the registered public accounting firm that issued the audit report(s);
4. The end date(s) of the fiscal period(s) covered by the financial statements that were the subject of the audit report(s); and

5. A description of the substantial role played by the Firm with respect to the audit report(s).

Note: If the Firm identifies any issuer in response to Item 4.1, the Firm need not respond to Item 4.2.

Note: In responding to Item 4.2, do not list any issuer more than once.

Item 4.3 Audit Reports Issued by the Firm for Brokers or Dealers

a. Provide the following information concerning each audit report issued for a broker or dealer during the reporting period—

1. The broker's or dealer's name;

2. The broker's or dealer's CRD number, and CIK number, if any; and

3. The date of the audit report(s).

b. If the Firm identified any brokers or dealers in response to Item 4.3.a., indicate, by checking the box corresponding to the appropriate range set out below, the total number of Firm personnel who exercised the authority to sign the Firm's name to an audit report, for a broker or dealer, during the reporting period. If the Firm checks the box indicating that the number is in the range of 1–9, provide the exact number.

1–9
10–25
26–50
51–100
101–200
More than 200

Note: For each audit report provide in Item 4.3.a.3 the audit report dates (as described in AU 530, Dating of the Independent Auditor's Report) including each date of any dual-dated audit report.

Item 4.4 Broker or Dealer Audit Reports With Respect to Which the Firm Played a Substantial Role During the Reporting Period

If no brokers or dealers are identified in response to Item 4.3.a, but the Firm played a substantial role in the preparation or furnishing of an audit report for a broker or dealer that was issued during the reporting period, provide the following information concerning each broker or dealer with respect to which the Firm did so—

a. The broker's or dealer's name;

b. The broker's or dealer's CRD number, and CIK number, if any;

c. The name of the registered public accounting firm that issued the audit report(s);

d. The end date(s) of the fiscal period(s) covered by the financial statements that were the subject of the audit report(s); and

e. A description of the substantial role played by the Firm with respect to the audit report(s).

Note: If the Firm identifies any broker or dealer in response to Item 4.3, the Firm need not respond to Item 4.4.

Note: In responding to Item 4.4, do not list any broker or dealer more than once.

Part V—Offices and Affiliations

In Part V, the Firm should provide information that is current as of the last day of the reporting period.

Item 5.1 Firm's Offices

List the physical address and, if different, the mailing address, of each of the Firm's offices.

Item 5.2 Audit-Related Memberships, Affiliations, or Similar Arrangements

a. State whether the Firm has any:

1. Membership or affiliation in or with any network, arrangement, alliance, partnership or association that licenses or authorizes audit procedures or manuals or related materials, or the use of a name in connection with the provision of audit services or accounting services;

2. Membership or affiliation in or with any network, arrangement, alliance, partnership or association that markets or sells audit services or through which joint audits are conducted; or

3. Arrangement, whether by contract or otherwise, with another entity through or from which the Firm employs or leases personnel to perform audit services.

b. If the Firm provides an affirmative response to Item 5.2.a, identify, by name and address, the entity with which the Firm has each such relationship, and provide a brief description of each such relationship.

Note: Item 5.2.b does not require information concerning every other entity that is part of the network, arrangement, alliance, partnership or association, but only information concerning the network, arrangement, alliance, partnership, or association itself, or the principal entity through which it operates.

Part VI—Personnel

In Part VI, the Firm should provide information that is current as of the last day of the reporting period.

Item 6.1 Number of Firm Personnel

Provide the following numerical totals—

Total number of the Firm's accountants;

Total number of the Firm's certified public accountants (include in this number all accountants employed by the Firm with comparable licenses from non-U.S. jurisdictions); and

Total number of the Firm's personnel.

Part VII—Certain Relationships

Item 7.1 Individuals With Certain Disciplinary or Other Histories

a. Other than a relationship required to be reported in Item 5.1 of Form 3, and only if the Firm has not previously identified the individual and the sanction or Commission order on Form 1, Form 2, or Form 3, state whether, as of the end of the reporting period, the Firm has any employee, partner, shareholder, principal, member, or owner who was the subject of a Board disciplinary sanction or a Commission order under Rule 102(e) of the Commission's Rules of Practice, entered within the five years preceding the end of the reporting period and without that sanction or order having been vacated on review or appeal, and who provided at least ten hours of audit services for any issuer, broker, or dealer during the reporting period.

b. If the Firm provides an affirmative response to Item 7.1.a, provide—

1. The name of each such individual;

2. A description of the nature of the relationship;

3. The date that the Firm entered into the relationship; and

4. The date of the relevant order and an indication whether it was a Board order or a Commission order.

Item 7.2 Entities With Certain Disciplinary or Other Histories

a. Other than a relationship required to be reported in Item 5.2 of Form 3, and only if the Firm has not previously reported the information on Form 1, Form 2, or Form 3, state whether, as of the end of the reporting period, the Firm was owned or partly owned by an entity that was the subject of (a) a Board disciplinary sanction entered within the five years preceding the end of the reporting period, which has not been vacated on review or appeal, suspending or revoking that entity's registration or disapproving that entity's application for registration, or (b) a Commission order under Rule 102(e) of the Commission's Rules of Practice entered within the five years preceding the end of the reporting period, which has not been vacated on appeal, suspending or denying the privilege of appearing or practicing before the Commission.

b. If the Firm provides an affirmative response to Item 7.2.a, provide—

1. The name of each such entity;

2. A description of the nature of the relationship;

3. The date that the Firm entered into the relationship; and

4. The date of the relevant order and an indication whether it was a Board order or a Commission order.

Item 7.3 Certain Arrangements To Receive Consulting or Other Professional Services

a. Other than a relationship required to be reported in Item 5.3 of Form 3, state whether the Firm received, or entered into a contractual or other arrangement to receive, from any individual or entity meeting the criteria described in Items 7.1.a. or 7.2.a, consulting or other professional services related to the Firm's audit practice or related to services the Firm provides to issuer, broker, or dealer audit clients.

b. If the Firm provides an affirmative response to Item 7.3.a, provide—

1. The name of each such individual or entity;

2. A description of the nature of the relationship;

3. The date that the Firm entered into the relationship;

4. A description of the services provided or to be provided to the Firm by the individual or entity; and

5. The date of the relevant order and an indication whether it was a Board order or a Commission order.

PART VIII—Acquisition of Another Public Accounting Firm or Substantial Portions of Another Public Accounting Firm's Personnel

If the Firm became registered on or after December 31, 2009, the first annual report that the Firm files must provide this information for the period running from the date used by the Firm for purposes of General Instruction 9 of Form 1 (regardless of whether that date was before or after the beginning of the reporting period) through March 31 of the year in which the annual report is required to be filed.

Item 8.1 Acquisition of Another Public Accounting Firm or Substantial Portions of Another Public Accounting Firm's Personnel

a. State whether the Firm acquired another public accounting firm.

b. If the Firm provides an affirmative response to Item 8.1.a, provide the name(s) of the public accounting firm(s) that the Firm acquired.

c. State whether the Firm, without acquiring another public accounting firm, took on as employees, partners, shareholders, principals, members, or owners 75% or more of the persons who, as of the beginning of the reporting period, were the partners, shareholders, principals, members, or owners of another public accounting firm.

d. If the Firm provides an affirmative response to Item 8.1.c, provide the name of the other public accounting firm and the number of the other public accounting firm's former partners, shareholders, principals, members, owners, and accountants that joined the Firm.

Part IX—Affirmation of Consent

Item 9.1 Affirmation of Understanding of, and Compliance With, Consent Requirements

Whether or not the Firm, in applying for registration with the Board, provided the signed statement required by Item 8.1 of Form 1, affirm that—

a. The Firm has consented to cooperate in and comply with any request for testimony or the production of documents made by the Board in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002;

b. The Firm has secured from each of its associated persons, and agrees to enforce as a condition of each such person's continued employment by or other association with the Firm, a consent indicating that the associated person consents to cooperate in and comply with any request for testimony or the production of documents made by the Board in furtherance of its authority under the Sarbanes-Oxley Act of 2002, and that the associated person understands and agrees that such consent is a condition of his or her continued employment by or other association with the Firm; and

c. The Firm understands and agrees that cooperation and compliance, as described in Item 9.1.a, and the securing and enforcing of consents from its associated persons as described in Item 9.1.b, is a condition to the continuing effectiveness of the registration of the Firm with the Board.

Note 1: The affirmation in Item 9.1.b shall not be understood to include an affirmation that the Firm has secured such consents from any associated person that is a registered public accounting firm.

Note 2: The affirmation in Item 9.1.b shall not be understood to include an affirmation that the Firm has secured such consents from any associated person that is a foreign public accounting firm in circumstances where that associated person asserts that non-U.S. law prohibits it from providing the consent, so long as the Firm possesses in its files documents relating to the associated person's assertion about non-U.S. law that would be sufficient to satisfy the requirements of subparagraphs (2) through (4) of Rule 2207(c) if that associated person were a registered public accounting firm filing a Form 2 and withholding this affirmation. This exception to the affirmation in Item 9.1.b does not relieve the Firm of its obligation to enforce cooperation and compliance with Board demands by any such associated person as a condition of continued association with the Firm.

Note 3: If the Firm is a foreign registered public accounting firm, the affirmations in Item 9.1 that relate to associated persons shall be understood to encompass every accountant who is a proprietor, partner, principal, shareholder, officer, or audit manager of the Firm and who provided at least ten hours of audit services for any issuer during the reporting period.

Part X—Certification of the Firm

Item 10.1 Signature of Partner or Authorized Officer

This Form must be signed on behalf of the Firm by an authorized partner or officer of the Firm including, in accordance with Rule 2204, both a signature that appears in typed form within the electronic submission and a corresponding manual signature retained by the Firm. The signer must certify that—

a. the signer is authorized to sign this Form on behalf of the Firm;

b. the signer has reviewed this Form;

c. based on the signer's knowledge, the Firm has filed a special report on Form 3 with respect to each event that occurred before the end of the reporting period and for which a special report on Form 3 is required under the Board's rules;

d. based on the signer's knowledge, this Form does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and

e. either—

1. based on the signer's knowledge, the Firm has not failed to include in this Form any information or affirmation that is required by the instructions to this Form, or

2. based on the signer's knowledge—

(A) the Firm is a foreign registered public accounting firm and has not failed to include in this Form any information or affirmation that is required by the instructions to this Form except for information or affirmations that the Firm asserts it cannot provide to the Board on this Form 2 without violating non-U.S. law;

(B) with respect to any such withheld information or affirmation, the Firm has

satisfied the requirements of PCAOB Rule 2207(b) and has in its possession the materials required by PCAOB Rule 2207(c); and

(C) the Firm has indicated, in accordance with the instructions to this Form, each Item of this Form with respect to which the Firm has withheld any required information or affirmation.

The signature must be accompanied by the signer's title, the capacity in which the signer signed the Form, the date of signature, and the signer's business mailing address, business telephone number, business facsimile number, and business email address.

Part XI—Exhibits

To the extent applicable under the foregoing instructions or the Board's rules, each annual report must be accompanied by the following exhibits:

Exhibit 3.2 Description of Methodology Used to Estimate Components of Calculation in Item 3.2 and Reasons for Using Estimates

Exhibit 99.1 Request for Confidential Treatment

Exhibit 99.3 Materials Required by Rule 2207(c)(2)–(4)—Submit Only as an Exhibit to an Amended Form 2 in Response to a Request Made Pursuant to Rule 2207(d)

Form 3—Special Report Form

General Instructions

1. Submission of this Report. Effective December 31, 2009, a registered public accounting firm must use this Form to file special reports with the Board pursuant to Section 102(d) of the Act and Rule 2203 and to file any amendments to a special report. Unless otherwise directed by the Board, the Firm must file this Form, and all exhibits to this Form, electronically with the Board through the Board's Web-based system.

2. Defined Terms. The definitions in the Board's rules apply to this Form. Italicized terms in the instructions to this Form are defined in the Board's rules. In addition, as used in the instructions to this Form, the term ''the Firm'' means the registered public accounting firm that is filing this Form with the Board.

3. When this Report is Required and When It is Considered Filed. Upon the occurrence of any event specified in Part II of this Form, the Firm must report the event on this Form by following the instructions to this Form. With respect to events that occur on or after December 31, 2009 and while the Firm is registered, the Firm must file the Form no later than thirty days after the occurrence of the event reported. Certain additional requirements apply, but they vary depending on whether a firm was registered as of December 31, 2009. A firm that becomes registered after December 31, 2009, must, within thirty days of receiving notice of Board approval of its registration application, file this Form to report any reportable events that occurred in a specified period before approval of the firm's application for registration. See Rule 2203(a)(2). A firm that was registered as of December 31, 2009, must, by January 30, 2010, file this Form to report certain additional information that is current as of December 31, 2009. See Rule 2203(a)(3) and General Instruction No. 4 below. A special report shall be deemed to be filed on the date that the Firm submits a Form 3 in accordance with Rule 2203 that includes the signed certification required in Part VIII of Form 3.

4. Required Filing to Bring Current Certain Information for Firms Registered as of December 31, 2009. If the Firm is registered as of December 31, 2009, the Firm must file a special report on this Form no later than January 30, 2010, to report the information specified below, to the extent that it has not been reported on the Firm's Form 1 filing. The Firm must make this Form 3 filing to report the following information even if the Firm has previously informally disclosed the information to the Board or its staff—

a. Information responsive to Items 2.4 through 2.9 and Item 4.1 if (1) the proceeding is pending as of December 31, 2009, and (2) the defendants or respondents as of that date include either the Firm or a person who is a partner, shareholder, principal, owner, member, or audit manager of the Firm as of that date;

b. Information responsive to Items 2.10 and 4.2 if (1) the conclusion of a proceeding as to any party specified there occurred after the date used by the firm for purposes of General Instruction 9 to Form 1 and before December 31, 2009, and (2) the proceeding resulted in any conviction of, judgment against, imposition of any liability or sanction on, or Commission Rule 102(e) order against the Firm or any person who is a partner, shareholder, principal, owner, member, or audit manager of the Firm as of December 31, 2009;

c. Information responsive to Items 2.11 and 4.3 if the Firm is the subject of a petition or proceeding described there as of December 31, 2009;

d. Information responsive to Items 2.12 through 2.14 and Part V if (1) the relationship commenced after the date used by the firm for purposes of General Instruction 9 to Form 1, (2) the specified disciplinary sanction or Commission Rule 102(e) order continued to be in effect as of December 31, 2009, and (3) the specified relationship continues to exist as of December 31, 2009;

e. Information responsive to Items 2.15 and 6.1 if (1) the loss of authorization relates to a jurisdiction or authority identified in Item 1.7 of the Firm's Form 1 and, (2) as of December 31, 2009, the Firm continues to lack the specified authorization in that jurisdiction;

f. Information responsive to Items 2.16 and 6.2 if the license or certification is in effect as of December 31, 2009; and

g. Information responsive to Items 2.17 and 2.18 and Part VII that is current as of December 31, 2009 to the extent that it differs from the corresponding information provided on the Firm's Form 1.

5. Completing the Form. A firm filing this Form must always complete Parts I, II, and VIII of this Form. Parts III through VII should be completed to the extent applicable, as described more fully in the instructions to Part II of the Form.

6. Amendments to this Report. Amendments shall not be filed to update information in a filed Form 3 that was correct at the time the Form was filed, but only to correct information that was incorrect at the time the Form was filed or to provide information that was omitted from the Form and was required to be provided at the time the Form was filed. When filing a Form 3 to amend an earlier filed Form 3, the Firm must supply not only the corrected or supplemental information, but must include in the amended Form 3 all information, affirmations, and certifications that were required to be included in the original Form 3. The Firm may access the originally filed Form 3 through the Board's Web-based system and make the appropriate amendments without needing to re-enter all other information.

Note: The Board will designate an amendment to a special report as a report on ''Form 3/A.''

7. Rules Governing this Report. In addition to these instructions, the rules contained in Part 2 of Section 2 of the Board's rules govern this Form. Please read these rules and the instructions carefully before completing this Form.

8. Requests for Confidential Treatment. The Firm may, by marking the Form in accordance with the instructions provided, request confidential treatment of any information submitted in Item 3.1.c,

Part IV, Part V, Item 6.1.d, Item 7.1.d, or Exhibit 99.3 of this Form that has not otherwise been publicly disclosed and that either contains information reasonably identified by the Firm as proprietary information or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. See Rule 2300. If the Firm requests confidential treatment, it must identify the information in Item 3.1.c, Part IV, Part V, Item 6.1.d, Item 7.1.d, or Exhibit 99.3 that it desires to keep confidential, and include, as Exhibit 99.1 to this Form, a representation that, to the Firm's knowledge, the information for which confidential treatment is requested has not otherwise been publicly disclosed, and a detailed explanation of the grounds on which the information is considered proprietary or a detailed explanation of the basis for asserting that the information is protected by law from public disclosure and a copy of the specific provision of law that the Firm claims protects the information from public disclosure. If the Firm fails to include Exhibit 99.1, or includes an Exhibit 99.1 that fails to comply with Rule 2300(c)(2), the request for confidential treatment may be denied solely on the basis of the failure. The Board will normally grant confidential treatment requests for information concerning non-public disciplinary proceedings. The Board will determine whether *or not* to grant *other* confidential treatment requests on a case-by-case basis. See Rule 2300(c).

9. Assertions of Conflicts with Non-U.S. Law. If the Firm is a foreign registered public accounting firm, the Firm may, unless otherwise directed by the Board pursuant to Rule 2207(e), decline to provide certain information required by this Form if the Firm could not provide such information without violating non-U.S. law and the Firm proceeds in accordance with Rule 2207. The Firm may withhold responsive information on that basis from any Part of the Form other than Parts I, II, and VIII, and Items 7.1.a, 7.1.b, 7.1.c, and 7.2. If the firm withholds responsive information, the Firm must indicate, in accordance with the instructions in the relevant Part of the Form, the particular Items with respect to which the Firm has withheld responsive information. The Firm may not use the Form to make any general assertion that a particular requirement may conflict with non-U.S. law, but only to indicate that, on the basis of an asserted conflict, the Firm has in fact withheld from this Form required information.

10. Language. Information submitted as part of this Form, including any exhibit to this Form, must be in the English language.

Part I—Identity of the Firm

Item 1.1 Name of Firm

a. State the legal name of the Firm.

Note: If the Firm is filing this Form 3 to report that the Firm's legal name has changed, the name entered in Item 1.1.a should be the Firm's legal name before the name change that is being reported. The Firm's new name should be included in the response to Item 1.1.c.

b. If different than its legal name, state the name or names under which the Firm issues audit reports.

c. If the Firm is filing this Form 3 to report that the Firm's legal name has changed, state the new legal name of the Firm.

Part II—Reason for Filing This Report

Indicate, by checking the relevant box(es) from among Items 2.1 through 2.18 below, the event(s) being reported on this Form. More than one event may be reported in the same Form 3 filing. For each event indicated below, proceed to the Parts and Items of this Form indicated parenthetically for the specific event being reported and provide the information therein described. Provide responses only to those Parts and Items of the Form specifically indicated for the event or events that the Firm identifies in this Part II as an event being reported on this Form. (For example, if the Form is being filed solely to report that the Firm has changed its name, check the box for Item 2.17 in this Part of the Form, and complete only Item 7.1 and Part VIII of the Form.) If the Firm is filing this Form to amend a previous filing, the Firm also should complete Item 2.19.

Note: In Items 2.4 through 2.11 and Item 2.15, the reportable event is described in terms of whether the Firm ''has become aware'' of certain facts. For these purposes, the Firm is deemed to have become aware of the relevant facts on the date that any partner, shareholder, principal, owner, or member of the Firm first becomes aware of the facts.

Audit Reports

Item 2.1 The Firm has withdrawn an audit report on an issuer's financial statements, or withdrawn its consent to the use of its name in a report, document, or written communication containing an issuer's financial statements, and the issuer has failed to comply with a Commission requirement to make a report concerning the matter pursuant to Item 4.02 of Commission Form 8–K. (Complete Item 3.1 and Part VIII.)

Item 2.1–C The Firm has resigned, declined to stand for re-appointment, or been dismissed from an audit engagement as principal auditor (or an auditor upon whom the issuer's principal auditor expressed reliance in its report regarding a significant subsidiary), and the issuer has failed to comply with a Commission requirement to make a report concerning the matter pursuant to Item 4.01 of Commission Form 8–K. (Complete Item 3.2 and Part VIII.)

Item 2.2 The Firm has issued audit reports with respect to more than 100 issuers in a calendar year immediately following a calendar year in which the Firm did not issue audit reports with respect to more than 100 issuers. (Complete Part VIII.)

Item 2.3 The Firm has issued audit reports with respect to 100 or fewer issuers in a completed calendar year immediately following a calendar year in which the Firm issued audit reports with respect to more than 100 issuers. (Complete Part VIII.)

Certain Legal Proceedings

Item 2.4 The Firm has become aware that the Firm has become a defendant in a criminal proceeding prosecuted by a governmental criminal law enforcement authority. (Complete Item 4.1 and Part VIII.)

Item 2.5 The Firm has become aware that, in a matter arising out of his or her conduct in the course of providing audit services or other accounting services to an issuer, broker, dealer, a partner, shareholder, principal, owner, member, or audit manager of the Firm has become a defendant in a criminal proceeding prosecuted by a governmental criminal law enforcement authority. (Complete Item 4.1 and Part VIII.)

Item 2.6 The Firm has become aware that a partner, shareholder, principal, owner, member, or audit manager of the Firm who provided at least ten hours of audit services for any issuer, broker, or dealer during the Firm's current fiscal year or its most recently completed fiscal year has become a defendant in a criminal proceeding prosecuted by a governmental criminal law enforcement authority and is charged with fraud, embezzlement, forgery, extortion, bribery, obstruction of justice, perjury, or false statements; or charged with any crime arising out of alleged conduct relating to accounting, auditing, securities, banking, commodities, taxation, consumer

protection, or insurance. (Complete Item 4.1 and Part VIII.)

Item 2.7 The Firm has become aware that, in a matter arising out of the Firm's conduct in the course of providing professional services for a client, the Firm has become a defendant or respondent in a civil or alternative dispute resolution proceeding initiated by a governmental entity or in an administrative or disciplinary proceeding other than a Board disciplinary proceeding. (Complete Item 4.1 and Part VIII.)

Item 2.8 The Firm has become aware that, in a matter arising out of his or her conduct in the course of providing audit services or other accounting services to an issuer, broker, dealer, a partner, shareholder, principal, owner, member, or audit manager of the Firm has become a defendant or respondent in a civil or alternative dispute resolution proceeding initiated by a governmental entity or in an administrative or disciplinary proceeding other than a Board disciplinary proceeding. (Complete Item 4.1 and Part VIII.)

Item 2.9 The Firm has become aware that, in a matter arising out of his or her conduct in the course of providing professional services for a client, a partner, shareholder, principal, owner, member, or audit manager of the Firm who provided at least ten hours of audit services for any issuer, broker, or dealer during the Firm's current fiscal year or its most recently completed fiscal year has become a defendant or respondent in a civil or alternative dispute resolution proceeding initiated by a governmental entity or in an administrative or disciplinary proceeding other than a Board disciplinary proceeding. (Complete Item 4.1 and Part VIII.)

Item 2.10 The Firm has become aware that a proceeding meeting the criteria described in Items 2.4, 2.5, 2.6, 2.7, 2.8, or 2.9, above has been concluded as to the Firm or a partner, shareholder, principal, owner, member, or audit manager of the Firm (whether by dismissal, acceptance of pleas, through consents or settlement agreements, the entry of a final judgment, or otherwise). (Complete Item 4.2 and Part VIII.)

Item 2.11 The Firm has become aware that the Firm, or the parent or a subsidiary of the Firm, has become the subject of a petition filed in a bankruptcy court, or has otherwise become the subject of a proceeding in which a court or governmental agency (or, in a non-U.S. jurisdiction, a person or entity performing a comparable function) has assumed jurisdiction over substantially all of the assets or business of the Firm or its parent or a subsidiary. (Complete Item 4.3 and Part VIII.)

Certain Relationships

Item 2.12 The Firm has taken on as an employee, partner, shareholder, principal, or member, or has otherwise become owned or partly owned by, a person who is currently the subject of (a) a Board disciplinary sanction suspending or barring the person from being an associated person of a registered public accounting firm, (b) a Commission order suspending or denying the privilege of appearing or practicing before the Commission, or (c) a court-ordered injunction prohibiting appearance or practice before the Commission. (Complete Item 5.1 and Part VIII.)

Item 2.13 The Firm has become owned or partly owned by an entity that is currently the subject of (a) a Board disciplinary sanction suspending or revoking that entity's registration or disapproving that entity's application for registration, (b) a Commission order suspending or denying the privilege of appearing or practicing before the Commission, or (c) a court-ordered injunction prohibiting appearance or practice before the Commission. (Complete Item 5.2 and Part VIII.)

Item 2.14 The Firm has entered into a contractual or other arrangement to receive consulting or other professional services from a person or entity meeting any of the criteria described in Items 2.12 or 2.13 above. (Complete Item 5.3 and Part VIII.)

Licenses and Certifications

Item 2.15 The Firm has become aware that its authorization to engage in the business of auditing or accounting in a particular jurisdiction has ceased to be effective or has become subject to conditions or contingencies other than conditions or contingencies imposed on all firms engaged in the business of auditing or accounting in the jurisdiction. (Complete Item 6.1 and Part VIII.)

Item 2.16 The Firm has obtained a license or certification authorizing the Firm to engage in the business of auditing or accounting and which has not been identified on any Form 1 or Form 3 previously filed by the Firm, or there has been a change in a license or certification number identified on a Form 1 or Form 3 previously filed by the Firm. (Complete Item 6.2 and Part VIII.)

Changes in the Firm or the Firm's Board Contact Person

Item 2.17 The Firm has changed its legal name while otherwise remaining the same legal entity that it was before the name change. (Complete Item 7.1 and Part VIII.)

Item 2.18 There has been a change in the business mailing address, business telephone number, business facsimile number, or business email of the person most recently designated by the Firm (on Form 2, Form 3, or Form 4) as the Firm's primary contact with the Board, or the Firm is designating a new person to serve as the primary contact. (Complete Item 7.2 and Part VIII.)

Amendment

Item 2.19 Amendments

If this is an amendment to a report previously filed with the Board—

a. Indicate, by checking the box corresponding to this item, that this is an amendment.

b. Identify the specific Item numbers of this Form (other than this Item 2.19) as to which the Firm's response has changed from that provided in the most recent Form 3 or amended Form 3 filed by the Firm with respect to the events reported on this Form.

PART III—WITHDRAWN AUDIT REPORTS AND ISSUER AUDITOR CHANGES

Item 3.1 Withdrawn issuer audit reports and consents

If the Firm has withdrawn an audit report on an issuer's financial statements, or withdrawn its consent to the use of its name in a report, document, or written communication containing an issuer's financial statements, and the issuer has failed to comply with a Commission requirement to make a report concerning the matter pursuant to Item 4.02 of Commission Form 8–K, provide—

a. The issuer's name and CIK number, if any;

b. The date(s) of the audit report(s) that the Firm has withdrawn, or to which the Firm's withdrawal of consent relates; and

c. A description of the reason(s) the Firm has withdrawn the audit report(s) or the consent.

Note: The 30-day period in which the Firm must report the event does not begin to run unless and until the issuer fails to report on Form 8–K within the time required by the Commission's rules. The Firm must then report the

event on Form 3 within 30 days of the expiration of the required Form 8–K filing deadline, unless, within that 30-day period, the issuer reports on a late-filed Form 8–K.

Item 3.2 Issuer auditor changes

If the Firm has resigned, declined to stand for re-appointment, or been dismissed from an audit engagement as principal auditor (or an auditor upon whom the issuer's principal auditor expressed reliance in its report regarding a significant subsidiary) and the issuer has failed to comply with a Commission requirement to make a report concerning the matter pursuant to Item 4.01 of Commission Form 8–K, provide—

a. The issuer's name and CIK number, if any; and

b. Whether the Firm resigned, declined to stand for re-election, or was dismissed and the date thereof.

PART IV—CERTAIN PROCEEDINGS

Item 4.1 Criminal, Governmental, Administrative, or Disciplinary Proceedings

If the Firm has indicated in this Form 3 that any of the events described in Items 2.4, 2.5, 2.6, 2.7, 2.8, or 2.9 has occurred, provide the following information with respect to each such event—

a. The name, filing date, and case or docket number of the proceeding, and the nature of the proceeding, i.e., whether it is a criminal proceeding, a civil or alternative dispute resolution proceeding, or an administrative or disciplinary proceeding.

b. The name of the court, tribunal, or body in or before which the proceeding was filed.

c. An indication whether the Firm itself is a defendant or respondent in the proceeding and, if so, the statutes, rules, or legal duties that the firm is alleged to have violated, and a brief description of the firm's alleged conduct in violation of those statutes, rules, or legal duties.

d. The names of every defendant or respondent who is a partner, shareholder, principal, owner, member, or audit manager of the Firm, or who was such either at the time the Firm received notice of the proceeding or at the time of the alleged conduct on which any claim or charge is based, and who provided at least ten hours of audit services for any issuer, broker, or dealer during the Firm's current fiscal year or its most recent fiscal year; and, as to each such defendant or respondent, the statutes, rules, or legal duties that he or she is alleged to have violated, and a brief description of his or her alleged conduct in violation of those statutes, rules, or legal duties.

e. The name of any client that was the recipient of the professional services to which any claim or charge in the proceeding relates.

Note: For the purpose of this Part, administrative or disciplinary proceedings include those of the Commission; any other federal, state, or non-U.S. agency, board, or administrative or licensing authority; and any professional association or body. Investigations that have not resulted in the commencement of a proceeding need not be included.

Item 4.2 Concluded Criminal, Governmental, Administrative, or Disciplinary Proceedings

If any proceeding meeting the criteria described in Items 2.4, 2.5, 2.6, 2.7, 2.8, or 2.9, including any proceeding reported in Item 4.1, has been concluded as to the Firm or a partner, shareholder, principal, owner, member, or audit manager of the Firm (whether by dismissal, acceptance of pleas, through consents or settlement agreements, the entry of a final judgment, or otherwise), provide—

a. The name, filing date, and case or docket number of the proceeding, and the nature of the proceeding, i.e., whether it is a criminal proceeding, a civil or alternative dispute resolution proceeding, or an administrative or disciplinary proceeding;

b. The name of the court, tribunal, or body in or before which the proceeding was filed; and

c. A brief description of the terms of the conclusion of the proceeding as to the Firm or partner, shareholder, principal, owner, member, or audit manager.

Item 4.3 Bankruptcy or Receivership

If the Firm, or the parent or a subsidiary thereof, has become the subject of a petition filed in a bankruptcy court, or has otherwise become the subject of a proceeding in which a court or governmental agency (or, in a non-U.S. jurisdiction, a person or entity performing a comparable function) has assumed jurisdiction over substantially all of the assets or business of the Firm or its parent or a subsidiary, provide—

a. the name of the proceeding;

b. the name of the court or governmental body;

c. the date of the filing or of the assumption of jurisdiction; and

d. the identity of the receiver, fiscal agent or similar officer, if applicable, and the date of his or her appointment.

PART V—CERTAIN RELATIONSHIPS

Item 5.1 New Relationship With Person Subject to Bar or Suspension

If the Firm has taken on as an employee, partner, shareholder, principal, or member, or has otherwise become owned or partly owned by, a person who is currently the subject of (a) a Board disciplinary sanction suspending or barring the person from being an associated person of a registered public accounting firm, (b) a Commission order suspending or denying the privilege of appearing or practicing before the Commission, or (c) a court-ordered injunction prohibiting appearance or practice before the Commission, provide—

a. the name of the person;

b. the nature of the person's relationship with the Firm; and

c. the date on which the person's relationship with the Firm began.

Item 5.2 New Ownership Interest by Firm Subject to Bar or Suspension

If the Firm has become owned or partly owned by an entity that is currently the subject of (a) a Board disciplinary sanction suspending or revoking that entity's registration or disapproving that entity's application for registration, (b) a Commission order suspending or denying the privilege of appearing or practicing before the Commission, or (c) a court-ordered injunction prohibiting appearance or practice before the Commission, provide—

a. the name of the entity that has obtained an ownership interest in the Firm;

b. the nature and extent of the ownership interest; and

c. the date on which the ownership interest was obtained.

Item 5.3 Certain Arrangements To Receive Consulting or Other Professional Services

If the Firm has entered into a contractual or other arrangement to receive consulting or other professional services from a person or entity meeting any of the criteria described in Items 2.12 or 2.13 above, provide—

a. the name of the person or entity;

b. the date that the Firm entered into the contract or other arrangement; and

c. a description of the services to be provided to the Firm by the person or entity.

PART VI—LICENSES AND CERTIFICATIONS

Item 6.1 Loss of, or Limitations Imposed on, Authorization To Engage in the Business of Auditing or Accounting

If the Firm's authorization to engage in the business of auditing or accounting in a particular jurisdiction has ceased to be effective or has become subject to conditions or contingencies other than conditions or contingencies imposed on all firms engaged in the business of auditing or accounting in the jurisdiction, provide—

a. the name of the state, agency, board or other authority that had issued the license or certification related to such authorization;

b. the number of the license or certification;

c. the date that the authorization ceased to be effective or became subject to conditions or contingencies, and

d. a brief description of the reason(s) for such action, including a description of the conditions or contingencies, if any.

Item 6.2 New License or Certification

If the Firm has obtained any license or certification authorizing the Firm to engage in the business of auditing or accounting, and which has not been identified on any Form 1 or Form 3 previously filed by the Firm, or there has been a change in any license or certification number identified on a Form 1 or Form 3 previously filed by the Firm, provide—

a. the name of the issuing state, agency, board or other authority;

b. the number of the license or certification;

c. the date the license or certification took effect; and

d. if the license or certification replaces another license or certification issued by the same authority, the number of the replaced license or certification.

Note: If the Firm is filing a Form 4 to report a change in its form of organization, change in jurisdiction, or a business combination, the Firm should report on Form 4, rather than Form 3, any related license change that takes effect before the submission of the Form 4.

PART VII—CHANGES IN THE FIRM OR THE FIRM'S BOARD CONTACT PERSON

Item 7.1 Change in Name of Firm

If the Firm is reporting a change in its legal name—

a. State the new legal name of the Firm;

b. State the legal name of the Firm immediately preceding the new legal name;

c. State the effective date of the name change;

d. Provide a brief description of the reason(s) for the change; and

e. Affirm, by checking the box corresponding to this Item, that, other than the name change, the Firm is the same legal entity that it was before the name change.

Note: If, other than the name change, the Firm is not the same legal entity that it was before the name change, whether because of a change in the Firm's legal form of organization or because of other transactions, the registration status of the predecessor firm does not automatically attach to the Firm, and the Firm cannot report the event as a name change. If the Firm cannot make the affirmation required by Item 7.1.e, the Firm cannot execute the certification in Part VIII as to Item 7.1, and this Form cannot be deemed filed under Rule 2206.

In that event, the Firm should consider whether, pursuant to the provisions of Rule 2108, the Firm can make the representations required in a Form 4 filing to enable the predecessor firm's registration to attach to the Firm. If the Firm cannot or does not file with the Board a Form 4 making all necessary representations, the predecessor firm's registration does not attach to the Firm. In those circumstances, the Firm may not lawfully prepare or issue an audit report without first filing an application for registration on Form 1 and having that application approved by the Board.

Note: If the Firm is filing a Form 4 to report a change in its form of organization, change in jurisdiction, or a business combination, the Firm should report any related name change on Form 4 and not on Form 3.

Item 7.2 Change in Contact Information

If there has been a change in the business mailing address, business telephone number, business facsimile number, or business email address of the person most recently designated by the Firm (on Form 2, Form 3, or Form 4) as the Firm's primary contact with the Board, or if the Firm is designating a new person to serve as the primary contact, provide the name and current business mailing address, business telephone number, business facsimile number, and business email of the partner or authorized officer of the Firm who will serve as the Firm's primary contact with the Board.

PART VIII—CERTIFICATION OF THE FIRM

Item 8.1 Signature of Partner or Authorized Officer

This Form must be signed on behalf of the Firm by an authorized partner or officer of the Firm including, in accordance with Rule 2204, both a signature that appears in typed form within the electronic submission and a corresponding manual signature retained by the Firm. The signer must certify that—

a. the signer is authorized to sign this Form on behalf of the Firm;

b. the signer has reviewed this Form;

c. based on the signer's knowledge, this Form does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and

d. either—

1. based on the signer's knowledge, the Firm has not failed to include in this Form any information or affirmation that is required by the instructions to this Form, with respect to the event or events being reported on this Form, or

2. based on the signer's knowledge—

(A) the Firm is a foreign registered public accounting firm and has not failed to include in this Form any information or affirmation that is required by the instructions to this Form, with respect to the event or events being reported on this Form, except for information or affirmations that the Firm asserts it cannot provide to the Board on this Form 3 without violating non-U.S. law;

(B) with respect to any such withheld information or affirmation, the Firm has made the efforts required by PCAOB Rule 2207(b) and has in its possession the materials required by PCAOB Rule 2207(c); and

(C) the Firm has indicated, in accordance with the instructions to this Form, each Item of this Form with respect to which the Firm has withheld any required information.

The signature must be accompanied by the signer's title, the capacity in which the signer signed the Form, the date of signature, and the signer's business mailing address, business telephone number, business facsimile number, and business email address.

PART IX—EXHIBITS

To the extent applicable under the foregoing instructions, each special report must be accompanied by the following exhibits:

Exhibit 99.1 Request for Confidential Treatment

Exhibit 99.3 Materials Required by Rule 2207(c)(2)–(4)—Submit Only as an Exhibit to an Amended Form 3 in Response to a Request Made Pursuant to Rule 2207(d)

* * * * *

FORM 4—SUCCEEDING TO REGISTRATION STATUS OF PREDECESSOR

GENERAL INSTRUCTIONS

1. Purpose of this Form. Effective December 31, 2009, this Form must be used to submit information, representations, and affirmations to the Board, pursuant to Rule 2109, by a public accounting firm that seeks to succeed to the registration status of a predecessor firm in circumstances described in Rule 2108.

2. Defined Terms. The definitions in the Board's rules apply to this Form. Italicized terms in the instructions to this Form are defined in the Board's rules. In addition, as used in the instructions to this Form, the term ''the Firm'' means the public accounting firm that is submitting this Form to the Board, and the term ''the predecessor firm'' means the registered public accounting firm identified in Item 1.1.a of the Form.

3. Submission of this Form. Unless otherwise directed by the Board, the Firm must submit this Form, and all exhibits to this Form, to the Board electronically by completing the Web-based version of this Form available on the Board's Web site. The Firm must use the predecessor firm's user ID and password to access the system and submit the Form. In the event of a transaction involving the combination of multiple registered public accounting firms, the Firm must access the system using only the user ID and password of the firm specifically identified in Item 1.1.a, and not those of any other registered public accounting firm.

4. When this Form Should be Submitted and When It is Considered Filed. To succeed to the registration status of the predecessor firm pursuant to the provisions of Rule 2108(a) or (b), the Firm must provide the information and representations required by this Form, in accordance with the instructions to this Form, and must file the Form no later than the 14th day after the effective date of the change in form of organization, change in jurisdiction of organization, or business combination. Different timing requirements apply with respect to events that occurred before December 31, 2009. See Rule 2109(a)(2). Form 4 is considered filed when the Firm has submitted to the Board, through the Board's Web-based reporting system, a Form 4 that includes the signed certification required in Part V of Form 4, provided, however, that any Form 4 so submitted after the applicable filing deadline shall not be deemed filed unless and until the Board, pursuant to Rule 2108(d), grants leave to file the Form 4 out of time.

5. Seeking Leave To File this Form Out of Time. To request leave to file Form 4 out of time, pursuant to the provisions of Rule 2108(d), the Firm must file the request on Form 4 and must attach as Exhibit 99.5 a detailed statement describing why, despite the passage of time since the event described on the Form 4, the Board should permit the Firm to succeed to the registration status of the predecessor firm. Any Form 4 that has been submitted out of time, and as to which a Board decision on whether to allow the form to be filed is pending, may be withdrawn by accessing the pending submission in the Board's Web-based system and selecting the ''Withdraw'' option.

6. Completing the Form. The Firm must complete Parts I, II, IV and V of this Form. Part III should be completed to the extent applicable, as described more fully in the instructions to Part II of the Form.

7. Amendments to this Form. Amendments shall not be submitted to update information into a Form 4 that was correct at the time the Form was submitted, but only to correct information that was incorrect at the time the Form was submitted or to provide information that was omitted from the Form and was required to be provided at the time the Form was submitted. When submitting a Form 4 to amend an earlier submitted Form 4, the Firm must supply not only the corrected or supplemental information, but must include in the amended Form 4 all information, affirmations, and certifications that were required to be included in the original Form 4. The Firm may access the originally filed Form 4 through the Board's Web-based system and make the appropriate amendments without needing to re-enter all other information. (Note that, pursuant to Rule 2109(d), the provisions of Rule 2205 concerning amendments apply to any submission on this Form as if the submission were a report on Form 3.)

Note: The Board will designate an amendment to a report on Form 4 as a report on ''Form 4/A.''

Note: Any change to a Form 4 that was originally submitted out of time, and as to which a Board decision on whether to allow the form to be filed is pending, shall not be treated as an amendment. To make a change to any such pending Form 4 submission, the Firm must access the pending submission in the Board's Web-based system, select the ''Withdraw and Replace'' option, and submit a new completed Form 4 in place of the previously pending submission. The certification required in Part V of the new submission must be executed specifically for the replacement version of the Form and dated accordingly.

8. Rules Governing this Form. In addition to these instructions, the rules contained in Part 2 of Section 2 of the Board's rules govern this Form. Please read these rules and the instructions carefully before completing this Form.

9. Requests for Confidential Treatment. The Firm may, by marking the Form in accordance with the instructions provided, request confidential treatment of any information submitted in Exhibit 99.3 or Exhibit 99.5 of this Form that has not otherwise been publicly disclosed and that either contains information reasonably identified by the Firm as proprietary information or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. See Rule 2300. If the Firm requests confidential treatment, it must identify the information in Exhibit 99.3 or Exhibit 99.5 that it desires to keep confidential, and include, as Exhibit 99.1 to this Form, a representation that, to the Firm's knowledge, the information for which confidential treatment is requested has not otherwise been publicly disclosed, and a detailed explanation of the grounds on which the information is considered proprietary or a detailed explanation of the basis for asserting that the information is protected by law from public disclosure and a copy of the specific provision of law that the Firm claims protects the information from public disclosure. If the Firm fails to include Exhibit 99.1, or includes an Exhibit 99.1 that fails to comply with Rule 2300(c)(2), the request for confidential treatment may be denied solely on the basis of the failure. The Board will normally grant confidential treatment requests for information concerning non-public disciplinary proceedings. The Board will determine whether or not to grant other confidential treatment requests on a case-by-case basis. See Rule 2300(c).

10. Assertions of Conflicts with Non-U.S. Law. If the Firm is a foreign registered public accounting firm, the

Firm may, unless otherwise directed by the Board pursuant to Rule 2207(e), decline to provide the affirmation required by Item 4.1 of this Form and any answer required by Item 3.2.e of this Form if doing so would constitute a violation of non-U.S. law by the Firm and the Firm proceeds in accordance with Rule 2207. (Note that, pursuant to Rule 2109(d), the provisions of Rule 2207 apply to any submission on this Form as if the submission were a report on Form 3.) If the firm withholds the affirmation or answer, the Firm must indicate, in accordance with the instructions in the relevant Part of the Form, that it has done so.

11. Language. Information submitted as part of this Form, including any exhibit to this Form, must be in the English language.

PART I—IDENTITY OF THE FIRM AND CONTACT PERSONS

Item 1.1 Names of Firm and Predecessor Registered Public Accounting Firm

a. State the legal name of the registered public accounting firm to whose registration status the Firm seeks to succeed.

Note: The name provided in Item 1.1.a should be the legal name of the registered public accounting firm as last reported to the Board on Form 1 or Form 3. This is the firm referred to in this Form as ''the predecessor firm.'' In accessing and submitting this Form through the Board's Web-based system, the Firm must use the predecessor firm's user ID and password.

b. State the legal name of the Firm filing this Form.

Note: The name provided in Item 1.1.b will be the name under which the Firm is registered with the Board if this Form is filed in accordance with Rule 2109.

c. If different than the name provided in Item 1.1.b, state the name or names under which the Firm issues or intends to issue audit reports.

Item 1.2 Contact Information of the Firm

a. State the physical address (and, if different, mailing address) of the Firm's headquarters office.

b. State the telephone number and facsimile number of the Firm 's headquarters office. If available, state the Web site address of the Firm.

Item 1.3 Primary Contact and Signatory

a. State the name, business title, physical business address (and, if different, business mailing address), business telephone number, business facsimile number, and business email address of a partner or authorized officer of the Firm who will serve as the Firm's primary contact with the Board, including for purposes of this Form 4, any annual reports filed on Form 2, and any special reports filed on Form 3.

PART II—GENERAL INFORMATION CONCERNING THE FILING OF THIS FORM

Item 2.1 Reason for Filing this Form

Indicate, by checking the box for either Item a or Item b below, the reason the Firm is filing this Form. Then proceed to the Parts and Items of this Form indicated parenthetically for the relevant item and provide the information described there. Provide responses only to those Parts and Items of the Form specifically indicated for the event or events that the Firm identifies in this Part II as the reason for filing this Form. (For example, if the Form is being submitted because the Firm has changed its form of organization, check the box for Item 2.1.a, and complete only Item 3.1 and Parts IV and V of the Form. Complete Item 2.2 or Item 2.3 if applicable.)

a. There has been a change in the Firm's form of organization, or the Firm has changed the jurisdiction under the law of which it is organized. (Complete Item 3.1, Part IV, and Part V; complete Item 2.2 or Item 2.3 if applicable.)

b. There has been an acquisition of a registered public accounting firm by an entity that was not a registered public accounting firm at the time of the acquisition, or a registered public accounting firm has combined with another entity or other entities to form a new legal entity. (Complete Item 3.2, Part IV, and Part V; complete Item 2.2 or Item 2.3 if applicable.)

Item 2.2 Request for Leave To File This Form Out of Time

If this Form is not submitted in accordance with Rule 2109(b) on or before the filing deadline set by Rule 2109(a), the Firm may request leave to file this Form 4 out of time by checking the box for this Item, completing this Form 4 as is otherwise required, and providing, as Exhibit 99.5 to this Form, a description of the reason(s) the Form was not timely filed and a statement of the grounds on which the Firm asserts that the Board should grant leave to file the Form out of time.

Note: Requests for leave to file Form 4 out of time are not automatically granted. See Rule 2108(d).

Item 2.3 Amendments

If this is an amendment to a Form 4 previously filed with the Board—

a. Indicate, by checking the box corresponding to this item, that this is an amendment.

b. Identify the specific Item numbers of this Form (other than this Item 2.3) as to which the Firm's response has changed from that provided in the most recent Form 4 or amended Form 4 filed by the Firm with respect to the event reported on this Form.

PART III—CHANGES IN THE FIRM

Item 3.1 Changes in Form of Organization or in Relevant Jurisdiction

If this Form 4 is being submitted in connection with a change in the Firm's form of organization or a change in the jurisdiction under the law of which the Firm is organized—

a. State the Firm's current (i.e., after the change in legal form or jurisdiction) legal form of organization;

b. Identify the jurisdiction under the law of which the Firm is organized currently (i.e., after the change in legal form or jurisdiction); and

c. State the date that the change took effect.

d. Affirm that, after the change reported or described in this Item 3.1, the Firm is a public accounting firm under substantially the same ownership as the predecessor firm.

Note: Neither the Act nor Board rules include any provision by which a registered public accounting firm may, in effect, transfer its Board registration to another entity. Rule 2108(a), in conjunction with this Form, allows the succession of registration status in circumstances in which a registered public accounting firm changes its legal form of organization while remaining under substantially the same ownership. For purposes of this Item, the Firm is considered to be under substantially the same ownership as the predecessor firm if a majority of the persons who held an equity ownership interest in the predecessor also constitute a majority of the persons who hold an equity ownership interest in the Firm.

e. If, in connection with the change described in this Item 3.1, the Firm has obtained, or will practice under, a license or certification number, authorizing it to engage in the business of auditing or accounting, that is different from any such license or certification number previously reported to the Board by the predecessor firm, provide as to each such license—

1. the name of the issuing state, agency, board, or other authority;

2. the number of the license or certification;

3. the date the license or certification took effect.

f. If, in connection with the change described in this Item 3.1, any license or certification that authorized the predecessor firm to engage in the business of auditing or accounting has ceased to be effective or has become subject to any conditions or contingencies other than conditions or contingencies imposed on all firms engaged in the business of auditing or accounting in the jurisdiction, provide, as to each such license—

1. the name of the issuing state, agency, board, or other authority;

2. the number of the license or certification; and

3. the date that the authorization ceased to be effective or became subject to conditions or contingencies.

Item 3.2 Acquisitions of, or Combinations Involving, a Registered Public Accounting Firm

a. If this Form 4 is being submitted in connection with a transaction concerning which a person who holds an equity ownership interest in the Firm, or is employed by the Firm, can certify the points set out in Item 3.2.b. and Exhibit 99.4,—

1. Provide the name of each entity, other than the predecessor firm, that was involved in the transaction and that was a registered public accounting firm immediately before the transaction, and as to each such entity—

(i) affirm that the entity has filed with the Board a request for leave to withdraw from registration on Form 1–WD; and

(ii) state the date that the entity filed Form 1–WD;

2. Provide the name of each entity, including any acquiror, that was involved in the transaction and that was not a registered public accounting firm immediately before the transaction;

3. Provide the date that the transaction took effect; and

4. Provide a brief description of the nature of the transaction.

b. Provide as Exhibit 99.4 to this Form, a statement in the form set out below, signed by a person who, immediately before the transaction, was an officer of, or held an equity ownership interest in, the predecessor firm and who now either holds an equity ownership interest in, or is employed by, the Firm. The statement must be submitted on behalf of the Firm. Exhibit 99.4 must include a signature that appears in typed form in the electronic submission and a corresponding manual signature retained by the Firm in accordance with Rule 2109(d). The signature must be accompanied by the signer's current title, the signer's title immediately before the event described in Item 3.2.a, the date of signature, and the signer's business mailing address, business telephone number, business facsimile number, and business email address. Other than the insertion of the relevant names, Exhibit 99.4 must be in the exact following words—

On behalf of [name of the Firm], I certify that (1) I was an officer of, or held an equity ownership interest in, [name of predecessor firm] immediately before the transaction described in Item 3.2.a of the Form 4 to which this exhibit is attached; (2) immediately before that transaction [name of predecessor firm] was a registered public accounting firm; (3) as part of that transaction, a majority of the persons who held equity ownership interests in [name of predecessor firm] obtained equity ownership interests in, or became employed by, [name of the Firm]; (4) [name of predecessor firm] intended that [name of the Firm] succeed to the Board registration status of [name of predecessor firm] to the extent permitted by the Board's rules; and (5) [name of predecessor firm] is no longer a public accounting firm.

c. If, in connection with the transaction described in Item 3.2.a, the Firm has obtained, or will practice under, a license or certification number, authorizing it to engage in the business of auditing or accounting, that is different from any such license or certification number previously reported to the Board by the predecessor firm, provide, as to each such license—

1. the name of the issuing state, agency, board or other authority;

2. the number of the license or certification; and

3. the date the license or certification took effect.

d. If, in connection with the transaction described in Item 3.2.a, any license or certification that authorized the predecessor firm to engage in the business of auditing or accounting has ceased to be effective or has become subject to any conditions or contingencies other than conditions or contingencies imposed on all firms engaged in the business of auditing or accounting in the jurisdiction, provide, as to each such license—

1. the name of the issuing state, agency, board, or other authority;

2. the number of the license or certification; and

3. the date that the authorization ceased to be effective or became subject to conditions or contingencies.

e. Provide a ''yes'' or ''no'' answer to each of the following questions—

1. Is there identified in Item 3.2.a.2 any entity that, if it were filing an application for registration on Form 1 on the date of the certification in Part V of this Form, would have to provide an affirmative response to Item 5.1.a of Form 1 in order to file a complete and truthful Form 1?

Note: In considering whether an affirmative response would be required to Item 5.1.a of Form 1, the Firm should take into account the guidance provided by question number 33 in Frequently Asked Questions Regarding Registration with the Board, PCAOB Release No. 2003–011D (Apr. 28, 2010).

2. Is there identified in Item 3.2.a.2 any entity that (i) issued an audit report with respect to an issuer on or after October 22, 2003 (or, if the entity is a non-U.S. entity, July 19, 2004), while not registered with the Board, and (ii) did not thereafter have an application for registration on Form 1 approved by the Board?

3. Is there identified in Item 3.2.a.2 any entity that (i) issued an audit report with respect to a broker or dealer for financial statements with fiscal years ending after December 31, 2008, while not registered with the Board, and (ii) did not thereafter have an application for registration on Form 1 approved by the Board?

4. Is the Firm operating without holding any license or certification issued by a state, agency, board, or other authority authorizing the Firm to engage in the business of auditing or accounting?

Note: If the Firm answers ''yes'' to any question in Item 3.2.e or asserts as to any of those questions that non-U.S. law prohibits it from providing an answer, the Firm cannot succeed outright to the registration of the predecessor. If this Form 4 is submitted in accordance with Rule 2109, however, the Firm will temporarily succeed to the registration of the predecessor for a transitional period as described in Rule 2108(b)(2) as long as the Firm makes the representation required in Item 3.2.f below. If the Firm answers ''yes'' to any question in Item 3.2.e or asserts as to any of those questions that non U.S. law prohibits it from providing an answer but fails to make the representation required in Item 3.2.f, this Form 4 will not be accepted for filing and the Firm will not succeed to the predecessor's registration even on a temporary basis. See Rule 2108(b)(2).

f. If the Firm answered ''yes'' to any question in Item 3.2.e or asserts as to any of those questions that non-U.S. law

prohibits it from providing an answer, affirm, by checking the box corresponding to the appropriate item, that one of the following statements is true—

1. The Firm has filed an application for registration on Form 1 on or after the date provided in Item 3.2.a.3.

2. The Firm intends to file an application for Registration on Form 1 no later than 45 days after the date provided in Item 3.2.a.3.

PART IV—CONTINUING OBLIGATIONS

Item 4.1 Continuing Consent to Cooperate

Affirm that—

a. The Firm consents to cooperate in and comply with any request for testimony or the production of documents made by the Board in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002;

b. The Firm has secured from each of its associated persons, and agrees to enforce as a condition of each such person's continued employment by or other association with the Firm, a consent indicating that the associated person consents to cooperate in and comply with any request for testimony or the production of documents made by the Board in furtherance of its authority under the Sarbanes-Oxley Act of 2002, and that the associated person understands and agrees that such consent is a condition of his or her continued employment by or other association with the Firm; and

c. The Firm understands and agrees that cooperation and compliance, as described in Item 4.1.a., and the securing and enforcing of consents from its associated persons as described in Item 4.1.b., is a condition to the continuing effectiveness of the registration of the Firm with the Board.

Note: The affirmation in Item 4.1.b. shall not be understood to include an affirmation that the Firm has secured such consents from any associated person that is a registered public accounting firm.

Note: The affirmation in Item 4.1.b. shall not be understood to include an affirmation that the Firm has secured such consents from any associated person that is a foreign public accounting firm in circumstances where that associated person asserts that non-U.S. law prohibits it from providing the consent, so long as the Firm possesses in its files documents relating to the associated person's assertion about non-U.S. law that would be sufficient to satisfy the requirements of subparagraphs (2) through (4) of Rule 2207(c) if that associated person were a registered public accounting firm filing a Form 2 and withholding this affirmation. This exception to the affirmation in Item 4.1.b. does not relieve the Firm of its obligation to enforce cooperation and compliance with Board demands by any such associated person as a condition of continued association with the Firm.

Note: If the Firm is a foreign registered public accounting firm, the affirmations in Item 4.1 that relate to associated persons shall be understood to encompass every accountant who is a proprietor, partner, principal, shareholder, officer, or manager of the Firm and who provided at least ten hours of audit services for any issuer during the reporting period.

Item 4.2 Continuing Responsibility to the Board for Previous Conduct Affirm that, for purposes of the Board's authority with respect to registered public accounting firms, including but not limited to the authority to require reporting of information and the authority to impose disciplinary sanctions, the Firm either has retained or assumes responsibility for the conduct of any predecessor registered public accounting firm before the change or business combination reported on this Form took effect.

Note: As used in Item 4.2 the term ''predecessor registered public accounting firm,'' means (1) in circumstances not involving a transaction described in Item 3.2, the predecessor firm and (2) in circumstances involving a transaction described in Item 3.2, each registered public accounting firm that was involved in the business combination.

Note: The continuing responsibility in Item 4.2 includes, among other things, responsibility for reporting information on Form 2 and events on Form 3. Thus, for example, if a registered public accounting firm experienced a Form 3 reportable event before the event that is the subject of this Form, the Firm, as successor, has the obligation to report that event on Form 3, and bears responsibility for any failure by any predecessor to have filed a timely Form 3 to report the matter.

Note: The Board's rules do not require that any entity retain or assume responsibility as set forth above. In the absence of an affirmation that it retains or assumes responsibility for such conduct at least for purposes of the Board's authority, however, an entity cannot succeed to the Board registration status of any predecessor entity. See Rule 2108.

PART V—CERTIFICATION OF THE FIRM

Item 5.1 Signature of Partner or Authorized Officer

This Form must be signed on behalf of the Firm by an authorized partner or officer of the Firm including, in accordance with Rule 2109(d), both a signature that appears in typed form within the electronic submission and a corresponding manual signature retained by the Firm. The signer must certify that—

a. the signer is authorized to sign this Form on behalf of the Firm;

b. the signer has reviewed this Form;

c. based on the signer's knowledge, this Form does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and

d. either—

1. based on the signer's knowledge, the Firm has not failed to include in this Form any information or affirmation that is required by the instructions to this Form, with respect to the event or events being described on this Form, or

2. based on the signer's knowledge—

(A) the Firm is a foreign public accounting firm and has not failed to include in this Form any information or affirmation that is required by the instructions to this Form other than an affirmation required by Item 4.1 and/or an answer to Item 3.2.e.; and

(B) the Firm asserts that it is prohibited by non-U.S. law from providing any such withheld affirmation or response to the Board on this Form and, with respect to each such withheld affirmation or response, the Firm has made the efforts described in PCAOB Rule 2207(b) and has in its files the materials described in PCAOB Rule 2207(c).

The signature must be accompanied by the signer's title, the capacity in which the signer signed the Form, the date of signature, and the signer's business mailing address, business telephone number, business facsimile number, and business email address.

PART VI—EXHIBITS

To the extent applicable under the foregoing instructions, each report must be accompanied by the following exhibits:

Exhibit 99.1 Request for Confidential Treatment

Exhibit 99.3 Materials Required by Rule 2207(c)(2)–(4)—Submit Only as an Exhibit to an Amended Form 4 in Response to a Request Made Pursuant to Rule 2207(d)

Exhibit 99.4 Acknowledgment Concerning Registration Status in Certain Transactions
Exhibit 99.5 Statement in Support of Request for Leave To File Form 4 Out of Time.

* * * * *

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. In addition, the Board is requesting that the Commission approve the proposed rules, pursuant to Section 103(a)(3)(C) of the Sarbanes-Oxley Act, for application to audits of emerging growth companies (''EGCs''), as that term is defined in Section 3(a)(80) of the Securities Exchange Act of 1934 (''Exchange Act''). The Board's request is set forth in section D.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(a) Purpose

Introduction

On July 21, 2010, the Dodd-Frank Act [1] amended various provisions of the Sarbanes-Oxley Act of 2002 (''the Dodd-Frank amendments'') and, among other things, gave the PCAOB oversight authority with respect to audits of brokers and dealers that are registered with the SEC.[2] The Dodd-Frank amendments provided the Board with authority to carry out the same types of oversight programs for audits of brokers and dealers that it has carried out with respect to audits of issuers.[3] The legislative history notes that this new authority ''permits [the Board] to write standards for, inspect, investigate, and bring disciplinary actions arising out of, any audit of a registered broker or dealer.'' [4]

On February 28, 2012, the PCAOB proposed to update its rules to conform them to the Dodd-Frank amendments and to make certain other updates and clarifications.[5] The Board received 13 comment letters: 10 from registered public accounting firms (representing a range of large, medium, and small-sized firms), two from accounting-auditing professional associations, and one from an actuary. Commenters generally supported the goal of amending the Board's rules to conform them to the Dodd-Frank Act and to make certain other amendments in light of the Board's administrative experience.[6] Commenters said the proposals were generally consistent with the ''goal of enhancing audit quality for the audits of brokers and dealers,'' [7] and would ''provide added clarity regarding the applicability of the Board's rules and standards to brokers and dealers.'' [8]

Commenters also raised a number of concerns, focusing especially on the Board's proposals to: Apply Rule 3523 (Tax Services for Persons in Financial Reporting Oversight Roles) to the audits of brokers and dealers; amend Rule 5109 (Rights of Witnesses in Inquiries and Investigations) and Rule 5422 (Availability of Documents for Inspection and Copying); and require Form 3 special reporting for withdrawn broker and dealer audit reports (proposed Form 3, Item 3.2) and issuer auditor changes (proposed Form 3, Item 3.3).

As described in more detail below, the Board, after considering comments, is adopting the proposed amendments with modifications to address certain of the commenters' concerns.

The amendments the PCAOB is adopting today include specific references to audits and auditors of brokers and dealers in the Board's rules. The amendments also conform the Board's rules to the Dodd-Frank amendments that (1) clarified the definition of ''person associated with a public accounting firm,'' [9] (2) permitted the Board to share certain information with foreign auditor oversight authorities,[10] and (3) clarified that the Board's sanctioning authority is not limited to persons who are supervisory personnel at the time a failure to supervise sanction is imposed.[11] Certain rules in each section of the Board's rules, except the funding rules,[12] and the rules related to assistance to non-U.S. authorities in inspections and investigations, are affected by these conforming amendments.[13] These sections are:

Section 1—General Provisions
Section 2—Registration and Reporting
Section 3—Professional Standards (including Auditor Independence)
Section 4—Inspections
Section 5—Investigations and Adjudications

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[1] Public Law 111–203, 124 Stat. 1376.

[2] Section 110 of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley'' or the ''Act''), which was added by the Dodd-Frank amendments, incorporates the definitions of ''broker'' in Section 3(a)(4) of the Securities Exchange Act of 1934 (''Exchange Act'') and ''dealer'' in Section 3(a)(5) of the Exchange Act, but includes only those brokers or dealers that are required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of the Exchange Act certified by a registered public accounting firm. *See* Section 110(3) and (4) of the Act.

[3] As defined in Section 2(a)(7) of the Act, ''issuer'' means an issuer (as defined in Section 3 of the Exchange Act) the securities of which are registered under Section 12 of the Exchange Act, or that is required to file reports under Section 15(d) of the Exchange Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 and that it has not withdrawn.

[4] S. Rep. No. 111–176, at 154 (2010). The Dodd-Frank amendments to Section 102(a) of the Act also expanded the Act's registration requirement by making it unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any broker or dealer. Even before the Dodd-Frank amendments, Section 17(e)(1)(A) of the Exchange Act, as amended by Sarbanes-Oxley in 2002, required that the balance sheets and income statements filed with the Commission by registered brokers or dealers be certified by a public accounting firm registered with the PCAOB. Before the Dodd-Frank amendments, however, the Sarbanes-Oxley Act did not give the PCAOB the authority to inspect, set standards for, or engage in investigation and enforcement actions with respect to registered firms that audit brokers and dealers. In July 2013, the SEC adopted amendments to SEC Rule 17a–5 to, among other things, require that broker and dealer audits be conducted in accordance with PCAOB standards and the PCAOB's attestation standards regarding broker and dealer examinations and reviews. *See* SEC, *Broker-Dealer Reports,* Exchange Act Release No. 70073 (July 30, 2013), 78 FR 51910 (Aug. 21, 2013).

[5] *See Proposed Amendments to Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications,* PCAOB Release No. 2012–002 (Feb. 28, 2012). The comment period closed on April 30, 2012.

[6] *See* Letter of the Center for Audit Quality (Apr. 30, 2012) (''CAQ Comment Letter''); Letter of Deloitte & Touche LLP (Apr. 26, 2012) (''D&T Comment Letter''); Letter of Ernst & Young LLP (Apr. 30, 2012) (''EY Comment Letter''); Letter of KPMG LLP (Apr. 27, 2012) (''KPMG Comment Letter''); Letter of McGladrey & Pullen, LLP (Apr. 27, 2012) (''McGladrey Comment Letter''); Letter of PricewaterhouseCoopers LLP (Apr. 30, 2012) (''PWC Comment Letter'').

[7] Letter of Crowe Horwath LLP (Apr. 23, 2012) (''Crowe Horwath Comment Letter'').

[8] Letter of Grant Thornton LLP (Apr. 30, 2012) (''Grant Thornton Comment Letter'').

[9] *See* Section 2(a)(9)(C) of the Act.

[10] *See* Section 105(b)(5)(C) of the Act.

[11] *See* Section 105(c)(6)(A) of the Act.

[12] The Board's funding rules were addressed in a separate PCAOB rulemaking. *See Final Rules for Allocation of the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers, and Other Amendments to the Board's Funding Rules,* PCAOB Release No. 2011–002 (June 14, 2011). While the Board is not substantively amending the funding rules, the Board is making technical amendments to Rules 7103 and 7104. *See infra* note 17.

[13] The Board is not amending the rules in Section 6, which state that the Board may provide assistance to non-U.S. authorities in an inspection or investigation of a registered public accounting firm, because these rules apply to registered firms that audit brokers and dealers without amendment.

Ethics Code

Beyond these conforming amendments, the PCAOB is adopting three additional categories of amendments that tailor certain of the Board's rules to the audits of brokers and dealers; call for relevant broker and dealer audit client information on the Board's forms; and amend a number of rules in light of the Board's experience administering and enforcing these rules.

First, the PCAOB is tailoring the Board's professional practice standards to the audits of brokers and dealers. As amended, Rule 3521 (Contingent Fees) and Rule 3522 (Tax Transactions) apply to the audits of brokers and dealers to the same extent that they previously applied to the audits of issuers. In contrast, Rule 3523 (Tax Services for Persons in Financial Reporting Oversight Roles), Rule 3524 (Audit Committee Pre-approval of Certain Tax Services), and Rule 3525 (Audit Committee Pre-approval of Non-audit Services Related to Internal Control Over Financial Reporting) will remain limited to services provided to issuer audit clients. The Board also is adding a definition of ''audit committee'' so that Rule 3526 (Communication with Audit Committees Concerning Independence) applies to brokers and dealers that may not have organizational structures that include audit committees.

Second, the Board is amending its registration, withdrawal, and reporting forms (Forms 1, 1–WD, 2, 3, and 4), and the general instructions to these forms, to call for relevant broker and dealer audit client information. This information includes, among other things, information identifying each audit report issued by registered firms for broker and dealer audit clients during their annual reporting periods.

Finally, the Board is amending a number of rule provisions and form items in light of administrative experience and to make a number of updates to address events that have occurred since the last time the rules were updated. These amendments, for example, conform Rule 4009 (Firm Response to Quality Control Defects) to a rule adopted by the Commission in July 2010, and eliminate a hard-copy submission requirement from Form 1–WD that the Board believes is unnecessary.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board's Statement on Burden on Competition

Not applicable.

C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board released the proposed rule amendment for public comment in PCAOB Release No. 2012–002 (February 28, 2012). A copy of Release No. 2012–002 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at *http://www.pcaobus.org/Rules/Rulemaking/Pages/Docket039.aspx.* The Board received 13 written comment letters. The Board has carefully considered the comment letters, as discussed below.

Section 1—General Provisions

Rule 1001, in Section 1 of the Board's rules, contains definitions of terms used in the Board's rules. Today's amendments conform definitions in this section to the definitions of terms in the Dodd-Frank amendments, including by amending the terms ''audit services'' and ''other accounting services'' to implement Section 102(b)(2)(B) of the Act.[14] The amendments also add the new statutory term ''foreign auditor oversight authority'' to Rule 1001.[15] Although commenters did not generally address the proposed amendments to Rule 1001, one commenter indicated its general support for these proposals, saying they conform to the provisions of the Dodd-Frank Act.[16]

''Audit'' and ''Audit Report'' (Rule 1001(a)(v) and (a)(vi)). The PCAOB is amending the definitions of ''audit'' and ''audit report'' to conform these terms to the statutory definitions the Dodd-Frank amendments added to Section 110 of the Act.[17] The amended definitions expand the terms to include not only audits of financial statements under PCAOB auditing standards but also examinations of reports, notices, other documents, procedures or controls under PCAOB attestation standards. The Board did not receive comment on the proposed amendments to the definitions of ''audit'' or ''audit report,'' and the Board is adopting the amendments to these definitions as proposed. The amended definitions recognize that brokers and dealers are required under SEC rules to file reports prepared and issued by auditors based on an examination of, among other things, broker and dealer financial statements and supporting schedules that provide information regarding a broker-dealer's net capital, reserves, and other items.[18] The terms ''audit'' and ''audit report'' in the context of SEC Rule 17a–5 apply to reports prepared on a broker's or dealer's financial statements and supporting schedules, compliance report, and exemption report, as well as a supplemental report regarding Securities Investor Protection Corporation (''SIPC'') annual general assessment reconciliation or exclusion from SIPC membership, as applicable.[19]

''Audit Services'' and ''Other Accounting Services'' (Rule 1001(a)(vii) and (o)(i)). To implement the Dodd-Frank amendments to Section 102(b)(2)(B) of the Act, the Board is amending the terms ''audit services'' and ''other accounting services'' to include services provided by auditors to broker and dealer audit clients. Commenters did not address the proposed amendments to the definitions of ''audit services'' or ''other accounting services'' and the PCAOB is adopting these definitions as proposed. Because firms provide different services to broker and dealer audit clients than they provide to issuer audit clients, the Board's definitions are tailored to each category of audit client. As discussed in more detail in Section VII below, these amendments will be used in the context

[14] As part of a separate rulemaking related to the Board's funding rules, the Board adopted amendments to Rule 1001 that added definitions of, among other Rule 1001 terms, ''broker,'' ''dealer,'' and ''self-regulatory organization,'' which are consistent with the definitions in the Dodd-Frank amendments. *See* PCAOB Release No. 2011–002.

[15] In addition, the Board is reserving Rule 1001(n)(i), and renumbering the definitions of ''party'' in Rule 1001(p)(iii) and ''secretary'' in Rule 1001(s)(iii) to correct technical errors in Rule 1001's numbering. In 2011, the Board removed the term ''notice'' from Rule 1001 without reserving subparagraph (n)(i). *See* PCAOB Release No. 2011–002, at n.22. Also, prior rule amendments inadvertently resulted in several unrelated definitions being assigned the same subparagraph numbers.

[16] *See* Grant Thornton Comment Letter.

[17] The Board is also removing the notes accompanying the definitions of ''audit'' and ''audit report.'' The Board added these notes in 2011 to make clear that the Board's enforcement rules encompass the obligations of auditors with respect to the audits of brokers and dealers. *See Temporary Rule for an Interim Program of Inspection Related to Audits of Brokers and Dealers,* PCAOB Release No. 2011–001, at n.32 (June 14, 2011); *Proposed Temporary Rule for an Interim Program of Inspection Related to Audits of Brokers and Dealers,* PCAOB Release No. 2010–008, at n.19 (Dec. 14, 2010). Today's amendments make these notes unnecessary. Similarly, the amendments to the definitions of ''audit'' and ''audit report'' make note three accompanying Rule 7104(b) unnecessary, and the Board is removing this note. The Board is also making a technical correction to Rule 7103(c), which should have consistently referred to brokers and dealers, as well as issuers.

[18] *See generally,* SEC Rule 17a–5 under the Exchange Act (17 CFR 240.17a–5).

[19] *See* SEC Rule 17a–5(e)(4) and (g). In July 2013, the SEC adopted amendments to SEC Rule 17a–5 to, among other things, strengthen and clarify broker and dealer audit and reporting requirements and require that broker and dealer audits be conducted in accordance with PCAOB standards. *See Broker-Dealer Reports,* Exchange Act Release No. 70073.

of collecting certain fee information on broker and dealer audit clients on Form 1.[20] In the event that a firm has both issuer and broker and dealer audit clients, the fee information will be collected separately for issuer and for broker and dealer audit clients. (The Board, as discussed below, is not imposing an annual reporting requirement with respect to fees for services provided to broker and dealer audit clients on Form 2.)[21]

The Rule 1001 term ''audit services,'' in the context of broker or dealer audit clients, includes professional services related to the audit of a broker's or dealer's financial statements and supporting schedules, as described in SEC Rule 17a–5(d)(2),[22] as well as the report on a broker's or dealer's compliance report, as described in SEC Rule 17a–5(d)(3), a report on a broker's or dealer's exemption report, as described in SEC Rule 17a–5(d)(4), and a report on the broker's or dealer's supplemental report on SIPC annual general assessment reconciliation or exclusion from SIPC membership, as described in SEC Rule 17a–5(e)(4).

To the extent a firm's services and particular fees may overlap these fee categories, the firm must attribute the fees it billed to just one of the fee categories. Applicants must include such fees within the most appropriate category under the circumstances. As discussed in more detail below, the Board understands that firms with broker and dealer audit clients have not necessarily maintained billing records in a way that would make precise reporting according to the fee categories always possible. For this reason, the Board expects that estimates will be required to attribute particular billed fees to one of the fee categories on Form 1.[23]

''Foreign Auditor Oversight Authority'' (Rule 1001(f)(iii)). As proposed, the Board is amending Rule 1001 to include the definition of ''foreign auditor oversight authority'' to track the definition in Section 2(a)(17) of the Act. The Board did not receive comment on the proposed definition of foreign auditor oversight authority. This definition supports the Board's authority to share confidential information with its counterparts in other countries.

''Person Associated with a Public Accounting Firm (and Related Terms)'' (Rule 1001(p)(i)). The PCAOB, as proposed, is amending Rule 1001(p)(i), which defines ''person associated with a public accounting firm'' (and related terms), consistent with amended Section 2(a)(9) of the Act. The Board is also adding a note to Rule 1001(p)(i) highlighting a related amendment to Section 2(a)(9). The note explains that Section 2(a)(9) has been amended to make clear that, for purposes of the Board's investigations and disciplinary proceedings, the defined terms include any person associated, seeking to become associated, or formerly associated with a public accounting firm. The note also explains that Section 2(a)(9) makes clear that the Board's authority to conduct an investigation of any such person applies only with respect to conduct or omissions that occurred while the person was associated or seeking to become associated with a firm, and that the Board's authority to commence disciplinary proceedings or impose sanctions against any such person applies only with respect to conduct or omissions occurring during such a period or failures to cooperate with investigative demands for testimony, documents, or other information relating to such a period. The legislative history of the Dodd-Frank amendments explains that Congress enacted the revised definition of associated person ''to make it clear that [the Board] may sanction or discipline persons who engage in misconduct while associated with a regulated or supervised entity even if they are no longer associated with that entity.''[24]

Commenters asked for guidance regarding the meaning of ''seeking to become associated'' (as added by the Dodd-Frank Act).[25] The Board believes that inclusion of the phrase ''seeking to become associated'' in the Act provides the Board with investigative and disciplinary authority over, for example, conduct connected with the preparation and filing with the Board of Form 1 (including the form's contents and all attachments, exhibits, and correspondence related to the form) and other applications for registration with the Board.

The PCAOB is also amending a provision that the Board included in the definition in its rules but is not included in the statutory definition. Before the Board adopted Rule 1001(p)(i) in 2003, a number of commenters suggested that the definition should be limited to only a public accounting firm's employees. In response, the Board adopted a provision providing that the persons associated with a particular public accounting firm do not include those persons the firm reasonably believes are persons primarily associated with another registered public accounting firm.[26] Experience in administering the rule after its adoption has shown that, in contexts other than registration and reporting, this provision, which is not a part of the statutory definition, may create uncertainty and lead to results inconsistent with the statutory definition. By its terms, the statutory definition has application without regard to the belief of a firm. Accordingly, the Board is adding language to Rule 1001(p)(i) to limit the reasonable belief provision to the context of registration and reporting forms that are completed on behalf of a firm pursuant to Section 2 of the Board's rules, thus making clear that this provision does not otherwise operate to amend the statutory definition. The Board did not receive comment on this aspect of the proposed amendments to the associated person definition and is adopting it as proposed.

The Board also is amending Rule 1001(p)(i) by inserting the words ''or entity'' after the words ''independent contractor,'' and ''or otherwise'' after ''participates as agent.'' The phrases ''or entity'' and ''or otherwise'' are included in the definition of ''Person Associated with a Public Accounting Firm'' in Section 2(a)(9) of the Act. Two commenters suggested that these amendments may raise interpretive and implementation questions.[27] The primary purpose of many definitions adopted in 2003 was to narrow terms to allow auditing firms to complete initial registration forms with some certainty and in a relatively short period of time. These rules, however, did not limit or contract the Board's authority under the Act. Now that most firms are registered, it is appropriate for the definition in the Board's rules to reflect the full statutory

[20] *See infra* notes 151–155 and accompanying text.

[21] *See infra* note 177 and accompanying text.

[22] ''Audit services'' covers professional services rendered for the audit of a broker's or dealer's financial statements and supporting schedules regarding computation and information required under SEC Rules 15c3–1 and 15c3–3. The definition of ''non-audit services'' remains unchanged. *See* Rule 1001(n)(ii).

[23] *See infra* text accompanying note 156.

[24] H.R. Rep. No. 111–687, at 79 (Dec. 16, 2010) (accompanying H.R. 3817, the Investor Protection Act of 2009).

[25] *See* CAQ Comment Letter; D&T Comment Letter; Grant Thornton Comment Letter; KPMG Comment Letter.

[26] *See Registration System for Public Accounting Firms,* PCAOB Release No. 2003–007, at A–3–xii (May 6, 2003). *See also Frequently Asked Questions Regarding Registration with the Board,* PCAOB Release No. 2003–011D, Question and Answer No. 21, available at *http://pcaobus.org/Registration/Pages/SampleForms.aspx. See generally,* comment letters available at *http://pcaobus.org/Rules/Rulemaking/Pages/Docket001Comments.aspx.*

[27] *See* D&T Comment Letter and EY Comment Letter.

meaning of the term. As with other provisions of the Act, the Board's interpretation of this defined term will be determined based on specific facts and circumstances.

''Play a Substantial Role in the Preparation or Furnishing of an Audit Report'' (Rule 1001(p)(ii)). As proposed, the PCAOB is inserting ''broker or dealer'' throughout this definition to make it clear that the definition extends to audit reports prepared for brokers or dealers, as well as issuers. The Board is also amending this definition to correct an error, by replacing the word ''accountant'' with ''auditor,'' which is the more appropriate term.[28] The Board did not receive comment on the proposed amendments to the substantial role definition.

''Professional Standards'' (Rule 1001(p)(vi)). The Board is amending the definition of ''professional standards'' to conform to the definition of this term in Section 110 of the Act.[29] Under the amended rule, the definition of professional standards is extended to include accounting principles, auditing standards, attestation standards, quality control standards, ethics standards and independence standards relating to the audit reports for brokers and dealers, as well as issuers. The Board did not receive comment on the proposed amendments to the definition of professional standards and is adopting the definition as proposed.

''Suspension'' (Rule 1001(s)(iv)). As proposed, the PCAOB is amending the definition of ''suspension'' to make it clear that when the Board imposes a suspension on a registered public accounting firm, the firm is prohibited from preparing or issuing, or participating in the preparation or issuance of, any audit report, including audit reports issued for brokers or dealers. The Board did not receive comment on the proposed amendments to the definition of suspension.

Section 2—Registration and Reporting Rules

This section of the PCAOB's rules sets out the requirements for public accounting firms to register with the Board. It also contains provisions for annual and special reporting, the payment of annual fees, and procedures to withdraw from registration with the Board. In addition, Section 2 contains rules governing a firm's request for confidential treatment of information submitted in registration and reporting forms, as well as requests to omit certain information on grounds that providing the information would violate certain non-U.S. laws.

Most of the amendments the Board is making to this section are to add ''broker'' and ''dealer'' to those rules that formerly applied only to auditors of issuers. Commenters did not address the Board's proposed amendments to the rules in Section 2, and the Board is adopting the amendments, which are briefly described below, as proposed.

Application for Registration (Rule 2100). Section 102(a) of the Act and Rule 2100 require the registration of all public accounting firms that prepare or issue audit reports, or play a substantial role in preparing or furnishing an audit report, with respect to issuers. The Dodd-Frank amendments extended this requirement to auditors of brokers and dealers.[30] The Board is revising Rule 2100 to implement these amendments with respect to registration.

Standard for Approval (Rule 2106(a)). Rule 2106(a) sets out the standard for the Board to consider in determining whether to approve a firm's application for registration. The rule is based on Section 101(a) of the Act. The Dodd-Frank amendments broadened Section 101(a) to cover broker and dealer audits, as well as issuer audits. To ensure that Rule 2106(a) continues to track Section 101(a) of the Act, as amended by the Dodd-Frank Act, the Board is revising this rule to remove its last clause.

Board Action (Rule 2107(d)). The Board may order that withdrawal of a firm's registration be delayed for a period of up to eighteen months under Rule 2107(d), if it determines that withdrawal is inconsistent with the Board's responsibilities to conduct inspections or investigations. Specifically, Rule 2107(d)(1) refers to ''inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with . . . related matters involving issuers.'' The Board is amending this provision to encompass brokers and dealers to reflect the Board's expanded authority under the Dodd-Frank amendments.

Section 3—Professional Standards

Section 3 of the PCAOB's rules establish auditing and related professional practice standards, including attestation, quality control, ethics, and independence standards applicable to registered public accounting firms and their associated persons. In light of the enactment of the Dodd-Frank Act, the Board proposed specific amendments to make Section 3 applicable to audits of brokers and dealers.

Under Section 17 of the Exchange Act and SEC Rule 17a–5 thereunder, brokers or dealers are generally required, among other things, to file with the Commission and with the broker's or dealer's designated examining authority (''DEA'') an annual report containing audited financial statements, supporting schedules, supplemental reports, and independent public accountant reports, as applicable.[31] Under the amendments to SEC Rule 17a–5, effective for fiscal years ending on or after June 1, 2014, ''independent public accountant'' reports must be prepared in accordance with the standards of the PCAOB.[32]

As discussed above, in July 2010, the Dodd-Frank amendments gave the Board authority to establish, subject to Commission approval, auditing and related attestation, quality control, ethics, and independence standards to be used by registered public accounting firms in the preparation and issuance of the audit reports included in broker and dealer filings with the Commission. In September 2010, the Commission issued interpretive guidance clarifying that the ''references in Commission rules and staff guidance and in the federal securities laws to generally accepted auditing standards (''GAAS'') or to specific standards under GAAS, as they relate to non-issuer brokers or dealers, should continue to be understood to mean'' the auditing and attestation standards established by the American Institute of Certified Public Accountants (the ''AICPA''), but noted that it intended to revisit this interpretation in connection with a Commission rulemaking project to update the audit and attestation requirements for brokers and dealers in light of the Dodd-Frank Act.[33] In June 2011, the Commission proposed to amend SEC Rule 17a–5 to mandate that the rule's required reports be prepared in accordance with the

[28] ''Accountant'' is defined in Rule 1001(a)(ii) as a natural person who is a CPA, or who holds an accounting degree, or who holds a license or certification authorizing him or her to engage in auditing or accounting, or who holds a degree other than accounting and participates in audits. ''Auditor'' is defined in Rule 1001(a)(xii) to mean both public accounting firms registered with the Board and associated persons thereof. The Board is also correcting this error in the notes accompanying Form 1, Items 2.1 and 2.2.

[29] The amendments also remove, as unnecessary, the note accompanying the definition of ''professional standards.''

[30] Section 17(e)(1)(A) of the Exchange Act requires every registered broker and dealer to file with the Commission a balance sheet and income statement certified by a registered public accounting firm.

[31] *See* Section 17(a) and (e) of the Exchange Act and SEC Rule 17a–5(d).

[32] *See* SEC Rule 17a–5(g), as amended.

[33] SEC, *Commission Guidance Regarding Auditing, Attestation, and Related Professional Practice Standards Related to Brokers and Dealers,* Exchange Act Release No. 62991 (Sep. 24, 2010).

standards of the PCAOB.[34] Finally, in July 2013, the SEC adopted amendments to SEC Rule 17a–5, directing that auditors of brokers and dealers are to comply with PCAOB standards effective for fiscal years ending on or after June 1, 2014.[35] As a result, the Board's auditing, attestation, quality control, and independence standards apply to audit, attest, and other engagements for brokers and dealers required by Section 17 of the Exchange Act and SEC Rule 17a–5.[36]

General Requirements

Rule 3100 requires registered firms and their associated persons to comply with all applicable auditing and related professional practice standards and Rule 3101 explains the meaning of certain terms used in those standards (such as ''must'' and ''should'') that describe the responsibility a PCAOB standard imposes on auditors. Rules 3100 and 3101 are applicable to audits of brokers and dealers required by Section 17 of the Exchange Act and SEC Rule 17a–5.

Rules 3200T, 3300T and 3400T generally require registered firms and their associated persons to comply with the AICPA's auditing, attestation, and quality control standards as in existence on April 16, 2003, to the extent not superseded or amended by the Board. Rules 3200T and 3300T, as well as standards adopted by the Board and approved by the Commission, apply to audit, attest, and other engagements for brokers and dealers required under Section 17 of the Exchange Act and SEC Rule 17a–5.

To clarify that Rule 3300T regarding interim attestation standards applies to broker or dealer engagements, the Board is removing the words ''for issuers'' from the phrase in the rule ''audit reports for issuers.'' [37] As a result, Rule 3300T applies, and the interim standards, as applicable and to the extent not superseded or amended by the Board, must be followed in connection with engagements related to the preparation or issuance of audit reports for brokers and dealers.[38]

Rule 3400T requires, among other things, that certain registered firms—firms that were members of the former SEC Practice Section (''SECPS'') of the AICPA—must comply with certain of the SECPS membership requirements that existed as of April 16, 2003, to the extent not superseded or amended by the Board.[39] Under the amendments, the SECPS membership requirements apply to the auditors of brokers and dealers that were members of the SECPS in 2003. This approach is consistent with the previous rule (which applied the SECPS membership requirements only to those registered firms that are former members of the SECPS).

One commenter suggested that Rule 3400T itself should state that the SECPS membership requirements apply to auditors of brokers and dealers that were members of the SECPS in 2003.[40] In response to this comment, the Board has added a note to Rule 3400T to clarify that the SECPS membership requirements only apply to those firms that were members of the SECPS in 2003.

Another commenter expressed concern that applying the former SECPS membership requirements only to firms that were SECPS members in 2003 could result in an unbalanced and disparate application of the Board's requirements.[41] Prior to the Act's enactment, public accounting firms that were members of the SECPS voluntarily committed to satisfying a number of quality control-related requirements, including the quality control requirements the Board is adopting today. The Board notes that only two of the five SECPS membership requirements adopted by the Board apply to audits of brokers or dealers. These two requirements relate to continuing professional education requirements for audit firm personnel and the firm communicating through a written statement to its professional personnel the firm's broad policies and procedures related to accounting principles, client relationships, and services provided.[42] The Board notes that all firms (including those that were members of the SECPS in 2003) are required to comply with state and professionally mandated continuing professional education requirements that satisfy most, if not all, of these education requirements, and expects that firms distribute such information to their professional personnel to effectively manage their firms. Application of these requirements to audits of brokers and dealers is therefore not expected to result in a significant burden on auditors of brokers or dealers that were members of the SECPS in 2003. The Board intends to address the quality control standards more generally in the future, and to consider whether the substance of any or all of the SECPS membership requirements should be applied to all registered firms.[43]

Although some commenters supported the proposals to amend the Board's general requirements governing the applicability of the Board's auditing and related professional practice standards to apply to audits of brokers and dealers,[44] others believed that the

[34] SEC, *Broker-Dealer Reports,* Exchange Act Release No. 64676 (June 15, 2011), 76 FR 57572 (June 27, 2011).

[35] *Broker-Dealer Reports,* Exchange Act Release No. 70073.

[36] In related releases issued recently, the PCAOB adopted standards that are tailored to the SEC's requirements under SEC Rule 17a–5. *See Standards for Attestation Engagements Related to Broker and Dealer Compliance and Exemption Report Required by the U.S. Securities and Exchange Commission and Related Amendments to PCAOB Standards,* PCAOB Release No. 2013–007 (Oct. 10, 2013), and *Auditing Standard on Auditing Supplemental Information Accompanying Audited Financial Statements,* PCAOB Release No. 2013–008 (Oct. 10, 2013). These standards must be approved by the SEC.

[37] As noted above, the Board is amending the definition of ''audit reports'' in Rule 1001 to include auditor examinations of and reports concerning not only financial statements but also reports, notices, other documents, procedures or controls, such as the auditor reports provided in connection with audits of brokers and dealers pursuant to SEC Rule 17a–5. *See supra* notes 17–19 and accompanying text.

[38] In related releases issued recently, the PCAOB adopted standards to align its standards more closely with auditor responsibilities under SEC Rule 17a–5. AT 1 and AT 2 apply specifically to the examination of a broker's or dealer's compliance report and review of a broker's or dealer's exemption report, as required by SEC Rule 17a–5. *See supra* note 36.

[39] *See* Rule 3400T(b); *Establishment of Interim Professional Auditing Standards,* PCAOB Release No. 2003–006, at n.15 and accompanying text (Apr. 18, 2003). These standards address, among other topics, training and education, internal communication of broad principles that influence the firm's quality control policies and procedures, notifications to regulators of dismissals and resignations from audit engagements, obligations with respect to foreign correspondent firms or other members of an international firm, and compliance with auditor independence requirements. Some of these membership requirements do not apply to broker or dealer audit clients. *See infra* note 42.

[40] *See* EY Comment Letter.

[41] *See* Grant Thornton Comment Letter (suggesting that the Board defer the application of the SECPS membership requirements to auditors of brokers and dealers until the Board has fully considered the application of those requirements to all firms).

[42] *See AICPA SEC Practice Section Reference Manual,* § 1000.08(d) and § 1000.08(l). In addition, three SECPS membership requirements adopted by the Board do not apply to audits of non-public brokers or dealers because they depend in part on the definition of ''SEC registrant'' in SECPS Membership Section 1000.38, which specifically excludes brokers or dealers that are registered with the Commission ''only because of section 15 paragraph a of the [Securities Exchange Act of 1934].'' *See* SECPS Member Section 1000.46 Appendix L, at n.3. These three requirements include notification to the Commission of resignations and dismissals from engagements with SEC registrants, audit obligations with respect to correspondent firms or other members of an international association of firms, and certain quality control procedures regarding compliance with auditor independence rules. *See AICPA SEC Practice Section Reference Manual,* § 1000.08(m), § 1000.08(n)(1), and § 1000.08(o).

[43] *See* Office of the Chief Auditor, Standard-Setting Agenda, at 6 (Sep. 30, 2013).

[44] *See* Grant Thornton Comment Letter; Rothstein Kass Comment Letter.

Board's quality control, ethics, and independence rules should not apply to the audit and attestation engagements of ''introducing'' or ''non-carrying'' brokers and dealers, asserting that these brokers and dealers are usually smaller entities that present little if any investment risk to investors or the capital markets.[45] Other commenters said that requiring auditors of brokers and dealers to follow PCAOB quality control, ethics, and independence standards is not warranted until decisions with respect to a final, permanent inspection program's scope are reached.[46]

As noted elsewhere, the SEC in July 2013 determined that all audit reports filed with the SEC and DEAs by brokers and dealers must be prepared in accordance with PCAOB standards.[47] A final decision regarding the scope of the Board's inspection program will be made at a later date. The Board believes postponing the adoption of amendments to its rules would not be consistent with the SEC's determination under Section 17(e)(2) of the Exchange Act to require that audits and attestations of broker and dealer reports filed under SEC Rule 17a–5 be made in accordance with standards of the PCAOB. The Board is not persuaded that removing doubt about which rules and standards apply to these audits should be delayed pending determinations on the scope of the Board's final inspection program.

The Board also is amending the rules in Section 3 to remove outdated and currently irrelevant provisions. For example, the Board is deleting the notes to Rules 3200T, 3300T and 3400T that addressed the application of standards during the period from the adoption of the Act to the date in 2003 when firms initially were required to register with the Board. The Board also is deleting Rule 3101(c), which provided relief from certain documentation requirements before November 2004. The Board is deleting Rule 3201T, which was a temporary and transitional rule regarding the application of Auditing Standard No. (''AS'') 2 and by its terms expired on July 15, 2005. The Board is amending Rule 3400T to remove the note that addressed application of the SECPS membership requirement for concurring partner reviews, which was superseded by Auditing Standard No. 7, Engagement Quality Review.[48] Finally, the Board is amending the note to Rule 3700(c) to clarify that nominations to Board advisory groups may be submitted by any person or organization, including a broker or dealer.

Section 1000.08(m) of the SECPS Membership Requirements. After soliciting comment, the PCAOB is adopting an amendment to the SECPS membership requirement addressing circumstances where a former SECPS member firm has been the auditor for an SEC Registrant (as defined in Appendix D, SECPS § 1000.38) that is required to file current reports on Form 8–K and has resigned, declined to stand for re-election, or been dismissed.[49] To make firm notices of these events more meaningful, the Board is requiring that registered firms (that are former members of the SECPS) notify the Commission's Office of the Chief Accountant of the cessation of an auditor's relationship with an issuer audit client only if the issuer has not reported the end of the relationship to the SEC in a timely filed Form 8–K.[50] Previously, these firm notices were required irrespective of whether or not the registrant reported the fact that the relationship ceased in a timely filed Form 8–K. As amended, if, by the end of the fifth business day after an issuer client-auditor relationship has ended the issuer has not reported the cessation of the relationship to the SEC in a timely filed Form 8–K, then a former SECPS member firm must simultaneously send a written report of this fact to the former client and email the report to the SEC's Office of the Chief Accountant.[51]

The amendment to Section 1000.08(m) of the SECPS Membership Requirements only applies to SEC Registrants that are required to file current reports on Form 8–K. For SEC Registrants that do not file current reports on Form 8–K—including foreign private issuers required to make reports on Form 6–K and investment companies required to file reports under Rule 30b1–1 of the Investment Company Act (other than business development companies)—the SECPS reporting requirement remains unchanged.[52] Notices for former clients that do not file current reports on Form 8–K are due by the end of the fifth business day following the end of the firm's determination that the client-auditor relationship has ended, irrespective of whether or not the registrant has reported the change in auditors in a timely filed report. The PCAOB is also updating Appendix I of SECPS Section 1000.43 to reflect the SEC's updated contact information and preference for email notifications.[53]

Commenters generally supported reporting circumstances where a former SECPS member firm has resigned, declined to stand for re-election, or been dismissed from an issuer engagement under Section 1000.08(m) only if the issuer has not reported the end of the relationship in a timely filed report (exception reporting).[54] But one commenter suggested that Section 1000.08(m) should be eliminated entirely,[55] and one other commenter said Section 1000.08(m) reporting is ''working, helpful, and appropriate'' and should not be amended.[56] After considering these comments, the PCAOB has determined that more focused Section 1000.08(m) reporting

[45] *See* Letter of the AICPA (Apr. 30, 2012) (''AICPA Comment Letter''); Crowe Horwath Comment Letter; KPMG Comment Letter.

[46] *See* AICPA Comment Letter; Letter of WeiserMazars LLP (Apr. 30, 2012) (''WeiserMazars Comment Letter'').

[47] *See* SEC Rule 17a–5(g); *see also Broker-Dealer Reports,* Exchange Act Release No. 70073, at nn.330–347 and accompanying text.

[48] A number of commenters pointed out that the proposal to remove subparagraph (1) from Rule 3400T(b)'s reference to § 1000.08(n) would have broadened the applicability of that requirement. *See* CAQ Comment Letter; Crowe Horwath Comment Letter; Grant Thornton Comment Letter; and KPMG Comment Letter. This consequence was not intended, and the Board is not adopting this proposal. *See* Rule 3400T(b).

[49] *See AICPA SEC Practice Section Reference Manual,* § 1000.08(m)(1). If an issuer audit client has a change in its principal auditor (or an auditor upon whom the issuer's principal auditor expressed reliance in its report regarding a significant subsidiary), within the last two fiscal years or any subsequent interim period up to and including the date of change, the issuer must provide the required information in Item 4.01 of Form 8–K within four business days of the change. *See* Item 304(a) of Regulation S–K; Item 4.01 of Form 8–K.

[50] *See* SECPS § 1000.08(m)(1). SECPS § 1000.08(m) does not apply to the termination of engagements with broker or dealer audit clients. *See* Appendix D, SECPS § 1000.38(1)(b). Also, under Rule 3400T, the former SECPS membership requirements, including SECPS § 1000.08(m), only apply to firms that were SECPS members in 2003.

[51] SECPS § 1000.08(m) also applies to situations where a firm (that is a former member of the SECPS) believes it no longer has a relationship with a former issuer audit client. In situations where a former issuer audit client has ''gone dark'' or declared bankruptcy, for example, and therefore the firm believes that the client-auditor relationship has ceased, SECPS § 1000.08(m) requires the firm to notify the former client and the SEC's Office of the Chief Accountant of the end of the issuer client-auditor relationship.

[52] *See* SECPS § 1000.08(m)(2). Foreign private issuers are required to report issuer auditor changes on Item 16F of Form 20–F and investment companies (other than business development companies) are required to report auditor changes on item 77K of Form N–SAR.

[53] The SEC staff strongly encourages emailing the SECPS report notification to *SECPSletters@sec.gov. See* Appendix I, SECPS § 1000.43. *See also http://www.sec.gov/about/offices/oca/10a1notices.htm* (''The Office of the Chief Accountant strongly encourages sending the SECPS report notification to *SECPSletters@sec.gov*. The staff will accept the date the email is received as the notification date.'').

[54] Crowe Horwath Comment Letter; EY Comment Letter; Grant Thornton Comment Letter; McGladrey Comment Letter; PWC Comment Letter.

[55] KPMG Comment Letter.

[56] D&T Comment Letter.

will enhance the SEC's ability to monitor the cessation of auditors' relationships with issuers that are required to file reports on Form 8–K. The Board, as discussed in more detail below, has also determined to adopt amendments requiring all registered firms to report the cessation of issuer relationships with Form 8–K filers on Form 3.[57]

Auditor Independence

Registered public accounting firms must follow not only the Commission's auditor independence requirements [58] but also, to the extent applicable, the ethics and auditor independence requirements in Rules 3520 through 3526.[59]

In 2003, the Board adopted Rules 3500T and 3600T, which require registered public accounting firms to adhere to ethics and independence standards described in the AICPA's Code of Professional Conduct Rules 102 and 101 and the interpretations and rulings thereunder, as in existence on April 16, 2003 to the extent not superseded or amended by the Board, and to certain standards and interpretations of the Independence Standards Board.

To simplify the Board's rules, and to conform to Section 103(a)(1) of the Act as revised by the Dodd-Frank amendments, the Board is merging Rule 3600T into Rule 3500T. The merger of these rules results in the specific auditor independence rules following the incorporation of the interim independence rules without having to renumber the existing PCAOB auditor independence rules.[60] The Board also is making a technical amendment to Rule 3600T(b) to delete a reference to Independence Standards Board Standard No. 1, which was superseded by Rule 3526.[61]

Subsequent to the adoption of Rules 3500T and 3600T, the Board added definitions and general rules related to ethics and auditor independence, rules that prohibit contingent fee arrangements for any services a registered public accounting firm may provide to its audit clients, rules that restrict certain types of tax services that may be provided to audit clients and to persons in a ''financial reporting oversight role'' at an issuer audit client, rules related to issuer audit committee pre-approval of tax services and services related to internal control over financial reporting, and rules related to communications with issuers' audit committees concerning auditor independence.[62] The areas covered by these rules, and the Board's application of each rule to audits of brokers and dealers, are discussed below.[63]

Definitions (Rule 3501). This rule contains definitions of nine terms used in the Board's auditor independence rules.

The Board is adding a definition of ''audit committee'' to Rule 3501 in order to facilitate the application of Rule 3526, *Communications with Audit Committees Concerning Independence,* to brokers and dealers.[64] The definition generally tracks the definition of ''audit committees'' in section 2(a)(3) of the Act. The Act essentially defines the ''audit committee'' to be the committee of the board of directors established to oversee the accounting and financial reporting processes of the issuer, and if there is no such committee then the full board of directors. Because the Board recognizes that some brokers and dealers may not have governance structures that include boards of directors or audit committees, the amended definition includes a provision indicating that for non-issuers, if no audit committee or board of directors (or equivalent body) exists, the term means those persons who oversee the accounting and financial reporting processes of the entity and the audits of the entity's financial statements.[65] As a result, if a broker or dealer audit client (or potential client) does not have an audit committee or a board of directors, the auditor must provide Rule 3526 communications to persons overseeing the broker's or dealer's accounting and financial reporting processes and its audits.

The amended definition does not mean that the broker or dealer audit client or potential client has to formally designate persons who oversee the client's accounting and financial reporting processes and audits. Instead, auditors are expected to use their judgment to identify senior persons at the client or potential client that have decision-making authority and responsibility for these functions. For an owner-managed entity, for example, the person overseeing the accounting and financial reporting processes, and audits, could be the owner. Under a limited partnership, that person could be the managing or general partner responsible for preparation of the financial statements and oversight of the partnership's audits.

One commenter supported amending the definition of ''audit committee'' to accommodate those brokers and dealers who do not have a formal audit committee in place.[66] Another commenter said the definition should be aligned with the definition of audit committee in ISA 260 and AICPA AU Section 260, which refers to ''the person(s) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity.'' [67] A third commenter recommended adding the words ''and controlling'' to the accounting and financial reporting processes identified in the proposed

[57] *See infra* notes 183–195 and accompanying text.

[58] *See* SEC Regulation S–X, Rule 2–01.

[59] Among other things, the Dodd-Frank amendments clarified the Board's authority under Section 103 of the Act to establish auditor independence standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by the Act, SEC rules, or ''as may be necessary or appropriate in the public interest or for the protection of investors.'' *See* Section 103(a)(1) of the Act.

[60] Regarding the note following proposed Rule 3500T, one commenter indicated that it would be better for the Board to say that the Board's independence rules ''supplement'' the SEC's standards, rather than the proposed formulation (that the Board's rules ''do not supersede'' the SEC's independence rules). *See* EY Comment Letter. The proposed note, however, was substantially the same as a note that had followed Rule 3600T. In the proposed note, following the statement that the Board's rules ''do not supersede'' the SEC's auditor independence rule, the statement was made that ''to the extent that a provision of the Commission's rule is more restrictive—or less restrictive—than the Board's Interim Independence Standards, a registered public accounting firm must comply with the more restrictive rule.'' The note means that the less restrictive rule still applies but satisfying the more restrictive rule is deemed to satisfy the less restrictive rule. Changing ''do not supersede'' to ''supplement'' would not enhance this understanding of the note. Accordingly, the Board has determined not to make the change suggested by the commenter, and is adopting the note as proposed.

[61] PCAOB Release No. 2008–003, at 4.

[62] *See, e.g.,* PCAOB Release Nos. 2003–011; 2005–014; 2005–20; 2007–005A; and 2008–003.

[63] Regardless of the application of the Board's independence rules, auditors of brokers and dealers must follow the Commission's auditor independence rules as stated in SEC Rule 17a–5(f)(1).

[64] *See* Rule 3501(a)(v).

[65] The Board adopted essentially the same definition of ''audit committee'' in its audit committee communications standard. *See Auditing Standard No. 16, Communications with Audit Committees,* PCAOB Release No. 2012–004 (Aug. 15, 2012). Instead of adopting ''essentially the same'' definition of audit committees as the audit committee communication standard, KPMG stated that the Board should consider using the same definition. The difference between the definitions is that audit committee communication definition uses the term ''company'' and the definition in Rule 3501 uses the word ''entity.'' In both instances, the defined term is intended to encompass the audit committee of the audit client, regardless of the client's legal form of organization.

[66] *See* Rothstein Kass Comment Letter.

[67] *See* EY Comment Letter. Under that definition, EY said communication would likely be made to the CEO or another officer of the broker or dealer.

audit committee definition to more fully relate to brokers and dealers.[68]

After consideration of the comments, the Board, as proposed, is adopting essentially the same ''audit committee'' definition used in its standard on communications with audit committees (AS 16). One of the purposes of defining ''audit committee'' in Rule 3501 is to facilitate auditor communications with audit committees regarding auditor independence issues and having consistent definitions of the term ''audit committee'' should promote the efficient implementation of the Board's two standards. In light of the AS 16 audit committee definition, adding the concept of ''controlling'' to the definition, or conforming the definition to international standards, would add unnecessary complexity to the Board's rules.

Although the Board is not amending the other definitions in Rule 3501, the meaning of certain definitions is altered because the Board's rules and standards are now applicable to the audits of brokers and dealers. For example, Rule 3501(a)(iv) defines ''audit client'' to mean ''the entity whose financial statements or other information is being audited, reviewed, or attested and affiliates of the audit client.'' The ''entity'' referenced in this definition includes a broker or dealer, as well as an issuer.[69] No comments were received regarding how changes in the definitions in the Board's rules may alter the applicability of the definitions in Rule 3501 to audits of brokers or dealers.

Overall Framework (Rules 3502 and 3520). Rule 3502 establishes a standard of ethical behavior for the conduct of persons associated with registered public accounting firms, indicating that these persons shall not take or omit to take an action knowing, or recklessly not knowing, that the act or omission would directly and substantially contribute to a violation by the firm of the Act, the rules of the Board, or provisions of the securities laws or professional standards. This basic ethics rule applies, without amendment, to all associated persons in all registered public accounting firms.

Rule 3520 sets forth the fundamental ethical obligation for the accounting firm and its associated persons to be independent of the firm's audit client throughout the audit and professional engagement period. With the change in the definition of ''audit client'' described above, this rule applies to auditors of brokers and dealers as well as to auditors of issuers. To remove any doubt that this rule applies to auditors of brokers and dealers as well as to auditors of issuers, and to make other technical changes, the Board, as proposed, is removing the reference to ''an issuer'' from note 1 of this rule. The Board did not receive comment on the proposed amendments to Rule 3520.

Contingent Fees (Rule 3521). This rule, which is consistent with the SEC's auditor independence rules,[70] states that a registered public accounting firm is not independent if it provides any service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission. With the expanded interpretation of ''audit client'' as noted above, this rule applies to audits of brokers and dealers as well as to audits of issuers. Because the SEC rule on contingent fees currently is applicable to audits of brokers and dealers, making the PCAOB rule similarly applicable to those audits should not affect practice in this area.

One commenter supported the proposed amendments to Rule 3521, stating that expanding Rule 3521 to include broker and dealer audit clients to make the rule consistent with current SEC auditor independence rules should have no effect in the broker-dealer practice area and is appropriate.[71] No commenters opposed the proposed application of Rule 3521. The Board has determined to have this rule apply to audits of brokers and dealers.

Tax Transactions (Rule 3522). Under this rule, registered public accounting firms are prohibited from providing any non-audit service to their audit clients related to the marketing, planning, or opining in favor of the tax treatment of transactions that are ''confidential transactions'' [72] under the Internal Revenue Service's regulations or transactions that would be considered ''aggressive tax position transactions.'' [73]

The Board adopted Rule 3522 in 2005 following a report by the Permanent Sub-committee on Investigations of the Senate Committee on Governmental Affairs (the ''Subcommittee'') which noted that some of the nation's largest accounting firms in the past had sold generic tax products to multiple corporate and individual clients despite evidence that some of those products were potentially abusive or illegal.[74] In addition, the Internal Revenue Service (''IRS'') and the U.S. Department of Justice brought a number of cases against accounting firms in connection with those firms' marketing of tax shelter products and, specifically, those firms' alleged failures to register, or comply with list maintenance requirements relating to, their tax shelter products. In addition, the IRS proposed a settlement initiative for executives and companies that participated in certain abusive tax avoidance transactions, at times with the assistance of the companies' auditors.[75] At the time the initiative was announced, the IRS Commissioner said that ''[t]hese transactions raise[d] questions not only about compliance with the tax laws, but also, in some instances, about corporate governance and auditor independence.'' [76]

The Government Accountability Office (''GAO'') also noted concerns about auditors' involvement in marketing abusive tax shelters to public companies. The GAO reported that 61 Fortune 500 companies obtained tax shelter services from their external auditors during the period 1998 through 2003.[77] The GAO also noted that the IRS considered some of these ''transactions abusive, with tax benefits subject to

[68] *See* Letter of Chris Barnard, Actuary (Apr. 26, 2012).

[69] Auditors of brokers and dealers must generally comply with the independence requirements of SEC Rule 2–01 of Regulation S–X. *See* SEC Rule 17a–5(f)(1); *see also Broker-Dealer Reports,* Exchange Act Release No. 70073, at nn.383–391 and accompanying text.

[70] *See* SEC Rule 2–01(c)(5) of Regulation S–X.

[71] *See* WeiserMazars Comment Letter.

[72] Rule 3501(c)(i) defines a ''confidential transaction'' to be a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a fee.

[73] Rule 3522(b) describes an ''aggressive tax position transaction'' as a transaction initially recommended, directly or indirectly, by the registered public accounting firm with a significant purpose of tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws.

[74] *See* Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs, *The Role of Professional Firms in the U.S. Tax Shelter Industry,* S. Rep. No. 109–54, at 6 (2005). This report was based on a Subcommittee investigation that included hearings, in November 2003, in which the Subcommittee elicited testimony that described certain potentially abusive tax shelter products marketed through cold-call selling techniques by accounting firms and others. *See also U.S. Tax Shelter Industry: The Role of Accountants, Lawyers, and Financial Professionals: Hearings Before the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs,* 108th Cong. (2003).

[75] Announcement 2005–19, 2005–11 I.R.B.1.

[76] IRS News Release, Settlement Offer Extended for Executive Stock Option Scheme, IR 2005–17 (Feb. 22, 2005), available at *http://www.irs.gov/uac/Settlement-Offer-Extended-for-Executive-Stock-Option-Scheme.* The Commissioner also said, ''We believe a new climate under Sarbanes-Oxley, together with the tougher independence standards for auditors recently proposed by the Public Company Accounting Oversight Board make this sort of thing less likely going forward.'' *Id.*

[77] See GAO, Tax Shelters: Provided by External Auditors, GAO–05–171 (2005).

disallowance under existing law, and other transactions possibly to have some traits of abuse.'' [78]

With the change in meaning of the term ''audit client,'' as described above, Rule 3522 applies to audits of brokers and dealers. The Board did not receive comment on the proposed application of Rule 3522 to audits of brokers and dealers. Accordingly, the amendments the Board is making today result in a prohibition on a registered public accounting firm providing any non-audit service related to the marketing, planning or opining in favor of a tax treatment of a ''confidential transaction'' or an ''aggressive tax position transaction'' to a broker or dealer audit client.

Tax Services for Persons in Financial Reporting Oversight Roles (Rule 3523). The Board is amending Rule 3523 to apply only to issuer audit clients. Rule 3523 does not apply in audits of brokers or dealers unless the broker or dealer is an issuer or an affiliate of an issuer under Rule 3501(a)(ii).[79]

Rule 3523 prohibits auditors from providing any tax service to any person who performs a financial reporting oversight role at an issuer audit client, or an immediate family member of such an individual, unless the person is in that role solely because (a) he or she is a member of the board of directors or a similar management or governing body, (b) the person has a relationship with an affiliated entity that is immaterial to the audit client's consolidated financial statements or that has its financial statements audited by another auditor, or (c) the person was hired or promoted into the financial reporting oversight role and the tax engagement was in process before the hiring or promotion and will be completed within 180 days after the hiring or promotion.[80] The rule addresses the concern that performing tax services for certain individuals involved in the financial reporting processes of an issuer audit client creates an appearance of a mutuality of interest between the auditor and those individuals.[81]

Although the Board proposed that Rule 3523 similarly apply to the audits of non-issuer brokers and dealers, it noted that the auditor independence implications of an auditor providing such tax services to an officer of a broker or dealer may not be the same as those associated with an auditor providing tax services to an officer of a public company, and it solicited comment on whether Rule 3523 should continue to be limited to issuer audit clients.

Commenters generally stated that Rule 3523 should be limited to issuers or subsidiaries of issuers,[82] saying the investing public does not trade on the financial results of brokers and dealers and that the SEC staff has recognized this difference by noting that non-issuer brokers and dealers are not required to comply with certain provisions of SEC Rule 2–01 of Regulation S–X.[83] Commenters also said the threat that these services would create the appearance of a mutuality of interests between the auditor and the individuals in a financial reporting oversight role is significantly greater for a public company, where the interests of investors and management's interests typically diverge to a greater degree than in a private company.[84] Finally, commenters said that applying Rule 3523 to audits of brokers and dealers could unnecessarily increase costs for brokers and dealers, many of which are small businesses, where the owner, manager, and person providing financial reporting oversight is the same person.[85] Similarly, some commenters indicated that compliance with the proposal might require some brokers or dealers, that may be organized as limited partnerships or sole proprietorships, to hire a second audit firm to provide personal tax services, creating inefficiencies.[86]

In response to these comments, the PCAOB has further considered the proposed application of Rule 3523 to audits of non-issuer brokers and dealers. The Board is not at this time extending the requirements of Rule 3523 (and the costs associated with these requirements) to audits of non-issuer brokers and dealers. Rule 3523's prohibition on providing tax services to a person in a financial reporting oversight role is therefore limited to issuer audit clients. As more information is gathered on broker and dealer audits through the PCAOB's inspections and other oversight functions, the Board will continue to consider whether providing such tax services for persons in financial reporting oversight roles could impair independence and could revisit its decision to limit Rule 3523's application to issuer audits.

Audit Committee Pre-approval of Certain Tax Services (Rule 3524). The Board adopted Rule 3524 to implement and strengthen the requirement in Sections 10A(h) and 10A(i) of the Exchange Act, as amended by Section 202 of Sarbanes-Oxley, that all non-audit services for an issuer audit client ''shall be preapproved by the audit committee of the issuer.'' [87] The Dodd-Frank amendments, however, did not extend the Exchange Act's issuer-audit committee preapproval requirements to non-audit services provided to non-issuer brokers and dealers. In addition, the SEC's independence rules over audit committee administration are applicable only to issuers. As a result, the Board is not extending the preapproval requirements in Rule 3524 to broker or dealer audit clients.[88] Commenters agreed that Rule 3524 should not be extended to the audits of brokers and dealers.[89]

Audit Committee Pre-approval of Non-audit Services Related to Internal Control Over Financial Reporting (Rule 3525). The Board adopted Rule 3525 in connection with the adoption of Auditing Standard No. 5, *An Audit of Internal Control Over Financial Reporting That is Integrated with An Audit of Financial Statements,* in 2007.[90] The prior auditing standard, Auditing Standard No. 2, had required audit committee pre-approval of internal control related non-audit

[78] Id.

[79] If a non-issuer broker or dealer is an affiliate of an issuer audit client, then the broker or dealer will be treated in the same manner that any other affiliate of the issuer would be treated when analyzing the auditor's independence from the issuer.

[80] PCAOB Release No. 2005–014, at 34–39.

[81] *Id.* at 34–35. In 2008, the Board amended this rule to limit its application to the ''professional engagement period,'' which begins when the auditor either signs the initial engagement letter or begins audit procedures, whichever is earlier, and ends when either the company or the auditor notifies the Commission that the company is no longer that auditor's audit client. *See* PCAOB Release No. 2008–003, at 15. The rule previously had applied not only to the professional engagement period but also during the ''audit period,'' which is the period covered by any financial statements being audited or reviewed. *See* PCAOB Release No. 2005–14, at 14–15.

[82] *See* CAQ Comment Letter; Grant Thornton Comment Letter; McGladrey Comment Letter; KPMG Comment Letter; Letter of Peterson Sullivan LLP (Apr. 30, 2012); Rothstein Kass Comment Letter.

[83] *See* Crowe Horwath Comment Letter.

[84] *See* McGladrey Comment Letter; Rothstein Kass Comment Letter.

[85] *See* CAQ Comment Letter; KPMG Comment Letter; Rothstein Kass Comment Letter; WeiserMazars Comment Letter.

[86] *See* Crowe Horwath Comment Letter; Rothstein Kass Comment Letter; WeiserMazars Comment Letter.

[87] PCAOB Release No. 2005–014, at 40, *quoting* Section 10A(i)(1)(A) of the Exchange Act.

[88] Audits of SEC registered brokers and dealers, however, remain subject to the SEC auditor independence rules, including prohibitions on the auditor providing certain non-audit services to audit clients. *See* SEC Rule 2–01(c)(4) of Regulation S–X.

[89] *See* Grant Thornton Comment Letter; McGladrey Comment Letter; Rothstein Kass Comment Letter.

[90] *See* PCAOB Release No. 2007–005A, at 14–15 and Appendix 2.

services.[91] With the adoption of Auditing Standard No. 5, this requirement was moved to Rule 3525.

Rule 3525 was adopted to facilitate implementation of the audit committee pre-approval requirements in Section 10A of the Exchange Act and the internal control reporting requirements in Section 404 Sarbanes-Oxley. As noted above, the Dodd-Frank amendments did not extend the audit committee pre-approval requirements in Exchange Act Sections 10A(h) and 10A(i) to brokers or dealers. Similarly, the Dodd-Frank amendments did not extend the Sarbanes-Oxley Act Section 404 internal control reporting requirements to brokers or dealers, and the Commission has not extended similar requirements to brokers or dealers. Accordingly, the Board has determined that the application of Rule 3525 should remain limited to services provided to issuer audit clients. Commenters agreed that Rule 3525 should not be extended to audits of non-issuer brokers and dealers.[92]

Communication with Audit Committees Concerning Independence (Rule 3526). The Board adopted Rule 3526 to ensure that those making the decisions to hire, compensate, and oversee the work of the auditor have information about the auditor's independence that could assist them in performing those responsibilities.[93] This rule requires that prior to being engaged and at least annually thereafter, an auditor describe in writing to the audit committee all relationships between the registered public accounting firm and audit client that may reasonably be thought to bear on the firm's independence from the audit client, discuss with the audit committee the potential effects of those relationships on independence, affirm annually that the public accounting firm is in compliance with Rule 3520, and document the substance of the discussion with the audit committee.[94]

SEC Rule 17a–5 generally requires that brokers or dealers registered with the Commission pursuant to Section 15 of the Exchange Act file with the Commission annual reports consisting of a financial report and either a compliance report or an exemption report that are prepared by the broker or dealer, as well as certain reports that are prepared by an independent public accountant covering the financial report and the compliance report or the exemption report.[95] The accountant must be independent in accordance with the Commission's independence rules in Regulation S–X.[96] It is as important that those persons discharging the responsibilities to engage, compensate and oversee an independent auditor at a broker or dealer, as it is for an issuer's audit committee, to be advised by the auditor of any relationships that reasonably may be thought to bear on the auditor's independence. The Board, therefore, is making Rule 3526 applicable to audits of brokers and dealers.

The Board recognizes, however, that brokers and dealers may have organizational structures that do not include audit committees. The Board is therefore adding a definition of ''audit committee'' to Rule 3501 that makes Rule 3526 applicable to broker and dealer audit clients.[97] This definition, as discussed above, provides that if a broker or dealer does not have an audit committee or board of directors (or equivalent body) then the required communications should be made to the individuals overseeing the accounting and financial reporting processes of the broker or dealer and audits of the financial statements of the broker or dealer.[98]

One commenter recommended that in a situation in which those charged with governance and management are the same individuals, the Board should consider providing some flexibility by allowing auditor judgment in determining the nature of the communications that should occur in these circumstances.[99] Under Rule 3526, an auditor of a non-issuer broker or dealer with no existing audit committee or board of directors (or equivalent body) is expected to identify senior persons at the broker or dealer who have decision-making authority and responsibility to oversee the accounting and financial reporting processes of the broker or dealer and audits of the financial statements, and make the required communications to those persons. For example, in an owner-managed broker, the person with oversight of financial reporting within the broker could be the owner, and the Rule 3526 communications, therefore, would be made to the owner. When making Rule 3526 communications to the owner, the auditor need not repeat written communications provided to the owner throughout the audit process as long as the auditor has met all of the requirements of Rule 3526, including describing in writing all relationships that reasonably may be thought to bear on independence, discussing the potential effects of those relationships on the auditor's independence, and providing a written affirmation of the firm's independence. In addition, the auditor may identify others in charge of the broker's or dealer's operations and performance who may benefit from the Rule 3526 communications and make the communications to those individuals as well as the owner.

Compliance dates for Rules 3521 through 3526. Commenters indicated that certain of the proposed amendments, if adopted, would benefit from transition periods. For example, one commenter suggested that certain services should be allowed to continue provided that the services are completed on or before the later of October 31 of the calendar year in which the SEC approves the Board's rules, or 10 days after the date the SEC approves the rules.[100] The requests from commenters for a prolonged transition period for the Board's independence rules focused on the time needed for brokers and dealers to change either auditors or tax consultants in the event of the application of Rule 3523 to broker and dealer audit engagements. Because the Board has determined not to apply Rules 3523, 3524, or 3525 to audits of non-issuer brokers and dealers, an extended transition period should not be necessary. These amendments will take effect on June 1, 2014.

Section 4—Inspections

The rules in this section set out the procedures for the Board's inspections of registered public accounting firms. The Board has adopted a temporary rule, Rule 4020T, which sets out an interim inspection program for auditors

[91] AS 2.33.

[92] *See* Grant Thornton Comment Letter; McGladrey Comment Letter; Rothstein Kass Comment Letter.

[93] PCAOB Release No. 2008–003, at 3–4.

[94] Rule 3526 requires that the registered public accounting firm describe, in writing, all relationships between the registered public accounting firm, or any affiliates of the firm, and the existing or potential audit client or persons at the audit client in a ''financial reporting oversight role'' that reasonably may be thought to bear on the auditor's independence.

[95] SEC Rule 17a–5(d).

[96] SEC Rule 17a–5(f)(1). The Commission's independence requirements include SEC Rule 2–01 and related interpretations.

[97] One commenter indicated that although auditors currently document their independence under GAAS, including brokers and dealers in Rule 3526 would be beneficial as it would require more documented evidence of auditor independence. *See* WeiserMazars Comment Letter.

[98] *See generally,* Section 301 of Sarbanes-Oxley, directing the Commission to adopt rules requiring listed companies' audit committees to ''be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer. . . .'' *See also* Exchange Act Section 10A(m)(2) and SEC Rule 10A–3(b)(2).

[99] *See* Grant Thornton Comment Letter.

[100] *See* D&T Comment Letter.

of brokers and dealers.[101] After it has gained knowledge and experience through the interim program and other sources, the Board in a subsequent rulemaking proceeding will propose rules for a permanent inspection program for these firms.

The Board is making two technical amendments to the rules in this section. The first is to revise Rule 4009 to conform to Rule 140 of the Commission's Regulation P (''Rule 140''),[102] which went into effect on September 7, 2010, and the second is to revise Rule 4020T(b) to conform to the amendments that the Board is making to the definitions of ''audit,'' ''audit report,'' and ''professional standards'' in Rule 1001.

Firm Response to Quality Control Defects (Rule 4009). Rule 4009 sets out the procedures relating to a firm's submission to the Board to demonstrate how the firm has addressed criticisms of, or potential defects in, the firm's system of quality control that are described in an inspection report. If the Board determines that the firm has satisfactorily addressed a criticism or defect, the portion of the inspection report discussing that issue remains nonpublic. If the Board determines that the firm has not addressed a criticism or defect to the Board's satisfaction, however, the portion of the report discussing that issue will be made public. Section 104(h) of the Act allows the firm to request interim Commission review if the firm disagrees with the Board's determination that the firm has not satisfactorily addressed a quality control criticism or defect.

When a firm seeks Commission review of a negative remediation determination by the Board, Rule 4009(d)(3) provides that ''unless otherwise directed by Commission order or *rule,''* (emphasis added) the quality control findings shall be made public by the Board 30 days after the firm formally requests Commission review. In July 2010, the Commission adopted Rule 140, which provides that a firm's timely request for Commission review of a negative remediation determination operates as a stay of publication by the Board of the portions of the report at issue unless and until the Commission either denies the review request or otherwise determines.[103] The Board is making an amendment to Rule 4009(d)(3) to conform to Rule 140's stay of publication provision. Commenters did not address the Board's proposed amendments to Rule 4009, and the Board is adopting the amendments as proposed.

Interim Inspection Program Related to Audits of Brokers and Dealers (Rule 4020T). On June 14, 2011, the Board adopted Rule 4020T, establishing an interim inspection program relating to audits of brokers and dealers.[104] Rule 4020T(b) provided that the definitions of ''audit,'' ''audit report,'' and ''professional standards'' contained in the Dodd-Frank Amendments applied to Rule 4020T, Rule 3502, Section 5 of the rules, and to the definition of ''disciplinary proceeding'' in Rule 1001(d)(i). Because this rulemaking makes these definitions permanently applicable to all of the Board's rules, the Board is deleting the second sentence of Rule 4020T(b).[105] Commenters did not address the Board's proposed amendments to Rule 4020T and the Board is adopting the amendments as proposed.

Section 5—Investigations and Adjudications

Section 5 of the Board's rules governs the process of PCAOB investigations and disciplinary proceedings. The Board is amending certain rules in this section to conform to the Dodd-Frank amendments. For many of these rules, this is simply a matter of adding ''broker'' and ''dealer'' to rules in addition to ''issuer,'' to reflect the Board's jurisdiction over auditors of brokers and dealers pursuant to the Dodd-Frank amendments. The Board is also amending a number of the rules in this section in light of its experience administering and enforcing these rules.[106]

Many of the rules in this section are affected by the amendments the Board is making to the definitions in Rule 1001. In particular, the changes to the definitions of ''audit,'' ''audit report,'' and ''professional standards'' make clear that the Board's enforcement rules—which encompass, among other things, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto—encompass the obligations of auditors with respect to audit reports for brokers and dealers, such as those obligations set out in Rule 17a–5. The Board's Temporary Rule for an Interim Inspection Program for the Audits of Brokers and Dealers extended the definition of these three terms to the rules in this section. This rulemaking makes these changes part of the Board's permanent rules.

In addition, the revisions to the definition of ''Person Associated With a Public Accounting Firm'' in Rule 1001 apply to all uses of the term in this section, making it clear that the term ''associated persons'' includes formerly associated persons concerning conduct that occurred while they were associated with a registered public accounting firm, as well as persons seeking to become associated with a registered public accounting firm. As stated above, this amendment reflects the Dodd-Frank amendments' clarification of the Board's jurisdiction over these individuals.

Some commenters said the proposed amendments regarding investigations and adjudications were not clear, and because in some cases they are unrelated to the Dodd-Frank amendments, the Board should consider a separate rulemaking effort to consider these amendments, which could also include suggestions for changes to the rules in Section 5 based on the experience of persons that have been the subject of inquiries and investigations, and better explain the rationales and potential impacts of these proposed amendments.[107] The Board does not agree that a separate rulemaking is necessary to address the proposed amendments to Section 5 that are not related to the Dodd-Frank amendments. Many of the proposed amendments to the rules in Section 5 were technical and the Board did not receive specific comment on them from any commenter. Commenters have had an opportunity through this rulemaking to comment on all aspects of the proposed rules. After considering the comments, including some suggestions for making amendments to the rules in Section 5 based on commenters' experiences, the Board is adopting the proposed amendments with modifications to address commenters' concerns, as discussed below.

Inquiries and Investigations

Testimony of Registered Public Accounting Firms and Associated Persons in Investigations (Rule 5102). Adopted pursuant to Section 105(b)(2)(A) of the Act, Rule 5102 establishes Board procedures related to obtaining and recording the testimony of any registered public accounting firm or any associated person of such a firm

[101] PCAOB Release No. 2011–001.

[102] 17 CFR 202.140.

[103] *See* SEC Rule 140(c)(5), (d), and (e)(4).

[104] *See* PCAOB Release No. 2011–001.

[105] As discussed above, the Board is also removing the notes accompanying the definitions of ''audit,'' ''audit report,'' and ''professional standards'' in Rule 1001. *See supra* notes 17, 29.

[106] The Board is also making a number of technical amendments, such as updating cross-references, to Rules 5205, 5407, and 5462.

[107] *See* CAQ Comment Letter; KPMG Comment Letter; PWC Comment Letter.

with respect to any matter that the Board considers relevant or material to an investigation. Rule 5102(c)(4) provides that a registered firm that is required to provide testimony in a Board examination shall designate one or more persons to testify on its behalf and ''may set forth, for each individual designated, the matters on which the individual will testify.'' As proposed, the Board is changing the phrase ''may set forth'' to ''shall set forth'' to ensure that, when a firm designates more than one individual to testify on its behalf, the firm provides appropriate notice as to the subject matter of each individual's testimony. The Board did not receive comment on the proposed amendments to Rule 5102.

Requests for Testimony or Production of Documents from Persons Not Associated With Registered Public Accounting Firms (Rule 5105). Rule 5105, adopted under Section 105(b)(2)(C) of the Act, provides that the Board, and the staff of the Board designated in a formal order, may issue an accounting board request for the testimony of any person, including any client of a registered public accounting firm, provided certain procedural requirements are satisfied. If not a natural person, the person to be examined must designate a representative or representatives to testify on the person's behalf.[108] The Board is amending Rule 5105, as proposed, to make the rule's provisions applicable to brokers and dealers. The amendments to Rule 5105 also require that entities set forth the matters on which their designated representatives will testify.[109] This amendment tracks the amendment to Rule 5102(c)(4), discussed above, and ensures that the Board receives appropriate notice of the subject matter of each designee's testimony. The Board did not receive comment on the proposed amendments to Rule 5105.

Confidentiality of Investigatory Records (Rule 5108). Rule 5108(a) reflects the Board's authority, under Section 105(b)(5) of the Act, to make confidential materials relating to informal inquiries and formal investigations available to the Commission and, ''when determined by the Board to be necessary to accomplish the purposes of the Act or to protect investors,'' to certain other regulatory authorities. The specified regulatory authorities include the Attorney General of the United States; the appropriate Federal functional regulator and the Director of the Federal Housing Finance Agency,[110] with respect to an audit report for an institution subject to the jurisdiction of such regulator; State attorneys general in connection with any criminal investigation; and any appropriate State regulatory authority. The Dodd-Frank amendments added two more categories of regulatory authorities to the list in Section 105(b)(5): self-regulatory organizations and foreign auditor oversight authorities. As proposed, the Board is making conforming amendments to Rule 5108. The Board's authority to disclose confidential information (either from investigations or inspections) to self-regulatory organizations and foreign audit oversight authorities is provided by the Act and does not depend upon these rule amendments taking effect.[111]

Self-regulatory organization. The Board is adopting Rule 5108(e) to conform to the Dodd-Frank amendments that permit the Board to share confidential information with ''a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization.'' [112]

Foreign auditor oversight authority. The Board is adopting Rule 5108(f) to conform to the Dodd-Frank amendments that allow greater Board cooperation with certain foreign regulators. The Dodd-Frank amendments allow the Board to share confidential information with ''foreign auditor oversight authorities,'' as the Board defined in Rule 1001.[113] Rule 5108(f) tracks the Dodd-Frank amendments that allow the Board to share documents with a foreign auditor oversight authority concerning a public accounting firm with respect to which it has been empowered by a foreign government to inspect or otherwise enforce laws, under certain circumstances. Specifically, the foreign auditor oversight authority must provide (1) assurances of confidentiality requested by the Board; (2) a description of its applicable information systems and controls; and (3) a description of the laws and regulations of the foreign government of the foreign auditor oversight authority that are relevant to information access. In addition to making a determination under Rule 5108(a)(2) that sharing the information with the foreign auditor oversight authority is necessary to accomplish the purposes of the Act or to protect investors, the Board must also determine that it is appropriate to share such information.[114]

One commenter suggested that because SROs are private entities the Board should take additional steps to ensure that SROs preserve the confidentiality and privilege of any information that is transmitted to SROs, for example by requiring, by rule, that SROs enter into a memorandum of understanding with the Board before receiving confidential and privileged information from the Board.[115] Unlike foreign auditor oversight authorities, Congress did not impose a requirement that the Board seek assurances of confidentiality from SROs or take other steps to determine that it is appropriate to share confidential information with SROs.[116] Instead, the Act itself instructs SROs to ''maintain such information as confidential and privileged.'' [117] The Board does not believe amending Rule 5108 is necessary to maintain the confidential and privileged status of this information. The Board takes steps to ensure that recipients of this information are aware of the statutory restrictions on information sharing. In the event that the Board discovers that an SRO makes disclosures that the Board believes are inconsistent with the Act, the Act and Rule 5108 allow the Board the flexibility to decline to supply information to that SRO or to require appropriate assurances of confidentiality.[118]

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[108] *See* Rule 5105(a)(2).

[109] *See* Rule 5105(a)(2). The Board is changing the phrase ''may set forth'' in Rule 5105(a)(2) to ''shall set forth.''

[110] Section 1161(h) of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654, 2781 (2008), amended Sarbanes-Oxley to authorize the PCAOB to share information gathered in Board inspections and investigations with the Director of the Federal Housing Finance Agency (with respect to audits of institutions within the Federal Housing Finance Agency's jurisdiction). The PCAOB is adopting amendments to conform to Section 1161(h) of the Housing and Economic Recovery Act. *See* Rule 5108(a)(2)(b).

[111] *See* Section 105(b)(5)(B) and (C) of the Act. The PCAOB is adopting these rule amendments to maintain consistency between Sections 105(b)(5) of the Act and Rule 5108(a), which the Board originally adopted ''principally for purposes of notice concerning how the Board will comply with the requirements of Section 105(b)(5) (*e.g.,* by keeping the relevant documents confidential) and that the Board will make appropriate use of its authority to share confidential materials with certain other regulatory authorities.'' *See Rules on Investigations and Adjudications,* PCAOB Release No. 2003–015, at A2–40 (Sep. 29, 2003).

[112] The term ''self-regulatory organization'' (''SRO'') was adopted as a part of the Board's funding rules release. *See* PCAOB Release No. 2011–002.

[113] *See* Rule 1001(f)(iii).

[114] *See* Section 105(b)(5)(C) of the Act.

[115] *See* D&T Comment Letter. With respect to foreign auditor oversight authorities, D&T supported inclusion of the statutory safeguards to protect against a breach of confidentiality by the foreign authority.

[116] *Compare* Section 105(b)(5)(C)(ii) of the Act, *with* Section 105(b)(5)(B)(ii) of the Act.

[117] *See* Section 105(b)(5)(B) of the Act.

[118] For these same reasons, the Board does not believe this commenter's similar suggested revisions to Rule 5112 or Rule 5420 are necessary and declines to make them.

Statements of Position (Rule 5109). Rule 5109(d) allows a registered firm or associated person that has become involved in an informal inquiry or formal investigation to submit a written statement to the Board setting forth their position on the subject matter of the investigation. The Board proposed to add an explanatory note to Rule 5109(d), that would have indicated that, in considering factual assertions in a statement of position, the Board will consider whether those factual assertions are supported by evidence, such as evidence in the investigative record, or by an affidavit or declaration by an individual with knowledge of the asserted facts. The proposed note was designed to encourage associated persons and registered firms to provide the Board with appropriate information that would further assist the Board in evaluating statements of position.

Several commenters said the proposed explanatory note could suggest that arguments made in statements of position that were not supported by formal affidavits or declarations would be discounted by the Board, which they said would place disproportionate weight on formal evidentiary submissions at an early stage of an inquiry or investigation and potentially harm the Board's process of obtaining evidence.[119] Two commenters said that the proposing release did not provide a clear rationale for this proposed amendment.[120]

In light of the concerns expressed by commenters, the Board is not adopting the proposed explanatory note. The Board did not intend to suggest that formal evidentiary submissions would be required, or that the Division of Enforcement and Investigation's (''DEI'' or ''Division'') burden of proof would shift as a result of the proposal. The purpose of the Rule 5109(d) process is to assist the Board in its decision-making by providing prospective respondents with a meaningful opportunity to focus the Board's attention on significant issues concerning prospective respondents' characterization of their own conduct, and on the legal and policy issues implicated by the staff's recommendation.[121] Submissions made under Rule 5109(d) also help the Board's Enforcement staff in determining whether to pursue a recommendation that the Board institute disciplinary proceedings against a prospective respondent. The process is not designed to become a miniature adjudication that is subject to formal evidentiary submission requirements.

Practice today varies across Rule 5109(d) submissions and sometimes within a submission. Some submissions are amply supported; others are unsupported or only partially supported. Additionally, in some instances, assertions in a submission appear to contradict evidence in the investigative record. The Board's goal in proposing the explanatory note was simply to make prospective respondents aware (or remind them) that if their statements of position assert new facts, or make factual assertions that contradict evidence already in the investigative record, those assertions are likely to be given more weight by the Division and the Board if they are supported by evidence. Supportive evidence could include evidence that is already in the investigative record. A proposed respondent could also, for example, submit an affidavit, declaration, or similar statement signed by an individual who claims to have knowledge of the asserted facts.

Board Referrals of Investigations (Rule 5112). Rule 5112(b) provides that the Board may refer any investigation to the Commission, and to any other Federal functional regulator. The Dodd-Frank amendments gave the Board authority to refer any investigation to a self-regulatory organization when the investigation concerns an audit report for a broker or dealer that is under the jurisdiction of such organization. The Board is adding subparagraph (2) to Rule 5112(b) to conform to these amendments.[122] Other than the comment discussed above in connection with Rule 5108(a), the Board did not receive comment on the proposed amendment to Rule 5112 and is adopting it as proposed.[123]

Disciplinary Proceedings

Commencement of Disciplinary Proceedings (Rule 5200(a)(2)). The Board is amending Rule 5200(a)(2) to replace the phrase ''the supervisory personnel of such a firm,'' with ''any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person of such firm.'' This amendment conforms the rule to the Dodd-Frank amendments to Section 105(c)(6) of the Act concerning the imposition of sanctions for failure to supervise. The Board did not receive comment on the proposed amendments to Rule 5200(a)(2) and the Board is adopting the amendments as proposed.

Proceedings Instituted Solely Pursuant to Rule 5200(a)(3). Under Rule 5200(a)(3), the Board may institute disciplinary proceedings when ''it appears to the Board that a hearing is warranted pursuant to Rule 5110.'' Rule 5110 states that the Board may institute a proceeding pursuant to Rule 5200(a)(3) for noncooperation with a Board investigation. A number of provisions in the Board rules are intended to expedite disciplinary proceedings of this type. Based on its experience with these rules in practice, the Board is making amendments so that these special procedures do not automatically apply in cases involving both non-cooperation and other charges.

First, the Board is eliminating the Rule 5201(b)(3)(ii) requirement that the Board specify a hearing date in every order instituting proceedings (''OIP'') for alleged noncooperation with an investigation. Rule 5200(b)(12) requires a hearing officer to obtain Board approval before changing any hearing date set by Board order. These two rules combine to restrict the hearing officer's discretion in a way that is not necessary in every noncooperation case. The Board retains the discretion to include hearing dates or deadlines in any OIP.

Second, the Board is amending the following rules by adding the word ''solely'' to make it clear that certain shorter deadlines and more abbreviated procedural requirements apply only to proceedings brought exclusively for alleged noncooperation: Rules 5110(b); 5201(b)(3) (and deleting 5201(b)(3)(ii)); 5204(b)(Note), 5421(b), 5422(a)(2), 5422(d), 5445(b), and 5460(a)(2)(ii). Rule 5421(b), for example, prescribes the time frame in which parties must answer allegations contained in Board OIPs. The rule requires parties to file answers to Board allegations within 20 days for proceedings brought pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5500, and within five days for proceedings brought under Rule 5200(a)(3). Rule 5421(b) does not expressly address, however, which time frame applies to proceedings brought under both Rule 5200(a)(1) and Rule 5200(a)(3), for example. The amendments clarify that the rule's shorter time frame applies only to proceedings brought under, and only under, Rule 5200(a)(3). Put another way, the amendments clarify that Rule 5421(b)'s expedited time frame does not apply to a proceeding brought under both Rule 5200(a)(1) and Rule 5200(a)(3).

[119] *See* D&T Comment Letter; Grant Thornton Comment Letter; KPMG Comment Letter; PWC Comment Letter.

[120] *See* KPMG Comment Letter; PWC Comment Letter.

[121] *See* PCAOB Release No. 2003–015, at A2–47 through A2–49.

[122] The PCAOB is also adopting amendments to conform to Section 1161(h) of the Housing and Economic Recovery Act. *See* Rule 5112(b)(3).

[123] *See supra* note 118.

One commenter expressed concern that the proposed amendments that would clarify that special expedited procedures only apply to non-cooperation charges could have the effect of allowing a disagreement over what conduct constitutes non-cooperation to take too long to resolve, creating uncertainty.[124] The Board's amendments clarify the circumstances under which the Board's special and expedited non-cooperation procedures apply,[125] but do not amend the grounds under which non-cooperation proceedings may be instituted [126] or the substance of the expedited procedures.[127] The time involved in resolving disagreements over what conduct constitutes non-cooperation should therefore not be affected by these amendments.

Burden of Proof (Rule 5204). Rule 5204(a) provides that in any disciplinary proceeding instituted pursuant to Rule 5200(a), the interested division ''shall bear the burden of proving an alleged violation or failure to supervise by a preponderance of the evidence.'' As proposed, the Board is adding a second sentence to Rule 5204 that makes it clear that respondents who raise affirmative defenses bear the burden of proving those affirmative defenses, also by a preponderance of the evidence. The addition is consistent with the general rule that the burden of proving an affirmative defense rests with the party asserting the defense. *See, e.g., Taylor* v. *Sturgell,* 553 U.S. 880, 907 (2008).

The amendments to Rule 5204 only become relevant if the interested division has met its burden of proving an alleged violation by a preponderance of the evidence. Thus, the amendments clarify that once the interested division has proved an alleged violation by a preponderance of the evidence, if the respondent raises an affirmative defense to the violation, the respondent bears the burden of proving the affirmative defense by a preponderance of the evidence. The Board did not receive comment on the proposed amendments to Rule 5204 and is adopting these amendments as proposed.

Civil Money Penalties (Rule 5300). Rule 5300(a) lists the sanctions the Board may impose if it finds a registered firm or associated person has committed a violation of the Act, rules of the Board, the relevant securities laws, or professional standards. Under Rule 5300(a)(4), the Board may impose civil money penalties for each such violation. This rule, which became effective in 2004, listed specific maximum amounts for penalties against natural persons and entities. As required by the Debt Collection Improvement Act of 1996,[128] the SEC adjusts the maximum amounts of certain penalties under the Act for inflation at least once every four years.[129] As proposed, the Board is revising Rule 5300(a)(4) to recognize the penalty inflation adjustments, as published in the Code of Federal Regulations at 17 CFR Part 201 Subpart E. In addition, the Board is adding an explanatory note at the end of Rule 5300, indicating that the maximum penalty amounts vary depending on the date that the violation occurs, per 17 CFR Part 201 Subpart E.[130]

Leave to Participate to Request a Stay (Rule 5420). Under Rule 5420, an authorized representative of the SEC, the United States Department of Justice or any United States Attorney's Office, an appropriate state regulatory authority, or any criminal prosecutorial authority of a state or political subdivision of a state may seek leave to participate in a pending Board or disciplinary proceeding to request a stay to protect an ongoing investigation or proceeding. Consistent with the Dodd-Frank amendments, the Board is expanding the list of entities that may seek a stay pursuant to Rule 5420 to include self-regulatory organizations, as defined by Rule 1001(s)(v). This amendment permits a self-regulatory organization to seek a stay of a hearing that is in the public interest or for the protection of investors. Other than the comment discussed above in connection with Rule 5108(a), the Board did not receive comment on the proposed amendments to Rule 5420 and is adopting these amendments as proposed.[131]

Documents That May Be Withheld From Production (Rule 5422). After disciplinary proceedings have been instituted, Rule 5422(a) provides that DEI generally must make available for inspection and copying various documents prepared or obtained by the Division ''in connection with the investigation prior to the institution of the proceedings.'' Rule 5422(b) lists categories of documents that the Division may decline to make available for inspection and copying, subject to an overriding obligation not to withhold material exculpatory evidence. The PCAOB has determined to amend Rule 5422(b) in two respects.

First, under amended Rule 5422(b)(1)(i), DEI need not make available for inspection and copying any document prepared by a person retained by the PCAOB or the PCAOB's staff to provide services in connection with a PCAOB investigation, disciplinary proceeding, or hearing on disapproval of registration. Documents may be withheld under Rule 5422(b)(1)(i) only if the document has not been disclosed to any person other than Board members, Board staff, or persons retained by the Board or Board staff to provide services in connection with a PCAOB investigation, disciplinary proceeding, or hearing on disapproval of registration. Withholding such documents does not trigger any procedural requirements under Rule 5422(c).

Commenters generally expressed concern that there is no parallel provision in the SEC's comparable rule, which sets forth when the SEC's Division of Enforcement may withhold a document including when a document ''is an internal memorandum, note or writing prepared by a Commission employee'' or ''is otherwise attorney work product and will not be offered in evidence.'' [132] Commenters also contended that this change is not warranted without a more thorough explanation.[133] The PCAOB further considered this proposal in light of the comments and determined to adopt it as proposed in most respects.[134]

[124] *See* PWC Comment Letter.

[125] *See* Rule 5110(b).

[126] *See* Rule 5110(a).

[127] *See* Rules 5201(b)(3), 5300(b), 5302(d), 5421(b), 5422(a)(2), 5422(d), 5445(b), and 5460(a)(2)(ii).

[128] Public Law 104–134, 110 Stat. 1321–373 (codified at 28 U.S.C. 2461 note).

[129] See SEC, Adjustments to Civil Monetary Penalty Amounts, Securities Act Release No. 8530 (Feb. 4, 2005); SEC, Adjustments to Civil Monetary Penalty Amounts, Securities Act Release No. 9009 (Feb. 25, 2009); SEC, Adjustments to Civil Monetary Penalty Amounts, Securities Act Release No. 9387 (Feb. 27, 2013).

[130] One commenter said that while it did not have a particular objection to the proposed amendment to Rule 5300, it was not apparent how the SEC can amend the civil penalties established by Congress in the Act for the PCAOB, because the Federal Civil Penalties Inflation Adjustment Act of 1990 (''FCPIAA'') applies only to ''agencies'' of the federal government, and the PCAOB is not a federal agency. *See* EY Comment Letter. The FCPIAA encompasses the civil monetary penalties that may be imposed by the Board because penalties assessed by the PCAOB are ''enforced'' by the SEC for purposes of the FCPIAA. *See* Securities Act Release No. 9009, at n.5.

[131] *See supra* note 118.

[132] *See* CAQ Comment Letter; D&T Comment Letter; EY Comment Letter; Grant Thornton Comment Letter; KPMG Comment Letter.

[133] *See* CAQ Comment Letter; EY Comment Letter; KPMG Comment Letter; PWC Comment Letter.

[134] Commenters also generally asserted that the addition of the words ''obtained from'' in proposed Rule 5422(b)(1)(i) was ambiguous and could have implications on the efficiency and fairness of PCAOB proceedings. *See* CAQ Comment Letter; D&T Comment Letter; EY Comment Letter; and

This amendment corrects an anomaly in the prior version of Rule 5422(b)(1)(i), under which a document prepared by the Board or its staff and provided to a retained person would not be subject to disclosure under this subsection, but a document prepared by a retained person and provided to the Board or its staff was not covered by this subsection. The Board believes the applicability of Rule 5422(b)(1)(i) should not turn on whether a document was initially prepared by the Board, its staff, or a person retained by the Board or its staff. Retained persons are required to execute confidentiality agreements as a condition of their retention. Additionally, revising Rule 5422(b)(1)(i) to encompass documents prepared by a retained person is consistent with the general rule that firms and associated persons are not required to produce to the Division documents prepared by consultants they have retained to provide services in connection with an investigation or disciplinary proceeding.

The Board is also not persuaded that the lack of a similar specific provision in the SEC Rules of Practice counsels against amending Rule 5422(b)(1)(i), since the analogous SEC Rule, Rule 230, *Enforcement and Disciplinary Proceedings: Availability of Documents for Inspection and Copying,* is structured differently from PCAOB Rule 5422. For example, under PCAOB Rule 5422(b), as currently written, the Division may withhold from production, pursuant to the ''work product doctrine,'' certain documents prepared by persons retained by the Board or the Board's staff in connection with an investigation. DEI, however, is required under Rule 5422(c) to provide a respondent with a log of such documents withheld. In contrast, under SEC Rule 230(c), the Commission's Division of Enforcement is not required to prepare a log of documents that it has withheld from production, including documents withheld pursuant to the work product doctrine (and work product documents prepared by retained persons), unless a hearing officer so requires. Thus, in certain respects, the amendment to Rule 5422(b)(1)(i), which effectively removes the logging requirement for documents prepared by persons retained by the Board or the Board's staff in connection with an investigation, brings the Board's rules more in line with the Commission's rules.

The PCAOB's second amendment, to Rule 5422(b)(1)(ii), allows DEI to not make available for inspection and copying any document ''accessed from generally available public sources, such as legal research or other subscription databases, databases of securities filings, databases of periodicals, and public Web sites, except to the extent that DEI intends to introduce such documents as evidence.'' Documents may be withheld under Rule 5422(b)(1)(ii) only if DEI does not intend to introduce them as evidence. Withholding such documents does not trigger any procedural requirements under Rule 5422(c).

Some commenters asserted that documents ''accessed from generally available public sources'' could result in relevant materials not being produced, including documents DEI may consider supportive of its claims or that are exculpatory of a respondent.[135] The Board does not agree that exculpatory materials can be withheld under this new subsection and is adopting this amendment as proposed. Rule 5422(b)(2) makes clear that material exculpatory evidence must always be produced even if it could otherwise be withheld under Rule 5422(b)(1).[136] The PCAOB is adopting this amendment as proposed because it is concerned that the previous version of Rule 5422 could be misread to require DEI to log any legal research or general background research done during the investigation. This amendment is not intended to relieve DEI of the obligation to make available any document DEI knows of and intends to introduce as evidence, and it does not allow DEI to withhold a document that contains material exculpatory evidence.

Prior Sworn Statements of Nonparty Witnesses in Lieu of Live Testimony (Rule 5426). Rule 5426 allows a party to make a motion with the Hearing Officer to introduce ''a prior, sworn statement of a nonparty witness otherwise admissible in the proceeding, in lieu of live testimony.'' The title and subsequent provisions of the rule do not, however, repeat the rule's limitation to nonparty witnesses. The Board is adding ''nonparty'' before ''witnesses'' in the title of Rule 5426, and before ''witness'' in the fourth sentence of the rule, in order to make it clear that the rule does not apply to prior sworn statements of parties to the proceeding. The Board did not receive comment on the proposed amendments to Rule 5426 and is adopting these amendments as proposed.

Motions for Summary Disposition (Rule 5427). Rule 5427 provides that the interested division or respondent may file motions for summary disposition of the proceedings. The Board is adding ''any or all allegations of the order instituting proceedings with'' to both Rules 5427(a) and (b) to make it clear that a motion for partial summary disposition may be made by the interested division and the respondents to disciplinary proceedings. This language tracks Rule 250 of the Commission's Rules of Practice. The Board did not receive comment on the proposed amendments to Rule 5427 and is adopting these amendments as proposed.

Evidence: Objections and Offers of Proof (Rule 5442). Rule 5442 addresses objections to the admission or exclusion of evidence in a disciplinary proceeding. The Board is making a technical amendment to Rule 5442(a)(2) to clarify that exceptions to the hearing officer's admission or exclusion of evidence will not be deemed waived on appeal to the Board, if they are raised in proposed findings and conclusions filed in a post-hearing brief or other submission pursuant to Rule 5445. The Board did not receive comment on the proposed amendments to Rule 5442 and is adopting these amendments as proposed.

Board Review of Determinations of Hearing Officers (Rule 5460). Rule 5460 sets out the procedures for the Board's review of hearing officer initial decisions, either on appeal of a party to a hearing or on the Board's own initiative. Under Rule 5460(a)(2), a party may obtain Board review of an initial decision by filing a timely petition for review. To be timely, a petition must be filed within 10 days of an initial decision in a proceeding commenced under Rule 5200(a)(3) for noncooperation, and within 30 days of an initial decision in other proceedings. To conform with the clarification to Rule 5200(a)(3) discussed above, the Board is adding the word ''solely'' to Rule 5460(a)(2)(ii), to make it clear that the 10-day time period applies only to proceedings instituted exclusively pursuant to Rule 5200(a)(3).

The Board is also adding a note to Rule 5460(a) that sets out how the Board will determine when service of an initial decision has occurred, and by extension, when petitions for review are due. For any party that has entered a

KPMG Comment Letter. After considering these comments, the Board has determined that this proposed amendment is not necessary and is not revising Rule 5422(b)(1)(i) to add the ''obtained from'' language.

[135] *See* CAQ Comment Letter; D&T Comment Letter; Grant Thornton Comment Letter; KPMG Comment Letter.

[136] The Board also is not persuaded that there is a risk that DEI would withhold evidence supportive of its claim under Rule 5422(b)(1)(ii), since that subsection requires DEI to produce documents it intends to introduce as evidence even if the documents were obtained from a generally available public source.

notice of appearance and filed an electronic mailing address with the Board, pursuant to Rule 5401(c), the Board deems service to have occurred on the date that the Secretary has transmitted the initial decision by electronic mail to the email address on file.

Finally, Rule 5460(e) provides that the Board may summarily affirm an initial decision, based upon a petition for review. The Board is deleting the phrase ''and any response thereto'' from this provision because no Board rule permits a response to a petition for review. The Board did not receive comment on the proposed amendments to Rule 5460 and is adopting these amendments as proposed.

Presence of accounting experts during investigative testimony. In response to a general request for comments about other potential changes to the rules in Section 5, several commenters said accounting experts should be allowed to assist counsel during testimony in appropriate circumstances under Rule 5102(c)(3).[137] These commenters asserted that the SEC has permitted this form of assistance since 1985, ''with no apparent interference in the SEC's fact-finding process,'' [138] and said that DEI's ''functional ban'' on technical assistance results in: possible prejudice to counsel and witnesses during questioning, an inhibiting effect on DEI's fullest exposition and consideration of the issues, and the appearance that DEI has an unfair tactical advantage over the witness in the investigative process.[139]

One commenter said that the Board should think of firm monitoring as a good idea that facilitates supervisors' ability to determine whether the firm should adjust the witness's work assignments, provide training, or take other steps to address shortcomings.[140] And commenters suggested that the Board should amend its rules to expressly provide that witnesses' counsel be permitted the assistance of a technical consultant during the taking of testimony, except in circumstances in which DEI staff determines that it would obstruct the investigation.[141]

The existing Rule 5102 gives the Board and the Board's staff discretion to allow an accounting expert to be present during investigative testimony in appropriate circumstances. The Board will consider the comments on this issue, as well as all other relevant factors, in determining how the staff should continue to exercise that discretion going forward.

Registration and Reporting Forms

The Board is amending PCAOB Forms 1, 1–WD, 2, 3, and 4, the Board's registration, withdrawal, and reporting forms. The amendments revise the forms to call for relevant information relating to a firm's audits of brokers and dealers. That information includes, among other things, information about audit reports issued by registered firms for broker and dealer audit clients. The amendments also make a number of changes to the forms in light of administrative experience. Commenters generally supported the proposed form amendments,[142] and the Board is largely adopting the amendments as proposed.

Form 1: Application for Registration. Under Section 102(b) of the Act and Rule 2101, public accounting firms applying to the Board for registration must complete and file Form 1.[143] The Board is amending Form 1 to conform with the Dodd-Frank amendments by adding ''broker'' and ''dealer'' to the Form in appropriate places.[144] In addition, the amendments require that applicants disclose identifying information concerning all brokers or dealers for which the applicant has prepared or issued audit reports during the previous calendar year,[145] and for which the applicant prepared, or expects to prepare or issue, audit reports during the current calendar year.[146] The amendments also require applicants to disclose the fees they billed to broker and dealer audit clients.[147] The amendments also require applicants to provide information about any limitations currently in effect, whether Board-ordered, Commission-ordered, or court-ordered, on association with a registered public accounting firm or on appearing or practicing before the Commission.[148] The Board did not receive comment on the proposed amendments to Form 1 and is adopting these amendments as proposed.

Part III amendments. As required by Section 102(b)(2)(A) and (B) of the Act, and consistent with the issuer client information currently required in Part II of Form 1, Part III of Form 1 requires disclosures about the applicant's broker or dealer audit clients, including the client's name, business address, CRD number,[149] CIK number,[150] the date of the audit report, and disclosures about the fees billed to broker or dealer audit clients by the applicant. The disclosures are divided into four items that closely track the items in Part II of Form 1 relating to issuer audit clients. Item 3.1 covers broker and dealer clients for which the applicant prepared an audit report during the previous year. Item 3.2 covers broker and dealer clients for which the applicant prepared an audit report during the current year. Item 3.3 covers broker and dealer clients for which the applicant expects to prepare an audit report during the current year. Item 3.4 covers broker and dealer clients for which the applicant played or expects to play a substantial role in the audit during the preceding or current calendar year if the applicant did not prepare or issue and does not expect to prepare or issue audit reports.

Items 3.1 and 3.2 require the same information: the broker's or dealer's name, business address, CRD number, CIK number, the date of the audit report, and the total amount of fees billed for audit services, other accounting services, and non-audit services.[151] Because Item 3.3 refers to a future period, it only requires the broker's or dealer's name, business address, and CRD and CIK numbers.[152] Item 3.4 requires disclosure of the broker's or dealer's name, business address, CRD

[137] *See* CAQ Comment Letter; EY Comment Letter; KPMG Comment Letter.

[138] *See* CAQ Comment Letter; EY Comment Letter; KPMG Comment Letter.

[139] *See* CAQ Comment Letter; KPMG Comment Letter.

[140] *See* EY Comment Letter.

[141] *See* CAQ Comment Letter; EY Comment Letter; KPMG Comment Letter.

[142] *See* EY Comment Letter; KPMG Comment Letter; PWC Comment Letter.

[143] *See* Registration System for Public Accounting Firms, PCAOB Release No. 2003–007 (May 6, 2003).

[144] *See, e.g.,* amended Form 1, Items 5.1, 5.2, 7.1, and 8.1. The amendments also make a technical change to General Instruction 6 of Form 1, to more closely conform the instruction to Rule 2300, as adopted in 2008. *See Rules on Periodic Reporting by Registered Public Accounting Firms,* PCAOB Release No. 2008–004, at n.27 and accompanying text (June 10, 2008).

[145] Form 1, Item 3.1.

[146] Form 1, Item 3.2 and Item 3.3.

[147] Form 1, Item 3.1.c–e and Item 3.2.c–e.

[148] Form 1, Item 5.1.c–d.

[149] A broker's or dealer's Central Registration Depository (''CRD'') number is a number assigned by FINRA's CRD system, a computer system that maintains registration information regarding brokers and dealers and their registered personnel.

[150] The Commission issues Central Index Key (''CIK'') numbers as unique publicly available identifiers and Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'') access codes. For consistency, and to more easily identify issuers, the Board is also amending Form 1, Items 2.1 through 2.4 to require issuers' CIK numbers.

[151] As discussed above, the Board is amending the terms ''audit services'' and ''other accounting services'' to apply to broker and dealer audit clients. *See supra* note 20 and accompanying text.

[152] As proposed, the note to Item 3.3 stated that an applicant may ''presume'' it is expected to prepare or issue an audit report for a broker or dealer in certain circumstances, while the notes to proposed Items 2.4 and 3.4(d) used the term ''conclude'' in the same context. The Board agrees with two commenters that using the term ''conclude'' consistently is preferable, and has adopted this change. *See* CAQ Comment Letter; KPMG Comment Letter.

number, CIK number, the name of the public accounting firm that issued or is expected to issue the audit report, the date or expected date of the audit report, and the type of substantial role played by the applicant with respect to the audit report.

The Board understands that the fee information in Items 3.1 and 3.2 may not have been collected historically, and that public accounting firms may have to put systems in place to track information in these categories. While the Board understands that many, if not all, broker or dealer clients are not subject to the Commission's existing requirements for issuers to disclose fee information, or Items 2.1 and 2.2 of Form 1, where similar fee disclosure is currently required for issuer audit clients, the Dodd-Frank amendments to Section 102(b)(2)(B) of the Act specifically require applicants to include disclosure of the annual fees received by the firm for ''audit services, other accounting services, and non-audit services'' for each broker or dealer audit client.[153]

The Board expects that the Form 1 fee disclosure requirements for broker and dealer audit clients will not affect most registered public accounting firms. First, all current auditors of broker and dealer clients should already be registered with the Board,[154] and so will already have filed Form 1. Also, going forward the Board expects that most new firms will not have prepared audit reports for broker or dealer clients during the preceding or current calendar year, without having been previously registered with the Board, and therefore Items 3.1 and 3.2 will generally not apply to them.[155] Finally, because the Board recognizes that firms with broker and dealer audit clients have not necessarily been maintaining billing records in a way that readily facilitates precise reporting according to the fee categories in the Act (as the Board has defined them), the Board is adopting a note to these items that provides that estimated amounts may be used in responding to these Items in Form 1, to the extent that these fees have not previously been disclosed or otherwise known to an applicant.[156]

Part V amendments. Item 5.1 of Form 1 requires applicants to disclose information about certain types of criminal, civil, administrative, or disciplinary proceedings pending against, or resolved in the preceding five years against, the applicant or any associated person of the applicant. At the time that the PCAOB adopted Form 1, there was no history of disciplinary sanctions imposed by the Board. Now that there is a history of Board-imposed bars and suspensions dating back to 2005, the Board is adding to Form 1 a requirement that the applicant disclose whether individuals in the firm, or contractors of the firm, are subject to any currently effective Board-imposed bar or suspension on being an associated person of a registered public accounting firm. The implication of collecting this information on Form 1 is not that a firm's relationship with such a person would, in and of itself, result in rejection of the firm's application, but in some circumstances it may be relevant information that would cause the Board to evaluate whether approving the application is consistent with the Board's responsibility to protect investors and further the public interest.[157] In the same vein, the Board also is requiring information about currently effective prohibitions on appearing or practicing before the Commission, whether resulting from a Commission order denying or suspending that privilege or from a court-ordered injunction against such appearance or practice.[158] The amendments add new Items 5.1.c, 5.1.d, and 5.1.e to Form 1.

Part VI amendments. The Board is also amending Part VI of Form 1, which requires an applicant to identify instances in which the applicant's issuer audit clients disclosed disagreements with the applicant in Commission filings. As required by Section 102(b)(2)(G) of the Act,[159] the Board is requiring that an applicant also disclose whether, in the preceding or current calendar year, a broker or dealer audit client disclosed issues with the applicant relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission in a notice filed with the Commission pursuant to SEC Rule 17a–5(f)(3)(v)(B).[160] For each such instance in the preceding or current calendar year, an applicant is required to disclose the name of the broker or dealer client, the broker's or dealer's CRD and CIK numbers, the date of the filing containing the notice, and to submit, as exhibits, copies of identified filings.[161]

Form 1–WD: Request to Withdraw from Registration. Under Rule 2107, a registered public accounting firm may at any time submit to the Board a request for leave to withdraw its registration. A request to withdraw must be submitted on Form 1–WD. The general instructions to Form 1–WD require registered public accounting firms seeking to withdraw from Board registration to submit an original hard copy of Form 1–WD to the Board, in addition to submitting the form to the Board electronically.[162] To facilitate the

[153] As noted below, the Board is not imposing an annual reporting requirement with respect to fees for services provided for broker and dealer audit clients. *See* text accompanying and following note 177.

[154] The Dodd-Frank amendments to Section 102(a) of the Act expanded the Act's registration requirement by making it unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any broker or dealer. Even before the Dodd-Frank amendments, however, Section 17(e)(1)(A) of the Exchange Act, as amended in 2002, required that the balance sheets and income statements filed with the Commission by registered brokers or dealers be certified by a public accounting firm registered with the PCAOB. *See supra* note 4.

[155] While Items 3.1 and 3.2 will generally not affect new applicants, some applicants may expect to issue an audit report for a broker or dealer in the current calendar year and may have provided tax services or other non-audit services to a broker or dealer client prior to providing audit services to the broker or dealer client. These applicants are required to comply with the amended fee disclosure requirements in Items 3.1 and 3.2 as to these previously provided tax and other accounting services.

[156] This means, for example, that if a firm has not tracked fees billed to broker and dealer audit clients according to the fee categories as defined by the Board's rules, estimated amounts may be used in responding to these items.

[157] Among other factors, the PCAOB will consider the nature of the allegations underlying the proceeding, and the position at the firm of the associated person. Form 1 permits firms to address these factors, as well as any other relevant points, in any discussion it provides concerning the disclosure.

[158] Because currently effective denials or suspensions may have been ordered at any time, not just within the five years preceding an application, the amended language refers to Commission orders without limiting them to orders issued pursuant to current Rule 102(e) of the Commission's Rules of Practice. The amended language also encompasses court-ordered injunctions against appearing or practicing before the SEC, some of which have been issued in the past and remain in effect. Although the vast majority of SEC practice denials or suspensions are administrative, some are court-ordered. A corresponding language change is also being made for Form 3, as described below.

[159] Section 102(b)(2)(G) of the Act specifically requires that an applicant submit as part of its application for registration ''copies of any periodic or annual disclosure filed by an issuer, broker, or dealer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer, broker, or dealer and the firm in connection with an audit report furnished or prepared by the firm for such issuer, broker, or dealer.''

[160] Form 1, Item 6.4. *See* SEC Rule 17a–5(f)(3)(v)(B).

[161] Form 1, Items 6.5 and 6.6. The amendments require an applicant to identify instances in which the applicant's broker or dealer audit clients disclosed issues with the applicant in such broker's or dealer's SEC Rule 17a–5 filings with the Commission. Therefore, if a broker or dealer did not disclose an issue in a SEC Rule 17a–5 filing with the Commission, the applicant does not need to disclose such issue in Form 1.

[162] *See* Form 1–WD, General Instruction 4.

process of withdrawal for firms that no longer wish to be registered with the Board, and permit the withdrawal of a number of firms that have submitted the form electronically (but have not submitted original hard copies of the form), the Board is amending Form 1–WD's general instructions to eliminate the requirement that the form's original hard copy be submitted to the Board. Under the amended instructions, firms are only required to submit Form 1–WD to the Board electronically.[163] The Board did not receive comment on the proposed amendments to Form 1–WD and is adopting these amendments as proposed.

Form 2: Annual Report. Under Section 102(d) of the Act and Rule 2200, registered public accounting firms must file annual reports with the Board on Form 2.[164] The Board is amending Form 2 to call for relevant information concerning a firm's audits of brokers and dealers.[165]

Part III amendments. Part III of Form 2 requires registered firms to annually disclose information about their issuer-related practice. The amendments require that registered firms indicate whether they issued any audit reports with respect to any broker or dealer during the annual reporting period; [166] and, if they did not issue any such audit reports, to indicate whether they played a substantial role in the preparation or furnishing of an audit report with respect to a broker or dealer.[167]

The Board is also revising Part III of Form 2 to reflect the Dodd-Frank amendment to the Act requiring certain foreign public accounting firms to designate to the Commission or the Board an agent in the United States upon whom may be served any request by the Commission or the Board under Section 106 of the Act or upon whom may be served any process, pleading, or other papers in any action to enforce Section 106 of the Act.[168] This statutory provision applies to any foreign public accounting firm that (i) performs material services upon which another registered public accounting firm relies in the conduct of an audit or interim review, (ii) issues an audit report, (iii) performs audit work, or (iv) performs interim reviews. Under the amendments, a foreign registered firm that has already made this designation to the Commission or Board is required to check a box annually indicating that the firm has done so and identify the name and address of the designated agent.[169] A foreign registered firm that has not already made a Section 106(d)(2) designation is required to indicate annually whether or not it has performed any of the activities specified by Section 106(d)(2) since enactment of the Dodd-Frank Act.[170] Any foreign public accounting firm that has not already made a required Section 106(d)(2) designation to the Commission or Board must do so immediately.[171]

One commenter said that the proposed identification of the name and address of the designated agent did not fairly reflect the Dodd-Frank amendments to Section 106 of the Act and would serve no legitimate purpose of the Commission, the Board, or the public readers of Form 2, because Section 106 confers no rights on persons beyond the SEC and PCAOB.[172] The Board expects that these amendments will facilitate the Board's and SEC's ability to track foreign firm designations and will remind firms that their Section 106(d)(2) designations should be kept current. The Act only addresses requests by the Commission or the Board, and these form amendments are intended only to impose a new reporting requirement, not to confer rights on anyone.

Another commenter said proposed Item 3.3 would only be appropriate if the Board permitted foreign firms to decline to provide such information if such firms were unable to do so without violating non-U.S. law, asserting conflicts with non-U.S. law.[173] The Board declines to accept this argument, as it would defeat the purpose of the Dodd-Frank amendment to Section 106(d)(2) of the Act.

Part IV amendments. Part IV of Form 2 requires firms to disclose information relating to the audit reports the firm issued for each issuer during the reporting period, as well as audit reports issued during the period that the firm did not issue, but played a substantial role in preparing or furnishing. The amendments require that public accounting firms disclose in their annual reports certain information concerning each audit report the firm issued for a broker or dealer during the reporting period.[174] Also, if the firm did not issue any broker or dealer audit reports during the reporting period, the amendments require the firm to disclose the names and identifying information for each broker or dealer audit report the firm played a substantial role in preparing or furnishing in the reporting period.[175]

Item 4.3 requires a public accounting firm to disclose in its annual report each audit report the firm issued for a broker or dealer during the reporting period. This amendment requires that the firm provide the broker's or dealer's name, CRD number, CIK number, and the date of the audit report(s).[176] In response to the Board's comment request on this issue, commenters generally said that firms should not be required to report audit fee information for broker and dealer audit clients on an ongoing basis on Form 2, saying the PCAOB currently has access to fee information for registered firms and the public interest would not be served by making this information publicly available.[177] The Board agrees and is not imposing an annual reporting requirement with respect to fees for services provided to broker and dealer audit clients under Form 2.

If a registered public accounting firm did not issue any broker or dealer audit reports during the reporting period, but played a substantial role in the preparation or furnishing of an audit report for a broker or dealer, Item 4.4 requires that registered public accounting firm to disclose, with respect to each such broker or dealer, the broker's or dealer's name, CRD number, CIK number, the name of the registered public accounting firm that issued the audit report(s), and a description of the role played by the firm with respect to the audit report(s). This information conforms to the information previously

[163] These amendments apply to firms that previously submitted an original hard copy of Form 1–WD without submitting the form electronically.

[164] *See Rules on Periodic Reporting by Registered Public Accounting Firms,* PCAOB Release No. 2008–004 (June 10, 2008).

[165] *See, e.g.,* Form 2, Items 3.1, 7.1, and 7.3. The amendments also make a technical change to General Instruction 7 of Form 2, to more closely conform the instruction to Rule 2300, as adopted in 2008. *See supra* note 144.

[166] Form 2, Item 3.1.d.

[167] Form 2, Item 3.1.e.

[168] *See* Section 106(d)(2) of the Act.

[169] Form 2, Item 3.3.a.

[170] Form 2, Item 3.3.b.

[171] To make a Section 106(d)(2) designation to the Board, firms should submit their designations by email to the PCAOB's Office of the Secretary (*Secretary@pcaobus.org*) and to note ''106(d)(2) Designation'' in the subject line of the email.

[172] *See* KPMG Comment Letter.

[173] *See* Grant Thornton Comment Letter.

[174] Form 2, Item 4.3.a.

[175] Form 2, Item 4.4. The Board is also amending Form 2, Item 4.1, so that in those circumstances in which the firm must report the date of the firm's issuance of a consent to a previously-issued report (i.e., when a firm's reports for a particular issuer during the reporting period are limited to such consents), the firm must indicate that the date corresponds to such a consent.

[176] Under the amendments, if a firm were to issue more than one audit report for a broker or dealer audit client during a reporting period, each audit report for that broker or dealer would be reported separately.

[177] *See* CAQ Comment Letter; Crowe Horwath Comment Letter; EY Comment Letter; KPMG Comment Letter; McGladrey Comment Letter.

required for issuer clients in Item 4.2.a.[178]

Part VII amendments. Part VII of Form 2 requires firms to report information about certain types of relationships with individuals and entities that have specified disciplinary and other histories. Under the amendments, firms have to report new relationships with individuals and entities that were the subject of a Board order imposing a disciplinary sanction or a Commission Rule 102(e) order entered within the five years preceding the end of the reporting period, and who provided at least ten hours of audit services for any broker or dealer during the reporting period.[179] Finally, the Board is amending Items 7.1, 7.2, and 7.3 to correct certain cross-references.

Form 3: Special Report Form. Under Rule 2203, registered public accounting firms must report certain information to the Board as a special report filed on Form 3. The amendments revise Form 3 to call for relevant information concerning firms' audits of brokers and dealers.[180] The amendments also revise Form 3 to require firms to report circumstances where a former issuer audit client does not comply with Item 4.01 of Commission Form 8–K.[181]

Withdrawn broker and dealer audit reports. Among other events that trigger an obligation to file a special report, firms are required to file Form 3 if they have withdrawn an audit report on an issuer's financial statements, and the issuer failed to comply with Commission reporting requirements (Item 4.02 of SEC Form 8–K) concerning the matter.[182] The proposed amendments would have extended the obligation to report withdrawn audit reports on Form 3 to firms' broker and dealer audit clients.[183]

Commenters generally agreed that it is important for the PCAOB and financial statement users to be aware of instances in which an audit report has been withdrawn, but said that the Board should coordinate with the SEC (or FINRA) in this area, and suggested that the SEC establish a process, comparable to the one in place for issuers, that would require a broker or dealer to report to the SEC when an auditor has withdrawn an audit report or consent for a broker or dealer, and the Board would require auditor reporting only where the broker or dealer has not notified the SEC in accordance with its obligations.[184] One commenter argued that unlike the requirements for issuers, the proposal would require that withdrawn audit reports be disclosed directly by the auditor potentially causing the auditor to disclose the company's private information while jeopardizing the auditor's ethical responsibilities related to confidentiality.[185] Until a coordinated reporting process is developed, some commenters suggested that AU 561, *Subsequent Discovery of Facts Existing at the Date of the Auditor's Report,* provides a framework for registered public accounting firms to notify users if an audit report is withdrawn.[186]

The Board does not believe it is necessary at this time to require Form 3 reporting of withdrawn broker and dealer audit reports because the requirement would go beyond current SEC notification requirements. The Board may revisit such a proposal in the future once more information is gathered through its inspections and other oversight functions. Firms should note that AU 561 applies to broker and dealer audits. Consistent with that standard, under certain circumstances the auditor should, among other things, notify the regulatory agencies having jurisdiction over the broker and dealer audit client that the auditor's report should no longer be relied upon.[187]

Issuer auditor changes. The Board is adopting amendments to address circumstances where an issuer audit client encounters a change in its principal auditor (or an auditor upon whom the issuer's principal auditor expressed reliance in its report regarding a significant subsidiary) and the issuer does not comply with the Commission's four business day reporting requirement concerning the change in auditors pursuant to Item 4.01 of Form 8–K.[188]

Two commenters supported this proposed reporting requirement.[189] Two commenters suggested that the proposed Form 3 reporting requirement appeared redundant to Section 1000.08(m) of the SECPS membership requirements and encouraged the Board to develop a single solution for reporting auditor changes.[190] Commenters were also concerned about the scope of the proposed Form 3 reporting, some of which commenters suggested would be difficult for the auditor to know or would not be relevant in circumstances where the auditor resigns or does not stand for reappointment.[191] Finally, one commenter said requiring auditors to make a Form 3 filing in these circumstances would inappropriately put auditors in the position of publicly reporting information that has not yet been reported by the issuer.[192]

The PCAOB has further considered this proposal in light of the comments and determined to adopt these proposed amendments largely as proposed. To ensure that the Board and public are made aware of these events, the Board is amending the instructions to Form 3 to require firms to file a special report with the Board if a client-auditor relationship has ended and the issuer has not reported the change in auditors on a Form 8–K.[193] Specifically, if a firm resigns, declines to stand for re-appointment, or is dismissed from an issuer audit engagement, and the issuer does not comply with Item 4.01 of Form 8–K, the firm within 30 days must report on Form 3 the issuer's name and

[178] Note 1 to Form 2, Item 4.4 clarifies that if a firm identifies a broker or dealer in response to 4.3, the firm does not have to respond to Item 4.4.

[179] Form 2, Items 7.1.a and 7.3.a. Consistent with the previous Form 2 reporting requirements, the amendments capture only relationships that (i) exist as of the end of the reporting period, (ii) are with individuals or entities whose relevant disciplinary sanction or Rule 102(e) order was entered within the five years preceding the end of the reporting period, and (iii) have not previously been reported on Forms 1, 2, or 3. Other than the comment discussed *supra* in note 148, the Board did not receive comment on these proposed amendments and is adopting them as proposed.

[180] *See, e.g.,* Form 3, Items 2.5, 2.6, 2.8, 2.9, and 4.1. The amendments also make a technical change to General Instruction 8 of Form 3 to more closely conform the instruction to Rule 2300. *See supra* note 144.

[181] Form 3, Items 2.1–C and 3.2.

[182] Form 3, Items 2.1 and 3.1.

[183] Proposed Form 3, Items 2.1–BD and 3.2.

[184] *See* CAQ Comment Letter; D&T Comment Letter; Grant Thornton Comment Letter; KPMG Comment Letter; McGladrey Comment Letter; PWC Comment Letter.

[185] *See* Grant Thornton Comment Letter.

[186] *See* CAQ Comment Letter; KPMG Comment Letter; PWC Comment Letter.

[187] *See* AU § 561.08(b).

[188] If an issuer audit client has a change in its principal auditor (or an auditor upon whom the issuer's principal auditor expressed reliance in its report regarding a significant subsidiary) within 24 months prior to or in any period subsequent to the date of the most recent financial statements, the issuer must provide the required information in Item 4.01 of Form 8–K within four business days of the change. *See* Item 304(a) of Regulation S–K; Item 4.01 of Form 8–K.

[189] *See* EY Comment Letter; KPMG Comment Letter.

[190] *See* CAQ Comment Letter; KPMG Comment Letter (recommending that the SECPS requirement be eliminated).

[191] *See* CAQ Comment Letter; Crowe Horwath Comment Letter; KPMG Comment Letter; McGladrey Comment Letter; PWC Comment Letter.

[192] *See* D&T Comment Letter (suggesting, as an alternative, that the PCAOB be copied, on a confidential basis, on the five-day SECPS letter so that the Board could be timely informed of issuer auditor changes).

[193] Form 3, Item 3.2 is only triggered by an issuer's failure to comply with Item 4.01 of SEC Form 8–K. This reporting requirement does not apply to foreign private issuers (that are required to report issuer auditor changes on Item 16F of Form 20–F) or investment companies other than business development companies (that are required to report auditor changes on Item 77K of Form N–SAR).

CIK number, if any, whether the firm resigned, declined to stand for re-election or was dismissed, and the date thereof.[194]

Together, the amendments to the SECPS membership requirements and Form 3 establish a reporting system that begins, for firms that are former members of the SECPS, with a required non-public filing with the SEC's Office of the Chief Accountant within five business days,[195] and, if the former audit client is still not in compliance within 30 days, requires auditors to make an abbreviated public filing on Form 3 with the PCAOB.[196] The Board sees value both in streamlining the SECPS membership requirement for Form 8–K filers and also, after a period of time, requiring that the Board and the public receive notice of these changes if the issuer still has not satisfied its reporting obligations under Item 4.01 of Form 8–K.

Because Form 3 filings are public, and the Board does not anticipate needing as much information as was proposed, the Board is requiring that a Form 3 filing only report the issuer's name and CIK number, whether the firm resigned, declined to stand for re-election or was dismissed, and the date thereof.[197] The PCAOB is not persuaded that requiring auditors to report information in these circumstances ahead of their former clients poses a serious problem. This Form 3 reporting requirement is only triggered in circumstances where a former audit client is delinquent in publicly reporting the information mandated by Item 4.01 of Form 8–K.

Relationships with persons subject to a bar or suspension. Form 3 also requires firms to disclose information about new relationships with persons or entities that are effectively restricted from providing auditing services. Specifically, a firm is required to file a Form 3 special report if it enters into certain specified relationships with individuals or entities that are currently subject to (1) a Board disciplinary sanction suspending or barring an individual from being an associated person or a registered public accounting firm, or (2) a Commission order under Rule 102(e) of the Commission's Rules of Practice suspending or denying the privilege of appearing or practicing before the Commission.[198] Consistent with the changes to Item 5.1 of Form 1, the Board is revising this reporting criteria to encompass persons currently subject to any Commission order denying the privilege of, or any court-ordered injunction prohibiting, appearance or practice before the Commission.[199]

Form 4: Succeeding to Registration Status of Predecessor. Under Rules 2108 and 2109, a registered public accounting firm can, in certain circumstances, succeed to the registration status of a predecessor registered firm by filing Form 4. As proposed, the Board is amending Form 4 to conform with the Dodd-Frank amendments by adding a new ''yes'' or ''no'' question to Item 3.2 of Form 4. The amendments require a firm seeking to succeed to the registration status of a predecessor firm to indicate whether any firm involved in the transaction underlying the succession issued an audit report with respect to a broker or dealer audit client for financial statements with years ending after December 31, 2008 while not registered with the Board, and did not thereafter have an application for registration approved by the Board.[200] The Board did not receive comment on the proposed amendments to Form 4.

Effective date. One firm suggested that the effective date of the Form 2 amendments should provide sufficient time for firms to collect the necessary information related to brokers and dealers prior to the June 30 annual report filing deadline.[201] The Board's staff is reprogramming the Board's Web-based Registration, Reporting, and Special Reporting system. The amendments to Form 2 will take effect April 1, 2015. The Board expects that this will provide firms with sufficient time to collect necessary information. The amendments to Forms 1, 1–WD, 3, and 4 will take effect July 1, 2014.

Ethics Code

The Board is amending six of the Ethics Code's provisions: EC2, ''Definitions;'' EC4, ''Financial and Employment Interests;'' EC5, ''Investments;'' EC7, ''Gifts, Reimbursements, Honoraria and Other Things of Value;'' EC8, ''Disqualification;'' and EC12, ''Post-Employment Restrictions.'' Several of these amendments conform the Ethics Code with the Board's authority under the Dodd-Frank amendments by adding the words ''broker'' and ''dealer'' to the Ethics Code in appropriate places. Other amendments are more technical in nature, reflecting the Board's experience in applying the Ethics Code. The Board did not receive comment on its proposed amendments to the Ethics Code and is adopting these amendments as proposed.

The Board is amending the note accompanying the definition of ''practice'' in EC2(f).[202] As part of its ''revolving-door restrictions,'' the Ethics Code restricts Board members and professional staff from ''practicing'' before the Board, and the Commission with respect to Board-related matters, for one year following termination of employment or Board membership.[203] The note accompanying the definition of ''practice'' clarifies that participating in the financial reporting process as the officer or director of an issuer, or participating in an audit of an issuer's financial statements does not, in and of itself, constitute practice before the Board or the Commission. The amendments extend the note to former Board members and professional staff participating in the financial reporting

[194] *See* Form 3, Item 2.1–C and Item 3.3. If the issuer comes into compliance with an SEC requirement to make a report concerning the matter pursuant to Item 4.01 of Form 8–K during this 30-day period, the firm would not be required to report the change in auditors on Form 3.

[195] *See supra* notes 49–57 and accompanying text.

[196] Firms that are not former members of the SECPS are only required to report these events on Form 3.

[197] As proposed, the Form 3 reporting would have also included whether: (i) The firm's audit report(s) for either of the past two years contained an adverse opinion or a disclaimer of opinion, or was qualified or modified as to uncertainty, audit scope, or accounting principles; (ii) the former audit client's audit committee (or equivalent body), or board of directors (or equivalent body) recommended or approved the change; and (iii) there were any disagreements with the former client in the two most recent fiscal years and any subsequent interim period on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved, would have caused the firm to make reference to the subject matter of the disagreements in connection with its audit report(s). Because the Board will be able to assess these additional categories of information, if necessary, through the inspections process or other means, the Board is not adopting these proposals.

[198] Form 3, Items 2.12 and 2.13, and Items 5.1 and 5.2.

[199] Form 3, Items 2.12 and 2.13, and Items 5.1 and 5.2. Other than the comment discussed *supra* in note 148, the Board did not receive comment on these proposed amendments and is adopting them as proposed.

[200] *See* Form 4, Item 3.2.e.3. The amendments clarify that succession is allowed where a firm was sanctioned for a registration violation but subsequently was allowed to register with the PCAOB. A conforming change is also being made to Form 4, Item 3.2.e.2. Separately, the amendments also make a technical change to General Instruction 8 of Form 4 to more closely conform the instruction to Rule 2300. *See supra* note 144.

[201] *See* Grant Thornton Comment Letter.

[202] EC2(f) defines the term ''practice'' to mean knowingly acting as an agent or attorney for, or otherwise representing any other person in any formal or informal appearance before the Board or Commission, or making any oral or written communication on behalf of any other person to, and with an intent to influence, the Board or Commission.

[203] EC12(b)(1). Additionally, former Board members and professional staff may not ''switch sides'' and work on a particular matter after leaving the Board that they personally and substantially participated in while at the Board. EC12(b)(2).

process for, or in an audit of, a broker or dealer.[204]

EC5(d) requires that Board members and professional staff annually disclose their holdings in securities of issuers, including exchange-traded options and futures. The Board is making technical amendments to EC5(d) to clarify that disclosure should be made to the Ethics Officer, and, to permit flexibility, the amendments allow the Ethics Officer to prescribe a different date for annual disclosure.

Under EC7(b), Board members and professional staff are generally prohibited from accepting payment for or reimbursement of official travel-related expenses from any organization. This prohibition is subject to an exception for travel-related expenses that are in direct connection with an employee's participation in an educational forum that is principally sponsored by certain tax-exempt entities.[205] These tax-exempt entities, however, may not be principally funded from one or more public accounting firms or issuers. The Board's amendments include brokers and dealers among the categories of entities that may not principally fund these tax-exempt entities.

EC8(a) provides that if a Board member or professional staff becomes, or reasonably should become, aware of facts which would lead a reasonable person to believe that he or she (or his or her spouse, spousal equivalent, and dependents) may have ''a financial interest or other similar relationship'' which might affect (or reasonably create the appearance of affecting) his or her independence or objectivity, then he or she must, at the earliest possible date, disclose such circumstances and facts and recuse himself or herself from further Board functions or activities involving or affecting the financial interest or relationship. Because the phrase ''or other similar relationship'' has not provided sufficient clarity, the Board is replacing it with ''or personal interest.'' Thus, under the amendments, EC8's disclosure and recusal provisions apply to ''a financial or personal interest'' a reasonable person would believe might affect (or reasonably create the appearance of affecting) his or her independence or objectivity.

Under EC12(a), Board members and professional staff may not negotiate prospective employment with a registered public accounting firm or issuer without first disclosing the identity of the prospective employer and recusing himself or herself from all matters directly affecting that prospective employer. Because the Dodd-Frank amendments gave the Board oversight over auditors of brokers and dealers, the Board is amending EC12(a) to require Board members and professional staff to disclose employment negotiations with brokers or dealers, in addition to registered accounting firms and issuers.

D. Request to Apply Conforming Amendments to Audits of Emerging Growth Companies

The PCAOB is sensitive to the compliance burden incurred by auditors and other market participants due to its regulatory requirements and has attempted in a variety of ways to minimize burdens on affected entities while also satisfying the objectives of Congress and the SEC. These include the Board's efforts to tailor its ethics and auditor independence requirements, in Rules 3520 through 3526, to the organizational structure of brokers and dealers, and, in particular, not at this time extending to broker and dealer audits Rule 3523's prohibition on providing tax services to persons in financial reporting oversight roles. A number of other cost-minimization measures are discussed below.

In its proposal, the PCAOB invited commenters to submit comment on all aspects of the proposed amendments. Several commenters addressed the economic consequences of the proposed amendments in qualitative terms. These comments are addressed below.

As discussed in the release, the PCAOB's objective in adopting today's amendments is to conform its rules, forms, and ethics code to the Dodd-Frank amendments to Sarbanes-Oxley and the SEC's amendments to Rule 17a–5. In amending the PCAOB's rules, forms, and ethics code the PCAOB has endeavored to achieve Congress's and the SEC's objectives in a cost-effective manner.

To the extent that these amendments reflect the statutory requirements of Dodd-Frank, the PCAOB's action is technical and non-substantive. It will not result in economic consequences beyond those resulting from Congress's determinations. Similarly, to the extent that these amendments reflect the SEC's Rule 17a–5 determinations, the PCAOB's action is housekeeping that will not result in separate economic consequences. However, to the extent that the amendments reflect the PCAOB's own determinations regarding implementation of Dodd-Frank's provisions or the SEC's Rule 17a–5 determinations, these determinations may result in additional economic consequences. These additional economic consequences (resulting from the PCAOB's own determinations) are separately considered below.

The baseline the Board uses to analyze the economic consequences of these amendments is the determinations made by Congress in 2010 to amend Sarbanes-Oxley and by the SEC in July 2013 to require that audits of brokers and dealers are to be conducted in accordance with the standards of the PCAOB. To conform to the determinations made by Congress and the SEC, the PCAOB's rules, forms, and ethics code are being amended to reflect the amendments to Sarbanes-Oxley and Rule 17a–5.[206]

Amendments Involving no PCAOB Discretion

Because Congress amended Sarbanes-Oxley and the SEC amended Rule 17a–5, the PCAOB's action to amend its rules, forms, and ethics code to conform to these amendments is technical and non-substantive. They do not reflect an exercise of PCAOB discretion. Instead, the PCAOB is adopting these amendments to implement statutory directives and the regulatory directives of the SEC. The PCAOB does not expect that these conforming amendments will result in any economic consequences, beyond reflecting the actions of Congress and the SEC.

To reflect the Dodd-Frank amendments, the Board is making technical conforming revisions, and including references to audits and auditors of brokers and dealers, in rules, ethics code provisions, and Form 1 parts that formerly applied only to issuers. These amendments include the revisions to: (1) The Rule 1001 definitions of ''audit,'' ''audit report,'' ''foreign auditor oversight authority,'' ''other accounting services,'' ''person associated with a public accounting firm,'' ''play a substantial role in the preparation or furnishing of an audit report,'' ''professional standards,'' and ''suspension;'' (2) the Board's registration and reporting rules (Rule 2100, Rule 2106, and Rule 2107); (3) certain of the Board's rules governing investigations and adjudications (Rule

[204] The Board is also making a technical amendment to the note accompanying the definition of ''honoraria'' in EC2(e) to clarify that meals provided to all conference participants are not considered ''honoraria'' that Board members and professional staff are prohibited from accepting under EC7(a).

[205] *See* EC7(b)(2)(C).

[206] The SEC included an economic analysis of its amendments to Rule 17a-5 in the release issued in July 2013. *See Broker-Dealer Reports,* Exchange Act Release No. 70073, at nn. 724–870 and accompanying text.

5105, Rule 5108,[207] Rule 5112, Rule 5200, Rule 5204, and Rule 5420); (4) certain provisions of the Board's ethics code (EC2(f), EC7(b), and EC12(a)); and (5) Parts III, V, VI, VII, and X of Form 1. These amendments simply reflect the amended statutory and regulatory provisions. They are not expected to result in any economic consequences, beyond reflecting the actions of Congress and the SEC.

Other technical amendments and non-substantive updates include the revisions to: (1) The Rule 1001 definitions of ''party'' and ''secretary;'' (2) Rules 3101, 3201T, and 3600T, (3) the Board's inspections rules (Rule 4009, Rule 4020T); (4) certain of the Board's rules governing investigations and adjudications (Rule 5102, Rule 5105, Rule 5110, Rule 5201, Rule 5205, Rule 5300, Rule 5407, Rule 5421, Rule 5426, Rule 5427, Rule 5442, Rule 5445, Rule 5460, and Rule 5462); (5) Rules 7103 and 7104 of the Board's funding rules; (6) certain provisions of the Board's ethics code (EC2(e), EC5(d), EC8(a)); and (7) certain Form 1 items (general instruction 6, Item 2.1(e), Item 2.2(e)), a Form 1–WD item (general instruction 7), certain Form 3 items (general instruction 8, Item 2.12, Item 2.13, Item 5.1, Item 5.2), and certain Form 4 items (general instruction 9, Item 3.2.e.1–2). To the extent these amendments are being made to conform to the determinations of Congress and the SEC, they will reflect the actions of Congress and the SEC; the other amendments are not expected to result in separate economic consequences.

Amendments Involving Some PCAOB Discretion

In certain respects Congress and the SEC left to the PCAOB the determination of which Board rules, forms, and ethics code provisions should apply to broker and dealer audits and how the Board should implement other Dodd-Frank provisions. These amendments in part reflect the PCAOB's own determinations and, to some extent, entail economic consequences beyond those resulting from Congress's statutory directives or the SEC's Rule 17a–5 determinations.

These amendments: (1) Make the Rule 1001 definitions of ''audit services'' and ''other accounting services'' applicable to broker and dealer audits; (2) require that auditors of brokers and dealers comply with the PCAOB's rules establishing auditing, attestation, and quality control standards (Rules 3200T, 3300T, and 3400T); (3) require that broker and dealer auditors adhere to certain of the PCAOB's ethics and auditor independence rules (Rules 3500T, 3501, 3502, 3520, 3521, 3522, and 3526) but not to others (Rules 3523, 3524, and 3525); and (4) tailor certain Form 1, Form 2, Form 3 and Form 4 items to call for relevant broker and dealer audit client information and implement the Dodd-Frank amendments (Items 3.1 and 3.2 of Form 1, Items 3.1, 3.2, 3.3, 4.3, 4.4, 7.1, and 7.3 of Form 2, Items 2.5, 2.6, 2.8, 2.9, and 4.1 of Form 3, and Item 3.2.e.3 of Form 4).

The PCAOB is also amending some rules and form items in light of administrative experience and to make a number of updates to address recent events. These amendments include the revisions to: (1) Rule 5422; (2) Section 1000.08(m) of the SEC Practice Section Requirements of Membership; (3) Items 2.1, 2.2, and 2.4 of Form 1, and General Instruction 4 of Form 1–WD; and (4) Items 2.1–C and 3.2 of Form 3. The PCAOB considers the economic consequences of these amendments below.

Rule 1001 amendments. The PCAOB is amending the Rule 1001 definitions of ''audit services'' and ''other accounting services'' to encompass the professional services auditors provide to broker and dealer audit clients. Pursuant to Section 102(b)(2)(B) of Sarbanes-Oxley, public accounting firms applying for PCAOB registration will use these definitions, along with the definition of ''non-audit services'' (which is not being amended), to attribute the annual fees they received from each broker and dealer audit client to one of the defined categories of services on Items 3.1 and 3.2 of Form 1. Commenters did not address the proposed amendments to the definitions of ''audit services'' and ''other accounting services,'' and the PCAOB is adopting the amendments as proposed. The PCAOB does not expect that these amendments will result in cost-related implications apart from the related Form 1 amendments discussed below.

Section 3 amendments. The amendments also generally make Rules 3200T, 3300T, and 3400T, the PCAOB's rules establishing auditing, attestation, and quality control standards, applicable to audits of brokers and dealers. Several commenters opposed the proposed application of the PCAOB's rules and standards—focusing particularly on the Board's quality control, ethics, and independence standards—to audits of ''introducing'' or ''non-carrying'' brokers and dealers.[208] One commenter asserted that requiring auditors of brokers and dealers to follow PCAOB quality control, ethics, and independence standards is not warranted until the PCAOB decides the scope and elements of its permanent inspection program for broker and dealer audits.[209] Additionally, one commenter suggested that Rule 3400T's application of the requirements of the SEC Practice Section (''SECPS'') of the American Institute of Certified Public Accountants only to the auditors of brokers and dealers that were members of the SECPS in 2003 could result in an unbalanced and disparate application of the Board's requirements.[210]

In response to these comments, the PCAOB has further considered the application of the PCAOB's rules establishing auditing, attestation, and quality control standards to auditors of brokers and dealers. As explained in the release, the SEC has decided that all audit reports filed with the SEC and designated examining authorities by brokers and dealers must be prepared in accordance with PCAOB standards. A final Board decision regarding the scope of the Board's inspection program will be made at a later date. The Board is not delaying adoption of the amendments to its rules. The PCAOB has also determined to make operative the two SECPS requirements that are applicable to broker and dealer engagements only to firms that were members of the SECPS in 2003.

The benefit of these amendments is that they will clarify the applicability of these rules to audits of brokers and dealers. The amendments will promote investor protection by clarifying that registered firms must comply with the PCAOB's rules establishing auditing, attestation, and quality control standards in audits of SEC-registered brokers and dealers. Consistent compliance with PCAOB standards for these audits will facilitate the Board's regulatory oversight over broker and dealer audits, and, among other things, facilitate the PCAOB's development and implementation of a permanent inspection program for these audits. The amendments will also facilitate the SEC's regulatory oversight of auditors,

[207] Separately, Section 1161(h) of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654, 2781 (2008) amended Sarbanes-Oxley to authorize the PCAOB to share information gathered in Board inspections and investigations with the Director of the Federal Housing Finance Agency (with respect to audits of institutions within the Federal Housing Finance Agency's jurisdiction). The PCAOB is adopting amendments to conform to Section 1161(h) of the Housing and Economic Recovery Act. *See* Rule 5108(a)(2)(b).

[208] *See* AICPA Comment Letter; Crowe Horwath Comment Letter; KPMG Comment Letter; Rothstein Kass Comment Letter; WeiserMazars Comment Letter.

[209] *See* AICPA Comment Letter.

[210] *See* Grant Thornton Comment Letter.

brokers, and dealers (because the SEC has direct oversight authority over the PCAOB, including the authority to approve or disapprove the Board's rules and standards).

The PCAOB has determined that these amendments will create some additional compliance costs for affected market participants. These costs include the one-time implementation costs for registered firms to update their broker and dealer audit methodologies to reflect PCAOB standards and train their personnel. These costs are attributable to SEC Rule 17a–5. Thus, the PCAOB does not anticipate that its conforming rule changes will result in significant costs to auditors (or to brokers and dealers in the form of increased audit fees).

Similarly, the Board notes that only two of the five SECPS membership requirements adopted by the PCAOB apply to the audits of brokers and dealers. These two requirements relate to continuing professional education requirements for audit firm personnel and the firm communicating through a written statement to its professional personnel the firm's broad policies and procedures related to accounting principles, client relationships, and services provided. The Board notes that all firms (including those that were members of the SECPS in 2003) are required to comply with state and professionally mandated continuing professional education requirements that satisfy most, if not all, of these education requirements, and expects that firms distribute such information to their professional personnel to effectively manage their firms.[211] The PCAOB therefore estimates that application of these requirements to audits of brokers and dealers that were members of the SECPS in 2003 will not result in a significant compliance burden on auditors of brokers and dealers.

The amendments also require that broker and dealer auditors adhere to certain of the PCAOB's ethics and auditor independence rules (Rules 3500T, 3501, 3502, 3520, 3521, 3522, and 3526) but not to others (Rules 3523, 3524, and 3525).

These rules establish a standard of ethical behavior for the conduct of persons associated with registered firms (Rules 3502 and 3520). They also prohibit broker and dealer auditors from: (1) Entering into a contingent fee or commission arrangement (Rule 3521); or (2) providing any non-audit service related to transactions that are ''confidential transactions'' or ''aggressive tax positions'' under Internal Revenue Service regulations (Rule 3522). The PCAOB is also adding a definition of ''audit committee'' to Rule 3501 so that Rule 3526 (Communication with Audit Committees Concerning Independence) applies to brokers and dealers that may not have organizational structures that include audit committees. No commenters opposed or suggested that these ethics and auditor independence rules does not apply audits of brokers and dealers. The PCAOB is not prohibiting firms from providing tax services to persons in financial reporting oversight roles (Rule 3523) in part due to commenter concerns about additional cost-related implications for auditors and brokers and dealers.

The PCAOB believes applying Rules 3500T, 3501, 3502, 3520, 3521, 3522 and 3526 to audits of brokers and dealers is consistent with investor protection. The amendments will promote investor protection by clarifying that auditors of brokers and dealers are required to adhere to certain of the PCAOB's ethics and independence rules. These rules, among other things, prohibit auditors from entering into contingent fees or commission arrangements or providing non-audit services related to aggressive tax positions to broker and dealer audit clients. Although these amendments will result in some new compliance costs on auditors of brokers and dealers, the Board does not anticipate that these costs will be significant. These costs will relate primarily to the one-time costs to update the firm's policies and procedures and training for these ethics and independence rules. Firms will also have recurring monitoring costs related to these amendments.

Form amendments. The amendments also tailor certain Form 1, Form 2, Form 3, and Form 4 items to call for relevant broker and dealer audit client information and reflect the Dodd-Frank amendments (Items 3.1 and 3.2 of Form 1, Items 3.1, 3.3, 4.3, 4.4, 7.1, and 7.3 of Form 2, Items 2.5, 2.6, 2.8, 2.9, and 4.1 of Form 3, and Item 3.2.e.3 of Form 4). This information will further the PCAOB's understanding of the market for broker and dealer audit services and enable the Board to make regulatory decisions (like how to allocate its inspections program resources) that will protect the interests of investors. This information may also help inform investors and the market generally about auditors' broker and dealer audit practice.

Form 1. In addition to the conforming amendments to Form 1, which were discussed earlier, the PCAOB is adding Items 3.1 and 3.2 to Form 1 to require general identifying information about the applicant's broker or dealer audit practice. Items 3.1 and 3.2 require the name of the broker or dealer, its business address, CRD number, and CIK number, as well as the date of the audit report, and the total amount of fees billed for audit services, other accounting services, and non-audit services (as defined by the PCAOB). The PCAOB expects that the Form 1 disclosure requirements for broker and dealer audit clients will not affect most registered firms, which have already filed Form 1. Going forward, the PCAOB expects that most new firms will not have prepared audit reports for broker or dealer clients during the preceding or current calendar year (without having been previously registered). The PCAOB is also taking steps to minimize the compliance burden associated with these amendments. Recognizing that firms with broker and dealer audit clients have not necessarily been maintaining billing records in a way that readily facilitates precise reporting according to the fee categories in Sarbanes-Oxley (as the PCAOB has defined them), the PCAOB is adopting a note that provides that estimated amounts may be used in responding to these Form 1 items, to the extent that these fees have not previously been disclosed or otherwise known to an applicant. Commenters did not address these Form 1 items. The PCAOB expects these amendments will result in small additional compliance costs related to reporting this information for a small number of applicant firms. The PCAOB is adopting these amendments as proposed.

Form 2. The amendments to Form 2 require that firms annually disclose general information about their broker and dealer audit practice. Specifically, the amendments require that firms indicate whether they issued any audit reports with respect to any broker or dealer during the annual reporting period, and, if they did not issue any such audit reports, to indicate whether they played a substantial role in the preparation or furnishing of an audit report with respect to a broker or dealer (Item 3.1). The amendments also require firms to disclose information concerning each audit report the firm issued for a broker or dealer audit client during the reporting period (Item 4.3). If the firm did not issue any broker or dealer audit reports during the reporting period, the amendments require the firm to disclose

[211] State CPE requirements range from a minimum of 0 hours (in one state) to a maximum of 120 hours every three years (in 45 states), and the PCAOB is requiring 120 hours every three years (with a minimum of at least 20 hours every year).

the names and identifying information for each broker or dealer audit report the firm played a substantial role in preparing or furnishing in the reporting period (Item 4.4). Firms are also required to report information about certain types of relationships with individuals and entities that have specified disciplinary and other histories involving brokers or dealers (Items 7.1 and 7.3). Commenters generally asserted that firms should not be required to report audit fee information for broker and dealer audit clients on an ongoing basis on Form 2.[212] The PCAOB has determined to mitigate firm costs by not imposing an annual reporting requirement with respect to fees for services provided to broker and dealer audit clients. The PCAOB did not receive other comments on these Form 2 amendments and is adopting them as proposed.

The amendments to Form 2 also reflect the Dodd-Frank amendment requiring certain foreign public accounting firms to designate to the SEC or PCAOB an agent in the United States upon whom may be served any request by the SEC or PCAOB under Section 106 of Sarbanes-Oxley or upon whom may be served any process, pleading, or other papers in any action to enforce Section 106 of Sarbanes-Oxley (Item 3.3). One commenter said proposed Item 3.3 could result in confusion and efforts by persons other than the SEC or PCAOB to serve subpoenas or process on foreign firms' designated agents.[213] The PCAOB has determined to adopt Item 3.3 as proposed. This amendment imposes only a new reporting requirement and does not confer rights on anyone.

The PCAOB believes the Form 2 amendments strike an appropriate balance between the Board's need for general identifying information to assist the Board in overseeing registered firms' broker and dealer audit practices, and facilitate the PCAOB's and SEC's ability to track foreign firm designations, and the time and resources firms will need to spend compiling, preparing, and reporting this information. These reporting requirements will contribute to investor protection by providing additional information upon which the PCAOB can base future program adjustments to ensure efficient deployment of the PCAOB's resources. This information may also help inform investors and the market generally about auditors' broker and dealer audit practice. These reporting requirements will also result in cost-related implications for auditors of brokers and dealers and foreign registered firms. Specifically, one-time costs that relate primarily to updating their records to facilitate annual reporting of their broker and dealer audit practice to the PCAOB and reporting their Section 106 designee. Recurring costs will include the costs of compiling and reviewing information responsive to these additional items in their annual reports. Over time, the PCAOB expects that firms will develop certain efficiencies in filing their annual reports, allowing these costs to decrease to some extent.

Form 3. The amendments to Form 3 require firms to report information about certain types of relationships with individuals and entities that have specified disciplinary and other histories involving auditors of brokers or dealers (Items 2.5, 2.6, 2.8, 2.9, and 4.1). The PCAOB did not receive comment on these Form 3 amendments and has determined to adopt them as proposed. The PCAOB believes the Form 3 amendments will contribute to investor protection by providing the PCAOB and the public with general information about disciplinary and other histories involving auditors of brokers and dealers. These reporting requirements are expected to result in small compliance costs for firms related to monitoring and compiling this information.

Form 4. The amendments to Form 4 require a firm succeeding to the registration status of a predecessor firm to indicate whether the firm issued an audit report with respect to a broker or dealer audit client for financial statements with years ending after December 31, 2008 while not registered with the PCAOB and has never had an application for registration approved by the Board (Item 3.2.e.3). The PCAOB did not receive comment on this Form 4 amendment and has determined to adopt it as proposed. The PCAOB believes the Form 4 amendment will contribute to investor protection by providing the PCAOB with useful information. This reporting requirement is expected to result in small compliance costs related to reporting this information for a small number of firms.

Amendments made in light of administrative experience. Under the amendments to Rule 5422 the Division of Enforcement and Investigations (''DEI'') need not make available for inspection and copying any document prepared by persons retained by the PCAOB or the PCAOB's staff to provide services in connection with a PCAOB investigation, disciplinary proceeding, or hearing on disapproval of registration. The amendments also permit DEI to withhold documents accessed from generally available public sources except to the extent that DEI intends to introduce such documents as evidence. Commenters were concerned that there is no parallel provision in the SEC's comparable rule, and that they could enable DEI to withhold exculpatory documents. Because the SEC's rule is structured differently, and the PCAOB does not agree that the amendments permit DEI to withhold exculpatory documents, the PCAOB has determined to adopt the amendments as proposed in most respects. The amendments to Rule 5422 are designed to correct an anomaly in DEI's document production requirements. These amendments will facilitate the PCAOB's efficient deployment of its enforcement program's resources. The PCAOB does not expect that the amendments to Rule 5422 will result in increased compliance burdens for registered firms or other market participants.

The Board is also amending Section 1000.08(m) of the SECPS membership requirements requiring that registered firms (that are former members of the SECPS) notify the Commission's Office of the Chief Accountant of the end of an auditor's relationship with an issuer audit client (including an EGC audit client) only if the issuer has not timely filed Form 8–K.[214] Previously, these notices were required irrespective of whether the issuer audit client reported the change in auditors in a timely filed Form 8–K. This amendment is designed to streamline the SECPS reporting requirement and to make firm notices more meaningful.[215] The PCAOB is also updating Appendix I of SECPS Section 1000.43 to reflect the SEC's updated contact information and preference for email notifications.[216]

[212] *See* CAQ Comment Letter; Crowe Horwath Comment Letter; EY Comment Letter; KPMG Comment Letter; McGladrey Comment Letter.

[213] *See* KPMG Comment Letter.

[214] *See* SECPS sec. 1000.08(m)(1). As amended, if by the end of the fifth business day after a client-auditor relationship has ended, and the issuer has not reported the change in auditors in a timely filed Form 8–K, then a former SECPS member firm must simultaneously send a written report of this fact to the former client and to the SEC's Office of the Chief Accountant.

[215] For SEC Registrants that do not file current reports on Form 8–K, Section 1000.08(m) remains unchanged. Notices for these former clients are due by the end of the fifth business day following the end of the firm's determination that the client-auditor relationship has ended, irrespective of whether or not the registrant has reported the change in auditors in a timely filed report. *See* SECPS sec. 1000.08(m)(2).

[216] The SEC staff strongly encourages emailing the SECPS report notification to *SECPSletters@sec.gov. See* Appendix I, SECPS sec. 1000.43. *See also http://www.sec.gov/about/offices/oca/10a1notices.htm* (''The Office of the Chief

Commenters generally supported reporting issuer auditor changes under Section 1000.08(m) only if the issuer audit client has not reported the change in auditors in a timely filed SEC form (exception reporting).[217] But one commenter suggested that Section 1000.08(m) should be eliminated entirely,[218] and one other commenter said Section 1000.08(m) reporting is ''working, helpful, and appropriate'' and should not be amended.[219] After considering these comments, the PCAOB has determined that more focused Section 1000.08(m) reporting for SEC Registrants that are required to file current reports on Form 8–K should enhance the SEC's ability to monitor issuer auditor changes. The amendments to Section 1000.08(m) of the SECPS membership requirements are designed to make firms' SECPS notices more meaningful. These amendments will contribute to the SEC's oversight of issuer auditor changes.

Requiring that issuer auditor changes be reported only on an exception basis for Form 8–K filers will also mean that auditors will be required to make fewer SECPS reports to the SEC, eliminating duplicative reporting of issuer auditor changes in most cases. At the same time, the PCAOB understands that there will be some incremental costs associated with the amendment to Section 1000.08(m). Auditors that are former SECPS members will bear some additional expense in monitoring whether their former audit clients reported the change in auditors in a timely filed Form 8–K. Given that former SECPS member firms are already required to make these reports, and that moving this reporting requirement to an exception basis is a fairly subtle change, the Board anticipates that these additional expenses will be minimal.

Finally, the PCAOB is amending Form 1 to require issuer CIK numbers [220] (in Items 2.1, 2.2, and 2.4), amending Form 1–WD to eliminate the requirement that ''original hard copies'' of requests for leave to withdraw from Board registration be submitted (General Instruction 4), and amending Form 3 to require firms to report circumstances where a former issuer audit client does not comply with Item 4.01 of Commission Form 8–K (Item 3.2). The PCAOB did not receive comment on these proposed amendments to Forms 1 and 1–WD and has determined to adopt them as proposed. Requiring applicants to provide issuer CIK numbers on Form 1 will increase reporting costs slightly for a small number of applicants, but it will enable the PCAOB to more easily identify issuers (as well as reducing search costs for investors, the SEC, and others). The Form 1–WD requirement will reduce compliance burdens for withdrawing firms by eliminating an unnecessary filing requirement.

The Board also received comment on these proposed amendments to Form 3. Two commenters supported this proposed reporting requirement.[221] Two commenters suggested that the proposed Form 3 reporting requirement appeared redundant to Section 1000.08(m) of the SECPS membership requirements and encouraged the Board to develop a single solution for reporting auditor changes.[222] Commenters were also concerned about the scope of the proposed Form 3 reporting, some of which commenters suggested would be difficult for the auditor to know or would not be relevant in circumstances where the auditor resigns or does not stand for reappointment.[223] Finally, one commenter said requiring auditors to make a Form 3 filing in these circumstances would inappropriately put auditors in the position of publicly reporting information that has not yet been reported by the issuer.[224]

The PCAOB has further considered this proposal in light of the comments and determined to adopt these proposed amendments to Form 3 largely as proposed. To ensure that the Board and public are made aware of these events, the Board is amending the instructions to Form 3 to require firms to file a special report with the Board if a client-auditor relationship has ended and the issuer has not reported the change in auditors on a Form 8–K.[225] Specifically, if a firm resigns, declines to stand for re-appointment, or is dismissed from an issuer audit engagement, and the issuer does not comply with Item 4.01 of Form 8–K, the firm within 30 days must report on Form 3 the issuer's name and CIK number, if any, whether the firm resigned, declined to stand for re-election or was dismissed, and the date thereof.[226] The Form 3 requirement will ensure that the Board and public are made aware of issuer auditor changes. This reporting requirement is expected to result in small compliance costs for firms related to monitoring and reporting this information.

Applicability to Audits of Emerging Growth Companies

Statutory Background

The Board is adopting these amendments pursuant to its authority under Sarbanes-Oxley.[227] Before rules adopted by the Board can take effect, they must be approved by the SEC. Pursuant to Section 107(b)(3) of Sarbanes-Oxley, the SEC shall approve a proposed rule if it finds that the rule is ''consistent with the requirements of [the] Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.''

Section 104 of the Jumpstart Our Business Startups Act (''JOBS Act'') amended Sarbanes-Oxley to provide that any additional rules adopted by the PCAOB after April 5, 2012 do not apply to audits of emerging growth companies (''EGCs'') [228] unless the SEC

Accountant strongly encourages sending the SECPS report notification to *SECPSletters@sec.gov.* The staff will accept the date the email is received as the notification date.'').

[217] Crowe Horwath Comment Letter; EY Comment Letter; Grant Thornton Comment Letter; McGladrey Comment Letter; PWC Comment Letter.

[218] KPMG Comment Letter.

[219] D&T Comment Letter.

[220] CIK numbers are unique, publicly-available identifiers and access codes issued by the SEC's Electronic Data Gathering, Analysis, and Retrieval System.

[221] *See* EY Comment Letter; KPMG Comment Letter.

[222] *See* CAQ Comment Letter; KPMG Comment Letter (recommending that the SECPS requirement be eliminated).

[223] *See* CAQ Comment Letter; Crowe Horwath Comment Letter; KPMG Comment Letter; McGladrey Comment Letter; PWC Comment Letter.

[224] *See* D&T Comment Letter (suggesting, as an alternative, that the PCAOB be copied, on a confidential basis, on the five-day SECPS letter so that the Board could be timely informed of issuer auditor changes).

[225] Form 3, Item 3.2 is only triggered by an issuer's failure to comply with Item 4.01 of SEC Form 8–K. This reporting requirement does not apply to foreign private issuers (that are required to report issuer auditor changes on Item 16F of Form 20–F) or investment companies other than business development companies (that are required to report auditor changes on Item 77K of Form N–SAR).

[226] *See* Form 3, Item 2.1–C and Item 3.3. If the issuer comes into compliance with an SEC requirement to make a report concerning the matter pursuant to Item 4.01 of Form 8–K during this 30-day period, the firm would not be required to report the change in auditors on Form 3.

[227] Under Section 101 of the Act, the mission of the PCAOB is to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. Section 101(g) authorizes the Board to adopt rules to provide for ''the exercise of its authority, and the performance of its responsibilities under [the] Act.'' Section 103 of the Act authorizes the Board to adopt auditing standards for use by registered public accounting firms in the preparation and issuance of audit reports ''as required by [the] Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.''

[228] Section 3(a)(80) of the Exchange Act defines the term ''emerging growth company.'' An issuer generally qualifies as an EGC if it has total annual gross revenue of less than $1 billion during its most recently completed fiscal year (and its first sale of common equity securities pursuant to an effective Securities Act registration statement did not occur

Continued

''determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors, and whether the action will promote efficiency, competition, and capital formation.'' [229] Thus, the Board's amendments are subject to a separate SEC determination regarding their applicability to audits of EGCs.

To assist the SEC in determining whether the Board's amendments should apply to audits of EGCs, this submission sets forth the PCAOB's assessment of the economic consequences of these amendments. It also considers the potential impact the amendments would have on audits of EGCs, including consideration of efficiency, competition, and capital formation.

Characteristics of Self-Identified EGCs

The PCAOB has been monitoring implementation of the JOBS Act in order to better understand the characteristics of EGCs and inform the Board's considerations regarding whether it should request that the SEC apply the amendments to audits of EGCs. To assist the SEC, the Board is providing the following information regarding EGCs that it has compiled from public sources.[230]

As of October 1, 2013, based on the PCAOB's research, 1,144 SEC registrants have identified themselves as EGCs in SEC filings. These entities operate in diverse industries. The five most common Standard Industrial Classification (''SIC'') codes applicable to these entities are: Blank check companies, pharmaceutical preparations, real estate investment trusts, prepackaged software services, and computer processing/data preparation services.

A majority of the entities that have identified themselves as EGCs have begun reporting information under the securities laws. Of these entities, approximately:

- 22% identified themselves in registration statements and were not reporting under the Exchange Act as of October 1, 2013.
- 61% of entities that have identified themselves as EGCs began reporting under the Exchange Act in 2012 or later.
- 17% of these entities have been reporting under the Exchange Act since 2011 or earlier.

Approximately 24% of these entities have securities listed on a U.S. national securities exchange as of October 1, 2013. Approximately 64% of the entities that have identified themselves as EGCs and filed an Exchange Act filing indicated that they were smaller reporting companies.[231]

Audited financial statements were available for nearly all of the entities that have identified themselves as EGCs.[232] For those entities for which audited financial statements were available, based on information included in the most recent audited financial statements filed as of May 15, 2013:

- The reported assets for those entities ranged from zero to approximately $18.2 billion. The average and median reported assets of the entities were approximately $182.4 million and approximately $0.3 million, respectively.[233]
- The reported revenue for these entities ranged from zero to approximately $962.9 million. The average and median reported revenue of these entities was approximately $60.2 million and $2 thousand, respectively.
- The average and median reported assets among entities that reported revenue greater than zero was approximately $360.8 million and $69.3 million, respectively. The average and median reported revenue among entities that reported revenue greater than zero was approximately $118.7 million and $22.1 million, respectively.
- Approximately 48% of the entities that filed audited financial statements identified themselves as ''development stage entities'' in their financial statements.[234]
- Approximately 38% were audited by firms that are annually inspected by the PCAOB (i.e., firms that have issued audit reports for more than 100 public company audit clients in a given year) or are affiliates of annually-inspected firms. Approximately 62% were audited by triennially-inspected firms (i.e., firms that have issued audit reports for 100 or fewer public company audit clients in a given year) that are not affiliates of annually-inspected firms.

Efficiency, Competition, and Capital Formation Considerations for EGCs

In this section the PCAOB considers whether the action discussed above will promote efficiency, competition, and capital formation in audits of EGCs. PCAOB staff has discussed the applicability of the JOBS Act to this rulemaking with the SEC staff. The PCAOB is not aware of any EGCs that are also registered brokers or dealers. Moreover, the reporting regimes for registered brokers and dealers under SEC Rule 17a–5 are separate and distinct from those for companies subject to reporting requirements pursuant to Section 13 and 15 of the Exchange Act or for a Securities Act registration statement. The Board defers to the SEC on the applicability of the JOBS Act to brokers and dealers.

Amendments Involving No PCAOB Discretion

As described above, the conforming amendments are technical and non-substantive and are not expected to

on or before December 8, 2011.) *See* JOBS Act Section 101(a), (b), and (d). Once an issuer is an EGC, it retains its EGC status until the earliest of: (i) The first year after it has total annual gross revenue of $1 billion or more (as indexed for inflation every five years by the SEC); (ii) the end of the fiscal year after the fifth anniversary of its first sale of common equity securities under an effective Securities Act registration statement; (iii) the date on which the company issues more than $1 billion in non-convertible debt during the prior three-year period; or (iv) the date on which it is deemed to be a ''large accelerated filer'' under the Exchange Act (generally, an entity that has been public for at least one year and has an equity float of at least $700 million).

[229] *See* Section 103(a)(3)(C) of Sarbanes-Oxley (15 U.S.C. 7213(a)(3)), as added by Section 104 of the JOBS Act, Public Law 112–106 (Apr. 5, 2012).

[230] To obtain data regarding EGCs, the PCAOB's Office of Research and Analysis has reviewed registration statements and Exchange Act reports filed with the SEC with filing dates between April 5, 2012, and October 1, 2013, for disclosures by entities related to their EGC status. Any filings subsequent to October 1, 2013 are not included in this analysis. For example, a filing made after this date suggesting an entity deregistered and is no longer an EGC is not included in this analysis. The PCAOB has not validated these entities' self-identification as EGCs. The information presented also does not include data for entities that have filed confidential registration statements and have not subsequently made a public filing.

[231] Companies generally qualify to be smaller reporting companies, and have scaled disclosure requirements, if they have less than $75 million in public equity float. Companies without a calculable public equity float qualify as smaller reporting companies if their revenues were below $50 million in the previous year.

[232] Audited financial statements were available for 1,134 of the 1,144 self-identified EGCs.

[233] For purposes of comparison, the PCAOB compared the data compiled with respect to the 898 entities with companies listed in the Russell 3000 Index in order to compare the EGC population with the broader issuer population. The Russell 3000 was chosen for comparative purposes because it is intended to measure the performance of the largest 3000 U.S. companies representing approximately 98% of the investable U.S. equity market (as marketed on the Russell Web site). The average and median reported assets of issuers in the Russell 3000 was approximately $12.1 billion and approximately $1.5 billion, respectively. The average and median reported revenue from the most recent audited financial statements filed as of May 15, 2013 of issuers in the Russell 3000 was approximately $4.6 billion and $717.2 million, respectively.

[234] According to FASB standards, development stage entities are entities devoting substantially all of their efforts to establishing a new business and for which either of the following conditions exists: (a) Planned principal operations have not commenced or (b) planned principal operations have commenced, but there has been no significant revenue from operations. *See* FASB Accounting Standards Codification, Subtopic 915–10, Development Stage Entities—Overall.

result in economic consequences independent from the directives of Congress and the SEC. The PCAOB expects that these amendments will not have efficiency, competition, or capital formation effects for audits of EGCs.

Amendments Involving Some PCAOB Discretion

To the extent these amendments apply to EGCs, the PCAOB has no reason to think the economic consequences for EGCs would differ significantly from those for the general population discussed above. The compliance costs associated with these new rule and reporting requirements are relatively fixed and may have a somewhat disproportionate impact on smaller registered firms. These costs may be passed on to firms' audit clients, including smaller and newer public companies like EGCs. But the PCAOB has endeavored to minimize the cost-related implications of these amendments to the extent possible, and estimates that the cost-related implications of the amendments for issuers, brokers, and dealers will not be significant. Similarly, the PCAOB estimates that the amendments will not result in significant efficiency, competition, or capital formation effects for EGCs.

With respect to the amendments affecting broker and dealer audits, brokers and dealers enhance the efficiency and liquidity of the financial markets by playing the intermediary role of connecting retail and institutional investors to investments. The adoption of the form amendments will increase, to some extent, the total amount of information available about brokers and dealers. In addition, to the extent that the additional PCAOB independence rules further enhance auditor independence, the quality of the financial reporting of brokers and dealers may improve. Enhanced financial disclosures of brokers and dealers help reduce information asymmetry between managers and customers, and reduce the adverse selection risk for market participants. To the extent they do so, the PCAOB believes the amendments will promote market efficiency, competiveness, and capital formation by informing investors and other market participants of the broker and dealer audit practices of registered firms and promoting consistent compliance with the PCAOB's rules and standards.

Furthermore, the new information provided in the newly mandated form items can make the audit market more competitive to some extent. It enables auditors to learn more about their competitors, and can help brokers and dealers make more informed decisions in selecting auditors. Brokers and dealers serve an important financial intermediary role, so increased competitiveness in the audit market for brokers and dealers can, in theory, trickle down to the capital market. Finally, improving the financial reporting of brokers and dealers facilitates financial transactions of companies, including those of EGCs, which typically rely on smaller brokers and dealers.

Conclusion

The PCAOB requests that the Commission determine that it is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, to apply these amendments to audits of emerging growth companies. The PCAOB will assist the SEC in considering any comments the Commission receives on these matters during the public comment process.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Pursuant to Section 19(b)(2)(A)(ii) of the Exchange Act, and based on its determination that an extension of the period set forth in Section 19(b)(2)(A)(i) of the Exchange Act is appropriate in light of the PCAOB's request that the Commission, pursuant to Section 103(a)(3)(C) of the Sarbanes-Oxley Act, determine that the proposed rules apply to audits of emerging growth companies, as defined in Section 3(a)(80) of the Exchange Act, the Commission has determined to extend to May 5, 2014 the date by which the Commission should take action on the proposed rules.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of 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/pcaob.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number PCAOB–2013–03 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. PCAOB–2013–03. 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/pcaob.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules 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 will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without charge; we do 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. PCAOB–2013–03 and should be submitted on or before February 24, 2014.

For the Commission, by the Office of the Chief Accountant, by delegated authority.[235]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–00271 Filed 1–31–14; 8:45 am]

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[235] 17 CFR 200.30–11(b)(2).

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Part III

Environmental Protection Agency

40 CFR Part 60
Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces, and New Residential Masonry Heaters; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2009–0734; FRL–9904–05–OAR]

RIN 2060–AP93

Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces, and New Residential Masonry Heaters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to amend the Standards of Performance for New Residential Wood Heaters and to add two new subparts: Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces and Standards of Performance for New Residential Masonry Heaters. This proposal is aimed at achieving several objectives for new residential wood heaters and other wood-burning appliances, including applying updated emission limits that reflect the current best systems of emission reduction; eliminating exemptions over a broad suite of residential wood combustion devices; strengthening test methods as appropriate; and streamlining the certification process. This proposal does not include any requirements for heaters solely fired by gas, oil or coal. In addition, it does not include any requirements associated with appliances that are already in use. The EPA continues to encourage state, local, tribal, and consumer efforts to changeout (replace) older heaters with newer, cleaner, more efficient heaters, but that is not part of this federal rulemaking.

Particulate pollution from wood heaters is a significant national air pollution problem and human health issue. Health benefits associated with these proposed regulations are valued to be much greater than the cost to manufacture cleaner, lower emitting appliances. These proposed regulations would significantly reduce particulate matter (PM) emissions and many other pollutants from these appliances, including carbon monoxide (CO), volatile organic compounds (VOC), and hazardous air pollutants (HAP). Emissions from wood stoves occur near ground level in residential communities across the country, and setting these new requirements for cleaner stoves into the future will result in substantial reductions in exposure and improved public health.

DATES: Comments must be received on or before May 5, 2014. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before March 5, 2014.

Public Hearing. The EPA will hold a public hearing on this proposed rule on February 26, 2014, in Boston, Massachusetts. The hearing will be at the following location: EPA New England Regional Office, 5 Post Office Square, Suite 100, Leighton Hall, Boston, MA. For directions and public transportation, visit: *http://www.epa.gov/region1/directions/*. Please note that 5 Post Office Square is a federal building, and proper identification is required for entry.

The public hearing will provide interested parties the opportunity to present data, views or arguments concerning the proposed rule. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments must be postmarked by the last day of the 90-day comment period.

If you would like to present oral testimony at the hearing, please register on-line (preferred method for registering) at *http://www2.epa.gov/residential-wood-heaters* no later than February 19, 2014, to request a general time slot for you to speak and any special equipment. If this method is not available to you, please notify Mr. David Cole no later than February 19, 2014, by email: *cole.david@epa.gov*); or by telephone: (919) 541–5565. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing. The public hearing will begin each day at 9 a.m. (local time) and continue into the evening until 7 p.m. (local time). The EPA will make every effort to accommodate all other speakers who arrive and register before 7 p.m. (local time) on the day of the hearing. The EPA is scheduling lunch breaks from 12:30 until 2 p.m. (local time).

Testimony will be limited to five (5) minutes for each commenter to address the proposal. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations unless we receive special requests in advance. The EPA encourages commenters to provide written versions of their oral testimonies either electronically on computer disk or CD–ROM or in paper copy.

The hearing schedule, including lists of speakers, will be posted on the EPA's Web page for the proposal at: *http://www2.epa.gov/residential-wood-heaters* prior to the hearing. Verbatim transcript of the hearing and written statements will be included in the rulemaking docket.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0734, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2009–0734.
- *Fax:* (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2009–0734.
- *Mail:* United States (U.S.) Postal Service, send comments to EPA Docket Center, EPA West (Air Docket), Attention Docket ID Number EPA–HQ–OAR–2009–0734, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20004. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 735 17th St. NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, EPA West (Air Docket), Room 3334, 1301 Constitution Avenue NW., Washington, DC, Attention Docket ID Number EPA–HQ–OAR–2009–0734. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0734. 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 whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of

your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*. For additional instructions on submitting comments, go to section I.D.2 of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: The EPA has established a docket for this rulemaking under Docket ID Number EPA–HQ–OAR–2009–0734. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Mr. Gil Wood, Office of Air Quality Planning and Standards, Outreach and Information Division, Community and Tribal Programs Group (C304–03), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5272; fax number: (919) 541–0242; email address: *wood.gil@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

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I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

The purpose of this action is to propose amendments to the Standards of Performance for New Residential Wood Heaters (40 CFR part 60, subpart AAA) and to add two new subparts: Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces and Standards of Performance for New Residential Masonry Heaters (40 CFR part 60, subparts QQQQ and RRRR). This proposal was developed following a Clean Air Act (CAA) section 111(b)(1)(B) periodic review of the current residential wood heaters new source performance standards (NSPS). We concur with numerous stakeholders that the current body of evidence justifies revision of the current residential wood heaters NSPS to capture the improvements in performance of such units and to expand the applicability of this NSPS to include additional wood-burning residential heating devices that are in the market. The proposed changes are aimed at achieving several objectives, including applying updated emission limits that reflect the current best systems of emission reduction (BSER); eliminating exemptions over a broad suite of residential wood combustion devices; strengthening test methods as appropriate; and streamlining the certification process. This proposal does not include any requirements for heaters solely fired by gas, oil or coal. In addition, it does not include any requirements associated with wood heaters or other wood-burning appliances that are already in use. The EPA continues to encourage state, local, tribal, and consumer efforts to changeout (replace) older heaters with newer, cleaner, more efficient heaters, but that is not part of this federal rulemaking.

These revisions will help reduce the health impacts of fine particle pollution, of which wood smoke is a contributing factor in many areas. Residential wood smoke contains fine particles with an aerodynamic diameter of 2.5 micrometers or less ($PM_{2.5}$), CO, toxic air pollutants (*e.g.,* benzene and formaldehyde), and climate-forcing emissions (e.g., methane and black carbon). Residential wood smoke can increase $PM_{2.5}$ to levels that cause significant health concerns. Populations that are at greater risk for experiencing health effects related to fine particle exposures include older adults, children and individuals with pre-existing heart

or lung disease. Each year, smoke from wood heaters contributes hundreds of thousands of tons of fine particles throughout the country—mostly during the winter months. Nationally, residential wood combustion accounts for 44 percent of total stationary and mobile polycyclic organic matter (POM) emissions, nearly 25 percent of all area source air toxics cancer risks and 15 percent of noncancer respiratory effects.[1] Residential wood smoke causes many counties in the U.S. to either exceed the EPA's health-based national ambient air quality standards (NAAQS) for fine particles or places them on the cusp of exceeding those standards.[2] To the degree that older, higher emitting, less efficient wood heaters are replaced by newer heaters that meet the requirements of this rule, or better, the emissions would be reduced, the efficiencies would be increased and fewer health impacts should occur.

This action is conducted under the authority of section 111 of the CAA, ''Standards of Performance for New Stationary Sources,'' under which the EPA establishes federal standards of performance for new sources within source categories that cause or contribute significantly to air pollution, which may reasonably be anticipated to endanger public health or welfare. Consistent with section 111(h), if it is not feasible to prescribe or enforce a standard of performance, the Administrator may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, that reflects the best system of continuous emission reduction, which (taking into consideration the cost of achieving such emission reduction, and any non-air quality, health, and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

2. Summary of the Major Provisions of This Proposed Regulatory Action

In response to the results of the NSPS review, we are proposing to amend 40 CFR part 60, subpart AAA, Standards of Performance for New Residential Wood Heaters. The current regulation applies to affected appliances manufactured after 1988. The current emission limits would remain in effect for the heaters and model lines manufactured before the effective date of this rule until their current EPA certification expires (maximum of 5 years) or is revoked. After the certification expires or is revoked, these heaters and other new heaters would have to meet updated emission standards. We propose to broaden the applicability of the regulation beyond adjustable burn rate wood heaters (the focus of the original regulation), to specifically include all single burn rate wood heaters/stoves and pellet heaters/stoves. (Some pellet heaters/stoves were not affected by the 1988 regulation.) Note that this preamble uses the following terms interchangeably: heaters, stoves and heaters/stoves. Heaters/stoves and model lines manufactured after the effective date of the rule would be required to meet PM standards.

As with the 1988 regulation, the source category covered by this NSPS is fundamentally different from the typical NSPS source category in several ways. For example, most NSPS source categories focus on industrial or commercial facilities, and typically these heaters are installed and operated in residences, not industrial or commercial facilities. Also, residential wood heaters, hydronic heaters, forced-air furnaces, and most masonry heaters are mass-produced consumer items, rather than industrial processes typically regulated by NSPS. Therefore, as in 1988, we are proposing that manufacturers participate in a certification program that tests a representative heater per model line rather than requiring testing each heater. If the representative heater meets the applicable emission limits, the entire model line may be certified and the manufacturer would not be required to test every heater. Individual heaters within the model line would still be subject to all other requirements, including labeling and operational requirements. Manufacturers would be required to have quality assurance programs to ensure that all heaters within the model line conform to the certified design and meet the applicable emission limits. The EPA would continue to have the authority to conduct audits to ensure compliance. We ask for comments on all aspects of this approach, especially whether more than one representative heater should be tested prior to certification of the model line.

The 1988 regulation also addressed some of the specific characteristics of this source category by developing a two-step compliance approach that provided a reasonable, phased implementation of emission limits for manufacturers. We believe such an approach is prudent this time also to allow manufacturers lead time to develop, test, field evaluate and certify current technologies across their consumer product lines. In 1988, there were ''logjam'' concerns about the capacity of accredited laboratories to conduct certifications tests and time for the EPA to review the tests and adequately assure compliance if all the NSPS requirements were to be immediate. Those concerns have been expressed this time also. Thus, upon the effective date of this rule, new heaters/stoves would be required to meet Step 1. Five years later, new heaters/stoves would be required to meet Step 2. The rule also would require that each unit be equipped with a permanent NSPS label. The two-step approach would apply to all the heater types addressed in this rulemaking except for masonry heaters. For masonry heaters, we are not proposing a second more stringent emission limit.

Additional requirements would apply to entities other than the manufacturer. The wood heater test laboratory would be subject to quality assurance requirements. The rule would continue to require the proper burn practices that currently apply to the owner or operator of a wood heating appliance. In addition, new pellet heater/stove owners and operators would be required to use only the grade of licensed pellet fuels that are included in the heater/stove certification tests, or better. We are proposing to streamline the current enforcement and audit provisions of the current subpart to reflect changes in industry practices and development of new tools and procedures. We are proposing improvements to the previous test methods as well as new test methods.

We are also proposing new subpart QQQQ, which would apply to new wood-fired residential hydronic heaters and forced-air furnaces, and new subpart RRRR, which would apply to new residential masonry heaters. These new subparts are being proposed to address the remaining heater appliance types in the 1987 residential wood heater source category listing that were not regulated by the 1988 NSPS. Both subparts are designed using principles similar to those in subpart AAA, *i.e.,* certification testing of a representative unit in a model line, label requirements, associated quality assurance requirements and phased implementation. Subpart RRRR has some additional features to address very small volume manufacturers, including a proposed compliance extension and the ability to use a software certification

[1] *Strategies for Reducing Residential Wood Smoke.* EPA–456/B–13–001, March 2013. Prepared by Outreach and Information Division, Air Quality Planning Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. pp. 4–5.

[2] Air Quality and Emissions Data; Supporting Information for the Residential Wood Heater New Source Performance Standard, August 14, 2013.

approach rather than a laboratory emission test.

The proposed PM standards for subparts QQQQ and RRRR would be implemented in two steps. For subpart QQQQ, upon the effective date of the rule, hydronic heaters would be required to meet a Step 1 PM limit of 0.32 pound per million British thermal unit (lb/MMBtu) output and forced-air furnaces would be required to meet a Step 1 PM limit of 0.93 lb/MMBtu heat output. Five years after the effective date of the rule, both hydronic heaters and forced-air furnaces would be required to meet a Step 2 PM limit of 0.06 lb/MMBtu heat output. For subpart RRRR (masonry heaters), upon the effective date of the rule, large manufacturers (defined as manufacturers constructing greater than or equal to 15 masonry heaters per year) would be required to meet a PM limit of 0.32 lb/MMBtu heat output. Five years after the effective date of the rule, small volume masonry heater manufacturers (defined as manufacturers constructing less than 15 masonry heaters per year) would be required to meet the 0.32 lb/MMBtu heat output PM limit.

3. Costs and Benefits

Consistent with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' we have estimated the cost and benefits of the proposed rule. The estimated net benefits of our proposed rule at a 3 percent discount rate are $1.8 billion to $4.1 billion or $1.7 billion to $3.7 billion at a 7 percent discount rate. The non-monetized benefits include 33,000 tons of CO reductions; 3,200 tons of VOC reductions; reduced exposure to HAP, including formaldehyde, benzene, and POM; reduced climate effects due to reduced black carbon emissions; reduced ecosystem effects; and reduced visibility impairments. Table 1 is a summary of the results of the analysis per type of residential wood heater. We have provided estimates reflecting average annual impacts for the 2014 to 2022 timeframe, which are the implementation years for the options analyzed in the RIA for this proposal. Monetized benefits are not currently available for masonry heaters. We ask for emission and projected sales data per model that would help us prepare emission reduction estimates and corresponding monetized benefits estimates for masonry heaters.

TABLE 1—SUMMARY OF COMPLIANCE COSTS, MONETIZED BENEFITS, AND MONETIZED NET BENEFITS (2010 DOLLARS) BY TYPE OF HEATER IN THE 2014–2022 TIME FRAME FOR THE PROPOSED RULE

Type of heater	Total annualized costs ($ millions)	Monetized benefits ($ millions) [a b]	Monetized net benefits ($ millions)
Wood stoves	$4.2	$62 to $140	$62 to $140.
Single burn rate stoves	0.9	$290 to $650	$290 to $650.
Pellet stoves	3.5	$19 to $43	$19 to $43.
Forced-air furnaces	2.3	$1,000 to $2,200	$1,000 to $2,200.
Masonry heaters	0.3	N/A [c]	N/A.
Hydronic heating systems	4.5	$480 to $1,100	$480 to $1,100.

[a] All estimates are for the time frame from 2014 to 2022 inclusive. These results include units anticipated to come online and the lowest cost disposal assumption. Total annualized costs are estimated at a 7 percent interest rate.

[b] Total monetized benefits are estimated at a 3 percent discount rate. The total monetized benefits reflect the human health benefits associated with reducing exposure to $PM_{2.5}$ through reductions of directly emitted $PM_{2.5}$. It is important to note that the monetized benefits include many but not all health effects associated with $PM_{2.5}$ exposure. Benefits are shown as a range from Krewski et al. (2009) to Lepeule et al. (2012). These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because the scientific evidence is not yet sufficient to allow differentiation of effect estimates by particle type. Because these estimates were generated using benefit-per-ton estimates, we do not break down the total monetized benefits into specific components.

[c] The monetized benefits for masonry heaters are not available because we do not have national estimates of the potential emission reductions.

B. Does this action apply to me?

The potentially regulated sources that are the subject of this proposal are listed in Table 2 of this preamble. Table 2 is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposed action. This standard, and any changes considered in this rulemaking, would be directly applicable to sources as a federal program. Thus, federal, state, local and tribal government entities are not affected by this proposed action.

TABLE 2—POTENTIALLY REGULATED ENTITIES

Category	NAICS [a] Code	Examples of regulated entities
Residential Wood Heating	333414—Heating Equipment (except Warm Air Furnaces) Manufacturing.	Manufacturers, owners and operators of wood heaters, pellet heaters/stoves, hydronic heaters, and masonry heaters.
	333415—Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	Manufacturers, owners and operators of forced-air furnaces.
	238140—Masonry Contractors	Manufacturers, owners, operators and testers of masonry heaters.
Testing Laboratories	541380—Testing Laboratories (except Medical, Veterinary).	Testers of wood heaters, pellet heaters/stoves, hydronic heaters and masonry heaters.

[a] North American Industry Classification System.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposal, following signature by the EPA Administrator, will be posted at the following address: *http://www2.epa.gov/residential-wood-heaters.*

D. What should I consider as I prepare my comments for the EPA?

1. Submitting CBI

Do not submit information containing CBI to the EPA through *www.regulations.gov* or email. Instead, clearly mark the part or all of the information that you claim to be CBI and send or deliver only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID Number EPA–HQ–OAR–2009–0734. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that you claim as CBI. In addition to one complete version of the comment that includes information claimed as CBI, you must submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a disk or CD–ROM that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. Respond to specific questions and organize comments by a section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats or character assassination.
- Make sure to submit your comments by the comment period deadline.

II. Background

A. What is the NSPS program?

Under section 111 of the CAA, ''Standards of Performance for New Stationary Sources,'' the EPA lists categories of sources that, in the EPA's judgment, cause or contribute significantly to air pollution, which may reasonably be anticipated to endanger public health or welfare pursuant to section 111(b)(1)(A), and then promulgates federal standards of performance for new sources within such categories under section 111(b)(1)(B). At the time the EPA proposes and establishes standards for certain pollutants for a source category, the EPA prepares an analysis of the potential costs and benefits associated with the NSPS, which includes the benefits from reductions in pollutants for which the standards do not set limits. For example, emission reductions associated with the requirements of this proposed rule will generate health benefits by reducing emissions of $PM_{2.5}$, other criteria pollutants, such as CO, and non-criteria HAP. Consistent with section 111(h), if it is not feasible to prescribe or enforce a standard of performance, the Administrator may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality, health, and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. The NSPS do not establish standards of performance for existing sources. However, numerous states have acted independent of this rule to address new and existing sources as part of state implementation plan (SIP) measures necessary to ensure attainment and maintenance of the NAAQS. Several examples are discussed in section II.E of this preamble.

The level of control prescribed by section 111 of the CAA historically has been referred to as ''Best Demonstrated Technology'' or BDT. To better reflect that section 111 was amended in 1990 to clarify that ''best systems'' may or may not be ''technology,'' the EPA is now using the term ''best systems of emission reduction'' or BSER. As was done previously in analyzing BDT, the EPA uses available information and considers the emissions reductions and incremental costs for different systems available at reasonable cost. The residential wood heaters source category is different from most NSPS source categories in that it is for mass-produced residential consumer products. Thus, important elements in determining that BSER include the significant costs and environmental impacts of delaying production while models with those systems are being designed, tested, field evaluated and certified. As noted earlier and discussed more fully later in this preamble, the 2-step approach that the EPA is proposing considers these factors. That is, for this rulemaking, the EPA has determined the appropriate emission limits and compliance deadlines that together are representative of BSER. Details of the BSER determinations are included in section V.B. of this preamble.

Section 111(b)(1)(B) of the CAA requires the EPA to periodically (every 8 years) review an NSPS unless it determines ''that such review is not appropriate in light of readily available information on the efficacy of such standard.'' If needed, the EPA must revise the standards of performance to reflect improvements in methods for reducing emissions, including consideration of what emissions limitation is achieved in practice. Numerous stakeholders have suggested that the current body of evidence justifies the revision of the current residential wood heaters NSPS to capture the improvements in performance of such units and to expand the applicability of this NSPS to include additional residential wood-burning heating devices that are available today. The states of New York, Connecticut, Maryland, Massachusetts, Oregon, Rhode Island and Vermont, as well as the Puget Sound Clean Air Agency, have filed in U.S. District Court in Washington, DC, to ask the court to order the EPA to promptly review, propose and adopt necessary updates to the NSPS for residential wood heaters. Likewise, the American Lung Association, the Environmental Defense Fund, the Clean Air Council, and Environment and Human Health, Inc., have filed a similar request. Also, some stakeholders have suggested that the

EPA develop additional NSPS to regulate residential heating devices that burn fuels other than or in addition to wood, *e.g.,* coal, corn or grass. This proposal does not include any requirements for heaters that solely burn fuels other than wood.

B. Why was the original residential wood heaters NSPS developed?

The development of the residential wood heater regulations began in the mid-1980s in response to the growing concern that wood smoke contributes to ambient air quality-related health problems. Several state and local governments developed their own regulations for wood heaters. Then, in response to a lawsuit filed by New York State and the Natural Resources Defense Council (NRDC), the EPA agreed to initiate a residential wood heaters NSPS rulemaking, with a schedule calling for final action by January 31, 1988. The original standard was developed using a regulatory negotiation process with the key stakeholders (the wood heating industry, state governments, and environmental and consumer groups) under the Federal Advisory Committee Act (FACA).

Pursuant to CAA section 111(b)(1)(A), the EPA listed the residential wood heater source category based on its determination that residential wood heaters cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare (52 FR 5065, February 18, 1987). The EPA also proposed regulations for residential wood heaters (52 FR 4994, February 18, 1987). The final standards were published on February 26, 1988 (53 FR 5860). At the time the original NSPS was proposed, the EPA estimated that a typical pre-NSPS conventional wood heater emits about 60 to 70 g/hr of PM and that a wood heater complying with the NSPS would emit 75 to 86 percent less than conventional wood heaters.

C. What are the requirements of the current 1988 NSPS?

The current subpart AAA defines a wood heater as an enclosed, wood-burning appliance capable of and intended for space heating or domestic water heating that meets all of the following criteria:

1. An air-to-fuel ratio (ratio of the mass of combustion air introduced into the firebox to the mass of dry fuel consumed) in the combustion chamber averaging less than 35-to-1 as determined by the test procedure prescribed in 40 CFR 60.534 performed at an accredited laboratory;

2. A usable firebox volume of less than 0.57 cubic meters (20 cubic feet);

3. A minimum burn rate (weight of dry test fuel consumed per hour) of less than 5 kilograms per hour (kg/hr) (11 pounds per hour (lb/hr)) as determined by the test procedure prescribed in 40 CFR 60.534 performed at an accredited laboratory; and

4. A maximum weight of 800 kg (1,760 lb), excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components that are not an integral part of the appliance or heat distribution ducting.

In the 1988 rulemaking, the EPA identified several types of residential wood combustion appliances that are not subject to the current 1988 NSPS:

- Open masonry fireplaces constructed on site
- Boilers/Heaters
- Furnaces
- Cook Stoves

In addition, the current 1988 NSPS exempts the following from the emission limits:

- Wood heaters used solely for research and development (R&D) purposes
- Wood heaters manufactured for export
- Coal-only heaters

As noted earlier, because of the specific characteristics of this source category (*e.g.,* it applies to mass-produced residential consumer items), the residential wood heaters NSPS (also sometimes informally referred to as the wood stove NSPS) allows compliance for model lines to be certified ''pre-sale'' by the manufacturers. A typical NSPS source category approach that imposes emission standards and then requires a unit-specific compliance demonstration would have been very costly and impractical. Therefore, the 1988 NSPS was designed to allow manufacturers of wood heaters to use a certification program to test representative wood heaters on a model line basis. Once a model line is certified, all of the individual units within the model line are subject to labeling, operational and other requirements. Manufacturers are then required to conduct a quality assurance program to ensure that appliances produced within a model line conform to the certified design and meet the applicable emission limits. There are also provisions for the EPA to conduct audits to ensure compliance.

As discussed in the 1988 rulemaking, the standards limiting PM emissions from wood heaters in the current 1988 NSPS were phased in for this source category because of the need to consider the costs of delayed production while new models were being developed and certified. Advanced technology heaters/stoves including both catalytic and noncatalytic systems were considered to be BDT (now called BSER), because the net emissions of both systems over time were estimated to be similar (even though the initial certification test results were lower for catalytic models) due to possible degradation and lack of catalyst replacement. The EPA considered requiring catalyst replacement on a regular schedule but determined that enforcement of such a requirement would be difficult or impractical. The EPA did require manufacturers to provide 2-year unconditional warranties on the catalysts and prohibited the operation of catalytic heaters/stoves without a catalyst. Principally because of these concerns, the EPA wanted to ensure that both catalytic and noncatalytic technology would continue to be options for manufacturers to use and further develop. The Subpart AAA Phase I standards issued in 1988 were very similar to the Oregon Department of Environmental Quality standards that had been in existence for a few years. The Subpart AAA Phase II standards, issued in 1988 and which are still in effect, are more stringent and had to be met within 2 years of publication of the final rule, *i.e.,* by 1990. Models equipped with a catalytic combustor cannot emit more than a weighted average of 4.1 g of PM per hour. Models that are not equipped with a catalytic combustor cannot emit more than a weighted average of 7.5 g of PM per hour. The lower initial emission limit for the catalytic combustor-equipped models incorporates an expected deterioration rate for the catalysts such that after 5 years the emissions from those models were expected to be similar to the emissions from noncatalytic models.

D. What are the major developments since the original NSPS was published?

New systems for residential wood heating devices are commercially available in the U.S. that perform at significantly lower g/hr emission rates than required under the current 1988 NSPS. Furthermore, even greater performance potentially can be achieved by greater deployment of the best U.S. systems and the typical systems already widely employed in Europe, especially for outdoor and indoor hydronic heaters. The EPA has conducted a research project ''Environmental Characterization of Outdoor Wood-fired Hydronic Heaters'' through a cooperative R&D agreement with the New York State Energy Research and

Development Authority (NYSERDA) that evaluated four types of technology ranging from a common outdoor wood boiler/heater to a state-of-the-art, high-efficiency pellet boiler/heater from Austria. The study showed considerable emission reduction due to a 2-stage combustion technology that includes gasification of the fuel and more complete combustion.[3]

Many stakeholders have expressed concern to the EPA about a broad range of residential wood heating appliances that do not have emission standards in the current 1988 NSPS. These include single burn rate wood heaters; pellet heaters/stoves that are not subject to the current standard via the NSPS air-to-fuel ratio; wood ''boilers'' (hydronic heaters); forced-air furnaces; and masonry heaters. Some stakeholders have also expressed an interest in regulating non-''heater'' devices, such as indoor and outdoor fireplaces, fire pits, cook stoves and pizza ovens.

One category of wood heating appliances that has undergone significant growth is wood heaters/boilers or ''hydronic heaters.'' (Note that these units are technically called heaters rather than boilers because many are not pressurized and do not boil the liquid.) Hydronic heaters are typically located outside the buildings they heat in small sheds with short smokestacks. These appliances burn wood to heat a liquid (water or a water-antifreeze mixture) that is piped to provide heat and hot water to occupied buildings, such as homes. Often, in addition to supplying heat for homes, the same unit is used to provide heat for barns and greenhouses and to provide warm water for swimming pools. Hydronic heaters may also be located indoors and may use other biomass (such as corn or wood pellets) or coal or a combination for fuel.

Studies have shown that $PM_{2.5}$ concentrations in proximity to a typical outdoor hydronic heater (aka outdoor wood boiler) can exceed the 24-hour NAAQS.[4] Thus, the EPA developed a hydronic heater voluntary partnership program in order to encourage manufacturers to reduce impacts on air quality and health through developing and distributing cleaner hydronic heaters for those locations where local jurisdictions allow hydronic heaters. We developed the voluntary partnership program with the goal of bringing cleaner models to market faster than the traditional federal regulatory process. Properly operated Phase 1[5] emission level (0.60 lb/MMBtu heat input) qualifying[6] units are approximately 70 percent cleaner than typical unqualified units. After March 31, 2010, units that only meet the Phase 1 emission level are no longer considered ''qualified models'' under the voluntary partnership program. Properly operated Phase 2 emission level (0.32 lb/MMBtu heat output) qualifying units are estimated to be approximately 90 percent cleaner than typical unqualified units. Typically, qualified models have improved insulation, secondary combustion, separation of the firebox from the water jacket, and the addition of improved heat exchangers.

In addition to the voluntary partnership program, the EPA provided technical and financial support for the Northeast States for Coordinated Air Use Management (NESCAUM) to develop a model rule that several states have adopted to regulate hydronic heaters. The model rule is a starting point for local regulatory authorities to consider, and additional actions may be needed due to site-specific concerns, *e.g.,* local terrain, meteorology, proximity of neighbors and other exposed individuals. Thus, some regulatory authorities have instituted additional requirements, such as limits on proximity to neighbors, limits on visible emissions and limits on use in non-heating seasons. Some authorities have banned hydronic heaters entirely in some areas.

The EPA also developed a similar voluntary partnership program for low mass fireplaces (engineered, pre-fabricated fireplaces) and site-built masonry fireplaces. Fireplaces were not included in the 1988 NSPS for residential wood heaters because typical fireplaces are not considered to be effective ''heaters.'' Most of the heat content from the wood burned in a typical fireplace is lost out the chimney rather than heating a room. The voluntary program began in February 2009, and pertained only to low mass fireplaces at that time. In July 2009, the program was expanded to masonry fireplaces. Under this program, cleaner burning fireplaces are ones that qualify for the Phase 1 emissions level of 7.3 grams of particles emitted per kilogram (g/kg) of fuel burned (approximately 57 percent cleaner than unqualified models) or the Phase 2 emissions level of 5.1 g/kg (approximately 70 percent cleaner than unqualified models). So far, 36 models (of hundreds of models on the market) have qualified under this voluntary partnership program at the Phase 2 level. Typically, qualified models have improved insulation and added secondary combustion and/or a catalyst to reduce emissions. Some manufacturers have added doors to reduce the excess air and thus improve combustion. The Phase 2 emission level in the voluntary fireplace program has been considered as a starting point for some local regulatory authorities, and additional actions have also been considered due to site-specific concerns, *e.g.,* local terrain, meteorology, proximity of neighbors and other exposed individuals, and magnitude of other emissions in the airshed. Thus, some regulatory authorities have instituted additional requirements (*e.g.,* ''no burn'' days on which the fireplaces cannot be operated) and some have banned new wood-burning fireplaces in some areas.

The current 1988 NSPS in subpart AAA have been in effect for over 25 years and manufacturers and test laboratories have gained considerable experience in complying with the requirements of the program. As a result, many manufacturers and test laboratories have suggested changes to the certification process to better implement the program, such as developing an electronic system for submittals and approval. Many manufacturers and test laboratories have also questioned the effectiveness of some of the current audit procedures. In addition, they have participated in the development of new test methods and test method improvements as part of the efforts of ASTM International (formerly known as the American Society of Testing and Materials). The 1988 NSPS left a placeholder for development of an efficiency test method for use in subpart AAA. On June 1, 2007, the EPA approved the Canadian Standards Association (CSA) stack loss method in B415 as an alternative for wood heater efficiency testing in subpart AAA

[3] *Environmental, Energy Market, And Health Characterization Of Wood-Fired Hydronic Heater Technologies.* Prepared by U.S. EPA Office of Research and Development, *et al.,* prepared for NYSERDA. June 2012.

[4] For more information on wood smoke health effects, see: ''Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State,'' prepared by Judith Schrieber, Ph.D., *et al.,* for the Office of the Attorney General of New York. August 2005. See also: ''Assessment of Outdoor Wood-fired Boilers,'' prepared by NESCAUM, March 2006 (revised June 2006).

[5] ''Phase 1'' and ''Phase 2'' emission levels refer to levels established in EPA voluntary partnership programs. The earlier use of the term ''Phase II'' (with a Roman numeral) standard refers to standards established in the current subpart AAA for residential wood heaters.

[6] The terms ''qualified'' and ''unqualified,'' or other similar terms, refer to models that meet or have not been shown to meet the voluntary partnership program performance levels. Later use of the terms ''certified'' and ''uncertified,'' or other similar terms, refers to models that are deemed to be in compliance or noncompliance with the NSPS emission limits.

provided that the tests use the same burn rate categories specified in the EPA Reference Method 28. We are now proposing that the current version of this method be used for efficiency testing (CSA B415.1–10). We are also proposing EPA Method 28 WHH (wood-fired hydronic heaters) that has been used for qualification testing of hydronic heaters in the EPA voluntary partnership program and numerous state regulations. Other issues that have been identified over the years regarding test methods and emissions calculations include emissions averaging, burn rate weightings, hot start versus cold start, emission caps per burn rate, and catalyst degradation. Another issue is whether to change current requirements to conduct certification tests with ''crib'' wood to ''cord'' wood. ''Crib wood'' is a specified configuration and quality of dimensional lumber and spacers, which was intended to improve the repeatability of the test method in 1988. ''Cord wood'' is a different specified configuration and quality of wood that more closely resembles what a typical homeowner would use. We address all these issues as part of this proposal.

E. Why is residential wood smoke a concern?

1. Health and air quality concerns. There is increasing recognition of the health impacts of particle pollution, to which wood smoke is a contributing factor in many areas. Wood smoke contains a mixture of gases and fine particles that can cause immediate effects, including burning eyes, runny nose and bronchitis. Exposure to fine particles has been associated with a range of health effects, including aggravation of heart or respiratory problems (as indicated by increased hospital admissions and emergency department visits), changes in lung function and increased respiratory symptoms, as well as premature death. Populations at greater risk for experiencing health effects related to fine particle exposures include older adults, children and individuals with pre-existing heart or lung disease.[7] Residential wood smoke contains fine particles and toxic air pollutants (*e.g.,* benzene and formaldehyde). Each year, smoke from wood heaters contributes hundreds of thousands of tons of fine particles throughout the country—mostly during the winter months. Nationally, residential wood combustion accounts for 44 percent of total stationary and mobile POM emissions, nearly 25 percent of all area source air toxics cancer risks, and 15 percent of noncancer respiratory effects.[8]

In a number of communities, residential wood smoke increases particle pollution to levels that cause significant health concerns. Several areas with wood smoke problems either exceed the EPA's health-based NAAQS for fine particles or are on the cusp of exceeding those standards. For example, in places such as Keene, New Hampshire; Sacramento, California; Tacoma, Washington; and Fairbanks, Alaska; wood combustion can contribute over 50 percent of daily wintertime fine particle emissions.[9]

In December 2012, the EPA issued revised NAAQS for PM to provide increased protection of public health and welfare. The 2012 NAAQS for PM strengthened the annual NAAQS for fine particles to 12 micrograms per cubic meter ($\mu g/m^3$) from the 1997 standard of 15 $\mu g/m^3$ and retained the existing 24-hour fine particle standard of 35 $\mu g/m^3$ issued in 2006. The 2012 NAAQS for PM also retains the current 24-hour PM_{10} standards for health and environmental effects at a level of 150 $\mu g/m^3$ to continue to provide protection against effects associated with exposure to thoracic coarse particles. Areas that do not meet the standards must take steps to reduce PM emissions. The National Association of Clean Air Agencies (NACAA), the Environmental Council of States (ECOS), NESCAUM, the Western States Air Resources Council (WESTAR), and the Lake Michigan Air Directors Consortium (LADCO) have argued that more stringent standards for new wood heating devices would provide a much needed tool for states and local communities to use in addressing the growth of pollution from these sources.[10] [11] Recent health studies considered in the review of the PM NAAQS confirm the impacts on public health. The latest information on the PM NAAQS reviews is at *http://www.epa.gov/pm/actions.html.*

There is also concern about the health effects of other pollutants found in wood smoke. In addition to PM, wood smoke contains harmful chemical substances such as CO, formaldehyde and other organic gases, and nitrogen oxides (NO_X).

Health effects from CO include:

- Interference with the blood's ability to carry oxygen to the brain, which impairs thinking and reflexes
- Heart pain
- Lower birth weights and increased deaths in newborns
- Death

Health effects from formaldehyde and other organic gases include:

- Irritation of eyes, nose, and throat
- Inflammation of mucous membranes, irritation of the throat and sinuses
- Interference with lung function
- Allergic reactions
- Nose and throat cancer in animals and cancer in humans

Nitrogen oxide can irritate the eyes and respiratory system, may damage the immune system by impairing the body's ability to fight respiratory infection and can affect lung function.[12]

Residential wood combustion emissions contain potentially carcinogenic compounds including formaldehyde, polycyclic aromatic hydrocarbons (PAHs), benzene, and dioxin, which are toxic air pollutants, but their effects on human health via exposure to wood smoke have not been studied as extensively.[13]

2. Concerns about existing sources. Many areas of the country are struggling with reducing PM emissions due to residential wood smoke from existing wood-burning appliances. Existing wood heaters will not be affected by this rule. In addition, due to the long life span of wood-burning appliances and slow turnover, it may be many years before the full benefits of these regulations on new appliances will be shown. However, there are strategies to reduce wood smoke that states, counties and townships can take to reduce wood smoke independent of this rule.[14] Some states have direct legislative authority, and all states have authority to address new and existing sources as SIP measures necessary to ensure attainment and maintenance of the NAAQS. For examples, the State of

[7] EPA Burn Wise (Consumer—Health Effects), *http://www.epa.gov/burnwise/healtheffects.html.*

[8] Strategies for Reducing Residential Wood Smoke. EPA–456/B–13–001, March 2013. Prepared by Outreach and Information Division, Air Quality Planning Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. pp. 4–5.

[9] Memorandum dated April 4, 2013, from David Cole, EPA, to Docket ID No. EPA–HQ–OAR–2009–0734.

[10] Arthur Marin, Executive Director of NESCAUM and Dan Johnson, Executive Director of WESTAR, to Steve Page, Director OAQPS/EPA. April 28, 2008.

[11] Arthur Marin, Executive Director of NESCAUM, to Gina McCarthy, Assistant Administrator for Air and Radiation/EPA. January 14, 2011.

[12] Department of Ecology, State of Washington, Brochure on Wood Smoke and Your Health. September 2008, *http://www.ecy.wa.gov/pubs/91br023.pdf.*

[13] EPA Burn Wise (Health Effects of Breathing Wood Smoke), *http://www.epa.gov/burnwise/pdfs/woodsmoke_health_effects_jan07.pdf.*

[14] ''Strategies for Reducing Residential Wood Smoke,'' EPA–456/B–13–001. March 2013.

Oregon, Washoe County (NV), and Township of Mammoth Lakes (CA) have required that, when a home is sold, existing wood heaters that have not been certified to meet the NSPS be removed and destroyed and not resold. As additional SIP strategies, some states and local authorities have banned wood burning during certain high PM events, restricted the amount of burning, and regulated the type of materials being burned. Non-regulatory programs, such as education programs to teach the public how to use their wood-burning appliances in ways that minimize emissions, have also been implemented. The EPA has also implemented programs that encourage good burning practices, which can have a significant impact on emissions. The EPA, some state and local agencies, and other stakeholders, including the Hearth, Patio and Barbecue Association (HPBA), have been active in promoting wood heater/stove changeout programs to replace older, higher-emitting heaters/stoves with lower-emitting EPA-certified heaters/stoves, pellet heaters/stoves, or other cleaner burning appliances.

F. What are the major issues that drove the review process?

We received several requests to conduct a review of the residential wood heaters NSPS, including a joint letter from WESTAR and NESCAUM that urged us to update and develop regulations relating to a variety of wood combustion devices. The authors cited concerns that many communities are measuring ambient conditions above or very close to the $PM_{2.5}$ NAAQS and that, in many instances, emissions from wood smoke are a large contributor to those high $PM_{2.5}$ levels. In addition, wood heater technology has greatly improved since the last revision of the NSPS. The standards we are proposing today recognize the cleaner, more efficient technologies developed in recent years. Other states, environmental groups, and HPBA have also recommended several changes to the NSPS. The HPBA Outdoor Wood-fired Hydronic Heater (OWHH) Manufacturers Caucus wrote the EPA to express their unanimous support for the EPA to develop a federal regulation for OWHH.[15]

Specific requests from stakeholders include:

- Tightening emission standards based on current performance data
- Addressing other pollutants of concern
- Reviewing the format of the standards, including adding requirements to document the tested efficiency of the unit
- Reevaluating exemptions, such as those based on air-to-fuel ratios and size and weight
- Adding other wood heating devices such as pellet heaters/stoves, hydronic heaters, and masonry heaters to the NSPS
- Regulating fireplaces and other ''non-heater'' devices (*e.g.,* cook stoves)
- Regulating heating devices that burn fuel other than wood (*e.g.,* other solid biomass and coal)
- Updating test methods
- Streamlining the certification process to use electronic data submittals/reviews
- Considering use of International Organization for Standardization (ISO)-accredited labs and ISO-accredited certifying bodies
- Improving compliance assurance/enforceability and quality assurance/quality control
- Making the rule more consumer friendly by making more information readily available on-line

III. Summary of Proposed Residential Wood Heater Appliance Amendments

We are proposing to amend 40 CFR part 60, subpart AAA, Standards of Performance for New Residential Wood Heaters. We are also proposing two new subparts to address additional types of residential wood heating appliances. Specifically, we are proposing subpart QQQQ, Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces, and subpart RRRR, Standards of Performance for New Residential Masonry Heaters. The following sections describe the major provisions of each subpart. This proposal does not include any requirements that would apply to heaters that are fueled solely by gas, oil or coal. In addition, this proposal does not include any requirements associated with wood heaters or other wood-burning appliances that are already in use. The EPA continues to encourage state, local, tribal, and consumer efforts to changeout (replace) older heaters with newer, cleaner, more efficient heaters, but that is not part of this federal rulemaking.

A. Room Heaters

The current 1988 regulation (subpart AAA) applies to affected appliances manufactured since 1988. The current emission limits would remain in effect for the heaters and model lines manufactured before the effective date of this rule until their current EPA certification expires (maximum of 5 years) or is revoked. After the certification expires or is revoked, these heaters and other new heaters would have to meet updated emission standards. We propose to broaden the applicability of the wood heaters regulation beyond adjustable burn rate wood heaters (the focus of the original regulation) to specifically also include single burn rate wood heaters/stoves, pellet heaters/stoves, and any other affected appliance as defined in the proposed subpart AAA as a ''room heater.'' The proposed subpart AAA does not apply to new residential hydronic heaters, new residential forced-air furnaces and new residential masonry heaters because they would be subject to their own subparts. Like the 1988 current subpart AAA, the proposed subpart AAA does not apply to fireplaces. This proposal tightens the definition for ''cook stoves'' and adds definitions for ''camp stoves'' and ''traditional Native American bake ovens'' to clarify that they would not be subject to the standard other than appropriate labeling for cook stoves and camp stoves. Finally, the proposed subpart AAA clarifies that the emission limits would only apply to wood-burning devices (*i.e.,* not to devices that only burn fuels other than wood, *e.g.,* gas, oil or coal).

As discussed in section II, NSPS determinations of BSER must consider costs. The fact that this source category is for consumer products manufactured for residential sale results in cost considerations that are different from those for industrial process source categories that are typical for most NSPS. Specifically, if production and sales were to be suspended while designing, testing, field evaluating and certifying cleaner models, the cost of potential lost revenues would be significant, which necessitates reasonable lead times for compliance with proposed emission limitations. This was true in 1988, and is still true today. Thus, we propose to allow a transition period so that heaters/stoves with EPA certification currently in effect can continue to be manufactured and sold until the current certification expires (5 years from date of certification) or is revoked by the Administrator, whichever date is earlier. We would not allow renewal of these certifications. That is, in the near term, we are proposing to retain the current Phase II PM emission limits (issued in the current 1988 standards for compliance in 1990) for adjustable burn

[15] HPBA OWHH Caucus letter to Greg Green, Director, Outreach and Information Division, EPA. September 27, 2007.

rate wood heaters and pellet heaters/stoves with a current EPA certification issued prior to the effective date of this rule. While our top priorities are to ensure that emission reductions occur in a timely manner and that there is no backsliding from the improvements that many manufacturers have already made, it is also important to avoid unreasonable economic impacts on those manufacturers (mostly small businesses) who need additional time to develop a full range of cleaner models. The compliance schedule should also help avoid potential ''logjams'' at laboratories conducting certification testing. We ask for specific comments on the length of this proposed transition and the degree to which there would be any critical economic impacts on manufacturers who have heaters with current certifications if we were to not allow up to the full 5-year certification period for units manufactured after the effective date of the final rule. We also ask for specific comments on allowing grandfathering of Step 1 models that are tested in good faith according to the proposed test methods and the proposed emission limits, even though the final test methods may differ from this proposal, and if so, for how long.

We are proposing a two-step compliance approach (referred to herein as the ''Proposed Approach'') that would apply to all new adjustable burn rate wood heaters, single burn rate wood heaters and pellet heaters/stoves. Under this Proposed Approach, the Proposed Step 1 emission limits for these sources would apply to each source (a) manufactured on or after the effective date of the final rule or (b) sold at retail on or after the date 6 months from the effective date of the final rule. Proposed Step 2 emission limits for these sources would apply to each adjustable rate wood heater, single burn rate wood heater and pellet heater/stove manufactured or sold on or after the date 5 years after the effective date of the final rule. We ask for specific comments on the Proposed Approach and the degree to which these dates could be sooner.

We are also asking for comments on a three-step compliance approach (referred to herein as the ''Alternative Approach'') for all adjustable rate wood heaters, single burn rate wood heaters and pellet heaters/stoves. Under this Alternative Approach, the Alternative Step 1 emission limits would apply to each source: (a) manufactured on or after the effective date of the final rule, or (b) sold at retail on or after the date 6 months from the effective date of the final rule. (Step 1 under the Alternative Approach is the same as Step 1 under the Proposed Approach.) The Alternative Step 2 emission limits would apply to each source manufactured or sold on or after the date 3 years after the effective date of the final rule. The Alternative Step 3 emission limits would apply to each source manufactured or sold on or after the date 8 years following the effective date of the final rule (thus providing 5 years between the Alternative Step 2 and Alternative Step 3). We ask for specific comments on this Alternative Approach, including data and potential environmental and economic impacts on this alternative, and the degree to which the Alternative Approach emission levels and dates could be considered BSER. Our current preference is the Proposed Approach, but we intend to finalize a single compliance approach after fully considering the comments received during the public comment period on this proposed rulemaking.

Table 3 summarizes the PM emissions standards that would apply to each wood heater appliance under this Proposed Approach at each step. Table 4 summarizes the PM emissions standards that would apply to each wood heater appliance under each step of the Alternative Approach.

TABLE 3—PROPOSED APPROACH SUBPART AAA PM EMISSIONS LIMITS

Appliance	Phases/steps	PM emissions limit
Adjustable Rate Wood Heaters or Pellet Heaters/Stoves with current EPA certification issued prior to the effective date of the Final Rule.	Transition period from 1988 rule through the later of the effective date of the final revised rule or expiration of current certification (maximum of 5 years certification and no renewal).	4.1 g/hr for catalytic heaters/stoves and 7.5 g/hr for noncatalytic heaters/stoves.
All Other Adjustable Rate Wood Heaters, Single Burn Rate Wood Heaters or Pellet Heaters/Stoves (includes currently certified heaters after the certification expires, catalytic and noncatalytic).	Step 1: upon the effective date of final rule ..... Step 2: 5 years after the effective date of the final rule.	4.5 g/hr. 1.3 g/hr.

TABLE 4—ALTERNATIVE APPROACH SUBPART AAA PM EMISSIONS LIMITS

Appliance	Phases/steps	PM emissions limit
Adjustable Rate Wood Heaters or Pellet Heaters/Stoves with Current EPA Certification Issued Prior to the effective date of Final Rule.	Transition period from 1988 rule through the later of the effective date of the final revised rule or expiration of current certification (maximum of 5 years certification and no renewal).	4.1 g/hr for catalytic heaters/stoves and 7.5 g/hr for noncatalytic heaters/stoves.
All Other Adjustable Rate Wood Heaters, Single Burn Rate Wood Heaters or Pellet Heaters/Stoves (includes currently certified heaters after the certification expires, catalytic and noncatalytic).	Step 1: upon the effective date of final rule ..... Step 2: 3 years after the effective date of the final rule. Step 3: 8 years after the effective date of the final rule.	4.5 g/hr. 2.5 g/hr. 1.3 g/hr.

Although the 1988 promulgated subpart AAA (53 FR 5860, February 26, 1988) included an additional 1-year compliance extension for low-volume manufacturers, *i.e.,* companies that manufacture (or export to the U.S.) fewer than 2,000 heaters per year, this proposal does not include a similar compliance extension. We are not proposing a delay for adjustable burn rate wood heaters or pellet heaters/stoves because the majority of these appliances already comply with the proposed Step 1 emission levels. See section V.C. of this preamble for more

discussion of this topic. However, we are requesting comments on the possible need for such a compliance extension for single burn rate wood heaters, which are not subject to the current subpart AAA requirements.

We are proposing to make a single determination of BSER for both catalytic and noncatalytic heater systems. The EPA considered requiring catalyst replacement on a regular schedule but determined that federal enforcement of such a requirement would be difficult. As in the current 1988 rule, we are proposing to require manufacturers to provide warranties on the catalysts and prohibit the operation of catalytic heaters/stoves without a catalyst. In addition, we are proposing to require warranties for noncatalytic heaters/stoves. Though we are not proposing efficiency standards at this time, we are proposing to require testing and reporting of these data; however, we are requesting specific comment on the need to propose efficiency standards and any data to support the basis for these standards.

We are also proposing to require emission testing and reporting based on both crib wood and cord wood for the proposed Step 1 compliance, and allowing manufacturers to choose whether to certify with crib wood or cord wood for the proposed Step 1 upon the effective date of the final rule. For the proposed Step 2 compliance 5 years after the effective date of the final rule, we would require certifying with cord wood only. As discussed earlier in this preamble, ''crib wood'' is a specified configuration and quality of dimensional lumber and spacers that was intended to improve the repeatability of the test method in 1988. ''Cord wood'' is a different specified configuration and quality of wood that more closely resembles what a typical homeowner would use. We ask for comments and test data to compare heater performance with crib wood and cord wood.

Although we lack sufficient data to propose a separate CO emissions standard at this time, we propose to require that the manufacturer determine CO emissions during the compliance test and report those results to the EPA. We specifically request emission and cost data for systems that reduce CO emissions. If those systems warrant inclusion in the final rule, we would consider doing so. In addition, we ask for specific comments on whether the final rule should explicitly require indoor CO monitors as a critical safety component for heaters installed in occupied buildings or other buildings or enclosures in which the operator would enter to add fuel to the heater or conduct other normal operation and maintenance of the heater. Numerous stakeholders have indicated that an explicit requirement is needed.

Like the current 1988 subpart, the EPA is using its authority under section 114 of the CAA to require each manufacturer to submit certifications of compliance with this rule for all models and all units. As in the 1988 rule, provided that the certifications are timely, complete, and accurate, the EPA is proposing to allow certification to be determined based on testing of a representative unit within the model line. As in 1988, the cost of testing each unit would be an order of magnitude greater than the cost of a wood heater/stove and would be economically prohibitive. In addition, as in 1988, the testing of each unit could create a potential ''logjam'' that would stymie the certification of cleaner model lines. However, as discussed earlier, we are asking for specific comments on whether we should require testing of more than one representative unit prior to certification of a model line. The proposed subpart revises the definition of ''Accredited Test Laboratory,'' from only EPA-accredited laboratories to laboratories approved by the EPA after being accredited by a nationally recognized accrediting body to perform testing for each of the test methods specified in this NSPS under ISO–IEC [16] Standard 17025, to conduct the certification testing. The laboratories would have to register their credentials with the EPA and be approved by the EPA prior to conducting any certification testing or related work used as a basis for compliance with this rule. Also, they would be required to report any changes in their accreditation and any deficiencies found under ISO 17025, and the EPA may revoke the approval if appropriate. Our proposal is this laboratory definition revision be effective upon the effective date of the final rule. However, we request specific comments on whether we should allow a transition period.

The proposal would require a ''Certifying-Body-Based Certification Process,'' upon the effective date of the final rule. Under this process, after testing is complete, a certification of conformity with the PM emissions standards must be issued by a certifying body with whom the manufacturer has entered into contract for certification services. The certification body would have to be accredited under ISO–IEC Standard 17065 and register their credentials with the EPA and receive EPA approval prior to conducting any certifications or related work used as a basis for compliance with this rule and report any changes in their accreditation and any deficiencies found under ISO 17065. We believe any certifying body that is approved by the EPA and is ISO-accredited should be expected to act in such a way that will not create a conflict of interest. The EPA would oversee the certification body's work and retain the right to revoke the approval if appropriate. Upon review of the test report and quality control plan submitted by the manufacturer, the certifying body may certify compliance and submit the required documentation to the EPA's Office of Enforcement and Compliance Assurance for review, approval and listing of the certified appliance. Our preference is to require the new expanded certification process (*i.e.,* inclusion of ISO-accredited and EPA-approved certifying bodies) for certifications that occur after the effective date of the final rule. However, we request specific comments on whether we should allow a transition period; that is, whether we should retain the current ''Administrator Approval Process'' to review the certification application, including test results, for the first year following the effective date of the final rule. Note that models certified prior to the effective date of the final rule would not have to be re-tested until the certification expires or is revoked.

As in the current 1988 NSPS, each affected unit would be required to have an applicable permanent label and have an owner's manual that contains specified information. We are proposing that permanent labels would be required for each affected unit on the effective date of the final rule. We propose to clarify that the permanent label must be installed so that it is readily visible both before and after the unit is installed. This clarification is needed to document the use of complying heaters that may be required by state and local rules and/or to determine the unit's applicability to any future changeout programs. We also request specific comments on how to best assure that manufacturers and retailers and online marketers of wood heaters only use valid certification test data and not exaggerated claims.

In the current (1988) NSPS, temporary labels (*aka,* hangtags) were required for wood heaters that are subject to the standards and also for ones that are not (*e.g.,* coal heaters/stoves). These temporary labels were intended primarily to contain information useful

[16] The International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) prepare and publish international standards.

to consumers and prospective heater purchasers to be able to compare different appliance models and to inform the consumer about the importance of proper operation and maintenance. These temporary labels included the wood heater's compliance status, comparative emission and efficiency performance data, and heat output rates and explicitly stated that the appliance will achieve low smoke output and high efficiency only if properly operated and maintained. The EPA no longer believes these temporary labels are necessary for all certified heaters because we have developed and are continuing to improve our education and outreach program for consumers on selecting the cleanest certified appliances and wood fuel with appropriate moisture content and on the effective use and operation of these appliances. Consequently, we are proposing to remove the requirement for temporary labels on certified heaters. Consumers can get additional information that would normally be contained on the temporary labels at *http://www.epa.gov/compliance/monitoring/programs/caa/woodheaters.html.* We request comment on the potential impact that deleting this requirement might have on a consumer's ability to select wood heaters that meet the proposed standards and are the cleanest and whether we should consider developing a voluntary labeling program for the cleanest of the clean. As discussed elsewhere, we also ask for specific comments on language that we should require manufacturers and retailers to provide to consumers to help explain the relative benefits of high-performing heaters versus lower-performing heaters and how to reduce exaggerated claims.

In addition to the PM emissions standards, we are proposing to continue to require the proper burn practices that already apply to the owner or operator of a wood heating appliance. That is, the current 1988 standards already include the requirement that the owner or operator must operate the heater consistent with the owner's manual and not burn improper fuels and manufacturers typically void their warranties in cases of improper operation. Numerous states have expressed their support for the continuation of these requirements. Some states and local jurisdictions have enforced similar requirements, and this proposal would allow potential delegation of enforcement authority of these NSPS requirements upon the EPA approval of state requests.

The proposed revision clarifies that the current requirement to operate according to the owner's manual continues to include a list of prohibited fuel types that create poor or even hazardous combustion conditions and includes operation of pellet fuel appliances only with the grades of pellet fuels that are included in the certification tests, or better. We propose that pellets for the certification tests be only those that have been produced under a licensing agreement with the Pellet Fuels Institute (PFI), or equivalent (after request and subsequent approval by the EPA), to meet certain minimum requirements and procedures for a quality assurance process. Details of the PFI program are available at *http://pelletheat.org/pfi-standards/pfi-standards-program/.* We are not aware of any other U.S. organization that has a pellet fuel quality assurance program similar in quality to the PFI program. However, we request specific comments on whether another high quality program exists. Manufacturers' data show that pellet fuel quality assurance is necessary to ensure that the appliances operate properly such that emissions are reduced as intended. We ask for specific comments on how to determine equivalency for fuel pellets, and whether we should include other requirements of best burn practices or adjustments to help ensure proper operation, *e.g.,* chimney height and draft specifications, moisture content of wood and limits on visible emissions.

The proposed subpart AAA still contains the crucial quality assurance provisions in the current 1988 NSPS. A comprehensive discussion of the rationale is included in the 1988 preamble. For example, a model line must be recertified whenever any change is made in the original design that could affect the emissions rate for that model line or when any of several specified tolerances of key components are changed. The 1988 requirements for manufacturer quality assurance programs would be superseded by a Certifying-Body-Based Quality Assurance program. (As noted earlier in this preamble, we would not require retesting for models that are certified prior to the effective date of the final rule until the certification expires or is revoked.) The certifying body would conduct regular, unannounced audits to ensure that the manufacturer's quality control plan is being implemented properly.

The EPA audit testing programs of the 1988 NSPS will be maintained under the proposed changes, although they will be streamlined and simplified to better ensure compliance and to clarify that audits can be based on any information the EPA has available and do not have to be statistically random. Also, we clarify that the EPA and states are allowed to be present during the audits and that states (and other entities, including the public) may provide the EPA with information that may ultimately be used in the EPA enforcement and compliance assurance efforts.

As discussed earlier, the EPA developed Method 28 in 1987 and 1988 as part of our efforts on the 1988 NSPS. We received input at that time from manufacturers, laboratories, and some states. Oregon Method 7 was the starting point for Method 28 and, thus, Method 28 has many aspects similar to Oregon Method 7. The details on the history and development of Method 28 are contained in the February 18, 1987, proposal in the **Federal Register** (52 FR 5003) and the February 26, 1988, final rule in the **Federal Register** (53 FR 5866).

The manufacturers, laboratories, states and the EPA have more than 25 years of experience with Method 28, and it has been very useful for certifying hundreds of model lines of wood heaters/stoves. We asked the manufacturers, EPA-accredited laboratories and states for their insights on Method 28. Many stakeholders agree that changes should be made to improve the reproducibility and repeatability of the test procedures and to address concerns about how to best ensure protection across the entire U.S. when various operating scenarios are used and various wood species and densities are used. For example, to address some of these concerns, ASTM has used a ''consensus-based'' process to develop E2515–10 ''Standard Method for Determination of Particulate Matter Emissions in a Dilution Tunnel.'' The EPA is proposing that this sampling and analysis method be used for all of the appliances in this rulemaking. As with all test methods, there are opportunities for continual improvement, and the EPA requests specific comments and supporting data for additional potential improvements to E2515–10.

A number of states have expressed concern about ASTM's Intellectual Property Policy which requires all participants to give their intellectual property rights to ASTM so that, in turn, ASTM can control distribution of the drafts and final test methods and sell the final test methods to potential users. Attorneys General for several states have indicated that state employees in their states cannot give to ASTM the property rights for property that their states paid for via the employee salaries and other expenditures and thus cannot participate in ASTM's ''consensus-

based'' process. For this rulemaking, ASTM is allowing public review, for no charge, of the ASTM test methods and draft work products relevant to this proposed rule at *www.astm.org/epa.* The EPA requests specific comments and supporting data on the substance of all of the test methods relevant to this rulemaking and specific comments on the ASTM process and ways to ameliorate the process concerns.

The ASTM methods E2779–10 ''Standard Test Method for Determining Particulate Emissions from Pellet Heaters'' and E2780–10 ''Standard Test Method for Determining Particulate Emissions from Wood Heaters'' are being considered for potentially replacing the wood heater fueling and operation requirements in Method 28 for pellet heaters and wood heaters, respectively. Note that ASTM intends to use the same E2515–10 for the sampling and analysis portion for all the appliances and then separate methods per appliance types for the fueling and operation portions of these methods. The EPA believes E2525–10 is a sound method for sampling and analysis and we are proposing its use. The EPA also believes that E2779–10 is a sound method for measuring emissions from pellet heaters/stoves and includes reasonable measures to reduce testing costs for continuously-fed appliances, and we are proposing its use. However, because, as noted earlier, some states were not able to participate in the ASTM method development process, we specifically request comments and supporting data of all aspects of not only these test methods but also all the proposed methods as part of the comments on this proposed rule.

Similarly, the EPA believes that ASTM Method E2780–10 includes improvements for testing adjustable and single burn rate wood heaters, and we are proposing many of the improvements today. For example, we are proposing the use of the E2780–10 appendix for testing single burn rate appliances. However, we, and some states, do not agree with all the changes that ASTM has made for adjustable burn rate wood heaters, and some provisions are not as protective as we, and some states, now believe they need to be. As noted above, several states are concerned about how to best ensure that the methods are protective for the entire U.S., considering differences in wood species, density, and homeowner operation. The EPA and the states are particularly concerned about scenarios in which heaters/stoves will have higher emissions in home use than the emissions measured in the laboratories. For example, the states and the EPA are concerned about the ASTM changes on burn rate categories, *i.e.,* easing or eliminating the lowest burn rates that often occur in home operations and are typically the highest emitting and least efficient. The EPA is asking for specific comments on these issues and recommendations and supporting data for other changes. The following paragraphs discuss some of the key test method provisions we are proposing and not proposing. Additional information on the methods is at *http://www2.epa.gov/residential-wood-heaters* and at *www.astm.org/epa.*

1. We do not agree with the ASTM changes to the burn rate categories, low burn rate requirement, and weightings in Method 28. Several states are very concerned that easing these items would create the potential for backsliding. Also, we are aware of several design changes being considered by a number of manufacturers that are relatively inexpensive (*i.e.,* less than $20 dollars) and will reduce the emissions during periods when operated at low burn rates. We instead propose that the original provisions in Method 28 be retained for the burn rate categories and low burn rate requirement. We considered the weightings and believe that if weightings are to be used, they should be the same as the original requirements in Method 28. We are also proposing that the burn rates not be weighted at all for the Step 2 standards but rather that the emission limits be separate for Burn Rate Category 1 (lowest burn rate category) and Burn Rate Category 4 (maximum burn rate category) and that compliance for each be shown separately.

2. We propose to not allow 5 minutes for startup before closing the doors because startup is often the highest emitting part of the wood heater operation, and manufacturers need to ensure that startup emissions are also reduced. Again, relatively inexpensive means exist to reduce these emissions.

3. We are not proposing to use the new ASTM equation for converting the emission test values between the EPA Reference Method 5G ''Determination of Particulate Emissions From Wood Heaters From a Dilution Tunnel Sampling Location'' and the EPA Reference Method 5H ''Determination of Particulate Emissions From Wood Heaters From a Stack Location'' currently allowed in the NSPS. Rather, we are proposing that Method 5G(3) test values be reported as tested for heaters that have valid certifications prior to the effective date of this rule and ASTM E2515–10 for all other heaters and that Method 5H not be used for testing for certifications after the effective date of this rule. We request data to help inform our decision for the final rulemaking.

4. We are not proposing to allow manufacturers to specify a smaller volume of the firebox for testing because of our concerns about how to ensure that homeowners do not circumvent such a specification during operation, thereby increasing emissions beyond the levels that are measured during testing.

5. We are proposing several tighter specifications on the test fuel moisture content, fuel load and coal bed depth in order to improve the reproducibility and repeatability of the certification tests. This part of the proposal is based on recommendations from one of the original EPA-accredited laboratories. We specifically request comments and supporting data regarding the following proposed tighter specifications for the laboratory test: (a) tightening fuel load dry-basis moisture content tightened from the Method 28-allowed 6 percentage-point range from 19 percent to 25 percent to a reduced range of 22.5 percent +/−1 percent; (b) tightening the Method 28-allowed range for fuel load weight from 7.0 lb/ft^3 +/−10 percent of the fuel load weight (or 7 lb/ft^3 +/−0.7 lb/ft^3) to 7 lb/ft^3 +/−1 percent (or 7 lb +/−0.07 lb) of the fuel load weight, calculated in accordance with Method 28; and (c) tightening the Method-28-allowed range for the test-initiation coal-bed weight from 20 percent to 25 percent of the fuel load weight to 22 percent +/−1 percent of the fuel load weight.

6. We propose to require efficiency testing according to CSA B415.1–10[17] using the stack loss method. That is, during each test run, data must be obtained and presented for the purpose of calculation of overall efficiency as specified in CSA B415.1–10. This would include CO and carbon dioxide (CO_2), flue gas temperature and appliance mass. CSA B415.1–10 was developed by a ''consensus'' process, but no states were part of the process. Thus, we specifically request comments on our proposal to require use of this method.

7. We propose that electronic test report submittals include the locked spreadsheets so the formulas used and relevant calculations can be evaluated in detail. We request comments on this specific proposal.

8. We propose that the test report include a narrative detailing specifics about test conditions and operations, such as how the test was run, operating conditions, issues and special procedures.

[17] ''CSA B415.1–10: Performance testing of solid-fuel-burning heating appliances,'' Canadian Standards Association, Mississauga, Ontario, Canada. 2010.

9. We propose that each individual moisture content reading must be in the range of 18 to 28 percent on a dry basis and the average moisture content of each piece of test fuel must be in the range of 19 to 25 percent. Also, we propose the following procedure for the moisture measurements: ''Using a fuel moisture meter as specified, determine the fuel moisture for each test fuel piece used for the test fuel load by averaging at least five fuel moisture meter readings, one from each of three sides, measured parallel to the wood grain. Penetration of the moisture meter insulated electrodes shall be ¼ (one-fourth) the thickness of the fuel piece or 19 millimeters (mm) (3/4 in.), whichever is less, for 3 of the measurements made at approximately 3 inches from each end and the center. Two additional measurements at approximately one-third the thickness shall be made centered between the other three locations.''

10. We also propose this alternate procedure developed by Brookhaven National Laboratory: [18] ''Select three pieces of cord wood from the same batch of wood as the test fuel and the same weight as the average weight of the pieces in the test load ± 1.0 lb. From each of these three pieces, cut three slices. Each slice shall be ½″ to ¾″ thick. One slice shall be cut across the center of the length of the piece. The other two slices shall be cut half way between the center and the end. Immediately measure the mass of each piece in pounds. Dry each slice in an oven at 220 °F for 24 hours or until no further weight change occurs. The slices shall be arranged in the oven so as to provide separation between faces. Remove from the oven and measure the mass of each piece again as soon as practical in pounds. The moisture content of each slice, on a dry basis, shall be calculated as:

$MC_{slice} = 100 \cdot (W_{SliceWet} - W_{SliceDry})/W_{SliceDry}$

Where: $W_{SliceWet}$ = weight of the slice before drying in pounds; W_{SliceDry} = weight of the slice after drying in pounds; [and] MC_{Slice} = moisture content of the slice in % dry basis.''

11. We propose to require two Step 1 tests, one using crib wood and one using cord wood and reasonable additional non-binding tests with a range of fuels for which the appliance is designed for warranted and/or advertized operation. These tests are needed to show how emissions and efficiency vary according to test methods, operating scenarios, wood species and density and other variables such as cord wood versus crib wood. We believe that such testing would help assure consumers, neighbors and other stakeholders that the appliances perform as well on all manufacturer-listed fuels and operating scenarios as they do for the EPA laboratory test scenarios. Proposed Step 2 tests will use cord wood and not crib wood. The EPA, industry and states believe that moving to cord wood testing will help address concerns about actual emissions from heaters/stoves in home use versus test laboratories. We are working with states and industry on a cord wood test method and evaluating potential revisions to the current version of the ASTM E2780–10 cord wood test method. Industry is conducting tests now using the cord wood test method, and we will consider the results of that testing when it becomes available during the public comment period of this rulemaking.

B. Central Heaters: Hydronic Heaters and Forced-Air Furnaces

The proposed subpart QQQQ would apply to new wood-fired residential hydronic heaters and forced-air furnaces and any other affected appliance as defined in subpart QQQQ as a ''central heater.'' We believe this new ''central heater'' categorization will better ensure that all appliances potentially affected under new proposed subpart QQQQ are included in this proposed action. The provisions of subpart QQQQ would apply to each affected unit that is manufactured or sold on or after April 4, 2014. This proposal does not include any requirements for heaters that are fueled solely by gas, oil or coal. In addition, this proposal does not include any requirements associated with appliances that are already in use. The EPA continues to encourage state, local, tribal and consumer efforts to changeout (replace) older heaters with newer, cleaner, more efficient heaters, but that is not part of this federal rulemaking.

As discussed earlier in this preamble, subpart QQQQ affects a source category of mass-produced residential consumer products rather than typical industrial processes. Thus, this proposed NSPS has many aspects that are similar to those in Subpart AAA, *e.g.,* certification of model lines and phased implementation. This Proposed Approach would apply to all new residential hydronic heaters and forced-air furnaces. Under the Proposed Approach, the Proposed Step 1 emission limit for residential hydronic heaters and forced air heaters would apply upon the effective date of the final rule. The Proposed Step 2 emission limit for residential hydronic heaters and forced air heaters would apply 5 years after the effective date of the final rule. We ask for specific comments on the Proposed Approach and the degree to which these dates could be sooner.

We also considered an alternative three-step approach (Alternative Approach) for residential hydronic heaters and forced air heaters. Under this Alternative Approach, as in the Proposed Approach, the Alternative Step 1 emission limits for residential hydronic heaters and forced air heaters would apply upon the effective date of the final rule. The Proposed Step 1 emission limits and the Alternative Approach Step 1 emission limits are identical. The Alternative Step 2 emission limit for residential hydronic heaters and forced air heaters would apply 3 years after the effective date of the final rule. The Alternative Step 3 emission limit for residential hydronic heaters and forced air heaters would apply 8 years after the effective date of the final rule (thus providing 5 years between the Alternative Step 2 and the Alternative Step 3). The Proposed Step 2 emission limits and the Alternative Approach Step 3 emission limits are identical. We ask for specific comments on this Alternative Approach and the degree to which these dates could be sooner.

Table 5 summarizes the proposed PM emissions standards that would apply under this Proposed Approach at each step. Table 6 summarizes the PM emissions standards that would apply under each step of the Alternative Approach. Similar to the proposed requirements for subpart AAA, we are not proposing a standard for CO or efficiency, but we are proposing to require manufacturers to collect and report CO emissions and efficiency data during certification tests. Some regulatory authorities have instituted additional requirements such as limits on visible emissions and limits on use in non-heating seasons and we ask for specific comments on the appropriateness of such limits and other requirements in this NSPS.

[18] ''A Test Method for Certification of Cord Wood-Fired Hydronic Heating Appliances with Partial Thermal Storage: Measurement of Particulate Matter (PM) and Carbon Monoxide (CO) Emissions and Heating Efficiency of Wood-Fired Hydronic Heating Appliances with Partial Thermal Storage.'' Prepared for NYSERDA by Brookhaven National Laboratory, February 15, 2013.

TABLE 5—PROPOSED APPROACH SUBPART QQQQ PM EMISSIONS STANDARDS

Appliance	Steps	Particulate matter emissions limits
Residential Hydronic Heater	Step 1: Upon the effective date of the final rule	0.32 lb/MMBtu heat output and a cap of 7.5 g/hr for individual test runs.
	Step 2: 5 years after the effective date of final rule	0.06 lb/MMBtu.
Forced-Air Furnace	Step 1: Upon the effective date of the final rule	0.93 lb/MMBtu.
	Step 2: 5 years after the effective date of final rule	0.06 lb/MMBtu.

TABLE 6—ALTERNATIVE APPROACH SUBPART QQQQ PM EMISSIONS STANDARDS

Appliance	Steps	Particulate matter emissions limits
Residential Hydronic Heater	Step 1: Upon the effective date of the final rule	0.32 lb/MMBtu heat output and a cap of 7.5 g/hr for individual test runs.
	Step 2: 3 years after the effective date of final rule	0.15 lb/MMBtu.
	Step 3: 8 years after the effective date of the final rule	0.06 lb/MMBtu.
Forced-Air Furnace	Step 1: Upon the effective date of the final rule	0.93 lb/MMBtu.
	Step 2: 3 years after the effective date of final rule	0.15 lb/MMBtu.
	Step 3: 8 years after the effective date of final rule	0.06 lb/MMBtu.

Unlike the 1988 subpart AAA requirements, the subpart QQQQ requirements would not provide an additional time period for the sale of unsold units manufactured before the compliance date. No additional time is prudent because cleaner EPA-qualified Phase 2 hydronic heaters systems have already been readily available for several years, the older systems have caused numerous complaints nationwide, and this proposal publication is ample notice for the remaining old high-emitting units. For the same reasons, the subpart QQQQ requirements would not include a small volume manufacturer compliance extension. See section V.C. of this preamble for more discussion of this topic. We ask for comments on the timing for implementation.

As in the current subpart AAA for wood heaters/stoves, we are proposing a list of prohibited fuels because their use would cause poor combustion or even hazardous conditions. We request comment on these requirements and data to support additional requirements, if warranted. Also, as in the current subpart AAA for wood heaters/stoves, we are proposing that the owner or operator must not operate the hydronic heater or forced-air furnace in a manner that is inconsistent with the owner's manual. For pellet-fueled appliances, this proposal makes it clear that operation according to the owner's manual includes operation only with pellet fuels that have been used in the certification test and have been graded and marked under a licensing agreement with the PFI, or equivalent (after request and subsequent approval by the EPA), to meet certain minimum requirements and procedures for a quality assurance process. Details of the PFI program are available at *http://pelletheat.org/pfi-standards/pfi-standards-program/*. Data show that quality assurance provisions are necessary to ensure that the appliances operate properly such that emissions are reduced as intended. We ask for specific comments on the use of the PFI program and the PFI specifications, especially the degree to which the PFI program will adequately ensure the absence of construction and demolition waste (and associated toxic contaminants) in the pellets. (No other organization has volunteered to develop such a quality program.)

The proposed labeling requirements and owner's manual requirements are similar to the guidelines in the EPA's current voluntary hydronic heater program with some improvements. We request specific comments on ways to improve the delivery of information on the permanent label and in the owner's manual and whether different information might be useful to the consumer and to the regulatory authorities.

The structure of the rest of the proposed subpart QQQQ is similar to the proposed subpart AAA certification and quality assurance process. We request specific comments on changes or improvements to that process that might be needed to address any special concerns related to the certification of hydronic heaters and forced-air furnaces.

As discussed earlier, the EPA developed Method 28 OWHH, in 2006, as part of our efforts for voluntary qualification of cleaner hydronic heaters. We received input at that time from manufacturers, laboratories, and some states in order to quickly develop a mostly consensus-based method that we incorporated into the program partnership agreements. We used Method 28 for wood heaters/stoves as the foundation. Thus, Method 28 OWHH has many aspects similar to Method 28. Three significant differences are: (1) Method 28 OWHH uses larger cribs because hydronic heater fireboxes are typically much larger than wood heater fireboxes; (2) Method 28 OWHH uses red oak instead of Douglas fir because red oak is the more common fuel in the U.S.; and (3) Method 28 OWHH includes procedures for determining 8-hour heat output and efficiency. The manufacturers, laboratories, states and the EPA have now had over 7 years of experience with Method 28 OWHH and its successor Method 28 WHH (improved and expanded to include indoor heaters, not just outdoor heaters).

All the stakeholders that have provided input on the test methods agree that the methods should be thoroughly vetted and changed as necessary to improve the method's accuracy and precision and to address concerns about how to best ensure protection across the entire U.S. when various operating scenarios and wood species and densities are used. ASTM has developed E2618–13 to address some of these concerns, and the EPA believes that E2618–13 does include some improvements. However, as with the wood heater/stove methods, we and some states do not agree with all the changes that ASTM has made. For example, the states of Washington and Oregon are very concerned that Method

28 WHH and ASTM E2618–13 do not specify fueling with Douglas Fir, which is used in EPA Method 28 for wood heaters/stoves and which these states require in their regulations for residential wood heaters, including hydronic heaters. They are concerned that hydronic heaters tested with red oak will have higher emissions when fueled with Douglas Fir and other less dense species typical in their states and have provided test data that shows higher emissions. Thus, they require testing with Douglas Fir in their states. Also, a number of states and the EPA are concerned about the ASTM changes to the burn rate categories, *i.e.,* easing or eliminating testing at the lowest burn rates, which often occur in home operations and are typically the highest-emitting and least efficient. For several years, we have been communicating with European certification laboratories to learn how they conduct their tests under EN 303–5 and to consider if incorporating some of their testing procedures might improve our test methods.

More recently, because of initial concerns about some surprisingly high laboratory test efficiencies for a couple of the EPA voluntary partnership program Phase 2 qualified partial heat storage models, the EPA, the Northeast states that regulate hydronic heaters, laboratories (including EPA-accredited laboratories and Brookhaven National Laboratory) and manufacturers have conducted a review of voluntary partnership program qualifying test reports. All of the stakeholders that provided input on the test methods agree that we need a change in the test method for testing of non-integral partial heat storage models (*i.e.,* models that have separate heat storage but the storage does not have the capacity to safely handle all the heat generated by a full load of fuel). ASTM has been leading an effort to develop an Appendix X2 to the test method for such models but has not completed that effort as of this proposal. Brookhaven National Laboratory recommended a method to the New York State Department of Environmental Conservation (NYSDEC) and NYSDEC is requiring that method be used for certification of such models in their states. We are proposing that method be used for certification of the NSPS for hydronic heaters equipped with a partial heat storage unit.[19]

Further, we are proposing revisions to Method 28 WHH that would require that all affected non-pellet hydronic heaters, subject to new subpart QQQQ, conduct certification compliance testing using both crib wood and cord wood for the Step 1 emission limits upon the effective date of the final rule and solely cord wood for the Step 2 emission limits 5 years after the effective date of the final rule.

We are asking for specific comments on whether the EPA should use: (1) One or more of the draft versions of Appendix X2 being considered as part of ASTM work product WK26581; (2) the European Union test method EN303–05 as the Maine Department of Environmental Protection approved for certification of hydronic heaters in their state as equivalent to the EPA Method 28 WHH; (3) the partial thermal storage test method developed by Brookhaven National Laboratory; and/or (4) some other test method(s). For use of any of the test methods, the EPA would require that the amount of heat storage for the actual sale and installation of the hydronic heaters be no less than the amount used for the certification tests. Because EN303–05 does not currently use heat storage during the certification test, if the EPA were to use EN303–05 test results, the EPA would require the installed heater to have heat storage that can safely handle at least 60 percent of the maximum heat output of the heater or a greater level if the manufacturer specifies a greater level. The EPA is asking for specific comments on the appropriateness of this heat storage level or other levels. The EPA will consider any or all of these options as the preferred reference test methods or as acceptable emission testing alternatives. (ASTM previously developed an Appendix X1 for testing of models that have ''full'' heat storage that can safely accept the heat from the full load of fuel.) We request comments on all aspects of heater testing and are especially interested in emission test data that compare the results for testing by these different methods.

Also, the review discussed above found a number of areas in the methods to improve the quality of the data and reduce anomalies. In June 2011, the voluntary partnership program stakeholders agreed to a number of changes to Method 28 OWHH, and we are proposing the revised method as EPA Reference Method 28 WHH. The EPA is asking for specific comments on this method and recommendations and supporting data for other changes or acceptable alternatives. The following paragraphs discuss some of the changes we are proposing for comment. Additional information on the EPA methods is available at *http://www2.epa.gov/residential-wood-heaters*. The ASTM methods and draft work products are available at *www.astm.org/epa*.

1. Heater (*aka* Boiler) Temperature Range

We propose that for all tests, the return water temperature to the heater must be 120 °F or greater. We additionally propose that if the manufacturer specifies a thermal control valve or other arrangement to be installed and set to control the return temperature at 120 °F or higher, the valve must be installed and set per the manufacturer's written instructions.

2. Efficiency Calculations

We propose to require the use of thermopiles to measure the temperature change ''delta T'' and verify accuracy of the load side flow meter. The accuracy of the flow meter is determined separately by direct weighing of timed water collection. Thermocouples must measure water temperature at the inlet and outlet of the load side heat exchanger. We propose to delete the requirement for supply side flow measurements and require one load side reading with thermopiles (using a commercial system or a homemade system). Efficiency would be measured on the output (load) side of the heat exchanger. The flow meter would be calibrated before and after each test run within the flow range used for the test.

3. Time Period for Recording Temperatures

We propose that all water temperatures, differential water temperatures and water flow rates must be recorded at time intervals of 1 minute or less. This data file must be submitted with the test report. For determination of heat output, the data for these parameters must be measured in equal time intervals no greater than 10 minutes or at a frequency that results in a minimum of 50 equal intervals per test run, whichever is greater.

4. Test Fuel Moisture Content

We propose that each individual test fuel moisture content reading must be in the range of 18 to 28 percent on a dry basis and the average moisture content of each piece of test fuel must be in the range of 19 to 25 percent.

We also propose the following moisture measurement procedure: Using a fuel moisture meter as specified in the test method, determine the fuel moisture for each test fuel piece used for the test fuel load by averaging at least five fuel moisture meter readings, one from each of three sides, measured parallel to the wood grain. Penetration of the moisture meter insulated

[19] See footnote 18.

electrodes must be one-fourth the thickness of the fuel piece or 19 mm (3/4 in.), whichever is less for 3 of the measurements made at approximately 3 inches from each end and the center. Two additional measurements at approximately one-third the thickness shall be made centered between the other three locations. We request specific comments on the moisture content limits and the procedures for determining the moisture content and the typical variances due to the measurement procedures.

We also request specific comments on the following approach for determining moisture content. ''Select three pieces of cord wood from the same batch of wood as the test fuel and the same weight as the average weight of the pieces in the test load ± 1.0 lb. From each of these three pieces, cut three slices. Each slice shall be ½″ to ¾″ thick. One slice shall be cut across the center of the length of the piece. The other two slices shall be cut half way between the center and the end. Immediately measure the mass of each piece in pounds. Dry each slice in an oven at 220 °F for 24 hours or until no further weight change occurs. The slices shall be arranged in the oven so as to provide separation between faces. Remove from the oven and measure the mass of each piece again as soon as practical in pounds. The moisture content of each slice, on a dry basis shall be calculated as:

$MC_{slice} = 100 \cdot (W_{SliceWet} - W_{SliceDry}) / W_{SliceDry}$

Where: $W_{SliceWet}$ = weight of the slice before drying in pounds; $W_{SliceDry}$ = weight of the slice after drying in pounds; [and] MC_{Slice} = moisture content of the slice in % dry basis.'' [20]

Also, we propose that moisture must not be added to previously dried fuel pieces except by storage under high humidity conditions and temperature up to 100 °F. Fuel moisture must be measured no more than 4 hours before using the fuel for a test. The test report must describe the source and storage history of the test fuel.

5. Water Density

a. We propose that the measured volumetric flow from the flow meter be converted to mass basis by using the water density based on water temperature. The same method must be used on both the load and supply side if the optional supply side meter is used.

b. We propose that the water density be calculated using the water temperature measured at the flow meter.

6. Calculations

a. We propose that the electronic test reports submittals include all data within the locked spreadsheets so the formulas used and relevant calculations can be reviewed in detail.

b. To ensure common application, we propose to require averages to be calculated on each 10-minute reading rather than averaging over the entire test run.

7. Overall Efficiency (CSA B415.1–10 Stack Loss Method)

We propose that during each test run, data must be obtained and presented for the purpose of calculation of overall efficiency as specified in the stack loss method in CSA B415.1–10. This includes CO and CO_2, flue gas temperature, and appliance mass (remaining fuel weight). Overall efficiency for each run must be determined as per CSA B415.1–10 and reported. Whenever the CSA B415.1–10 overall efficiency is found to be lower than the overall efficiency based on the load side measurements, as determined by this method, the report must include a discussion of the reasons for this result.

8. Wood Loading

Test fuel loads would be determined by multiplying the firebox volume by 4.54 kg (10 lb) of wood (as used, wet weight) per cubic foot, or a higher load density as recommended by the manufacturer's operating instructions. As discussed earlier, the EPA will require separate tests in the proposed Step 1 using cribs and using cord wood. In the proposed Step 2, the tests would all be using cord wood. There are ongoing discussions on how to improve both types of tests. We are working with states and industry on a cord wood test method and evaluating making revisions to the current version of the ASTM cord wood test method and states' ideas on cord wood testing. Also, we are reviewing European experiences with cord wood testing.

9. Drawing of Test Apparatus

The test report would be required to contain a drawing of the test apparatus, including thermocouples, piping arrangements including any recirculation loops, the thermopile and flow meter(s).

10. Aquastat Settings

Aquastat or other heater output control device settings that are adjustable would be set using manufacturer specifications, either as factory set or in accordance with the owner's manual, and must remain the same for all burn categories.

11. Narrative

The test report would be required to include a statement that the test was conducted according to the method specified. If there are any deviations from the test procedure requirements, the test report would need to include a section identifying those deviations, the reasons for those deviations, and an evaluation of the data quality implications, if any, of such deviations on the test results.

12. The test report would include a standard summary page as a quick check for the reviewer that results are within method specifications.

13. We propose to require testing with a range of all fuels for which the appliance is designed, per the manufacturer's warranty and owner's manual, to show how emissions and efficiency vary according to species and density and cord wood versus crib wood.

In addition, ASTM has developed a draft test method that uses cord wood rather than crib wood to better represent real world conditions. All stakeholders agree that a test method that better represents real world conditions would be a significant improvement and help ameliorate concerns that some heaters do not perform as well in home use as they do in laboratories. We are also interested in real-time emission test methods that measure cold or warm startup emissions and emission peaks/durations. We are also interested in field test methods and less expensive test methods that regulators and neighbor can use to better quantify impacts in the real world. The EPA is asking for specific comments and data on all these potential methods, issues and recommendations.

The EPA is proposing to rely on the test method that has been developed by the CSA for forced-air furnaces. All CSA standards are developed through a consensus development process approved by the Standards Council of Canada. This process brings together volunteers representing varied viewpoints and interests to achieve consensus and develop a standard. CSA worked for years on development of this test method that has its roots in earlier U.S. efforts on wood heaters/stoves. The current version of CSA B415.1–10 was published in March 2010, and it includes not only the forced-air furnace test method but also new Canadian emission performance specifications for indoor and outdoor central heating appliances.

[20] See footnote 19.

Although the CSA B415.1–10 technical committee included numerous U.S. manufacturers and laboratories, it did not include any states or environmental groups, and the EPA participation was minimal during the development. Now that we have reviewed this method in substantively, we are satisfied that it warrants proposal for this rulemaking. We request specific comments and supporting data. We ask for specific comments on the appropriateness of using the CSA test method in its entirety, including the use of cord wood instead of crib wood that are used in current versions of Method 28 and Method 28 WHH. To review the CSA test method, please go to *www.csa.ca*.

C. Masonry Heaters

The proposed subpart RRRR would apply to new residential masonry heaters. The provisions apply to each affected unit that is manufactured on or after April 4, 2014. We are proposing that, as of the effective date of the final rule, no person would manufacture or sell a residential masonry heater that does not meet the proposed emission limit of 0.32 lb of PM per MMBtu heat output. We are also proposing a 5-year small volume manufacturer compliance extension that would apply to companies that construct fewer than 15 masonry heaters per year. See section V.C. of this preamble for more discussion of compliance date related issues. We request specific comments on the degree to which these dates can be sooner. As in the case of subpart AAA and subpart QQQQ, we are proposing requirements that would apply to the operator of the masonry heater, including a provision to operate the unit in compliance with the owner's manual; a prohibition on use of certain fuels; and a requirement to use licensed wood pellets or equivalent, if applicable. We are not proposing efficiency or CO standards for new residential masonry heaters at this time because sufficient data are not yet available to support the basis for such standards.

The EPA is proposing to rely on ASTM method E2817–11 for masonry heaters. The laboratories, some states and the masonry heater industry worked for years on drafts of this method that has its roots in earlier regulatory efforts in Colorado. The EPA has participated in the discussions from time to time over the years and has provided comments and suggestions. The current ASTM methods are ASTM E2817–11 ''Standard Test Method for Test Fueling Masonry Heaters'' and the draft work product ASTM WK26558 ''Specification for Calculation Method for Custom Designed, Site-built Masonry Heaters.'' (*http://www.astm.org/DATABASE.CART/WORKITEMS/WK26558.htm*.) We propose that they be used for this rulemaking. We request specific comments on these methods and any changes that should be considered and supporting data for those changes. We request specific comments and supporting emission test data on the use of ''Annex A1. Cordwood Fuel'' and ''Annex A2. Cribwood Fueling.'' ASTM is allowing public review, for no charge, of the ASTM test methods and draft work products relevant to this rule at *www.astm.org/epa*.

As an alternative to testing, we are proposing that manufacturers of masonry heaters may choose to submit a computer model simulation program, such as ASTM WK 26558 noted above, for the EPA's review and approval. Masonry heater manufacturers and laboratories developed computer simulations as a way to encourage good designs without having to conduct emission tests for slight variations, especially because there are so few masonry heaters built every year per manufacturer. Since these units are built on-site, it is not easy to test each of them. These units are typically cleaner than pre-NSPS certified wood stoves. Considering all of these factors, we believe a simple computer simulation showing how new models would perform may be all that is necessary for many of these models.

The structure of the rest of the proposed new subpart RRRR is similar to the proposed subpart AAA certification and quality assurance process and contains similar requirements for labels, owner's manual, etc. One difference, however, is that for small custom unit manufacturers, we are requiring less stringent quality control (QC) procedures. Specifically, we are proposing that the initial certification for these custom units is sufficient and that no further QC is necessary since each unit is a unique model and subject to certification. We request comment on changes or improvements that might be needed to address special concerns related to certification of masonry heaters.

IV. Summary of Environmental, Cost, Economic, and Non-Air Health and Energy Impacts

The EPA estimates the proposed NSPS's total annualized average nationwide costs would be $15.7 million ($2010) over the 2014 through 2022 period. The economic impacts for industries affected by this proposed rule over this same period range from 4.3 percent for manufacture of wood heater/stove models to 6.4 percent compliance cost-to-sales estimate for manufacture of single burn rate wood heater models. These impacts do not presume any pass-through of impacts to consumers. With pass-through to consumers, these impact estimates to manufacturers will decline proportionate to the degree of pass-through.

A. What are the air quality impacts?

To determine the air quality impacts, we developed emission factors for each appliance type and then applied those emission factors to shipment data for each of the appliance types subject to the proposed NSPS.[21] We developed the emission factors using the EPA Residential Wood Combustion (RWC) emission estimation tool,[22] which is a Microsoft Access database that compiles nationwide RWC emissions using county-level, process-specific data and calculations. The compilation of such data is a large, important, continually improving effort by the EPA and the states to ensure that we and the states have access to the best information available. We summed the estimated nationwide number of appliances and the estimated total tons of wood burned for each of the relevant product categories in the inventory and then made some adjustments/assumptions to the baseline RWC inventory to reflect emission characteristics specific to new units.

We used the resulting subset of the RWC database to calculate an average emission rate per appliance for each category, as follows. First, we multiplied the total tons of wood burned by devices within the category by the category emission factor to calculate the total tons of emissions for each of the pollutants $PM_{2.5}$, VOC and CO emissions for that category. Then we divided these values by the number of appliances in the category to calculate the average emissions of $PM_{2.5}$, VOC and CO per individual appliance. We then developed adjusted emission factors to reflect the NSPS options and then used the adjusted factors to calculate average tons of emissions of each of these three pollutants per appliance for each category.

[21] Memo to Gil Wood, USEPA, from EC/R, Inc. Estimated Emissions from Wood Heaters. February 15, 2013.

[22] rwc_2008_tToolv4.1_feb09_2010.zip available in the docket.

We used data in the Frost & Sullivan Market (F&S) report [23] on 2008 shipments by product category and F&S revenue forecasts, which incorporated the weak economy in years 2009 and 2010, to calculate the reduced number of shipments in years 2009 and 2010. We adjusted these data to include appliances not covered in the F&S report (*e.g.,* forced-air furnaces). For years 2011 through 2038, we estimated shipments based on a forecasted revenue growth rate of 2.0 percent, in keeping with the average annual growth in real gross domestic product (GDP) predicted by the U.S. Bureau of Economic Analysis.[24] Historically wood heater shipments have most closely corresponded to GDP, housing starts, and price of wood relative to gas. We think the overall trend in the projection is reasonable in the absence of additional specific shipment projections. We did not change the relative percentages of one type of residential wood heater versus other types of residential wood heaters over this time period. We ask for comments and data that would support improved projections.

The next step was to calculate the total emissions per appliance category. First, we multiplied the emission factor for each category by the inventory value of total tons of wood burned by all appliances within that category, and then divided by the number of appliances in the inventory population. The appliance value was then multiplied by the number of units shipped to calculate total emissions from each category per year using the baseline conditions emission factors (*i.e.,* in the absence of a revised NSPS). Using the same procedure, category emissions were then calculated using the emission factors for the proposed NSPS.

Table 7 is a summary of the average emissions reductions over years 2014 through 2022 resulting from implementing the proposed NSPS compared to baseline conditions (for the years analyzed in the RIA). Note that we do not have national emission impacts from masonry heaters because they are not included in the RWC emission estimation tool. Because of the relatively high cost of emission testing versus the current small number of masonry heaters sold per manufacturer, and in total, there are few emission test data from masonry heater manufacturers and laboratories. Based on the limited data we have, we believe that nationwide emissions from masonry heaters are relatively low, given the low number of sales. Thus, we also believe that the total emission reductions from masonry heaters will be relatively low. However, the limited data we have do show that the emission reductions could be significant for some models that do not follow current best designs, perhaps as high as 70 percent for some designs. We do not know how many of these typically custom-made heaters already use best practice designs versus other designs and thus we do not have nationwide estimates of baseline emissions. We ask for comments and data to help us prepare emission estimates.

TABLE 7—ESTIMATED ANNUAL AVERAGE (2014–2022) AIR QUALITY IMPACTS [25]

Appliance type	$PM_{2.5}$ (tons)			VOC (tons)			CO (tons)		
	Baseline	Revised NSPS	Emission reduction	Baseline	Revised NSPS	Emission reduction	Baseline	Revised NSPS	Emission reduction
Wood Heaters	548	385	163	781	551	230	7,857	5,448	2,409
Single Burn Rate Heaters	932	178	754	1,614	244	1,370	7,029	2,860	4,169
Pellet Heaters/ Stoves ...	199	150	49	3	2	1	1,035	778	257
Furnace: Indoor, Cord Wood	3,044	434	2,610	1,290	184	1,106	20,294	2,896	17,398
Hydronic Heating Systems	1,332	84	1,249	565	35	530	8,883	557	8,326
Total ..	6,055	1,230	4,825	4,253	1,016	3,237	45,098	12,538	32,559

Note: This table only includes the emissions during the first year of the life of each wood heater. That is, this table *does not include* the emissions that continue for the duration of the lifetime of each appliance's use, typically greater than 20 years.

B. What are the benefits?

Emission reductions associated with the requirements of this rule will generate health benefits by reducing emissions of $PM_{2.5}$, HAP, as well as criteria pollutants and their precursors, including CO and VOC. VOC are precursors to $PM_{2.5}$ and ozone. For this rule, we were only able to quantify the health co-benefits associated with reduced exposure to $PM_{2.5}$ from directly emitted $PM_{2.5}$. Our benefits reflect the average of annual $PM_{2.5}$ emission reductions occurring between 2014 and 2022 (inclusive). We estimate the monetized $PM_{2.5}$-related health benefits of the proposed residential wood heaters NSPS in the 2014–2022 timeframe to be $1,800 million to $4,100 million (2010 dollars) at a 3-percent discount rate and $1,700 million to $3,700 million (2010 dollars) at a 7-percent discount rate. Using alternate relationships between $PM_{2.5}$ and premature mortality supplied by

[23] Market Research and Report on North American Residential Wood Heaters, Fireplaces, and Hearth Heating Products Market. Prepared by Frost & Sullivan. April 26, 2010, pp. 31–32.

[24] 2013 Global Outlook projections prepared by the Conference Board in November 2012; *http://www.conference-board.org/data/globaloutlook.cfm.*

[25] See footnote 24.

experts, higher and lower benefits estimates are plausible, but most of the expert-based estimates fall between these two estimates.[26] A summary of the emission reduction and monetized benefits estimates for this rule at discount rates of 3 percent and 7 percent is in Table 8 of this preamble, except for masonry heaters. As requested earlier in this preamble, we ask for emission and sales data per model that would help us prepare emission reduction estimates and corresponding monetized health benefits for masonry heaters.

TABLE 8—SUMMARY OF MONETIZED $PM_{2.5}$-RELATED HEALTH BENEFITS FOR PROPOSED RESIDENTIAL WOOD HEATERS NSPS IN 2014–2022 TIMEFRAME

[millions of 2010 dollars] [a, b, c]

Pollutant	Estimated emission reductions (tpy)	Total monetized benefits (3% discount rate)	Total monetized benefits (7% discount rate)
Directly emitted $PM_{2.5}$	4,825	$1,800 to $4,200	$1,700 to $3,700.
$PM_{2.5}$Precursors			
VOC	3,250	—	—

[a] All estimates are for the 2014–2022 timeframe (inclusive) and are rounded to two significant figures so numbers may not sum across rows. The total monetized benefits reflect the human health benefits associated with reducing exposure to $PM_{2.5}$ through reductions of $PM_{2.5}$ precursors, such as NO_X, and directly emitted $PM_{2.5}$. It is important to note that the monetized benefits do not include reduced health effects from exposure to HAP, direct exposure to NO_2, exposure to ozone, VOC, ecosystem effects or visibility impairment.

[b] PM benefits are shown as a range from Krewski, *et al.* (2009) to Lepeule, *et al.* (2012). These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because the scientific evidence is not yet sufficient to allow differentiation of effects estimates by particle type.

[c] The emission reductions and monetized benefits for masonry heaters are not included in this summary.

These benefits estimates represent the monetized human health benefits for populations exposed to less $PM_{2.5}$ from emission limits established to reduce air pollutants in order to meet this rule. Due to analytical limitations, it was not possible to conduct air quality modeling for this rule. Instead, we used a ''benefit-per-ton'' approach to estimate the benefits of this rulemaking. To create the benefit-per-ton estimates, this approach uses a model to convert emissions of $PM_{2.5}$ precursors into changes in ambient $PM_{2.5}$ levels and another model to estimate the changes in human health associated with that change in air quality, which are then divided by the emissions in specific sectors. These benefit-per-ton estimates were derived using the approach published in Fann *et al.* (2012),[27] but they have since been updated to reflect these studies and population data in the 2012 p.m. NAAQS RIA.[28] Specifically, we multiplied the benefit-per-ton estimates from the ''Residential Wood Heaters'' category by the corresponding emission reductions.[29] All national-average benefit-per-ton estimates reflect the geographic distribution of the modeled emissions, which may not exactly match the emission reductions in this rulemaking, and thus they may not reflect the local variability in population density, meteorology, exposure, baseline health incidence rates, or other local factors for any specific location. More information regarding the derivation of the benefit-per-ton estimates for this category is available in the technical support document, which is referenced in the footnote below and is available in the docket.

These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because the scientific evidence is not yet sufficient to allow differentiation of effects estimates by particle type. Even though we assume that all fine particles have equivalent health effects, the benefit-per-ton estimates vary between precursors depending on the location and magnitude of their impact on $PM_{2.5}$ levels, which drive population exposure.

It is important to note that the magnitude of the $PM_{2.5}$ benefits is largely driven by the concentration response function for premature mortality. We cite two key empirical studies, one based on the American Cancer Society cohort study [30] and the extended Six Cities cohort study.[31] In the Regulatory Impact Analysis (RIA) for this rule, which is available in the docket, we also include benefits estimates derived from expert judgments (Roman *et al,* 2008) as a characterization of uncertainty regarding the $PM_{2.5}$-mortality relationship.

Considering a substantial body of published scientific literature, reflecting thousands of epidemiology, toxicology, and clinical studies, the EPA's Integrated Science Assessment for Particulate Matter [32] documents the association between elevated $PM_{2.5}$ concentrations and adverse health effects, including increased premature mortality. This assessment, which was

[26] Roman, *et al,* 2008. ''Expert Judgment Assessment of the Mortality Impact of Changes in Ambient Fine Particulate Matter in the U.S.,'' Environ. Sci. Technol., 42, 7, 2268–2274.

[27] Fann, N., K.R. Baker, and C.M. Fulcher. 2012. ''Characterizing the $PM_{2.5}$-related health benefits of emission reductions for 17 industrial, area and mobile emission sectors across the U.S.'' Environment International 49 41–151.

[28] U.S. Environmental Protection Agency (U.S. EPA). *Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter.* EPA–452/R–12–003. Office of Air Quality Planning and Standards, Health and Environmental Impacts Division. December 2012. Available at *http://www.epa.gov/pm/2012/finalria.pdf.*

[29] U.S. Environmental Protection Agency. Technical support document: Estimating the benefit per ton of reducing $PM_{2.5}$ precursors from 17 sectors. Research Triangle Park, NC. January 2013.

[30] Krewski, C.A., III, R.T. Burnett, M.J. Thun, E.E. Calle, D. Krewski, K. Ito, and G.D. Thurston. 2002. ''Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution.'' *Journal of the American Medical Association* 287:1132–1141.

[31] Lepeule J, Laden F, Dockery D, Schwartz J 2012. ''Chronic Exposure to Fine Particles and Mortality: An Extended Follow-Up of the Harvard Six Cities Study from 1974 to 2009.'' *Environ Health Perspect.* Jul;120(7):965–70.

[32] U.S. Environmental Protection Agency (U.S. EPA). 2009. *Integrated Science Assessment for Particulate Matter (Final Report).* EPA–600–R–08–139F. National Center for Environmental Assessment—RTP Division. December. Available on the Internet at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=216546.*

reviewed twice by the EPA's independent Science Advisory Board, concluded that the scientific literature consistently finds that a no-threshold model most adequately portrays the PM-mortality concentration-response relationship. Therefore, in this analysis, the EPA assumes that the health impact function for fine particles is without a threshold.

In general, we are more confident in the magnitude of the risks we estimate from simulated $PM_{2.5}$ concentrations that coincide with the bulk of the observed PM concentrations in the epidemiological studies that are used to estimate the benefits. Likewise, we are less confident in the risk we estimate from simulated $PM_{2.5}$ concentrations that fall below the bulk of the observed data in these studies. Concentration benchmark analyses (*e.g.,* lowest measured level [LML] or one standard deviation below the mean of the air quality data in the study) allow readers to determine the portion of population exposed to annual mean $PM_{2.5}$ levels at or above different concentrations, which provides some insight into the level of uncertainty in the estimated $PM_{2.5}$ mortality benefits. There are uncertainties inherent in identifying any particular point at which our confidence in reported associations becomes appreciably less, and the scientific evidence provides no clear dividing line. However, the EPA does not view these concentration benchmarks as a concentration threshold below which we would not quantify health benefits of air quality improvements.

For this analysis, policy-specific air quality data are not available. Thus, we are unable to estimate the percentage of premature mortality associated with this specific rule's emission reductions at each $PM_{2.5}$ level. As a surrogate measure of mortality impacts, we provide the percentage of the population exposed at each $PM_{2.5}$ level using the source apportionment modeling used to calculate the benefit-per-ton estimates for this sector. Using the Krewski, *et al,* (2009) study, 93 percent of the population is exposed to annual mean $PM_{2.5}$ levels at or above the LML of 5.8 $\mu g/m^3$. Using the Lepeule, *et al,* (2012) study, 67 percent of the population is exposed above the LML of 8 $\mu g/m^3$. It is important to note that baseline exposure is only one parameter in the health impact function, along with baseline incidence rates, population, and change in air quality. Therefore, caution is warranted when interpreting the LML assessment for this rule because these results are not consistent with results from rules that had air quality modeling.

Every benefit analysis examining the potential effects of a change in environmental protection requirements is limited, to some extent, by data gaps, model capabilities (such as geographic coverage) and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Despite these uncertainties, we believe the benefit analysis for this rule provides a reasonable indication of the expected health benefits of the rulemaking under a set of reasonable assumptions. In addition, we have not conducted air quality modeling for this rule, and using a benefit-per-ton approach adds another important source of uncertainty to the benefits estimates. The 2012 $PM_{2.5}$ NAAQS benefits analysis provides an indication of the sensitivity of our results to various assumptions.

One should note that the monetized benefits estimates provided above do not include benefits from several important benefit categories, including exposure to HAP, VOC and ozone exposure, as well as ecosystem effects and visibility impairment. Although we do not have sufficient information or modeling available to provide monetized estimates for these benefits in this rule, we include a qualitative assessment of these unquantified benefits in the RIA [33] for this proposal.

For more information on the benefits analysis, please refer to the RIA for this rule, which is available in the docket.

C. What are the cost impacts?

In analyzing the potential cost impacts of the proposed NSPS, we considered two types of impacts. The first was the impact to the manufacturer to comply with the proposed standards. The second was the increase in price of the affected unit. In both of these cases, we considered the same input variables: R&D cost to develop and certify complying model lines, certification costs (where these are separate from R&D), reporting and recordkeeping costs, numbers of shipments of each appliance category (modified, from Frost & Sullivan report), number of manufacturers, and number of models per manufacturer. This section of the preamble contains a summary of these costs. For more detailed information, see the manufacturer cost impact memo [34] and unit cost memo [35] in the docket. Unless otherwise specified, all costs are in 2010 dollars.

To develop average R&D costs, we reviewed information provided by manufacturers. Based on this information, we estimated [36] average costs to develop a new model line, including testing, of 356,250 for certified wood heaters and pellet heaters/stoves. We also assumed 356,250 for single burn rate wood heaters, which may be high if currently available units can meet the standards without significant modifications as some manufacturers have suggested. We also assumed development costs for forced-air furnaces and hydronic heaters of 356,250. Finally, we also assumed development costs of 356,250 for the masonry heaters. The estimates of the cost of R&D are crucial to our estimates of overall costs and economic impacts and greatly influence our decisions on BSER, implementation lead times and small volume provisions. Thus, we request specific comments on these estimates, including whether they should be reduced and thus allow greater emission reductions sooner.

We annualized the R&D costs over 6 years, applied the NSPS implementation assumptions, and estimated the average manufacturing cost per model line per manufacturer. Under the proposed rules, pellet heaters/stoves will only face certification (testing) costs (no R&D should be required), so we estimated certification costs of 10,000 per model line. Similarly, many masonry heater model lines that would comply with the proposed standards have already been developed. These manufacturers would also face certification costs of 10,000 per model line. We estimated post R&D period certification costs for hydronic heaters and forced-air furnaces at 20,000 per model line.

The masonry heater compliance costs included implementation of a software package based on a European masonry heater design standard. This software has been verified in the laboratory and under field conditions to produce masonry heaters that would meet the proposed NSPS emission limits. The cost of this software to the user is approximately $1,500 for the package with an approximately $450 annual fee

[33] Regulatory Impact Analysis (RIA) for Residential Wood Heaters NSPS. [INSERT DATE RULE IS SIGNED].

[34] Memo to Gil Wood, USEPA, from EC/R, Inc. Residential Heater Manufacturer Cost Impacts. February 22, 2013.

[35] Memo to Gil Wood, USEPA, from EC/R, Inc. Unit Cost Estimates of Residential Wood Heating Appliances. February 21, 2013.

[36] In developing average R&D costs, the EPA used the highest industry R&D estimates supplied, in order to avoid under-estimating potential costs per model line and to avoid understating the number of model lines that would undergo R&D nationwide.

that commences in the second year following purchase. In addition, we believe that some manufacturers will use this approach to demonstrate that ''similar'' model designs meet the proposed emissions standards.

The estimate of the number of model types was derived from information provided by HPBA, individual manufacturers, and Internet searches of product offerings. For numbers of manufacturers, we started with HPBA data and modified the dataset based on Internet searches of manufacturers of the major appliance types. Table 9 is a summary of the nationwide average annual NSPS-related cost increases to manufacturers. The average annual cost increases are presented over the 2014 to 2022 period consistent with the years analyzed in the RIA,[37] as well as over the 2013 to 2038 period. The 2013 to 2038 period encompasses the first year of estimated NSPS-related costs (2013 since some companies have already started in anticipation of the NSPS) through the life span of models designed to meet the NSPS, as explained further below and in our background analyses.[38]

TABLE 9—SUMMARY OF NATIONWIDE AVERAGE ANNUAL COST INCREASES

[2010$]

Appliance Type	2014–2022 Period	2013–2038 Period
Wood Heaters	$4,212,303	$1,749,726
Single Burn Rate Heaters	901,732	456,316
Pellet Heaters/Stoves	3,460,489	1,702,796
Forced-Air Furnaces	2,252,284	1,171,222
Hydronic Heating Systems	4,554,152	2,221,551
Masonry Heaters	307,511	228,896
Total Average Annual Cost	15,688,471	7,530,507

To develop estimates of potential unit cost increases, we used major variables including the estimated number of units shipped per year, the costs to develop new models, baseline costs of models, and the schedule by which the proposed revised NSPS would be implemented. Both the number of shipped units and the baseline costs of models were based on data from the Frost & Sullivan report with modifications to address additional appliances or subsets of appliances. The 20-year model design life span and 20-year use/emitting appliance life span are based on actual historical design certification and heater use data. That is, the data show that many models developed for the current 1988 NSPS are still being sold (after 25 years), many ''new'' models still have the same internal working parts with merely exterior cosmetic changes, and most residential wood heaters in consumer homes emit for at least 20 years and often much longer. Therefore, our analysis tracks shipments and costs through year 2038 (*i.e.,* 19 years after a model designed to meet the NSPS Step 2 emission limits expected to be implemented in 2020 has completed development and is shipped). Finally, we also estimated the potential additional manufacturing costs to make NSPS complying models. These expenses result from the use of more expensive structural materials, components to enhance good combustion, etc. We estimated the following additional manufacturer price increases per unit based on appliance type:

- Certified wood heaters and pellet heaters/stoves represent a well-developed technology, and we could not identify price differences between models due solely to lower emission levels compared to models with higher emission levels. Rather, price differences are more closely related to cosmetic differences and output. Therefore, we have assumed no additional manufacturing costs.
- One manufacturer estimated that it will cost an average of 100 more to manufacture a lower emitting single burn rate product.
- We have seen a range of estimates for additional price increases for manufacture of a cleaner hydronic heater, with an average being approximately 3,000 (as compared to a typical pre-regulation sales price of 7,500).
- We estimate that the additional price increases to manufacture a certified forced-air furnace will be comparable to the price increases for manufacturing certified hydronic heaters, *i.e.,* $3,000 (as compared to a typical pre-regulation price of $900).

Our next step was to develop the following incremental cost formula: Cost of R&D multiplied by number of units shipped per year divided by number of models multiplied by model life equals the incremental cost of developing a new unit, spread over the number of units expected to be sold during the model life. In developing this calculation, we included the concept that the R&D costs per model line are recovered in the sales price of future models, which means that the more units that are sold or the longer the model life, the lower the incremental cost per unit. For our unit cost analysis, we assumed a flat growth rate in shipments—that is, we assumed future shipments over the 20 years of model design life would be equal to the shipments estimated in the first NSPS compliance year. We did not assume lower sales due to market competition with other wood heaters or non-wood heaters. We did not assume lower projected sales for increased prices because of the uncertainty of other demand factors. Where there are additional manufacturing costs as discussed above, we added these to the unit cost number. Table 10 is a summary of the baseline unit costs, NSPS unit costs, and incremental cost increase.

[37] See footnote 36.

[38] Memo to Gil Wood, USEPA, from EC/R, Inc. Residential Heater Cost Effectiveness Analysis. February 26, 2013.

TABLE 10—SUMMARY OF UNIT COST IMPACTS

[2010$]

Appliance type	Baseline	Post-NSPS	Incremental increase
Certified Wood Heaters	$859	$883	$24
Single Burn Rate Heaters	253	479	226
Pellet Heaters/Stoves	1,295	1,319	24
Forced-Air Furnaces	912	4,174	3,262
Masonry Heaters	9,157	9,245–9,997	88–840
Hydronic Heating Systems	7,528	13,986	6,458

We request specific comments on these estimates, which significantly affect the estimates of costs per model lines and per unit sold and potential changes in sales and, thus, affect decisions on the affordability of candidate BSER. For example, if the number of model lines was less and the number of heaters per model line was greater, then the cost per unit sold would be less and more stringent options for BSER could potentially be implemented sooner.

D. What are the economic impacts?

The economic impacts of the proposed rule are estimated using industry-level estimates of annualized compliance cost to value of shipments (receipts) for affected industries. In this case, cost-to-receipts ratios approximate the maximum price increase needed for a producer to fully recover the annualized compliance costs associated with a regulation. Essentially, the revenues to producers will likely fully cover the annualized compliance cost incurred by producers at this maximum price increase. Any price increase above the cost-to-receipts ratio provides revenues that exceed the compliance costs. These industry level cost-to-receipts ratios can be interpreted as an average impact on potentially affected firms in these industries. Cost-to-receipts ratios for the affected product types range from 2.3 percent for pellet heaters/stoves up to 6.4 percent for single burn rate wood heaters for the proposed option. More information on how these impacts are estimated can be found in Chapters 5 and 6 of the RIA. In estimating the net benefits of regulation, the appropriate cost measure is ''social costs.'' Social costs represent the welfare costs of the rule to society. We believe that the social costs are best approximated by the compliance costs estimated for this rule. Thus, the annualized social costs for this proposal are best estimated to be $15.7 million for the proposed option, based on the estimate of costs to manufacturers for the proposal and assuming no cost pass-through to consumers. More information on how these social costs are estimated can be found in Chapter 5 of the RIA.

E. What are the non-air quality health and energy impacts?

These proposed NSPS are anticipated to have no impacts or only negligible impacts on water quality or quantity, waste disposal, radiation or noise. To the extent new NSPS models are more efficient, that would lead to reduced wood consumption, thereby saving timber and preserving woodlands and vegetation for aesthetics, erosion control, carbon sequestration, and ecological needs.

It is difficult to determine the precise energy impacts that might result from this proposed rule. On the one hand, to the extent that the NSPS wood-fueled appliance is more efficient, energy outputs per mass of wood fuel consumed will rise. However, wood-fueled appliances compete with other biomass forms as well as more traditional oil, electricity, and natural gas. We have not determined the potential for consumers to choose other types of fuels and their associated appliances if the consumer costs of wood-fueled appliances increase and at what level that increase would drive consumer choice. Similarly, we have not determined the degree to which better information on the energy efficiency of the NSPS appliances will encourage consumers to choose new wood-fueled appliances over other new appliances.

V. Rationale for Proposed Amendments

A. Why are we proposing to expand the scope of appliances subject to the NSPS?

As described in section II, the EPA has had ongoing discussions with many stakeholders regarding the need to expand the scope of the current residential wood heater regulation. Stakeholders described adverse health and environmental impacts arising from the increasing use of some appliances, actions taken at the state and local levels to address such concerns, and growth in types and numbers of appliances that are currently on the market. Numerous states (*e.g.,* Vermont, New York, Maine, Michigan, Minnesota) have indicated to us that individuals' concerns about smoke from residential wood burning, particularly by hydronic heaters, are the top source of environmental complaints. In the case of masonry heaters, we believe EPA certification of these typically cleaner devices, would allow them to be excellent emission reduction alternatives to replace pre-NSPS wood heaters and be a good consumer alternative in parts of the country that currently ban uncertified appliances (contingent upon approval by the local jurisdiction). We also saw a need to address the residential heating market in a way that recognizes that some heaters and fuels are substitutes for each other. Regulating only one type of heater may result in unintended incentives for consumers to favor purchase and use of unregulated and potentially higher emitting devices. We felt a comprehensive assessment was needed. Therefore, as part of the NSPS review process, we evaluated a wide range of residential biomass heating devices and non-heating devices (such as cook stoves and fireplaces) to determine what expansions in scope might be needed.[39]

The residential wood heaters NSPS is a ''standard of performance'' as defined by section 111(a) of the CAA. The term ''standard of performance'' means a ''standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated.'' As discussed earlier, the level of control prescribed by section 111 historically has been commonly referred to as ''Best Demonstrated

[39] Subpart AAA—Standards of Performance for New Residential Wood Heaters: Revised Draft Review Document. Prepared for EPA by EC/R Incorporated. December 30, 2009.

Technology'' or BDT. To better reflect that section 111 was amended in 1990 to clarify that ''best systems'' may or may not be ''technology,'' the EPA is now using the term ''best systems of emission reduction'' or BSER. As previously with BDT, in determining BSER, the EPA uses available information and considers the emissions reductions and incremental costs for different systems available at reasonable cost. The residential wood heaters source category is mass-produced residential consumer products, fundamentally different from the typical NSPS source category that regulated industrial processes. Thus, for the residential wood heaters source category important elements in determining BSER include the significant costs and environmental impacts of delaying production and sales while models with those systems are being designed, tested, field evaluated, and certified. The EPA determines the appropriate emission limits representative of BSER. After the emission limits are established, in general, the source may use whatever systems meet the emission limits. In developing the proposed rule, we evaluated possible systems both at baseline conditions (conditions in the absence of additional regulation) and under other scenarios. In most cases, candidate BSER for residential wood heaters is based on improved combustion techniques, primarily improvements in model-specific combinations of time, temperature, and turbulence. That is, the improved combustion models have greater airflow residence time, better insulation to increase temperatures, and passageways and directed flows to improve mixing and turbulence. In addition, some heaters also use catalytic combustors to reduce emissions. Each manufacturer has a potential myriad of combinations of specific designs that could incorporate these key aspects. Many systems reduce emissions significantly, increase efficiency, and provide good operator flexibility. The key differences tend to be confidential business information as to the specifics of the combination that the manufacturer uses and does not share with other manufacturers but rather holds as proprietary. Similarly, the industry trade association cannot facilitate exchange of such information because of antitrust regulations. Because each appliance type has a potentially unique emissions profile, market niche, and manufacturer profile, we made BSER determinations for each heater type, as described below.

For certain types of devices, information is lacking. For example, we have no information or very limited information on emissions and emission reduction techniques for cook stoves, pizza ovens, chimineas, coal stoves and biomass (other than wood or wood pellet) stoves/furnaces (*e.g.,* fueled with grass, corn, cherry pits). We are interested in receiving data for contributions to air quality, endangerment of public health and welfare, emissions, potential emission reductions, costs, prices, and sales of coal stoves and biomass stoves because we believe we do not have sufficient information at this time to list these sources under section 111(b) and develop proposed standards. For example, usage rates of some of these appliances are limited both in numbers of new units and in the number of markets they occupy. Also, some stakeholders have stated that use of coal stoves is more common in some coal mining regions, where the consumer may have access to free or cheap coal, but such stoves are not typically used in other areas. We request data on any of these appliances that might help us potentially develop national programs or standards for these devices in the future.

We are also deferring any regulatory action addressing emissions from wood-burning fireplaces at this time. Fireplaces typically are not designed to be ''wood heaters'' and thus are not within the current scope of the ''residential wood heater'' source category listed on February 18, 1987, pursuant to the authority of section 111(b). (Fireplaces are typically used for ambience and most of the heat content of the wood is lost out the chimney with the relatively large amounts of excess combustion air rather than heating the room. For effective heating, some homeowners have inserted a new EPA certified wood stove into an otherwise open masonry fireplace. In those cases, new wood heaters/stoves are regulated under the current 1988 rule and would be regulated by this proposal. Also, some fireplaces have restricted excess combustion air to less than 35:1 air-to-fuel ratio and are certified under the current 1988 NSPS.) Fireplaces are addressed in the current EPA voluntary partnership program that encourages the development and sale of lower-emitting wood-burning fireplaces over the sale of higher-emitting fireplaces. The EPA's fireplace program covers new masonry and prefabricated (low-mass) fireplaces and retrofit devices for existing fireplaces. See the voluntary partnership program Web site for more information: *www.epa.gov/burnwise/participation.html#fireplace*. We request comments and additional data on contributions to air quality, endangerment of public health and welfare, emissions, potential emission reductions, costs, prices, and sales of fireplaces. We request data that might help us potentially develop new or revised national programs or a source category listing and standards under section 111(b) for these devices in the future. We are especially interested in data on current and projected sales of new wood-burning fireplaces versus gas-fired fireplaces, current and projected usage patterns for new fireplaces versus existing fireplaces, current and projected quantities of wood burned per existing and new fireplaces, current and projected best systems of emission reduction for new fireplaces versus existing fireplaces and costs of current and projected best systems versus current costs of fireplaces. Also, we are interested in national data and how these data vary by state and local areas.

B. How did we determine BSER and the proposed emission standards?

As discussed earlier in this preamble, the proposed subparts AAA, QQQQ, and RRRR recognize that the sources covered by these subparts are fundamentally different from the typical NSPS source category in that residential wood heaters are mass-produced residential consumer products whereas most NSPS regulate industrial processes. Discussions in sections V.B.1 through V.B.4 of this preamble focus on the analysis of PM emission reductions under our proposed two-step phased-in standards for each appliance type affected by this proposal. In general, for this rulemaking, we have determined that the proposed first step represents the emission levels that almost all models can readily achieve now using today's designs and technology. Further, we have determined that the proposed second step represents stronger emission levels achievable for all appliance types at reasonable cost, but allows appropriate lead times for manufacturers to redesign their model lines to accommodate the improved technology across multiple model lines and test, field evaluate, and certify the new model lines. See section V.B.5 for a discussion of the Alternative Approach we considered to reduce PM emissions based on three-step phased-in standards, under which the strongest emission standard would be 8 years after the effective date of the final rule rather than the proposed 5 years. Section V.B.6 discusses other provisions

we considered and for which we request additional data and information from commenters.

For these source categories, our BSER determination rests on: (1) the achievability of the proposed emission levels (*i.e.,* the fact that top-performing models for each appliance type are already achieving the proposed emission levels); and (2) the cost effectiveness of the proposed standards when considering the design life span and the emitting life span of the appliances in residences. The net monetized benefits of the proposal far exceed the costs for all options considered. Realistic model design and appliance emitting life span assumptions are essential components for a meaningful cost effectiveness analysis. As explained above in section IV.C. and in our background documentation,[40] a model design life span of 20 years is supported by the historical data that show that the non-cosmetic aspects of wood heaters designed to meet the 1988 NSPS are still being used today in some model lines. While some manufacturers may choose to make more frequent cosmetic changes to their models, the internal design changes a manufacturer must make to a wood heater model line to comply with the NSPS are longer lasting. Furthermore, once installed in consumer homes, wood heaters emit for at least 20 years and many are operated in residences for much longer time periods (a key fact motivating wood heater/stove changeout programs). Once purchased, consumers tend to only replace appliances when they no longer serve their functional purpose. Wood heaters tend to serve the basic function of producing heat for well over 20 years. Table 11 presents our estimated cumulative costs, $PM_{2.5}$ emission reductions, and associated cost per ton for our proposed limits, based on a model design life span of 20 years and an appliance emitting life span of 20 years.

For all of the standards proposed in this **Federal Register** notice, the EPA invites specific comments on the data and analyses on which we base the proposed standards. Moreover, the EPA invites specific comments that provide additional data and analyses that would support a different standard. Interested persons should note that the EPA will consider promulgating a more stringent or less stringent standard than what we are proposing for any of these categories, if the record contains data or analyses that support a different standard.

TABLE 11—COST EFFECTIVENESS OF $PM_{2.5}$ EMISSION REDUCTIONS OF PROPOSED STANDARDS AND EMISSION CO-REDUCTIONS BASED ON CUMULATIVE ANALYSIS

[2013–2057] [41]

Appliance type	Nationwide cumulative cost (2010$)	$PM_{2.5}$ reductions		VOC Co-Reductions		CO Co-Reductions	
		Cumulative emission reduction (tons)	Cost per ton (2010$)	Cumulative emission reduction (tons)	Cost per ton (2010$)	Cumulative emission reduction (tons)	Cost per ton (2010$)
Cord Wood Stoves	$45,492,874	96,523	$471	136,293	$334	1,426,240	$32
Single Burn Rate Stoves	11,864,204	236,254	50	416,828	28	1,602,218	7
Pellet Stoves	44,272,694	29,269	1,513	392	112,894	152,082	291
Furnaces	30,451,763	823,770	37	349,207	87	5,491,797	6
Hydronic Heaters	57,760,316	360,587	160	152,858	378	2,403,916	24
Total *	189,841,851	1,546,403	123	1,055,578	180	11,076,253	17

* **NOTE:** Masonry Heaters are not included in this analysis because representative emission tons per appliance could not be determined.

1. Room Heaters

The current subpart AAA definition of ''wood heater'' specifies certain conditions, including that affected sources are those that have an air-to-fuel ratio of less than 35:1. As part of the regulatory negotiation for the current 1988 NSPS, the EPA included the air-to-fuel criterion in the rule primarily to exclude typical fireplaces from the affected source definition. An unintended side effect, however, is that it also resulted in the exclusion of the majority of pellet heaters/stoves. Also included in the current 1988 NSPS definition of ''wood heater'' is an exclusion of heaters that have a minimum burn rate of greater than 5 kg/hr. The definition and test methods had the effect of excluding a large number of single burn rate wood heaters. As described below, we are proposing to change the applicability of subpart AAA to include all three types of ''room heater'' appliances: adjustable burn rate wood heaters, pellet heaters/stoves and single burn rate wood heaters. Our intent is that this rule will be stated in broad enough terms to regulate any future room heater appliances that may come into the U.S. market and function as room heaters.

a. Adjustable Burn Rate Wood Heaters

Adjustable burn rate wood heaters include freestanding heaters and heaters modified to fit within a firebox (sometimes called fireplace inserts). These units were the primary focus of the 1988 NSPS and are subject to current NSPS limits of 7.5 g/hr for noncatalytic heaters and 4.1 g/hr for catalytic heaters. As discussed in the February 26, 1988, final rule (53 FR 5865) and earlier in this preamble, the EPA considered the performance of catalytic heaters and noncatalytic heaters co-BDT (now called BSER) because the net emissions over time were estimated to be similar (even though the initial certification test results are typically lower for catalytic models) assuming possible degradation of the catalyst and lack of catalyst replacement by the operator. The EPA considered requiring catalyst

[40] See footnotes 24, 36 and 38.

[41] Analysis period assumes that manufacturers will incur R&D costs beginning in 2013, in anticipation of final rule. Analysis is 2013 through 2057, based on assumption that the internal emission-related components of a model designed to meet the proposed Step 2 emission limit will be manufactured/shipped for 20 years, and shipped models will emit in residences for another 20 years. See footnotes 24, 36 and 38. $PM_{2.5}$, VOC and CO costs per ton are calculated independently for illustrative purposes, even though VOC and CO reductions would actually occur with no additional cost as the $PM_{2.5}$ reductions are achieved.

replacement on a regular schedule, but determined that enforcement of such a requirement would be difficult. The EPA did require manufacturers to provide 2-year unconditional warranties on the catalysts and prohibited the operation of catalytic heaters/stoves without a catalyst. Additionally, because of these concerns, the EPA wanted to ensure that further development of both noncatalytic and catalytic technology would continue.

Since the 1988 NSPS was developed, the state of Washington issued standards in 1995 imposing limits of 4.5 g/hr for noncatalytic heaters and 2.5 g/hr for catalytic heaters. In developing the proposed revisions to the NSPS, we evaluated and identified these ''improved'' catalytic and noncatalytic systems and associated emission levels as the proposed Step 1. This analysis showed that the state of Washington level of 4.5 g/hr is achieved by 107 out of 121 (88 percent) of the EPA-certified adjustable burn rate wood heater models in production and sold in the U.S. today (noncatalytic and catalytic models combined). This statistic includes 92 of the 106 certified noncatalytic wood heater models (87 percent) and 15 of the 15 certified catalytic models (100 percent). The median certification value for noncatalytic models was 3.2 g/hr and for all certified models was 3.4 g/hr. Details of the analysis are in the docket.[42]

For the proposed Step 2 (5 years after the effective date of the final standard), we considered ''state-of-the-art'' systems that achieve a certification value of 1.3 g/hr (using crib wood as the test fuel as specified in Method 28 as required by the 1988 NSPS). This is approximately 50 percent less than the 1995 state of Washington standard for catalytic models (2.5 g/hr). The EPA certification test data show that a level of 1.3 g/hr is achieved by 27 adjustable burn rate wood heater models as of December 2013. This includes 11 certified noncatalytic wood heater models and 16 certified catalytic models. There were no apparent break points other than the current state of Washington initial certification level of 4.5 g/hr for noncatalytic heaters. That is, the distribution of certification values was relatively linear with no step functions other than at the state of Washington level of 4.5 g/hr. We ask for comments and emission test data using cord wood to help us determine if the proposed emission levels should be adjusted for any differences between crib wood and cord wood.

This source category is fundamentally different from the typical NSPS source category composed of industrial processes. This source category involves the manufacture and sale of mass-produced residential consumer products that are significantly affected by production and sales volumes and timing of testing and certification. Thus, we are proposing implementing the proposed Step 2 BSER emission limit 5 years after the effective date of the final standard to allow for longer lead times for redesign, testing, field evaluation and certification. This also spreads the costs over a longer time and a larger number of units. The intent behind the proposed Step 2 BSER emission limit is to recognize that current state-of-the-art level of performance appears to be significantly better than the state of Washington limit of 4.5 g/hr met by over 85 percent of the heaters sold today on a sales-weighted basis (*i.e.,* 92 out of 106 noncatalytic models and 15 out of 15 catalytic models), and furthermore better than the state of Washington catalytic limit of 2.5 g/hr for over 25 percent of the adjustable burn rate wood heaters sold in the U.S. today (*i.e.,* 20 out of 106 or approximately 19 percent of noncatalytic models and 13 out of 15 or approximately 87 percent of catalytic models). As noted earlier and discussed more fully in the paragraphs below, our decisions on BSER for this source category have fully considered not only the emission performance but also the cost and economic impacts, including the costs to accommodate the best systems in additional model lines. The net monetized benefits far exceed the costs of all options considered.

The cost impacts of the proposed Step 1 are very small. This is because, despite being a limit that was originally developed for only one state, over 85 percent of currently EPA-certified non-catalytic and catalytic heaters that are in active production already meet the state of Washington initial certification test values. We also believe production of any certified heaters that do not meet the proposed Step 1 standard would be discontinued, as manufacturers would likely focus on models that already comply with the proposed standard in the short term. While implementing the proposed Step 1 standard would not impose any significant additional costs on most of the manufacturers, it also would not achieve a large amount of new emissions reductions for most of the models. However, implementing an emission standard associated with the proposed Step 1 would have the benefit of ensuring consistent nationwide standards and ensuring that the remaining 15 percent of non-complying adjustable burn rate wood heater models could no longer be sold. It would also ensure that wood heater/stove changeout programs aimed at reducing emissions from old, pre-NSPS or pre-state of Washington heaters/stoves would result in replacement models that meet the state of Washington levels or better.

The proposed Step 1 limit eliminates the distinction between catalytic and non-catalytic heater models, which we view as progress. It is important to remember that the lower emission level catalytic standards were initially instituted because of concerns that the early generation catalysts would degrade over time, resulting in eventual real world emission levels comparable to non-catalytic units. After 25 years of catalyst heater development experience, manufacturers have demonstrated that the performance of these heaters typically remains consistently good over the course of proper operation because of changes manufacturers have made to improve heater design to protect the catalysts from flame impingement and other factors that previously caused catalysts to degrade significantly. For example, one recent study of four catalytic combustors from the two selected heaters/stoves showed that the combustors maintained substrate integrity without substantial PM emissions performance reduction.[43] Therefore, establishing a separate limit to accommodate ''degradation'' seems to create a distinction where none exists and adds unnecessary confusion to the overall regulation.

We recognize that there may be concern that a single limit based on the Washington State non-catalytic limit could result in ''backsliding'' of current catalytic heater models. We think that the likelihood of actual backsliding is extremely low because of other factors driving the wood heater market. Given the pending implementation of the proposed Step 2 limits described below and that some manufacturers have heaters that already achieve Step 2, all manufacturers would have market incentives to improve performance as soon as possible rather than degrade performance. Also, with consumer education regarding the impacts of PM emission levels, we believe that consumer pressure will favor better performing units that in general are more energy efficient and lower

[42] Attachment A of Residential Wood Heaters Manufacturer Cost Memorandum to Gil Wood, USEPA, from EC/R Inc. February 22, 2013.

[43] The Interim Wood Stove Catalytic Combustor Longevity Study, Prepared for the Catalytic Hearth Coalition by L. Pitzman *et al,* OMNI Environmental Services. January 4, 2010.

emitting at reasonable cost, especially as they compare wood heaters and gas heaters. However, we are requesting comments on whether we should maintain a separate, lower limit for catalytic heater models for the proposed Step 1 emission limits, based on the current state of Washington catalytic standard of 2.5 g/hr.

The proposed Step 2 state-of-the-art BSER cost and economic impacts would be significant, but our analysis shows a very reasonable cost per ton of emission reduction when considering the typical design and appliance life spans.[44] Our data show that at the proposed Step 2 BSER emission level of 1.3 g/hr, about 20 percent of catalytic models and 5 percent of noncatalytic models currently manufactured would already comply with the proposed Step 2 standard. Thus, manufacturers would need to either modify noncomplying lines or develop new ones to continue production for approximately 95 percent of the current market. Some unknown fraction of manufacturers may be able to switch some of their production from noncomplying models to complying models. Because we do not know this fraction, because the total of complying units is only 6 percent (combined catalytic and non-catalytic models) at this time, and because many manufacturers have no complying models at this time, we have assumed this fraction to be zero for our analysis. Historically, those manufacturers that chose to comply with the 1988 NSPS did so for a full range of models. Thus, our analysis shows the potential emission and cost impacts for the approximately 95 percent of adjustable burn rate wood heater models projected to undertake R&D needed to develop the heater-specific combinations of time, temperature, and turbulence to achieve higher efficiencies and lower (proposed Step 2 compliant) emissions. That is, although the manufacturers know the factors that are important for good combustion and low emissions, they still need to develop and test the laboratory-specific combinations that can be incorporated into the design of specific model lines. Alternatively, some manufacturers might convert noncatalytic models to catalytic models or hybrids as ways to reduce emissions.

We estimated the resulting nationwide costs based on the cost assumptions explained in section IV.C. The average annual cost increase to manufacturers of adjustable burn rate wood heaters during the 2014 through 2022 period analyzed in the RIA is approximately $4.2 million. Estimated nationwide annual $PM_{2.5}$ emissions, averaged over this same period (2014–2022), are projected to be 548 tons/year under baseline conditions versus 385 tons/year under the proposed two-step BSER, an average reduction of 163 tons/year, considering only the first year of emissions for each new heater sold. Given that limited snapshot for these cost and emission estimates, the average cost of reducing each new ton of $PM_{2.5}$ emissions during the 2014–2022 period would be approximately $26,000 per ton annually. As explained in section IV.C, the cost-to-sales ratio, which is an indicator of the ability of the manufacturer to successfully absorb the regulatory impacts, is high at 4.3 percent. However, when considering the total costs and cumulative emission reductions over the more representative full model design life span and appliance emitting life span of 20 years; the overall cost effectiveness is approximately $500 per ton (shown above in Table 11).[45]

Given the reasonable cost effectiveness of imposing the two-step BSER when considering total costs and cumulative emission reductions, and given the 6-year lead time (from the date of these proposed standards) until models must meet the proposed Step 2 emission limit, we determined that the two-step phased-in emission limits represent BSER for these residential consumer product appliances at this time. Thus, we are proposing a two-step standard for adjustable burn rate wood heaters, in which Proposed Step 1 is required upon the effective date of the final rule and Proposed Step 2 is required 5 years after the effective date of the final rule. Section V.B.5 discusses a three-step alternative approach that we also considered for adjustable burn rate wood heaters, and on which we are seeking comment.

We note that there have been some technical questions associated with measuring the emission levels associated with the proposed Step 2, which we are addressing in this proposed rule. That is, the currently available laboratory proficiency test results cast some doubt on the reproducibility of test results at lower levels of the standard for the current EPA Test Method 28. An HPBA analysis [46] found that the repeatability and reproducibility of the current test method for wood heater emissions, as demonstrated by the EPA-accredited laboratory proficiency test data, may be poor based on the scope of their analysis. Their analysis stated:

- ''At the 95-percent confidence level, repeatability for the EPA weighted average emission rate is at best ±2.9 g/hr and ranged as high as ±5.4 g/hr.''
- ''The reproducibility was no better than ±4.5 g/hr and ranged as high as ±6.4 g/hr.''

We believe some mitigating factors are not accounted for in their analysis, such as the lack of regulatory requirements or incentives for the test laboratories to achieve highly reproducible results in proficiency testing (*i.e.,* the laboratories are not required to meet a certain proficiency level; they are not paid for the proficiency tests, but rather they absorb the costs as part of their overhead; and, in some cases, they intentionally staged the test to demonstrate that variability was possible within the current protocol). Also, these factors do not reflect the proposed changes to improve the repeatability and reproducibility of the test method. Consequently, we believe the previous results merit consideration of concerns about implementing a lower emission standard, but they do not mean that lower emission standards cannot be measured accurately. For example, the State of Washington Department of Ecology has successfully used lower emission levels in their regulations since 1995, and the Oregon Department of Environmental Quality has used lower levels for tax credits for low-emitting pellet heaters/stoves.

As noted earlier in this section, we ask for comments and emission test data using cord wood to help us determine if the proposed emission levels should be adjusted for any differences between crib wood and cord wood.

b. Pellet Heaters/Stoves

Several certified pellet heaters/stoves are subject to current subpart AAA. However, most models currently offered for sale are exempt due to air-to-fuel ratios greater than 35:1. We considered candidate options similar to those discussed earlier for wood heaters/stoves, *i.e.,* improved catalytic and improved noncatalytic systems and state-of-the-art systems. Our data set for currently manufactured U.S. pellet heaters/stoves, for which we have reproducible emissions data, contains 24 models, of which 23 would meet the 4.5 g/hr proposed Step 1 BSER emission limit. We also compared the listings of certified pellet heaters/stoves for both the EPA and the state of Washington. Of the 224 pellet heater/stove models from both lists, 221 models produced by 35 manufacturers would meet the state of

[44] See footnotes 24, 36 and 38.

[45] See footnotes 24, 36 and 38.

[46] Final Report: EPA Wood Heater Emission Test Method Comparison Study. Prepared by Robert Ferguson, Ferguson, Andors & Company for the Hearth, Patio and Barbecue Association. December 1, 2010.

Washington emission standard. Only three models produced by three manufacturers would not meet the standard. Assuming that the rest of the pellet heater/stove market has comparable performance, we would expect to see only a small cost impact of requiring the proposed Step 1 BSER emission levels of 4.5 g/hr for noncatalytic and catalytic pellet heaters in terms of having to redesign units to meet the proposed Step 1 BSER.

Even though additional R&D would not be required to meet the proposed Step 1 BSER, manufacturers would need to test and certify their heaters/stoves to sell them after the effective data of the final rule, which we expect to occur in 2015. Some manufacturers of pellet heaters/stoves have started incurring costs in anticipation of the final rule. They would also incur ongoing recertification costs for the fraction of heaters/stoves with expiring certifications.

Some stakeholders have argued that pellet heaters/stoves are relatively cleaner burning than other wood heaters and that regulation is not needed. Other stakeholders have argued that pellet heater/stove standards should be tighter to show how clean they are and encourage consumers to purchase pellet heaters/stoves instead of cord wood heaters/stoves. Considering both positions, and because pellet heaters/stoves are cleaner burning in general, we think there is environmental value in ensuring they have an EPA certification so they can be sold in jurisdictions that require such certification of any wood-burning appliance (contingent upon approval by the local jurisdiction). This would help avoid a competitive imbalance regarding wood heaters. Also, we believe there is environmental value in having third-party accredited laboratory test results available in all areas so that consumers can make informed choices among competing residential heaters.

We are also proposing implementation of a Step 2 state-of-the-art BSER 5 years after the effective date of the final rule. We estimate that at least 30 percent of current U.S. pellet heater/stove models already meet the proposed Step 2 emission level. We assume that manufacturers will either modify the remaining models or invest in developing new model lines that can meet the proposed Step 2 emission level. This assumption may somewhat overstate the potential cost and economic impacts of requiring a proposed Step 2 BSER, because some noncomplying models will be dropped and manufacturers may consolidate their model lines in the short term. However, we do not know how many models will be dropped. This industry has a history of manufacturing a wide range of choices of models for the marketplace.

The nationwide annualized total costs are significant based on our cost assumptions explained in section IV.C and in our background documentation.[47] The average annual cost increase to manufacturers of pellet heaters/stoves during the 2014 through 2022 period analyzed in the RIA is approximately $3.5 million. Estimated nationwide annual $PM_{2.5}$ emissions, averaged over this same period (2014–2022), are projected to be 199 tons/year under baseline conditions versus 150 tons/year under the proposed two-step BSER, an average reduction of 49 tons/year, considering only the first year of emissions for each new heater sold. Given this limited snapshot for these cost and emission estimates, the average cost of reducing each new ton of $PM_{2.5}$ emissions during the 2014–2022 period is approximately $71,000 per ton annually as compared to the monetized health benefits of $360,000 per ton to $810,000 per ton of reducing direct $PM_{2.5}$. The annualized cost-to-sales ratio is 2.3 percent. However, when considering the total costs and cumulative emission reductions over the more representative full model design life span and appliance emitting life span of pellet heaters/stoves, the overall cost effectiveness is approximately $1,500 per ton (shown above in Table 11).[48]

Given the reasonable cost effectiveness of imposing the proposed two-step BSER when considering total costs and cumulative emission reductions, and given the 6-year lead time (from the date of these proposed standards) until model lines must come into compliance with the proposed Step 2 limit, we determined that the two-step phased-in limits represent BSER for these residential consumer appliances at this time. Thus, we are proposing a two-step standard for pellet heaters/stoves, in which Proposed Step 1 is required upon the effective date of the final rule, and Proposed Step 2 is required 5 years after the effective date of the final rule. Section V.B.5 discusses a three-step alternative approach that we also considered for pellet heater/stoves, and on which we are seeking comment.

c. Single Burn Rate Wood Heaters

Single burn rate wood heaters represent a huge regulatory exemption in the current residential wood heater market. We estimate that over 40,000 of these units are sold per year. We evaluated all of the available emission data and discussed the state of R&D with manufacturers of single burn rate wood heaters. The data show that the BSER for single burn rate wood heaters based on improved combustion could achieve the same emission levels for one individual burn rate category as adjustable burn rate category wood heaters do for the weighted average of four burn rates. To compare single burn rate emissions to adjustable burn rate emissions, however, one must remember that single burn rate wood heaters are by definition incapable of operating at the lowest burn rates, and that these low burn rates result in the greatest level of emissions in an adjustable burn rate wood heater. Thus, the certification test method for single burn rate wood heaters must be modified to take the single burn rate into account (instead of the multiple burn rates for the adjustable rate heaters). For example a rate of 3.0 g/hr could be considered to be equivalent to the state of Washington standards (of 4.5 g/hr for adjustable burn rate wood heaters) adjusted to the single burn rate.

Considering that single burn rate wood heaters will not be expected to operate at the typically higher-emitting burn rates, we expect the majority of single burn rate wood heaters to meet the proposed Step 1 BSER limit of 4.5 g/hr for adjustable burn rate wood heaters, if the design is focused on one optimal single burn rate. However, some models would require modifications to ensure that they consistently pass the test and to add tamper-proof settings to ensure that operators do not circumvent the intent of the NSPS. For our analyses, we assumed that all existing models would need to be modified through R&D, resulting in significant emission reductions to achieve the proposed Step 1 BSER. We request specific data and comments regarding these assumptions. Since 2009, single burn rate wood heater designs have been undergoing R&D in anticipation of the proposed NSPS, and the information that we have from industry is that cleaner designs are nearly market-ready.[49] Nonetheless, because these devices were previously unregulated and may need to transfer technology from adjustable burn rate wood heaters, our cost analysis assumed that R&D efforts would intensify in order to meet the proposed Step 1 standard while also beginning R&D to develop models to meet the more stringent proposed Step 2 BSER limit. Specifically, for single burn rate wood

[47] See footnotes 36 and 38.

[48] See footnotes 24, 36, and 38.

[49] See footnote 36.

heaters, we doubled our R&D estimate of $356,250 per model for other appliances in these early years.

The nationwide annualized total costs are based on the cost assumptions explained in section IV.B and in the background documentation.[50] The average annual cost increase to manufacturers of single burn rate heaters during the 2014 through 2022 period analyzed in the RIA is approximately $902,000. Estimated nationwide annual $PM_{2.5}$ emissions, averaged over this same period (2014–2022), are projected to be 932 tons/year under the baseline (unregulated) condition versus 178 tons/year under the proposed two-step BSER, an average reduction of 754 tons/year, considering only the first year of emissions for each new heater sold. Given this limited snapshot for these cost and emission estimates, the average cost of reducing each new ton of $PM_{2.5}$ emissions during the 2014–2022 period is approximately $1,200 per ton annually as compared to the monetized health benefits of $360,000 per ton to $810,000 per ton of reducing direct $PM_{2.5}$. The cost-to-sales ratio is 6.4 percent and is calculated based on only the initial 5-year period. However, when considering the total costs and cumulative emission reductions over the more representative full model design life span and appliance emitting life span, the overall cost effectiveness is approximately $50 per ton (shown above in Table 11).[51]

Given the reasonable cost effectiveness of imposing the two-step BSER when considering total costs and cumulative emission reductions, and given the 6-year lead time (from the date of these proposed standards) until new model lines must meet the proposed Step 2 emission limit, we determined that the two-step phased-in limits represent BSER for these residential consumer appliances at this time. Thus, we are proposing a two-step standard for single burn rate wood heaters, in which Proposed Step 1 is required upon the effective date of the final rule and Proposed Step 2 is required 5 years after the effective date of the final rule. Section V.B.5 discusses a three-step alternative approach that we also considered for single burn rate wood heaters, and on which we are seeking comment.

2. Central Heaters

We are proposing subpart QQQQ for wood-burning appliances that function as ''central heaters'' with the purpose of heating the entire residence, including current new residential hydronic heaters and forced-air furnaces. Our intent is that this rule will be stated in broad enough terms to regulate any future central heater wood-burning appliances that may come into the U.S. market and function as central heaters. In this section, we describe our rationale for determining BSER and the associated proposed emission standards for both hydronic heating systems (''hydronic heaters'') and forced-air furnaces. As discussed earlier in this preamble, the source categories to be regulated by proposed subparts AAA, QQQQ, and RRRR are fundamentally different from the typical NSPS source category that includes industrial processes whereas subparts AAA, QQQQ, and RRRR include mass-produced residential consumer products. Thus, additional factors are included in the analyses presented today. Section V.B.2.a. below discusses hydronic heaters. Section V.B.2.b. discusses forced-air furnaces.

a. Hydronic Heaters

As described in section II.D, hydronic heaters (commonly known as ''outdoor wood boilers'' although there are indoor units as well) are the subject of an EPA voluntary partnership program, started in January 2007. The EPA's voluntary partnership program provided criteria in 2007 for qualification of units to be approximately 70 percent cleaner than unqualified models (Phase 1, ''orange hangtag''). In October 2008, the program evolved to Phase 2, and EPA-qualified Phase 2 (''white hangtag'') units are approximately 90 percent cleaner than older, pre-program unqualified units. Under the Phase 2 voluntary partnership program, new qualified models must emit no more than 0.32 lb/MMBtu of heat output and have a cap of 18 g/hr on any individual test run conducted during the qualifying test. (As noted in the hydronic heaters test method discussion in this preamble, the EPA, the manufacturers, the laboratories, and key states conducted an additional review of the test reports to support these qualifications and made some changes to the test methods to improve the reliability and reproducibility of the test results.)

The proposed Step 1 emission limit for hydronic heaters is the Phase 2 qualifying level of the hydronic heater voluntary partnership program, 0.32 lb/MMBtu. There are currently 36 models (27 cord wood and 9 pellet models) built by 17 U.S. manufacturers that have been qualified to meet the 2008 Phase 2 level of 0.32 lb/MM BTU.[52] In almost all cases, the manufacturers developed models that rely upon improved combustion techniques, primarily improvements in time, temperature, and turbulence. That is, the improved combustion models have greater residence time, separation of the firebox and the water jacket and the addition of better heat exchangers and better insulation to increase temperatures, and passageways and directed flows to improve mixing and turbulence. In some cases, manufacturers are also using catalyst technology. Each manufacturer has developed their own confidential business combinations of specific designs that incorporate these key aspects and some other techniques.

In addition to the voluntary partnership program, the EPA provided technical and financial support for NESCAUM to develop a model rule for outdoor hydronic heaters, which several states have adopted or plan to adopt to regulate those units in their jurisdictions. The model rule Phase 2 emission limits and the voluntary partnership program Phase 2 emission levels/caps are identical, and are the same as our proposed Step 1 limit. In several states, the Phase 2 emission levels have become regulatory requirements for new units. Based on our experience with the hydronic heater market through the voluntary partnership program, we understand that it is dominated by a few manufacturers in terms of the bulk of sales, and each of these manufacturers has at least one qualifying model already.

For these reasons, we consider the Phase 2 voluntary partnership program level the appropriate emission level for the NSPS proposed Step 1 BSER, effective upon the effective date of the final rule. As noted above, there are currently 36 models (27 cord wood and 9 pellet models) built by 17 U.S. manufacturers that have already been qualified to meet the Phase 2 voluntary partnership program level of 0.32 lb/MM BTU.

The EPA believes the proposed Step 2 limit for hydronic heaters is achievable for some manufacturers now and would be achievable for all manufacturers 5 years after the effective date of the final rule. We consider this compliance period a reasonable amount of time for manufacturers to complete development across model lines and complete testing, field evaluation, and

[50] See footnotes 24, 36 and 38.

[51] See footnotes 24, 36 and 38.

[52] A list of cleaner hydronic heaters participating in the EPA's voluntary partnership program is located at *http://www.epa.gov/burnwise/owhhlist.html.*

certification so that sufficient models are ready for sale. We reviewed all the hydronic heater emission data available, and we found our proposed Step 2 emission limit of 0.06 lb/MMBtu is already met by 4 hydronic heater models (2 cord wood and 2 pellet models) built by 2 U.S. manufacturers (using crib wood as specified in Method 28 WHH in the voluntary partnership program),[53] as well as over 50 European models per test method EN 303–05 (which uses cord wood).[54] We ask for comments and emission test data using cord wood and different test methods to help us determine if the proposed emission levels should be adjusted for any differences in test methods and test fuels, *e.g.,* between crib wood and cord wood.

Our review of the available data also showed a break point at the emission level of 0.15 lb/MMBtu heat output. We considered this break point as a candidate for interim Step 2 in the three-step Alternative Approach, as discussed in section III above. Several years ago, we discussed the 0.15 lb/MMBtu level with the voluntary program stakeholders, including states and manufacturers, as a potential future ''Phase 3'' interim target in the voluntary partnership program to reduce emissions to approximately one-half of the Phase 2 voluntary partnership program level. Some of the manufacturers responded quickly to this informal target and now 11 of the 36 models (6 cord wood and 5 pellet models) that currently qualify under the Phase 2 voluntary partnership program already qualify at an emission level of 0.15 lb/MMBtu or better.

The proposed BSER levels include both outdoor hydronic heaters and indoor hydronic heaters. The initial manufacturers who actively participated in the voluntary partnership program were primarily manufacturers of outdoor units, due to the very large concern about the health effects of emissions from the outdoor units and the fact that over 90 percent of hydronic heater sales were and still are for outdoor models. When we moved to Phase 2 of the voluntary partnership program in October 2008, we explicitly included indoor units to more strongly encourage cleaner indoor units and to provide another tool for the states and local jurisdictions, especially since some states were concerned that some high-emitting indoor units were avoiding rules that only specified outdoor units. Indoor and outdoor models compete in the marketplace and having standards on only outdoor units would provide a market advantage to indoor models. Indoor and outdoor models both can use currently available improved combustion and improved heat transfer techniques to achieve similar emission levels. Given the number of years the voluntary partnership program has already been in existence, we believe our proposed Step 1 limit upon the effective date of the final rule and the proposed Step 2 limit 5 years after the effective date of the final standard provide reasonable lead time to incorporate BSER in both outdoor and indoor residential consumer models. We ask for specific comments and data on this determination and the degree to which other options would be appropriate.

We estimate that there are 30 manufacturers producing approximately 120 hydronic heater models for sale in the U.S. On a sales-weighted basis, less than 25 percent of the models currently sold would need to undertake R&D to meet the proposed Step 1 BSER limit, with a higher percentage that would need to undertake R&D to meet the proposed Step 2 BSER limit. We assumed that any manufacturer undertaking R&D to develop a new model would aim to meet the proposed Step 2 limit to maximize the lifetime of the resulting product, while shifting production to models that already meet the proposed Step 1 limit. For our cost analysis, we assumed that 100 percent of the 120 hydronic heater models would incur NSPS-related R&D costs to achieve the proposed Step 2 BSER limit. Considering typical R&D lead times, and even the different starting dates for outdoor versus indoor manufactures, we concluded that 5 years after the effective date of the final standard is an achievable compliance deadline for both outdoor and indoor models, even if they were just starting their R&D now. As discussed earlier in this preamble, most manufacturers have known of the hydronic heater emission concerns for over 7 years already.

We also investigated the performance of European models in considering BSER options. Several European countries have already established emission limits, and they are considering more stringent limits in the near future. This has encouraged the European industry to develop more energy efficient and lower emitting technologies. Most of these state-of-the-art models use multiple-stage combustion and some use oxygen sensors and CO sensors and automated feedback controls to help optimize combustion conditions. A concern in comparing the emission performance of European models with North American models is the difference in test methods. All European models are tested on cord wood fuel in Europe by European laboratories to meet European standards. Few have been imported to the U.S. (by U.S. companies) and very few have been tested in the U.S. according to U.S. testing requirements. However, a recent report [55] included an effort to compare the performance of the European models to U.S. type performance standards. Although a perfect comparison is not possible due to differences in duty-cycle (*i.e.,* proportion of time the unit is operating) to be evaluated in the test and the emissions sampling and analysis protocols, the analysis indicates that the top 20 percent performing European wood boilers (*i.e.,* hydronic heaters) in the size range of 120,000–170,000 Btu would meet an output-based emission rate of 0.06 lb/MMBtu using the European test methods. The underlying test data and limited comparative testing show that over 50 European models would likely be considered state-of-the-art BSER and be capable of meeting the proposed Step 2 BSER associated emission level of 0.06 lb/MMBtu heat output, using EN 303–05, which specifies cord wood as the test fuel. We ask for comments and emission test data using different test methods and cord wood to help us determine if the proposed emission levels should be adjusted for any differences in test methods and between fuels, *e.g.,* crib wood and cord wood.

The nationwide annualized total costs are based on the cost assumptions explained in section IV.C and in the background documentation.[56] The average annual cost increase to manufacturers of hydronic heaters during the 2014 through 2022 period anlayzed in the RIA is approximately $4.6 million. Estimated nationwide annual $PM_{2.5}$ emissions, averaged over this same period (2014–2022), are projected to be 1,332 tons/year under the baseline (unregulated) condition versus 84 tons/year under the proposed two-step BSER, an average reduction of 1,249 tons/year, considering only the first year of emissions for each new heater sold. Given this limited snapshot for these cost and emission estimates, the average cost of reducing each new

[53] See footnote 54.

[54] European Wood-Heating Technology Survey: An Overview of Combustion Principles and the Energy and Emissions Performance Characteristics of Commercially Available Systems in Austria, Germany, Denmark, Norway, and Sweden; Final Report; Prepared for the New York State Energy Research and Development Authority; NYSERDA Report 10–01; April 2010.

[55] See footnotes 24, 36 and 38.

[56] See footnotes 36 and 38.

ton of $PM_{2.5}$ emissions during the 2014–2022 period is approximately $3,600 per ton annually. The annualized cost-to-sales ratio is 3.3 percent for hydronic heater models. However, when considering the total costs and cumulative emission reductions over the more representative full model design life span and appliance emitting life span, the overall cost effectiveness is approximately $160 per ton (shown above in Table 11).[57]

Given the reasonable cost effectiveness of imposing the two-step BSER, and given the 6-year lead time (from the date of these proposed standards) until model lines must come into compliance with the proposed Step 2 limit, we determined that the two-step phased-in limits represent BSER for these residential consumer appliances at this time. Thus, we are proposing a two-step standard for hydronic heaters, in which Proposed Step 1 is required upon the effective date of the final rule, and Proposed Step 2 is required 5 years after publication of the final rule. Section V.B.5 discusses a three-step alternative approach that we also considered for hydronic heaters, and on which we are seeking comment.

b. Forced-air Furnaces

Emissions from wood-fired, forced-air furnaces have not previously received much attention in the U.S. However, industry information suggests that there are three times more sales of wood-fired, forced-air furnaces each year compared to wood-fired hydronic heaters. These units are relatively easy to retrofit into existing structures, and their sales price is substantially less than hydronic heaters but greater than gas or oil furnaces. Because they are whole-house heating systems, they have the capacity to generate large amounts of emissions. Also, they compete with wood-fired hydronic heaters, which we propose to regulate. Not regulating wood-fired, forced-air furnaces could create an adverse competitive imbalance with the wood-fired hydronic heater market segment of the residential wood heater source category. Both forced-air furnaces and hydronic heaters compete with oil and gas furnaces. Consumer choices vary with consideration of upfront sales price, financing costs, and operating costs, *e.g.,* the cost of obtaining seasoned wood versus oil or gas.

Wood-fired, forced-air furnaces are not currently regulated in the U.S. (with the exceptions of broader bans or use limits on wood-burning appliances), but they are beginning to be regulated in Canada. The main regulatory mechanisms are local and provincial regulations requiring listing per CSA B415.1–10, which is the CSA specification for emission performance of solid-fuel-burning heating appliances.[58] All CSA standards are developed through a consensus standards development process approved by the Standards Council of Canada. This process brings together stakeholder volunteers representing varied viewpoints and interests to achieve consensus and develop a standard. The most recent B415.1–10 Committee consisted of manufacturers, Environment Canada,[59] provincial agency staff, test laboratories and the EPA. The current version of B415.1–10 was published in March 2010, and it includes new requirements for indoor and outdoor central heating appliances, including wood-fired forced-air furnaces. In addition to establishing performance test requirements, B415.1–10 also includes emissions requirements for PM. Section 4.2.1(c) of the CSA standard establishes an average particulate emission rate of less than or equal to 0.40 g/MJ, which is equivalent to 0.93 lb/MMBtu. Manufacturers anticipate that CSA Standard B415.1–10 will effectively establish the minimum requirements for future units sold in Canada. For example, the province of British Columbia has enacted regulations limiting the sale of wood-burning appliances to those that comply with B415.1–10 (or the U.S. NSPS when the EPA issues such a standard), and other provinces and municipalities in Canada are in the process of amending their regulations to apply to central heating systems, including forced-air furnaces.

In developing the B415.1–10 emissions limit of 0.40 g/MJ (0.93 lb/MMBtu) for solid-fuel central heating systems, the CSA committee thoroughly reviewed the best systems available, developed a test method for such systems and supported emission testing of candidate best systems. A B415.1–10 validation-testing program performed by Intertek in Middleton, Wisconsin, included both a high-tech furnace and a conventional furnace. The high-tech furnace achieved average particulate emissions of 0.46 g/MJ output (1.067 lb/MMBtu). The conventional furnace achieved average particulate emissions of 1.65 g/MJ (3.828 lb/MMBtu) output. Thus, the CSA limit of 0.40 g/MJ (0.93 lb/MMBtu) output corresponds to a 75 percent reduction in emissions when using the average particulate emissions of the conventional furnace tested by Intertek as part of the CSA B415.1–10 validation program.

We also investigated the performance of European production forced-air furnace models to determine whether their performance might be better than what CSA found in North America. However, forced-air furnaces are not commonly used in Europe because they are considered to be an inferior technology for home heating in Europe; thus we had no European candidate BSER to consider.

Manufacturers are actively conducting R&D in response to both the current CSA standard and the anticipated NSPS we are proposing. For example, one company has recently had an EPA-certified laboratory test two of their newest models. These tests, using the test method in CSA B415.1–10, show particle emissions below 0.1 lb/MMBtu heat output. Considering all of the above, we believe that BSER for forced-air furnaces may be demonstrated at the same emission levels as for hydronic heaters. We have considered proposing standards for forced-air furnaces that match the Step 1 and Step 2 standards we are proposing for hydronic heaters, that is, a proposed Step 1 BSER of 0.32 lb/MMBtu heat output and a cap of 18 g/hr as determined by the test methods and procedures in CSA B415.1–10 upon the effective date of the final standard and a proposed Step 2 BSER of 0.06 lb/MMBtu heat output as determined by the test methods and procedures in CSA B415.1–10, 5 years after the effective date of the final standard. However, we have concerns that only one U.S. manufacturer currently has models that have been tested by CSA B415.1–10 and shown to achieve these levels, and, thus, we are proposing that the Step 1 BSER for forced-air furnaces match the current CSA B415.1–10 level of 0.93 lb/MMBtu heat output. We are also proposing, however, that by 5 years after the effective date of the final standard, forced-air furnaces be subject to the same standards as hydronic heaters and be required to meet the proposed Step 2 BSER of 0.06 lb/MMBtu that hydronic heaters must meet then under this proposal.

Given that the largest U.S. forced-air furnace manufacturer already has a catalytic model meeting 0.06 lb/MMBtu, we think the 6 years of lead time is sufficient time in which to conduct R&D

[57] See footnotes 36 and 38.

[58] CSA B415.1–10: Performance testing of solid-fuel-burning heating appliances, Canadian Standards Association, Mississauga, Ontario, Canada. March 2010.

[59] Environment Canada was created in 1971, and has the responsibility to implement the Government of Canada's environmental agenda including, but not limited to, Canada's environmental and wildlife legislation, enforcement activities and other efforts to protect, conserve and enhance the environment.

to produce comparably lower emitting model lines, although we are seeking comment on an alternative 3-step approach with a longer lead time. Since there are limited emissions data available for forced-air furnaces that reflect hydronic heater proposed Step 1 and proposed Step 2 BSER, we request specific comments and data on the proposed emission levels and compliance deadlines, as well as the environmental impacts and market implications for setting emission limits that match what we are proposing for hydronic heaters.

The nationwide annualized total costs are based on the cost assumptions explained in section IV.C and in the background documentation.[60] The average annual cost increase to manufacturers of forced air furnaces during the 2014 through 2022 period analyzed in the RIA is approximately $2.3 million. Estimated nationwide annual $PM_{2.5}$ emissions, averaged over this same period (2014–2022), are projected to be 3,044 tons/year under the baseline (unregulated) condition versus 434 tons/year under the proposed two-step BSER, an average reduction of 2,610 tons/year, considering only the first year of emissions for each new heater sold. Given this limited snapshot for these cost and emission estimates, the average cost of reducing each ton of $PM_{2.5}$ emissions during the 2014–2022 period is approximately $860 per ton annually, as compared to the monetized health benefits of $360,000 per ton to $810,000 per ton of reducing direct $PM_{2.5}$. The cost-to-sales ratio is 2.4 percent. However, when considering the total costs and cumulative emission reductions over the more representative full model design life span and appliance emitting life span, the overall cost effectiveness is approximately $40 per ton (shown above in Table 11).[61]

Given the reasonable cost effectiveness of imposing the two-step BSER, and given the 6-year lead time (from the date of these proposed standards) until new model lines must come into compliance with the proposed Step 2 limit, we determined that the two-step phased-in limits represent BSER for these residential consumer appliances at this time. Thus, we are proposing a two-step standard for forced air furnaces, in which Proposed Step 1 is required upon the effective date of the final rule and Proposed Step 2 is required 5 years after the effective date of the final rule. Section V.B.5 discusses the three-step alternative approach that we also considered for forced air furnaces, and on which we are seeking comment.

3. Masonry Heaters

We are proposing subpart RRRR for new masonry heaters. With a few exceptions, masonry heater emissions are not subject to specific PM emission limits in North America or Europe. Some states and local areas do not allow any residential wood heaters that are not certified to meet the current residential wood heater NSPS. The states of Colorado and Washington have set 6 grams of particles emitted per kilogram of wood burned (g/kg) and 7.3 g/kg limits, respectively (each of which is based on different test methods), and a small number of appliances have been tested and certified for those states. (The BSER level we are proposing below uses a different format but is commonly accepted to be only slightly more stringent than the Colorado and Washington limits.) We considered various forms for a masonry heater standard, and we believe that an appropriate format could be a daily average g/hr limit for the heating cycle coupled with a limit for emissions per heat output (lb/MMBtu output). The daily average over the heating cycle format seems to be well adapted to the nature of the technology of masonry heater operation, which involves one or two short high burn rate cycles where hot gases are generated during combustion of a fuel load in the firebox and then pass through the channels, saturating the masonry mass with heat. The masonry mass then radiates heat into the area around the masonry heater for 12 to 24 hours. Unfortunately, we lack sufficient data to set the level of a daily average data approach, so we are proposing instead a heat output format. The heat output format has the advantage of providing a good metric for consumers and regulatory agencies to compare emissions of competing residential heating appliances for an equivalent heat output. We ask for specific comments on whether a g/kg format would be better.

We had numerous discussions with states, masonry heater manufacturers, and laboratories on heater designs, test methods and heater emissions and performance. The best performing improved combustion technology masonry heaters have well-engineered designs with long channels to maximize complete combustion and heat transfer. The manufacturers provided all available current emissions data. For example, one manufacturer provided an archive of available data. The data set included results from 31 tests (measuring emissions per heat output) that ranged from 0.07 g/MJ to 0.51 g/MJ (~0.17 to 1.22 lb/MMBtu), with an average rate of 0.26 g/MJ (0.621 lb/MMBtu). As we discussed earlier in this preamble, we do not have good information on how many heaters emit at each of these levels and thus have not developed a good estimate of baseline emissions and we ask for data that would help inform us. However, looking at this data set in more detail, we can see that the best ''improved combustion'' systems have an emission level of 0.13 g/MJ (0.32 lb/MMBtu) heat output. We note that this level is consistent with the proposed Step 1 BSER for hydronic heaters.

As discussed earlier in this preamble, the source categories to be regulated by the proposed subparts AAA, QQQQ, and RRRR are fundamentally different from the typical NSPS source category in that most NSPS regulate industrial processes whereas the source categories in subparts AAA, QQQQ, and RRRR include mass-produced residential consumer products. Thus, additional factors are included in the analyses presented today as compared to typical NSPS. For example, we considered whether we should allow longer lead time over which small manufacturers/builders could spread their R&D costs in order to stay in business. The Small Business Regulatory Enforcement Act Panel strongly recommended that we consider allowing more time. See section V.C of this preamble for discussion of this topic.

We estimated proposed Step 1 improved combustion BSER emissions and cost and economic impacts based on four groups of costs. The first group of costs consisted of the two large manufacturers that we know have already developed potentially complying models and would only face the costs of certification tests. For the second group of costs, we estimated the costs incurred by an additional two large manufacturers that conduct R&D to develop a total of four new model lines. For the third group of costs, we estimated the cost of one of the manufacturers using the computer simulation approach to certify additional model lines. Finally, for the fourth group of costs, we estimated the cost for all of the small, custom-built manufacturers using the computer simulation approach to certify their model lines. We do not anticipate a large nationwide emission reduction resulting from requiring the proposed Step 1 BSER versus what most manufacturers would have done in the absence of a rule; however we believe there are some masonry heaters that do

[60] See footnotes 37 and 38.

[61] See footnotes 24, 36 and 38.

not use current best designs and for those heaters there can be an emission reduction of 70 percent or more. We believe it is important to ensure that all new models achieve the BSER emission levels and avoid backsliding.

The nationwide annualized total costs are based on the cost assumptions explained in section IV.C and in the background documentation.[62] The average annual cost increase to manufacturers of masonry heaters during the 2014 through 2022 period analyzed in the RIA is approximately $294,000. The estimated cost-to-sales ratio is 4.8 percent. If one were to spread the costs over the much longer typical lifetimes of masonry heaters (over 40 years), the average annual costs would be much lower. We concluded that the proposed Step 1 BSER level of 0.32 lb/MMBtu heat output is appropriate for these appliances.

For masonry heaters, we are proposing that large manufacturers of masonry heaters (defined as those manufacturers constructing 15 or more masonry heaters per year) would be required to comply with these standards upon the effective date of the final rule. We are proposing that small manufacturers (defined as those manufacturers of less than 15 masonry heaters per year) would be required to comply with these standards 5 years after the effective date of the final rule. We are requesting specific comments on the proposed BSER option and data that might support alternative findings and enhance our impact analyses. For example, if we were to develop a g/hr average format in addition to the lb/MMBtu heat output format, are there products that might meet a daily average over the heating period versus the averaging only over the combustion period, and if so, how would this affect levels of performance and impacts on the environment? Further, we are seeking comment on the degree to which these dates could be sooner.

4. Alternative Approach for Comment

As noted in section III, in addition to the proposed two-step standards described above for appliances regulated as ''room heaters'' under subpart AAA (currently catalytic and noncatalytic adjustable burn rate wood heaters, single burn rate wood heaters, and pellet heaters/stoves) and for appliances regulated as ''central heaters'' under subpart QQQQ (currently hydronic heaters and forced-air furnaces), we also considered a different approach, an ''alternative three-step approach'' for subparts AAA and QQQQ. We seek comments on whether the final rule should be our (preferred) proposed two-step approach or whether the final rule should be this alternative three-step approach. We do not intend for the final rule to allow a choice between the two approaches. We did not develop a three-step approach for masonry heaters under subpart RRRR, since it is a one-emission-level standard, but we are seeking comments on our proposed 5-year compliance extension for small volume masonry heater manufacturers.

We compared unit cost increases,[63] nationwide manufacturer cost estimates,[64] emission reductions,[65] and overall cost effectiveness of the two-step proposal to the three-step alternative approach considered.[66] Table 12 compares the unit cost increase, nationwide average cost to manufacturers and the annual particulate emission reductions, during the 2014 through 2022 period analyzed in the RIA, for appliances currently affected by this proposal, considering only the first year of emissions for each new heater sold. Based on the cost and emission reduction estimates presented in this table, the overall cost effectiveness for this proposal over the 2014–2022 period is $3,250 per ton, but $5,800 per ton for the alternative approach considered (assuming no emission reductions for masonry heaters, for the sake of this analysis). Additional information on the impacts is included in the RIA in the docket.

TABLE 12—COMPARISON OF PROPOSAL AND ALTERNATIVE APPROACH (2014–2022)

Appliance type	Unit cost increase from baseline (2010$)		Nationwide average cost increase from baseline (2010$)		Emission reduction from baseline (tons)	
	Proposal	Alternative	Proposal	Alternative	Proposal	Alternative
Certified Wood Heaters	24	48	4,212,303	8,090,026	163	136
Single Burn Rate Heaters	226	337	901,732	1,540,600	754	756
Pellet Heaters/Stoves	24	47	3,460,489	6,255,536	49	24
Forced-Air Furnaces	3,262	4,891	2,252,284	3,813,898	2,610	2,712
Hydronic Heating Systems	6,458	9,672	4,554,152	8,302,026	1,249	1,250
Masonry Heaters	300 (ave.)	300 (ave.)	307,511	293,776	Not estimated	Not estimated.
Total	10,294	15,295	15,688,471	28,295,862	4,825	4,878

We are seeking comment and information on potential justifications for implementing such a three-step standard, instead of our proposed two-step standard for each of the appliances affected by this proposed rule, to provide additional flexibility for manufacturers that have different capabilities and resources to ultimately reach the most stringent BSER. The proposed two-step standards rely on the assumption that the proposed Step 2 BSER, already demonstrated by various models in each appliance category affected by the proposed rule, is achievable within 5 years of the proposed Step 1 BSER. There is a significant emission reduction achieved by the proposed Step 2 BSER compared to the proposed Step 1 BSER in each appliance category discussed above in section V, but there are no proposed interim emission limits imposed during the transition from the proposed Step 1 to the proposed Step 2. In the alternative approach considered, there is a longer transition period of 8 years between Step 1 and Step 3 (with the same significant emission reduction achieved between our proposed Step 1 and proposed Step 2), but there is an interim Step 2 limit which manufacturers must meet 3 years after

[62] See footnotes 24, 36 and 38.

[63] See footnote 38.

[64] See footnote 24, 36 and 38.

[65] See footnote 24.

[66] See footnote 24, 36 and 38.

the proposed Step 1. If we were to give a longer timeframe to redesign across model lines to accommodate the best systems, test, field evaluate, and certify a wide range of model lines, we believe there would be benefit to establishing required interim limits to codify progress in reducing emissions and to focus positive attention on early achievers as they show compliance in the period between 2015 and 2023.

We expect that the manufacturers that do not already meet the strongest emission limits would like the longer time to meet the Alternative Approach Step 3 but would prefer to not have an interim Step 2 requirement. However, we do not currently see adequate justification for allowing extra time without also requiring satisfactory progress, especially because numerous models already achieve the strongest emission levels. We also have concerns about the complexity of a 3-step approach and whether it would be harder for the EPA to enforce. Thus, we seek comment, including data and potential environmental and economic justifications, on whether the described Alternative Approach Step 2 emission limits represent BSER within 3 years of the effective date of the final rule. We also seek comment on whether an additional 5 years would be necessary to transition from the Alternative Approach Step 2 to the Alternative Approach Step 3 limit, or whether such a transition could be made in a shorter time period. Finally, for single burn rate wood heaters and forced-air furnaces, we are seeking comment on whether the alternative Step 1 limit should become effective upon the effective date of the final rule or after a 1-year ''adjustment'' period. The EPA seeks to encourage national achievement of the (proposed Step 2) BSER for each appliance category as soon as possible and as efficiently as possible, which is why we prefer the proposal over the alternative approach we considered. However, we also seek to balance industry's R&D needs with timely and efficient standards, and so we are seeking comment on the alternative approach outlined immediately above and in section III.

5. Other Proposed Emissions Testing and Reporting

a. Efficiency Testing and Reporting

While the CAA gives the EPA authority to set standards for emissions, and we have issued final rules that have used a variety of formats for such standards, including efficiency, we lack sufficient data to propose efficiency standards for residential wood heaters at this time. We are proposing only to require testing and reporting but not a minimum efficiency standard. Current data and other information from manufacturers and testing laboratories and the NYSERDA ''European Wood-Heating Technology Survey'' discussed earlier in this preamble show that, in general, the same types of improved combustion BSER designs that tend to reduce $PM_{2.5}$ emissions also tend to increase combustion efficiency, reduce CO emissions and improve efficiency. Current subpart AAA allows sources to either measure efficiency or report a default efficiency value. We believe these proposed subparts are an excellent opportunity to standardize the collection and reporting of such data.

Most industry members support the collection and reporting of tested efficiency values, but some do not necessarily support an efficiency standard because they have concerns that efficiency standards would encourage a ''ratings race'' and worry that some manufacturers would sacrifice operational viability in the field for a higher efficiency rating. We agree that some heat loss is necessary to ensure adequate draft out the chimney/stack and not backdrafting into living areas. However, we do not expect manufacturers to jeopardize their reputation or operator safety for a higher rating, and we believe that competition among manufacturers to increase their heaters/stoves' efficiencies is good for consumers and the environment. We request specific comments and supporting data that would help inform the need for and level of a possible efficiency standard. Also, we ask for specific comments on how, in the meantime, to best ensure consumers have access to the best information on efficiency performance, *e.g.,* labels, owner's manual, Burn Wise Web site and/or other means.

b. CO Testing and Reporting

We considered developing CO emission limits for all new residential wood heaters. However, our current data for CO emissions performance and methods of control are not sufficiently robust to support strong CO emission limits, and it would delay the NSPS if we were to seek additional data elsewhere at this time to support strong CO emission limits. We expect the CO emissions to be reduced as a result of the control of PM, because meeting the PM standards will be achieved primarily by BSER based on good combustion (and in some cases catalysts and hybrids) which will also result in good CO reductions without additional standards for CO. However, we are proposing that manufacturers measure and report CO. We believe this information will be useful to consumers and state and local regulators. Requiring manufacturers to measure and report CO emissions would also result in the collection of data that could be used in the future to establish a CO emissions limit. We are requesting specific comments and supporting data on the need for and level of a possible CO emissions standard. Also, we ask for comments on whether we should require CO monitors to help ensure proper operation of the heater and to reduce health and safety concerns for appliances that are installed in occupied areas.

c. Pellet Fuel Requirements

A wide variety of pellet fuels is available for purchase. However, in some cases, quality claims on the pellet fuel bag do not necessarily reflect what is in the bag and there can be variable performance. Manufacturers' data show that some fuel qualities have worse burning characteristics and operational characteristics than others, which results not only in heater performance problems but also increased emissions of PM. The PFI, an industry trade organization, has had pellet fuel quality standards in place since 1995, with updated standards issued in 2005, and again, most recently in 2011 (*http://pelletheat.org/wp-content/uploads/2011/11/PFI-Standard-Specification-November-2011.pdf*), in response to the EPA's planned revisions to the residential wood heaters NSPS. We have reviewed the PFI program and believe it is a good program that obviates the need for the EPA to develop our own program at this time. Under the proposed NSPS, pellet burning appliances would be tested using PFI (or, upon request to the EPA Administrator, an equivalent organization's) graded pellet fuel(s). Once certified, pellet burning appliances would only be allowed to burn the grade of fuel that the appliance manufacturer chose for the appliance certification test and the manufacturer specifies in their owner's manual for the operator to use. As discussed above, use of inferior grades would cause heater operational problems and increase emissions. The overall intent of the certification process is to increase the consistency and quality of pelletized fuel throughout the industry, and, thus, reducing appliance operational problems and helping certified appliances perform at the emission levels to which they are certified. Heater manufacturers have indicated to us that market competition will compel them to specify the widest range of grades for

which their heaters will properly perform.

The PFI is also implementing a quality assurance program to ensure that manufacturers reliably produce graded fuels. We propose to require adherence to this program (or equivalent) as a condition of producing graded pellet fuels to be used in obtaining certification under the NSPS. Similar to the NSPS quality assurance program, the PFI quality assurance program relies on use of accreditation and auditing bodies that:

- Accredit auditing agencies and testing laboratories
- Implement and enforce the program, including testing that the pellet fuels meet the grading specifications
- Maintain the enforcement regulations
- Administer a laboratory proficiency program
- Pursue product complaints

In addition, accredited auditing agencies perform the following tasks:

- Certify the production of densified fuel manufacturers
- Authorize production facilities to use PFI's ''grading mark''
- Conduct regular audits and extracts samples for third party verification
- Revoke authority to use the PFI mark, if necessary

Accredited testing laboratories perform the following activities:

- Provide QA/QC testing for fuel producers—''as needed''
- Provide testing for samples collected by auditing agencies
- Participate in the accreditation body's proficiency testing program

Finally, the densified fuel producers perform the following activities:

- Develop an in-house QA/QC program based on the PFI QA/QC handbook and the PFI standard specification
- Select an auditing agency and test lab
- Demonstrate compliance with grading system component
- Maintain compliance through periodic audits, inspection and testing

As noted earlier, we have reviewed the PFI program and believe it is a good program that obviates the need for the EPA to develop our own program at this time. We ask for specific comments on this decision and the PFI program.

d. Prohibited Fuel Types

As regulated in the current 1988 subpart AAA standards for residential wood heaters/stoves, operation according to the owner's manual requires operation with the appropriate fuels because the choice of fuels to burn in any appliance can have a major impact on emissions and efficient operation of the appliance. For clarity, we are proposing a list of prohibited fuel types (*e.g.,* trash, plastics, yard waste) to emphasize the responsibility of owners and operators to use appropriate fuels that will result in the performance of the unit as certified, to avoid the creation of possibly hazardous fumes from burning inappropriate materials, and to ensure that appliance continues to operate as designed. Even with burning clean wood, one of the key factors affecting emissions is the moisture content. Some advocates have suggested that we only allow use of wood certified to a certain moisture level and that we include visible emission limits as a tool to help with practical enforceability of the requirements for proper operation and maintenance. Manufacturers typically include in their owner's manuals information on proper maintenance and operation and state that the wood must be properly seasoned so that the moisture content is not too high for proper operation. Some manufacturers include moisture meters for the operators. We are proposing to require commercial owners (direct distribution manufacturers and retailers) to provide a moisture meter with the wood heater at the time of sale, along with the owner's manual and a copy of the warranty. We request specific comments on whether we should include more specific requirements on proper operations, such as the moisture content of the wood and visible emission limitations.

C. How did we establish the proposed compliance timelines?

The following table summarizes the proposed compliance timelines for the appliances covered by the three subparts.

TABLE 13—SUMMARY OF PROPOSED COMPLIANCE DATES

Appliance type	Compliance date
Adjustable Rate Wood Heaters or Pellet Heaters/Stoves with Current EPA Certification Issued Prior to the Effective Date of the Final Rule.	1988 requirements remain in effect for these heaters/stoves through the later of the effective date of the final revised rule or expiration of current certification (maximum of 5 years after certification and no renewal).
All Other Adjustable Rate Wood Heaters or Pellet Heaters/Stoves (includes currently certified heaters after the certification expires).	Step 1: upon the effective date of the final rule. Step 2: 5 years after the effective date of the final rule.
Single Burn Rate Heaters	Step 1: Upon the effective date of the final rule. Step 2: 5 years after the effective date of the final rule.
Hydronic Heaters	Step 1: Upon the effective date of the final rule. Step 2: 5 years after the effective date of the final rule.
Forced-Air Furnaces	Step 1: Upon the effective date of the final rule. Step 2: 5 years after the effective date of the final rule.
Masonry Heaters	Large manufacturers: Upon the effective date of the final rule for large manufacturers. Small manufacturers: 5 years after the effective date of the final rule.

The proposed compliance dates are tied to the effective date of the final standards. As stated earlier, an element of the BSER determination includes reasonable lead time for R&D to develop and certify cleaner units. We think limited or no R&D is needed to comply with the proposed Step 1 BSER standards. This allows manufacturers approximately 1 year between the date of this proposal and the date of the final rule to meet proposed compliance standards and limits. This 1-year period is in addition to the time that manufacturers have had leading up to this proposed rule.

We allowed small producers of masonry heaters that do not have a history of federal or extensive state regulation, or experience with voluntary partnership programs, 5 years after the effective date of the final rule to come into compliance with the same emission standards as larger masonry heater manufacturers in order to ensure a reasonable lead-time.

Finally, we think our proposal for a 6-year lead time before the Step 2 BSER limits (*i.e.,* 5 years after the effective date of the final rule) would allow manufacturers a reasonable time to develop complying models, access the necessary capital to develop them, and complete the certification process.

We are proposing a 6-month ''sold at retail'' provision for adjustable burn rate wood heaters, single burn rate heaters/stoves, and pellet heaters/stoves that were manufactured prior to the effective date of the final rule, but not yet sold. This ''sold at retail'' provision is similar to that provided in the current subpart AAA, and provides a reasonable transition for manufacturers to recoup their investment in their stock on hand. We believe this provision would have a nominal impact on air quality, because the majority of these appliances are already expected to achieve the Step 1 emission limits. For small producers of masonry heaters, we are proposing an additional 5-year lead-time. We are not proposing to apply these extensions to other sources regulated by this proposal. We do not believe that an additional ''sold at retail'' provision is needed for outdoor and indoor hydronic heaters and forced-air furnaces. In the case of hydronic heaters, we believe that any delay of the compliance deadline for sales would also result in the sale and long-term use of non-complying units, with a potentially adverse quality impact. We request specific comments on whether there are other factors we should consider regarding this ''sold at retail'' window and what length of time might be considered appropriate in specific circumstances.

While the original subpart AAA created a 1-year compliance extension for wood heater manufacturers producing less than 2,000 heaters per year, this proposed rule does not include a compliance extension provision for single burn rate heaters. The purpose of the original NSPS compliance date extension was to reduce the potential for a testing logjam and to provide small manufacturers additional time to conduct R&D, obtain financing, or purchase complying designs likely to meet the proposed standards. We believe that manufacturers and testing facilities have now had sufficient time and have gained the expertise necessary to meet these standards as proposed and that meeting the proposed compliance dates will impose no undue imposition on manufacturers or testing facilities. We request comment on the need for such a compliance extension and the number of models that might qualify as a small single burn rate heater manufacturer.

As stated above, we are proposing a 5-year compliance date extension for masonry heater manufacturers that sell fewer than 15 units per year. We also seek comments on whether we should have a cap on the total units sold in the 5 years, perhaps 50 units. Most of these manufacturers are very small companies. There are only a few major producers. According to one manufacturer, the Finnish firm, Tulikivi, manufactures and supplies about one-half of the U.S. masonry heater units installed yearly through its network of installing distributors. The second largest producer is a Canadian firm, Temp-Cast, which manufactures and exports a large percentage of the remainder as internal core components only to U.S. dealer/installers and homeowners. This manufacturer states that the remainder of the industry is dozens of small producers and installers who produce only a few units, most of which are custom and individually designed. This manufacturer also stated that over 80 percent of U.S. masonry heater installations use manufactured core product installation and are not custom site built (brick-by-brick).

Because of the resources required to develop, test, and certify masonry heaters (estimated by industry to be approximately $250,000 per model, although our cost analysis used a larger estimate), we have concluded that a manufacturer of a small number of custom site-built model(s) of masonry heaters would likely be unable to recover the total cost of R&D and certification testing costs in a reasonable timeframe. Similarly, a company that makes core components or sells design kits would be unable to recover total costs if only a few such components or kits are sold per year. We estimated that the annualized cost for developing, testing and certifying a single model is approximately $60,000, most of which is the cost of R&D. If a seller makes $5,000 of profit on each model sold, he or she would need to sell 12 units per year to break even. The masonry heater industry recognized concerns about these costs, and it has developed an alternative compliance method based on computer simulations. The industry expects that this alternative will allow sharing licensing of cleaner designs such that the initial software purchase would cost approximately $1,500 but ongoing annual licensing cost will be approximately $450 per manufacturer. We believe the 5-year compliance date extension discussed above for masonry heater manufacturers that sell fewer than 15 units per year will allow sufficient time for manufacturers to become comfortable with this alternative, and use it to demonstrate compliance.

We considered proposing a compliance exemption for small manufacturers of masonry heaters because of the overall small size of the market. However, we were concerned that this might encourage installation of cheaper, low-performing models, which would place complying models at a potential disadvantage. We request comment on the need for either a compliance date extension or a compliance date exemption for masonry heaters and the length of time that we should allow.

We are not proposing any extensions or exemptions for small manufacturers of adjustable burn rate wood heaters or pellet heaters/stoves. Adjustable burn rate wood heaters are already subject to the NSPS, and we have estimated that they should not face any R&D expenses to comply with the Step 1 standards. To reduce unnecessary certification costs, we are proposing to allow a one-time waiver from performance testing for the first certification period for any manufacturer that has previously conducted a valid certification test that demonstrates the wood heaters in the model line meet the proposed standards. We also believe that pellet heaters/stoves would not face any R&D costs to comply with the proposed Step 1 standards, and we estimate that certification costs will only pose a minor impact. We request comment on whether there are other factors we should consider regarding a small manufacturer compliance extension for these appliances.

We also are not proposing a small manufacturer compliance extension for the Step 1 standards for new residential hydronic heaters or forced-air furnaces. There are currently 36 hydronic heater models built by 17 U.S. manufacturers that have already been qualified to meet the Phase 2 voluntary partnership program level of 0.32 lb/MM BTU. Manufacturers of hydronic heaters and forced-air furnaces have known for several years that we were drafting this proposal and that the states have been very concerned about emissions from the models that may not meet the proposed standards; and we do not want to perpetuate sales and use of models unless they demonstrate they do meet the standards. Once again, we request comment on whether there are other factors we should consider regarding a small manufacturer compliance extension for these appliances and what number of appliances sold would constitute a small volume manufacturer.

As discussed above, we recognize there is some concern, as there was with the initial NSPS compliance dates, that testing laboratories capacity may not be able to meet the demand for certification tests in the first few years. However, we believe that the steps we have already proposed, the availability of additional ISO-accredited labs, the advance notice that industry has had concerning the NSPS prior to this proposal, and the time between this proposal and the proposed compliance date of the final rule, should ensure that adequate compliance certification resources are available. The logjam provisions of the current 1988 NSPS were never invoked, and we do not think they are needed at this time. However, we are taking comment on this issue. We also request comment on whether these compliance timelines strike the right balance between avoiding undue economic burdens and the need to get better performing models on the market as soon as possible to reduce emissions, and whether other compliance dates would be appropriate.

D. How are we proposing to streamline the requirements for certification, quality assurance and laboratory accreditation?

As part of the NSPS review process, several stakeholders stated the need to improve the current certification and quality assurance requirements. For example, some pellet heaters/stove manufacturers said one reason they avoid certifying their heaters/stoves is because they are concerned that the current process is a barrier to rapid product development and making changes to respond to market demand. Many manufacturers were also concerned that, as the scope of the NSPS program expands to include multiple appliance types, the certification program would act as a logjam. Some states are concerned, however, that moving away from the EPA certification might result in less effective oversight. At the EPA, we are also looking for ways to use our enforcement resources more effectively.

We believe that the proposed changes, described in section III.A regarding a third-party certification program by an ISO-accredited certifying body and testing at ISO-accredited labs, will facilitate the development of improved designs by providing a faster approval process and reducing redundancies in quality assurance for emissions testing and safety testing, and will improve enforcement by providing for more frequent on-site inspections of manufacturing facilities and laboratories. For example, safety certification audits take place quarterly and include the random inspection of manufactured units for compliance with design and safety factors. The experience of the voluntary partnership programs' ISO process has shown that the third-party approach can work.

We also reviewed the list of design changes (the ''k'' list; *See* 40 CFR, subpart AAA, § 60.633(k)) that would result in a need to recertify a model line when certain tolerances are exceeded. We reviewed this list based on the experience we have to date on the types of changes that are significant and knowledge about current manufacturing processes that help prevent these changes from occurring. The resulting list focuses on the following key tolerances:

- Firebox dimensions
- Air introduction systems
- Dimensions and locations of the baffle, catalyst, refractory/insulation, flue gas exit, and the outer shielding and covering
- Dimensions and fit of the gaskets for the door and catalyst bypass
- Fuel feed system
- Forced air combustion system

We believe these changes will focus resources on the significant changes that could affect emissions performance of the model in question. We ask for specific comments on this list and the level of appropriate tolerances.

We propose to revise the requirement for manufacturers to conduct quality assurance emission tests once a specified number of units are sold. Instead, we propose to replace this numerical trigger with a requirement to retest when manufacturer-specific quality assurance criteria (*e.g.,* multiple errors in safety tests) are exceeded. We believe that development of a manufacturer-specific quality assurance plan with specific criteria and approval by an ISO-accredited certifying body (or EPA-approved equivalent) and required follow-up by that certifying body is a more direct measure of possible performance issues, but we request comment on the exact event(s) that should be used as the trigger(s) to retest and whether the triggering event(s) should vary by appliance type.

We are proposing to retain final EPA approval of the certification, and we also propose to require the manufacturer to submit with the application for certification a statement signed by a responsible official that the manufacturer has complied with all requirements of the subpart and that the manufacturer understands that he or she remains responsible for compliance regardless of noncompliance by the certifying body. We believe this combination of requirements would provide meaningful EPA oversight, assign clear lines of responsibility, and free up resources to do more on-site inspections and other quality assurance activities, such as addressing issues of counterfeit certificates or absence of certificates.

The current random compliance audit testing of the certification testing program is considered underused by many. The EPA recognized this and has recently initiated such testing.

A key element of the current 1988 NSPS laboratory audit program is the ''round robin'' test program. In this program, the EPA purchases a wood heater and sends it to each of the accredited laboratories to conduct emissions tests (two runs at each burn rate for a total of eight runs). The EPA then compares the results to determine inter-laboratory performance. The EPA recognizes that we have not given this program as much attention as was envisioned in 1988. Thus, we propose to strengthen this program by specifying that every laboratory conducting certification tests under the NSPS must participate in the round robin tests every other year. If a lab's results are not within ±10 percent of the value at which the heater was certified, then the lab must conduct another 8 runs. Also, we will remind the manufacturers that, as always, the EPA may potentially use this information to help determine the need for manufacturer audits and potential enforcement actions. We think that these requirements and reminders, combined with the proposed changes in test methods (described in greater detail in the test methods discussion in this preamble) and implementation of the ISO process will help improve inter-laboratory repeatability and reproducibility.

E. What changes and additions to the allowed test methods are we proposing?

As described earlier in this preamble, we are proposing changes to the test methods required by subpart AAA. We are also proposing test methods for the new subparts QQQQ and RRRR (as described earlier). In addition, we are proposing new requirements for testing and ultimately certifying using cord wood, which is what the consumer burns. All affected devices required to be tested using Method 28 or Method 28 WHH would now be required to conduct such tests using crib wood and cord wood. Under Proposed Step 1, manufacturers would have the option of selecting which of these test results to use to show compliance with the emissions standards. In other words, we

are proposing to require manufacturers to conduct two separate tests, one with crib wood and one with cord wood. We are also proposing that manufacturers be required to report the results of both tests to the EPA, but manufacturers can choose to certify with either crib or cord wood under Proposed Step 1. Under Proposed Step 2, manufacturers would be required to show compliance testing with cord wood.

We are also proposing to revise the test methods to require the addition of 1-hour filters for each test run to gather data regarding startup and anticipated peaks. Further, we are proposing new compliance requirements for Step 2 with emissions limits at the lowest burn rate (Category 1) and the maximum burn rate (Category 4), not a weighted average of the four burn rates, as in the current 1988 NSPS.

Based on the extensive consensus development process, history of the subpart AAA NSPS and hydronic heater voluntary partnership program emission test experience, and review of similar international standards, we believe the proposed methods reflect state-of-the-art test methods. However, we request specific comment on test method related issues and any data supporting such issues or concerns.

F. What other changes and additions to the administrative requirements are we proposing?

Consistent with Executive Order 13563: Improving Regulation and Regulatory Relief, we reviewed the entire current subpart AAA to identify information that is no longer relevant or useful and removed associated reporting and recordkeeping requirements. For example, because of the changes in the audit procedures, we do not believe it is necessary for manufacturers to keep records of the number of affected appliances that are sold each year, by certified model lines, for purposes of these subparts.

The prohibitions section in each of the proposed subparts (§ § 60.538, 60.5480, 60.5492) is based substantially on the current prohibitions section in subpart AAA. Similarly, the delegation section in each proposed subpart (§ § 60.539a, 60.5482, 60.5494) is based primarily on the current delegation section in subpart AAA. In general, we believe these delegations have worked well and are still appropriate with some clarifications and additions. The intent of the prohibitions section is to clarify the responsibility of owners and operators and manufacturers to comply with the proposed subparts. Key provisions for owners and operators emphasize that appliances must be operated in accordance with the owner's manual and the appliances must not be altered in any way to circumvent the design and operation of a certified appliance. Key provisions for manufacturers emphasize the importance of complying with the label requirements and the need to maintain current certification for all heaters that are offered for sale. The intent of the delegation section is to clarify the regulatory provisions for which the EPA has retained sole enforcement authority (definitions, compliance and certification, test methods and procedures, laboratory accreditation, reporting and recordkeeping, revocation of certification, and hearings and appeals procedures). However, we have proposed to include the ability to delegate provisions to state, local or tribal agencies where local enforcement is essential, such as enforcement of permanent labels and owner's manual content, and presentation of false or misleading information. Note that when the EPA ''delegates'' enforcement authority, we retain our authority to enforce while allowing the delegatees also to be able to enforce the delegated provisions. Also note that the delegations are upon request, not a requirement by the EPA.

We are proposing to replace the current subpart AAA hearing and appeal procedures with a streamlined Petition for Review process and also use this process in subparts QQQQ and RRRR. This process would allow accredited laboratories and manufacturers to contest audit test findings, laboratory accreditations, certification denials, and certification revocations by submitting a written request and supporting documentation to the EPA. This process would allow for expedited review and resolution. We request specific comments on this proposed process and other ways to improve or streamline procedures while preserving the integrity of the program.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action'' because it is likely to have an annual effect on the economy of $100 million or more 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. The $100 million threshold can be triggered by either costs or benefits, or a combination of them. Accordingly, the EPA submitted this action to OMB for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, the EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the RIA for this proposed rule. A copy of the analysis is available in the docket for this action.

A summary of the monetized benefits and net benefits for the proposed rule at discount rates of 3 percent and 7 percent is in Table 8 of this preamble, and a more detailed discussion of the benefits is found in section IV.B of this preamble. For more information on the benefits analysis, please refer to the RIA for this rulemaking, which is available in the docket.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Information Collection Request (ICR) documents have been prepared for each proposed subpart. The subpart AAA ICR has been assigned the EPA ICR number 1176.10, which is a revision of the currently approved ICR number 1176.09. The subpart QQQQ ICR is a new collection, which has been assigned the EPA ICR number 2442.01. The subpart RRRR ICR also is a new collection, which has been assigned the EPA ICR number 2443.01. The new information collection requirements are not enforceable until OMB approves them.

The proposed rules would require manufacturers of new residential wood heating devices to submit applications for certification of model lines, to submit results of emissions tests conducted to demonstrate that the model lines would comply with the standards and produce certified units according to a quality control plan approved by an independent certifying body. Manufacturers must submit a notification of the initial test and biennial reports that each certified model line remains unchanged. They must also maintain records of all certification data, maintain results of quality assurance program inspections and emissions test data, and seal and store the tested appliance.

Consistent with the current ICR for subpart AAA, we have included costs to manufacture and apply permanent labels (for all models) on each applicable unit prior to sale. These labels provide important compliance information to enforcement officials.

Test laboratories that want to conduct NSPS certification testing would need to apply for accreditation, conduct initial and biennial proficiency testing and report the results of all such testing. Accredited test laboratories would also be required to participate in an audit compliance program. Finally, the accredited laboratories must maintain records of all certification tests, proficiency tests and compliance audit test data.

The required notifications are used to inform the agency when a new model line is expected to be tested. The EPA may then observe the testing operation, if desired. Emissions test reports are needed as these are the agency's record of a model line's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved.

Adequate recordkeeping and reporting are necessary to ensure compliance with these standards as required by the CAA. The information collected from recordkeeping and reporting requirements is also used for targeting inspections and is of sufficient quality to be used as evidence in court. As discussed earlier, we have reviewed all the current requirements and are proposing to remove the portions of the recordkeeping that are not necessary.

The estimated burden for proposed subpart AAA is based on an estimated 72 respondents (66 manufacturers and 6 testing laboratories) that would be subject to the rule. The number of total annual responses for subpart AAA is estimated at 265. The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to be a total of 6,489 labor hours per year at a total labor cost of $516,188 per year. The ICR estimates that capital and the associated operation and maintenance (O&M) costs for these systems would be $1,452,177 per year. The average annual labor burden per response is 24 hours.

The estimated burden for proposed subpart QQQQ is based on an estimated 41 respondents (37 manufacturers and 4 testing laboratories) that would be subject to the rule. The number of total annual responses for subpart QQQQ is estimated at 67. The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to be a total of 2,134 labor hours per year at a total labor cost of $169,745 per year. The ICR estimates that capital and operation and maintenance (O&M) costs would be $715,796 per year. The average annual labor burden per response is 32 hours.

The estimated burden for proposed subpart RRRR is based on an estimated 48 respondents (45 manufacturers and 3 testing laboratories) that would be subject to the rule. The number of total annual responses for subpart RRRR is estimated at 108. The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to be a total of 2,044 labor hours per year at a total labor cost of $162,589 per year. The ICR estimates that capital and operation and maintenance (O&M) costs would be $89,037 per year. The average annual labor burden per response is 19 hours. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2009–0734. Submit any comments related to the ICR to the EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to the EPA. Send ICR-related comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after February 3, 2014, a comment to OMB is best assured of having its full effect if OMB receives it by March 5, 2014. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in manufacturing heating equipment (except electric and warm air furnaces), such as heating boilers (heaters), heating stoves, floor and wall furnaces, and wall and baseboard heating units, as defined by NAICS code 333414 with fewer than 500 employees, or is primarily engaged in manufacturing air-conditioning and warm air heating equipment as defined by NAICS code 333415 with fewer than 750 employees, or is primarily engaged in masonry contracting, as defined by NAICS code 238140 with annual receipts less than 14 million dollars (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Pursuant to section 603 of the RFA, the EPA prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could reduce that impact. The IRFA contained within the RIA for this proposed rule is available for review in the docket and is summarized below:

- Reason Why Action Is Being Considered. As discussed earlier in this preamble, this proposal was developed following CAA section 111(b)(1)(B) review of the existing residential wood heater NSPS.
- Statement of Objectives and Legal Basis of Proposed Rule. As discussed earlier in this preamble, the EPA is proposing to amend Standards of Performance for New Residential Wood Heaters and to add two new subparts: Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces and Standards of Performance for New Residential Masonry Heaters. This proposal would achieve several objectives, including applying updated emission limits that reflect BSER; improving coverage of the broad suite of residential wood heaters; improving the test methods; and streamlining the certification process. This proposal does not include any requirements on heaters that are solely fired by gas or oil. This proposal does not affect existing heaters. This proposal

was developed under the authority of CAA section 111.

• Description and Estimate of the Number of Small Entities. As discussed earlier in this preamble, small entities that the EPA anticipates being affected by this proposal would include almost all manufacturers of residential wood heaters. We estimate that roughly 250–300 U.S. companies manufacture residential wood heaters. We believe that approximately 90 percent of these manufacturers meet the SBA small-entity definition of having fewer than 500 employees.

• Description of reporting, recordkeeping and other compliance requirements. The reporting and recordkeeping requirements are described in the section immediately above (*B. Paperwork Reduction Act*). As discussed there, the information collection requirements (ICR), including reporting and recordkeeping, in this proposed rule have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* For subpart AAA, we estimated the potential annual burden averaged over the first 3 years of the ICR to be a total of 6,489 labor hours per year at a total labor cost of $516,188 per year and an average annual labor burden per response of 24 hours. For subpart QQQQ, we estimated 2,134 labor hours per year at a total labor cost of $169,745 per year and an average annual labor burden per response of 32 hours. For subpart RRRR, we estimated 2,044 labor hours per year at a total labor cost of $162,589 per year and an average annual labor burden per response of 19 hours.

• Description of other compliance requirements. As described earlier in this preamble, this proposal would apply updated emission limits that reflect the current best systems of emission reduction and improve the coverage of the expanded variety of types of residential wood heaters. We estimate the proposed NSPS's total annualized average nationwide costs would be $15.7 million (2010$) over the 2014 through 2022 period. The economic impacts for industries affected by this proposed rule over this same period range from 4.3 percent for manufacture of wood heater/stove models to as much as an 6.4 percent compliance cost-to-sales estimate for manufacture of single burn rate wood heater models. These impacts do not presume any pass-through of impacts to consumers. With pass-through to consumers, these impact estimates to manufacturers will decline proportionate to the degree of pass-through. We estimate that small entities will have annualized costs of greater than 1 percent of their sales in all industries except NAICS 332510, 333414 and 423720 with fewer than 20 employees, and NAICS 236115, 238140 and 442299 with receipts less than $10 million. Those establishments in NAICS 332510, 333414 and 423720 with cost-to-receipt ratios higher than 1 percent account for 80 percent of small entities affected in these industries. Establishments in NAICS 236115, 238140 and 442299 with cost-to-receipt ratios higher than 1 percent account for 99 percent of small entities affected in these industries.

• Relevant federal rules that may overlap or conflict with this proposal. There are no other relevant federal rules.

• Significant alternatives. The significant alternatives to this proposal, especially those that might minimize potential impacts on small entities, are presented in the remainder of this section.

As required by section 609(b) of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), the EPA also convened a Small Business Advocacy Review Panel (Panel) to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements. The following paragraphs describe the process, the type of small entity representatives, the outreach efforts and the Panel members.

Well before beginning the formal SBREFA process, the EPA actively engaged in outreach with HPBA, the Masonry Heater Association (MHA) and PFI and many of their member companies to discuss the rule under development and to provide these contacts with an early opportunity to ask questions and discuss their concerns.[67] The EPA provided each small business with general information on the SBREFA process and background information on the NSPS rulemaking process and current schedule.

Based on consultations with the Small Business Administration, and resulting from solicited self-nominations, we prepared a list of 30 potential Small Entity Representatives (SERs), from residential wood heating appliance manufacturers (wood heaters, pellet heaters/stoves, hydronic heaters, forced-air furnaces and masonry heaters), other wood-burning appliance manufacturers (fireplaces, cook stoves), equipment suppliers, chimney sweeps, test laboratories, masons and trade associations. Once the official pre-Panel process began and potential SERs were identified, the EPA held an outreach meeting with the potential SERs and invited representatives from the Office of Advocacy of the Small Business Administration (OA/SBA) and the Office of Information and Regulatory Affairs within the Office of Management and Budget (OIRA/OMB) on June 29, 2010, to solicit their feedback on the upcoming proposed rulemaking. Representatives from 26 of the 30 companies and organizations that we selected as potential SERs for this SBREFA process participated in the meeting (in person and by phone). At that meeting, the EPA solicited written comments from the potential SERs, which were later summarized and shared with the Panel as part of the convening document.

The SBAR Panel convened on August 4, 2010. The Panel consisted of representatives of the EPA, OA/SBA and OIRA/OMB. The Panel held a formal outreach meeting/teleconference with the SERs on August 25, 2010. To help the SERs prepare for this meeting, on August 11, 2010, the Panel sent a list of questions, preliminary cost information and other materials to each of the SERs via email. Additional materials were emailed to the SERs on August 19, 2010. The Panel provided the opportunity for questions and comment during the meeting on various aspects of the proposal being developed, including the expanded scope of the rule, changes to the current requirements under consideration, preliminary cost information and follow up from the June 29, 2010, meeting on the SERs' ideas for regulatory flexibility. During the August 25 meeting, SERs voiced general support for the planned proposed rule and shared specific concerns with the Panel members. As a result of this meeting, the EPA received many useful verbal comments, and the EPA received many helpful written comments by September 10, 2010.

Consistent with the RFA/SBREFA requirements, the Panel evaluated the assembled materials and small-entity comments on issues related to elements of the IRFA. A copy of the Panel final full report is included in the docket for this proposed rule. We invite comments on the report. A summary of the Panel recommendations is presented below. We have attempted to follow the Panel's recommendations to the degree we can while also ensuring that the options are practicable, enforceable,

[67] Also, as noted in this preamble in the discussion of development of the hydronic heater emission limits, the EPA worked with the hydronic heater industry in 2006 to develop a voluntary partnership program to encourage manufacture of cleaner models, *www.epa.gov/burnwise/participation.*

environmentally sound and consistent with the CAA. For those recommendations not adopted by the EPA, we have included an explanation for why we rejected them.

Many of the SERs and the Panel had concerns about the breadth of this rulemaking and the challenges the EPA faces in conducting rulemaking for all of these source categories at one time and the challenges that the small businesses will face in having to comply with standards for all of these source categories at one time. The Panel recommended that the EPA should consider focusing efforts first on emissions sources that have the greatest potential to impact public health through the magnitude of emissions and population exposure. We have focused our efforts. The Panel noted the adverse effects of the 1988 NSPS on numerous wood heater/stove manufacturers, and the need to carefully develop a rule that will minimize business closures, while still achieving significant emission reductions. All Panel members believed that the EPA had adequate information to move forward with developing revisions that apply to the residential wood heater categories that are already regulated by the 1988 NSPS. However, two Panel members recommended that the EPA Administrator consider taking more time to collect additional information to better determine BSER for the certified wood heater category. They concluded that the EPA did present to the Panel enough information to justify regulation of this subcategory, but the EPA did not adequately inform the SERs about the other categories. These two Panel members believed it was unclear whether adoption of a more stringent standard for new sources would slow the adoption of new, cleaner burning heaters, potentially delaying improvements in air quality. The two Panel members further believed, based on the information available from the EPA and the SERs at that time, that they could not conclude that a nationwide NSPS limit on the other categories would be the preferred approach for reducing wood heater emissions.

Following the Panel's convening on August 4, 2010, the EPA collected additional information, and we refined the economic and technical analyses based, in part, on input from the SERs as the basis for this proposal. The Panel recommended that the EPA Administrator consider assessing the availability of data to better characterize each source category prior to considering proposal of standards. In particular, the Panel recommended that the EPA consider characterizing the emissions per unit, operating hours per year, and the distribution of emissions across the unit types within each category under discussion at that time to better understand the magnitude of emissions reductions that may or may not be reduced through alternative regulatory and non-regulatory mechanisms. As discussed earlier, the EPA has considered such characterizations and alternatives.

The following is a list of Panel recommendations and how we incorporated them into this proposal:

- The Panel recommended that the EPA should consider focusing efforts first on emissions sources that have the greatest potential to impact public health through the magnitude of emissions and population exposure. *This proposal focuses on those sources.*
- The Panel encouraged the EPA to consider flexibilities that will most directly minimize the small business burdens, for example delayed compliance dates for low volume production. The delayed compliance approach was predicated on the concept that it will take a number of years for manufacturers to recover the costs of the R&D investment in order to achieve compliance. *This proposal has incorporated a stepped approach for emission limits and asks for comments on other alternative approaches.*
- The Panel recommended that the EPA consider the availability and feasibility of certification, testing labs, testing standards and other requirements. In particular, the Panel recommended that the EPA consider ways to streamline compliance certification, identifying flexible approaches and procedures that will reduce the burden and time for manufacturers to complete the application, testing and approval process for new model lines. For example, the Panel recommended that the EPA consider allowing the use of International Standards Organization (ISO)-accredited laboratories and certifying bodies to expand the number of facilities that would be required for testing and certification of the new residential solid biomass combustion appliances. Additionally, the Panel recommended that the EPA consider different compliance time frames for different product categories to reduce the potential for logjams at test labs and the overall impact on companies that manufacture multiple categories. *This proposal includes stepped emission limits for different categories and adds ISO-accredited laboratories and ISO-accredited certifying bodies to increase the availability of laboratories and certifiers. Further, this proposal asks for specific comments on the schedules.*
- The Panel recommended that the EPA continue to allow manufacturers to test a representative unit for a model line rather than testing and reporting results for each individual unit. *This proposal continues to allow that.*
- The Panel recommended that the EPA consider emphasizing that the NSPS will address only new units. *This proposal emphasizes that it does not affect existing units.*
- In the Panel Report, SBA and OMB recommended that the EPA not move forward with proposed emission limits for pellet stoves, indoor hydronic heaters, biomass pellet stoves, masonry heaters, masonry fireplace kits, site-built masonry fireplaces, coal stoves, cook stoves, bake ovens (including Native American Traditional Bake Ovens), camp stoves, outdoor fireplaces and chimineas. *This proposal establishes emission limits for pellet stoves/heaters, which compete with adjustable burn rate wood stoves/heaters in the ''room heaters'' consumer marketplace. There is confusion in the marketplace as to why some pellet stoves are regulated and why some are not. As discussed earlier in this preamble, the potential exclusion of pellet stoves with greater than 35-to-1 air-to-fuel ratio is an unintended consequence of the 1988 actual intention of not setting emission limits for open fireplaces with high excess combustion air that do not operate as effective heaters. We believe that not moving forward on pellet stoves now would contribute to further confusion and an uneven playing field in the marketplace. Further, the emission levels we are proposing for pellet stoves/heaters are at the same level as the proposed wood stove/heater standards and are already achieved by most pellet stove/heater models and thus do not impose substantial compliance costs. Similarly, masonry heaters compete in the residential wood heaters consumer marketplace and there is confusion as to why they are regulated by some states, but not the EPA, and are even banned by some air districts because masonry heaters are not EPA-certified. Most masonry heaters are effective heaters and relatively clean and efficient, especially compared to pre-NSPS wood stoves. Requiring valid certification testing and reporting and providing that information to regulators and consumers and the public will help inform all as they strive to make appropriate choices on wood heating and air quality. That is, the masonry heaters can be an excellent emission reduction choice for replacing higher emission pre-NSPS wood stoves and*

should be encouraged over old wood stoves in most air sheds. Further, the emission levels we are proposing are already achieved by most masonry heater designs and we allow extra time for small manufacturers. This proposal addresses indoor hydronic heaters because they compete with outdoor hydronic heaters and forced-air furnaces in the ''central heaters'' consumer marketplace and there already is confusion as to why some are regulated by some states and some are not. Further, the magnitude of their emissions is of great concern and BSER controls are highly justified on cost-benefit grounds. The remainder of the appliances listed above are not included in this proposal.

• In the Panel report, SBA and OMB recommended that ''where EPA estimates that the nationwide emissions are less than 300 tons per year (or some other value) . . . the EPA Administrator should consider options of not issuing an NSPS but rather consider allowing Regions and States to control such sources and consider other efforts, including voluntary standards to lower emissions.'' *We considered this recommendation but we could not find a legal or policy justification for an arbitrary cutoff and it is not included in this proposal. Also, we note that many states are prohibited from setting control requirements more stringent than the EPA requirements and all states have concerns about the lack of resources necessary to develop and adopt and implement state standards or voluntary programs, especially when most believe it is the EPA's responsibility, and some have sued the EPA for failure to review and promulgate national standards on time as statutorily required. Further, the EPA does not agree with this recommendation, especially considering the strong recommendations by many states that the EPA regulate all residential wood heaters as soon as possible to provide another tool to help them with their efforts to reduce wood smoke emissions. As stated elsewhere in this proposal, the EPA is not proposing standards at this time for biomass pellet heater/stoves that are designed to only combust biomass other than wood, bake ovens, fireplaces, coal-only stoves, chimineas, ceremonial fires and commercial pizza ovens.*

• Two Panel members recommended that if the EPA decides to later pursue regulation of categories other than certified wood heaters, the EPA should convene another Panel to address those subcategories at the appropriate time. *The EPA does not agree with this recommendation for residential wood heaters because the EPA believes that the SERs already have had multiple opportunities to address those subcategories. Furthermore, the EPA has conducted numerous meetings after the Panel process was completed to provide much additional information (e.g., technical discussions of refined alternatives) and updates to stakeholders including the SERs and other small businesses and other interested parties. We emphasize that this proposal is not a final rule but rather it is a proposal for public review and comment. We welcome comments and data on all aspects of this proposal that will help us prepare the final rulemaking.*

As noted earlier, a copy of the Panel final full report is included in the docket for this proposed rule. We invite comments on the report and on all aspects of the proposal and its impacts on small entities.

D. Unfunded Mandates Reform Act

This proposed rule contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 that may result in expenditures of $100 million or more for state, local or tribal governments, in the aggregate, or to the private sector in any 1 year. This proposed action imposes no enforceable duty on any state, local or tribal governments. The nationwide annualized average compliance cost of this proposed rule for directly affected appliances is $15.7 million/yr in the 2014–2022 timeframe (2010$). Therefore, this proposed rule would not be subject to the requirements of sections 202 or 205 of the UMRA.

This proposed rule would also not be subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rule would not apply to such governments and would impose no obligations upon them.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires the EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would not impose any requirements on state and local governments. Thus, Executive Order 13132 does not apply to this proposed rule. Although section 6 of Executive Order 13132 does not apply to this proposed action, the EPA did consult with representatives of state and local governments in developing this action. In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule would not impose any requirements on tribal governments; thus, Executive Order 13175 does not apply to this action. Although Executive Order 13175 does not apply to this action, we recognize that the air quality and public health benefits to be achieved by this rule would benefit tribes, and we conducted outreach to tribal environmental staff and consulted with representatives of tribal officials in developing this action.

During the development of this proposed rulemaking, the EPA conducted outreach with numerous tribal representatives to provide opportunities for input prior to development of the proposed rule. We provided information at the July 2010, National Tribal Forum/National Tribal Air Association (NTAA) meeting in Albuquerque, New Mexico, and the November 2010, EPA Region 10 Tribal Leaders Summit in Juneau, Alaska. We also presented information on this proposed rulemaking in the April 2010, issue of Tribal Air News and during the EPA/NTAA tribal workgroup conference calls (April 2010, July 2010, August 2010, and May 2013). Specifically, we received input from the EPA/NTAA tribal workgroup members on culturally relevant exclusions from the proposed

standards. We agreed with their input, clarified that we do not intend to regulate ceremonial fires, and added a definition to the rule to exclude traditional Native American bake ovens.

On February 18, 2011, the EPA mailed letters to about 600 elected tribal leaders in the U.S. offering an opportunity for consultation on this proposal. We received requests from six tribes. These tribes agreed to discuss this proposal with us in a conference call held on March 22, 2011. The tribes were very supportive of this proposal and provided some helpful clarifications of definitions (*e.g.,* Native American bake ovens) that we have incorporated in this proposal.

We plan to continue to provide updates on the rule on the EPA/NTAA conference calls and to offer opportunities to tribal leaders for consultation. The EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because the agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. The report, ''Analysis of Exposure to Residential Wood Combustion Emissions for Different Socio-Economic Groups,'' [68] shows that on a nationwide basis, cancer risks due to residential wood smoke emissions among disadvantaged population groups generally are lower than the risks for the general population due to residential wood smoke emissions. One of the demographic variables examined for this report was that of children 18 years and younger.

This proposed rule is expected to reduce environmental impacts for everyone, including children. This action proposes emissions limits at the levels based on BSER, as required by the CAA. Based on our analysis, we believe this rule would not have a disproportionate impact on children, and, in fact, will result in improvements to children's health.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to smoke from residential wood heaters.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any significant adverse energy effects. In general, we expect the NSPS to improve technology, including energy efficiency. Reducing emissions and increasing efficiency might increase the use of wood fuel, which would relieve pressure on traditional coal or petroleum based energy sources. However, as described in section IV.E, it is difficult to determine the precise energy impacts that might result from this rule. This is because wood-fueled appliances compete with other biomass forms as well as more traditional oil, electricity and natural gas. We have not determined the potential conversion to other types of fuels and their associated appliances if the consumer costs of wood-fueled appliances increase and at what level that increase would drive consumer choice.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113 (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. The EPA proposes to use several VCS test methods, in full or in part, including the following methods available for review at the ASTM Web site *www.astm.org/EPA-review*: E2515–10 ''Standard Test Method for Determination of Particulate Matter Emissions Collected by a Dilution Tunnel'' (See also ASTM WK20442 proposed revision and ASTM WK31433 proposed revision); E2779–10 ''Standard Test Method for Determining Particulate Matter Emissions from Pellet Heaters;'' E2780–10 ''Standard Test Method for Determining Particulate Matter Emissions from Wood Heaters;'' E2618–13 ''Standard Test Method for Measurement of Particulate Matter Emissions and Heating Efficiency of Outdoor Solid Fuel-Fired Hydronic Heating Appliances;'' ASTM E2817–11 ''Standard Test Method for Test Fueling Masonry Heaters;'' ASTM WK26558 ''Specification for Calculation Method for Custom Designed, Site Built Masonry Heaters.'' Also, we propose to use, in part, the following test method available for review at the CSA Web site *http://shop.csa.ca/en/canada/fuel-burning-equipment/b4151-10/invt/27013322010/*: CSA B415.1–10 ''Performance Testing of Solid-fuel-burning Heating Appliances.'' Finally, we propose to use, in part, the following test method prepared by the European Union: EN 303–5 ''Heating boilers for solid fuels, hand and automatically stoked nominal heat output of up to 1025 MBtu—Terminology, requirements, testing, and marketing.'' We believe that all the methods listed above have some positive aspects that can help stakeholders determine emissions under various operation conditions. For more details on each method, please refer to the discussions in Section III of this preamble.

In addition, we determined that the VCS ASTM E871–82 (2006), ''Standard Test Method for Moisture Analysis of Particulate Wood Fuels'' is acceptable as an alternative to Methods 5H and 28.

The search identified five other VCS that were potentially applicable for this rule in lieu of the EPA reference methods. However, the EPA determined that the five candidate VCS would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. The five VCS and other information and conclusion, including

[68] ''Analysis of Exposure to Residential Wood Combustion Emissions for Different Socio-Economic Groups, Revised Draft Report.'' Prepared for Gil Wood, U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC. Prepared by EC/R Inc., EPA Contract No. EP–D–05–085, Work Assignment No. 4–3. April 22, 2010.

the search and review results, are in the docket for this proposed rule. The EPA welcomes comments on this aspect of the proposed rulemaking. Specifically, we invite the public to identify potentially applicable voluntary consensus standards and to explain why such standards, in whole or in part, should or should not be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the U.S. The EPA defines ''Environmental Justice'' to include meaning involvement of all people regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.

As discussed earlier, the report, ''Analysis of Exposure to Residential Wood Combustion Emissions for Different Socio-Economic Groups,'' shows that on a nationwide basis, cancer risks due to residential wood smoke emissions among disadvantaged population groups generally are lower than the risks for the general population due to residential wood smoke emissions. Thus, we have determined that this proposed rule would not have disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority low-income or indigenous population.[69] This proposed rule establishes national standards that would reduce primarily PM emissions from new residential wood heaters and, thus, would decrease the amount of these emissions to which all affected populations are exposed.

[69] ''Analysis of Exposure to Residential Wood Combustion Emissions for Different Socio-Economic Groups, Revised Draft Report.'' Prepared for Gil Wood, U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC. Prepared by EC/R Inc., EPA Contract No. EP–D–05–085, Work Assignment No. 4–3. April 22, 2010.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Hazardous substances, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 3, 2014.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—GENERAL PROVISIONS

■ 2. Section 60.17 is amended by:
■ a. Adding paragraphs (a)(109) through (a)(115); and
■ b. Adding paragraph (p) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(a) * * *

(109) ASTM E871–82 (2006), Standard Test Methods for Moisture Analysis of Particulate Wood Fuels, IBR approved for appendix A: Method 5H and Method 28.

(110) ASTM E2515–10, Standard Test Method for Determination of Particulate Matter Emissions Collected by a Dilution Tunnel, IBR approved for § 60.534(c), § 60.5476(b) and § 60.5488(b).

(111) ASTM E2779–10, Standard Test Method for Determining Particulate Matter Emissions from Pellet Heaters, IBR approved for § 60.534(a)(2).

(112) ASTM E2618–13 Standard Test Method for Measurement of Particulate Matter Emissions and Heating Efficiency of Outdoor Solid Fuel-Fired Hydronic Heating Appliances, IBR approved for § 60.5476(a)(2).

(113) ASTM E2780–10, Standard Test Method for Determining Particulate Matter Emissions from Wood Heaters, IBR approved for § 60.534(a)(2).

(114) ASTM E2817–11, Standard Test Method for Test Fueling Masonry Heaters, IBR approved for § 60.5488(a).

(115) ASTM WK26558, New Specification for Calculation Method for Custom Designed, Site Built Masonry Heaters, IBR approved for § 60.5488(c)(1).

* * * * *

(p) This material is available for purchase from the Canadian Standards Association (CSA) at *http://shop.csa.ca/en/canada/fuel-burning-equipment/b4151-10/invt/27013322010/*.

(1) CSA B415.1–10, Performance Testing of Solid-fuel-burning Heating Appliances, IBR approved for § 60.534(d) and § 60.5476(c) and (d).

(2) [*Reserved*]

■ 3. Revise subpart AAA to read as follows:

Subpart AAA—Standards of Performance for New Residential Wood Heaters

Sec.

60.530 Am I subject to this subpart?
60.531 What definitions must I know?
60.532 What standards and associated requirements must I meet and by when?
60.533 What compliance and certification requirements must I meet and by when?
60.534 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?
60.535 What procedures must I use for laboratory accreditation or certifying body accreditation?
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Subpart AAA—Standards of Performance for New Residential Wood Heaters

§ 60.530 Am I subject to this subpart?

(a) You are subject to this subpart if you operate, manufacture, sell, offer for sale, import for sale, distribute, offer to distribute, introduce, or deliver for introduction, into commerce in the United States, an affected wood heater specified in paragraphs (a)(1) or (a)(2) of this section:

(1) Each adjustable burn rate wood heater with a current EPA certificate of compliance, single burn rate wood heaters with a current EPA certificate of compliance, and each pellet stove with a current EPA certificate of compliance issued prior to [EFFECTIVE DATE OF FINAL RULE] according to the certification procedures in effect in this subpart at the time of certification that are manufactured on or after July 1, 1988 are affected wood heaters.

(2) All other residential wood heaters under this subpart manufactured or sold on or after [EFFECTIVE DATE OF FINAL RULE] are affected wood heaters.

(b) Each affected wood heater must comply with the provisions of this subpart unless exempted under paragraphs (b)(1) through (b)(6) of this section.

(1) Affected wood heaters manufactured in the United States for export are exempt from the applicable emission limits of § 60.532 and the requirements of § 60.533.

(2) Affected wood heaters used for research and development purposes that are never offered for sale or sold and that are not used for the purpose of providing heat are exempt from the applicable emission limits of § 60.532 and the requirements of § 60.533. No more than 50 wood heaters manufactured per model line can be exempted for this purpose.

(3) Appliances that do not burn wood or wood pellets (such as coal-only heaters that meet the definition in § 60.531 or corn-only pellet stoves) are exempt from the applicable emission limits of § 60.532 and the requirements of § 60.533.

(4) Cook stoves that meet the definition in § 60.531 are exempt from the applicable emission limits of § 60.532 and the requirements of § 60.533.

(5) Camp stoves that meet the definition in § 60.531 are exempt from the applicable emission limits of § 60.532 and the requirements of § 60.533.

(6) Modification or reconstruction, as defined in § 60.14 and § 60.15 of Subpart A will not, by itself, make a wood heater an affected facility under this subpart.

(c) The following are not affected wood heaters and are not subject to this subpart:

(1) Residential hydronic heaters and residential forced-air furnaces subject to subpart QQQQ of this part.

(2) Residential masonry heaters subject to subpart RRRR of this part.

(3) Appliances that are not residential heating devices (for example, manufactured or site-built masonry fireplaces).

(4) Traditional Native American bake ovens that meet the definition in § 60.531.

§ 60.531 What definitions must I know?

As used in this subpart, all terms not defined herein have the meaning given them in the Clean Air Act and subpart A of this part.

Adjustable burn rate wood heater means an enclosed, wood-burning appliance capable of and intended for residential space heating or domestic water heating that is equipped with or installed with a damper or other mechanism to allow the operator to vary burn rate conditions, regardless of whether it is internal or external to the appliance. This definition does not distinguish between heaters that are free standing or fireplace inserts.

Accredited test laboratory means a test laboratory that is accredited for wood heater certification testing under § 60.535 or is an independent third-party test laboratory that is accredited by a nationally recognized accrediting entity under ISO–IEC Standard 17025 to perform testing using the test methods specified in § 60.534 and approved by the EPA for conducting testing under this subpart.

At retail means the sale by a commercial owner of a wood heater to the ultimate purchaser.

Camp stove (sometimes also called cylinder stove or wall tent stove) means a portable stove equipped with a pipe or chimney exhaust capable of burning wood or coal intended for use in a tent or other temporary structure used for hunting, camping, fishing, or other outdoor recreation. The primary purpose of the stove is to provide space heating, although cooking and heating water may be additional functions.

Catalytic combustor means a device coated with a noble metal used in a wood heater to lower the temperature required for combustion.

Certifying entity means an independent third party that is accredited by a nationally recognized accrediting entity under ISO–IEC Standard 17020 to perform certifications, inspections and audits under ISO–IEC Guide 17065 and approved by the EPA for conducting certifications, inspections and audits under this subpart.

Coal-only heater means an enclosed, coal-burning appliance capable of space heating, or domestic water heating, which has all of the following characteristics:

(1) An opening for emptying ash that is located near the bottom or the side of the appliance;

(2) A system that admits air primarily up and through the fuel bed;

(3) A grate or other similar device for shaking or disturbing the fuel bed or power-driven mechanical stoker;

(4) Installation instructions that state that the use of wood in the stove, except for coal ignition purposes, is prohibited by law; and

(5) The model is listed by a nationally recognized safety-testing laboratory for use of coal only, except for coal ignition purposes.

Commercial owner means any person who owns or controls a wood heater in the course of the business of the manufacture, importation, distribution (including shipping and storage), or sale of the wood heater.

Cookstove means a wood-fired appliance that is designed primarily for cooking food and that has the following characteristics:

(1) An oven, with volume of 0.028 cubic meters (1 cubic foot) or greater, and an oven rack;

(2) A device for measuring oven temperatures;

(3) A flame path that is routed around the oven;

(4) An ash pan;

(5) An ash clean-out door below the oven;

(6) The absence of a fan or heat channels to dissipate heat from the appliance;

(7) A cooking surface measured in square inches or square feet that is 1.5 times greater than the firebox, which is measured in cubic inches or cubic feet. Example: A firebox of 2 cubic feet would have a cooking surface of at least 3 square feet;

(8) A portion of at least four sides of the oven is exposed to the flame path during the heating cycle of the oven. A flue gas bypass may exist for temperature control.

Manufactured means completed and ready for shipment (whether or not packaged).

Manufacturer means any person who constructs or imports into the United States a wood heater.

Model line means all wood heaters offered for sale by a single manufacturer that are similar in all material respects.

Particulate matter (PM) means total particulate matter including coarse PM (PM_{10}) and fine PM ($PM_{2.5}$).

Pellet stove means an enclosed, solid fuel burning device capable of and intended for residential space heating or domestic water heating that is designed specifically to burn wood pellet fuel that incorporates induced air flow, is installed with an automatic pellet feeder, and is a free standing room heater or fireplace insert.

Representative affected wood heater means an individual wood heater that is similar in all material respects to other wood heaters within the model line it represents.

Room heater means an enclosed, wood-burning appliance capable of and intended for residential space heating. Unless otherwise specified, these devices include adjustable burn rate wood heaters, single burn rate wood heaters and pellet stoves.

Sale means the transfer of ownership or control, except that a transfer of control of an affected wood heater for research and development purposes within the scope of § 60.530(b)(2) is not a sale.

Seasoned wood means wood with a moisture content of 20 percent or less.

Similar in all material respects means that the construction materials, exhaust and inlet air system, and other design features are within the allowed tolerances for components identified in § 60.533(k).

Single burn rate wood heater means an enclosed, wood-burning appliance capable of and intended for residential space heating or domestic water heating that is not equipped with or installed with a damper to allow the operator to vary burn rate conditions.

Traditional Native American bake oven means a wood or other solid fuel burning appliance that is designed primarily for use by Native Americans for food preparation, cooking, warming, or for instructional, recreational, cultural or ceremonial purposes.

Valid certification test means a test that meets the following criteria:

(1) The Administrator was notified about the test in accordance with § 60.534(f);

(2) The test was conducted by an accredited test laboratory;

(3) The test was conducted on a wood heater similar in all material respects to other wood heaters of the model line that is to be certified; and

(4) The test was conducted in accordance with the test methods and procedures specified in § 60.534.

Wood heater means an enclosed, wood burning-appliance capable of and intended for residential space heating or domestic water heating. Unless otherwise specified, these devices include adjustable burn rate wood heaters, single burn rate wood heaters and pellet stoves.

Wood pellet fuel means refined and densified wood shaped into small pellets or briquettes that are uniform in size, shape, moisture, density and energy content.

§ 60.532 What standards and associated requirements must I meet and by when?

(a) *1990 Particulate Matter Standards.* Unless exempted under § 60.530, each adjustable burn rate wood heater and pellet stove with a current EPA certification issued prior to [EFFECTIVE DATE OF FINAL RULE], according to the certification procedures in effect in this subpart at the time of certification, must comply with the following particulate matter emission limits as determined by the applicable test methods and procedures in § 60.534(a) through (c) until the current certification expires as specified in § 60.533(h)(1), or it is revoked by the Administrator as specified in § 60.533(l), whichever is first. After the certificate expires or is revoked, individual wood heaters in that model line can no longer be manufactured or sold unless the manufacturer receives a new certificate of compliance from the Administrator.

(1) An affected wood heater equipped with a catalytic combustor must not discharge into the atmosphere any gases that contain particulate matter in excess of a weighted average of 4.1 g/hr (0.009 lb/hr) as specified in the applicable test method. Particulate matter emissions during any test run at any burn rate that is required to be used in the weighted average as specified in the applicable test method must not exceed the value calculated for ''C'' (rounded to 2 significant figures) calculated using the following equation:

(i) At burn rates less than or equal to 2.82 kg/hr (6.2 lb/hr),

$C=K_1BR+K_2$

Where:

BR = Burn rate in kg/hr (lb/hr)

C = Actual particulate matter emission rate in g/hr (lb/hr) per burn rate in a given test run

K_1= 3.55 g/kg (0.00355 lb/lb)

K_2= 4.98 g/hr (0.0.011 lb/hr)

(ii) At burn rates greater than 2.82 kg/hr (6.2 lb/hr), C = 15 g/hr (0.033 lb/hr).

(2) An affected wood heater not equipped with a catalytic combustor must not discharge into the atmosphere any gases that contain particulate matter in excess of a weighted average of 7.5 g/hr (0.017 lb/hr) as specified in the applicable test method. Particulate matter emissions must not exceed 15 g/hr (0.033 lb/hr) during any test run at a burn rate less than or equal to 1.5 kg/hr (3.3 lb/hr) that is required to be used in the weighted average as specified in the applicable test method and particulate matter emissions must not exceed 18 g/hr (0.040 lb/hr) during any test run at a burn rate greater than 1.5 kg/hr (3.3 lb/hr) that is required to be used in the weighted average as specified in the applicable test method.

(3) As an alternative, an affected wood heater subject to paragraph (a) of this section may elect to comply with the requirements in paragraph (b) of this section.

(b) *2015 Particulate Matter Standards.* Unless exempted under § 60.530 or subject to the standards specified in paragraph (a) of this section, each adjustable burn rate wood heater or pellet stove manufactured on or after [EFFECTIVE DATE OF FINAL RULE] or sold at retail for use in the United States on or after [6 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE] must comply with the emission limits specified in paragraphs (b)(1) or (b)(2) of this section, as applicable. Unless exempted under § 60.530, each single burn rate wood heater manufactured on or after [EFFECTIVE DATE OF FINAL RULE] or sold at retail on or after [6 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE] must comply with the emission limit specified in paragraph (b)(3) of this section. Compliance for all sources must be determined by the test methods and procedures in § 60.534.

(1) An adjustable burn rate wood heater or pellet stove that is an affected wood heater equipped with a catalytic combustor must not discharge into the atmosphere any gases that contain particulate matter in excess of a weighted average of 4.5 g/hr (0.01 lb/hr).

(2) An adjustable burn rate wood heater or pellet stove that is an affected wood heater not equipped with a catalytic combustor and capable of making burn rate adjustments must not discharge into the atmosphere any gases that contain particulate matter in excess of a weighted average of 4.5 g/hr (0.01 lb/hr).

(3) A single burn rate wood heater that is an affected wood heater must not discharge into the atmosphere any gases that contain particulate matter in excess of 4.5 g/hr (0.01 lb/hr).

(c) *2020 Particulate Matter Standards.* Unless exempted under § 60.530 or subject to the standards specified in paragraph (a) of this section, each adjustable burn rate wood heater, pellet stove or single burn rate wood heater manufactured or sold at retail for use in the United States on or after [5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE] must not discharge into the atmosphere any gases that contain particulate matter in excess of 1.3 g/hr (0.003 lb/hr) for any burn rate. Compliance for all sources must be determined by the test methods and procedures in § 60.534.

(d) [*Reserved*]

(e) *Pellet Fuel Requirements.* Operators of wood heaters that are certified to burn pellet fuels may only burn pellets that have been produced under a licensing agreement with the Pellet Fuels Institute or an equivalent organization approved by the EPA. The pellet fuel must meet the following minimum requirements:

(1) Density: consistent hardness and energy content with a minimum density of 38 pounds/cubic foot;

(2) Dimensions: maximum length of 1.5 inches and diameter between 0.230 and 0.285 inches;

(3) Inorganic fines: less than or equal to 1 percent;

(4) Chlorides: less than or equal to 300 parts per million by weight;

(5) Ash content: no more than 2 percent; and

(6) A quality assurance process licensed by the Pellet Fuels Institute or equivalent organization approved by EPA.

(f) *Prohibited Fuel Types.* No person is permitted to burn any of the following materials in an affected wood heater:

(1) Residential or commercial garbage;

(2) Lawn clippings or yard waste;

(3) Materials containing rubber, including tires;

(4) Materials containing plastic;

(5) Waste petroleum products, paints or paint thinners, or asphalt products;

(6) Materials containing asbestos;

(7) Construction or demolition debris;

(8) Paper products, cardboard, plywood, or particleboard. The prohibition against burning these materials does not prohibit the use of fire starters made from paper, cardboard, saw dust, wax and similar substances for the purpose of starting a fire in an affected wood heater;

(9) Railroad ties or pressure treated wood;

(10) Manure or animal remains; or

(11) Salt water driftwood or other previously salt water saturated materials.

(g) *Owner's Manual.* A person must not operate an affected residential wood heater in a manner inconsistent with the owner's manual. The owner's manual must clearly specify that operation in a manner inconsistent with the owner's manual would violate the warranty.

(h) *Temperature Sensor Requirement.* An affected wood heater equipped with a catalytic combustor must be equipped with a temperature sensor that can monitor combustor gas stream temperatures within or immediately downstream [within 2.54 centimeters (1 inch)] of the catalytic combustor surface.

§ 60.533 What compliance and certification requirements must I meet and by when?

(a) *Certification Requirement.* Each affected wood heater must be certified to bein compliance with the applicable emission standards and other requirements of this subpart. For each model line manufactured or sold by a single entity, *e.g.,* company or manufacturer, compliance with applicable emission standards of § 60.532 may be determined based on testing of representative affected wood heaters within the model line. If one entity, licenses a model line to another entity, each entity's model line must be certified. If an entity changes the name of the entity or the name of the model, the manufacturer must apply for a new certification.

(1) Prior to [EFFECTIVE DATE OF FINAL RULE], the manufacturer must submit to the EPA the information required in paragraph (b) of this section and follow either the certification process in paragraphs (b) through (e) of this section or the certifying entity based application process specified in paragraph (f) of this section.

(2) On or after [EFFECTIVE DATE OF FINAL RULE], the manufacturer must submit the information required in paragraph (b) of this section and follow the certifying entity based application process specified in paragraph (f) of this section.

(b) *Application for Certificate of Compliance.* Any manufacturer of an affected wood heater must apply to the Administrator for a certificate of compliance for each model line. The application must be submitted to: Wood Heater NSPS Compliance Program at *www.epa.gov/Wood_Heater_NSPS_Compliance_Program*. The application must be signed by a responsible representative of the manufacturer or an authorized representative and must contain the following:

(1) The model name and/or design number and responsible contact information for the manufacturer and all authorized representatives, including name, affiliation, physical address, telephone number, and email address.

(2) Engineering drawings and specifications of components that may affect emissions (including specifications for each component listed in paragraph (k) of this section). Manufacturers may use complete assembly or design drawings that have been prepared for other purposes, but must designate on the drawings the dimensions of each component listed in paragraph (k) of this section. Manufacturers must identify tolerances of components of the tested unit listed in paragraph (k)(2) of this section that are different from those specified in that paragraph, and show that such tolerances may not reasonably be anticipated to cause wood heaters in the model line to exceed the applicable emission limits. The drawings must identify how the emission critical parts, such as air tubes and catalyst, can be readily inspected and replaced. The drawings may be submitted either in hard copy or electronic format.

(3) A statement whether the firebox or any firebox component (including the materials listed in paragraph (k)(3) of this section) will be composed of material different from the material used for the firebox or firebox component in the wood heater on which certification testing was performed and a description of any such differences.

(4) Clear identification of any confidential business information. Submit such information under separate cover to the EPA CBI Office; Attn: Residential Wood Heater Compliance Program. Note that emissions data, including information necessary to determine emission rates in the format of the standard, cannot be claimed as confidential business information.

(5) All documentation pertaining to a valid certification test, including the complete test report and, for all test runs: raw data sheets, laboratory technician notes, calculations, and test results. Documentation must include the items specified in the applicable test methods. The test report must include a summary table that clearly presents the individual and overall emission rates, efficiencies, and heat output range. Submit the test report and all associated required information according to the procedures for electronic reporting specified in § 60.537(f).

(6) A copy of the warranties for the model line, including a statement that the warranties are void if the unit is used to burn materials for which the unit is not certified by the EPA.

(7) A statement that the manufacturer or certifying entity will conduct a quality assurance program for the model line that satisfies the requirements of paragraph (m) of this section.

(8) A statement describing how the tested unit was sealed by the laboratory after the completion of certification testing and that such unit will be stored by the manufacturer in the sealed state until 1 year after the certification expires.

(9) Statements that the wood heaters manufactured under this certificate will be—

(i) Similar in all material respects as defined in this subpart to the wood heater submitted for certification testing, and

(ii) Labeled as prescribed in § 60.536.

(iii) Accompanied by an owner's manual that meets the requirements in § 60.536. In addition, a copy of the owner's manual must be submitted to the EPA and be available on the manufacturer's Web site.

(10) A statement that the manufacturer has entered into a contract with an accredited laboratory that satisfies the requirements of paragraph (e) of this section.

(11) A statement that the accredited certifying body is allowed to submit information on behalf of the manufacturer.

(c)(1) *Administrator Approval Process.* The Administrator will electronically issue a certificate of compliance for a model line if the Administrator determines, based on all information submitted by the applicant and any other relevant information available, that:

(i) A valid certification test demonstrates that the representative affected wood heater complies with the applicable emission standards in § 60.532,

(ii) Any tolerances for components listed in paragraph (k)(2) of this section that are different from those specified in those paragraphs may not reasonably be anticipated to cause wood heaters in the model line to exceed the applicable emission limits; and

(iii) The requirements of paragraph (b) of this section have been met.

(2) The Administrator will deny certification if the Administrator determines that the criteria in paragraph (c)(1) of this section have not been satisfied. Upon denying certification under this paragraph, the Administrator will give written notice to the manufacturer setting forth the basis for this determination.

(d) Prior to [EFFECTIVE DATE OF THE FINAL RULE], the Administrator will issue the certificate for the most stringent particulate matter emission standard that the unit meets under § 60.532(a) or (b), as applicable.

(e) To receive EPA certification, a manufacturer must enter into a contract with the accredited laboratory that performed the certification test, under which the laboratory will:

(1) Conduct the compliance audit test at no additional cost to the manufacturer if the EPA selects that laboratory to conduct the test; or

(2) Pay the manufacturer the cost of a compliance audit test (as determined by the EPA) if the EPA selects any other laboratory to conduct the test.

(f) *Certifying Entity-Based Application Process.*

(1) Any manufacturer of an affected wood heater must apply to the Administrator for a certificate of compliance for each model line. The manufacturer must meet the following requirements:

(i) The manufacturer must contract with a certifying entity for certification services.

(ii) The manufacturer must submit the materials specified in paragraph (b) of this section and a quality control plan that meets the requirements of paragraph (m)(4) of this section to the certifying entity. The quality control plan must ensure that units within a model line accurately reflect emission-critical components of the model line design, and it must include design drawings for the model line.

(iii) The manufacturer must apply to the certifying entity for a certification of conformity with the applicable requirements of this subpart for the model line.

(A) After testing by an accredited test laboratory is complete, certification of conformity with the emission standards in § 60.532 must be performed by the manufacturer's contracted certifying entity.

(B) The certifying entity can certify conformity if the emission tests have been conducted per the appropriate guidelines and the test report is complete and accurate and the instrumentation is properly calibrated and the test report shows that the representative affected wood heater meets the applicable emission limits specified in § 60.532 and the quality control plan is adequate to ensure that units within the model line will be similar in all material respects to the wood heater submitted for certification testing.

(iv) The manufacturer must then request that the certifying entity electronically submit, on behalf of the manufacturer, an application for EPA certification that includes the certification of conformity, quality control plan, test report and supporting documentation.

(v) The submission must include a statement signed by a responsible official of the manufacturer that the manufacturer has complied with all requirements of this subpart and that the manufacturer remains responsible for compliance regardless of any error by the certifying entity.

(2) The Administrator will electronically issue to the manufacturer a certificate of compliance for a model line if it is determined, based on all of the information submitted in the application for certification and any other relevant information, that:

(i) A valid certification of conformity has demonstrated that the representative affected wood heater complies with the applicable emission standards in § 60.532; and

(ii) Any tolerances or materials for components listed in paragraph (k)(2) or (3) of this section that are different from those specified in those paragraphs may not be reasonably anticipated to cause wood heaters in the model line to exceed the applicable emission limits.

(iii) The requirements of paragraphs (b) of this section have been met.

(iv) A valid certificate of conformity for the model line has been prepared and submitted.

(3) The Administrator will deny certification if the Administrator determines that the criteria in paragraph (f)(2) of this section have not been satisfied. Upon denying certification under this paragraph, the Administrator will give written notice to the manufacturer setting forth the basis for the determination.

(g) *Waiver from Submitting Test Results.* An applicant for certification may apply for a potential waiver of the requirement to submit the results of a certification test pursuant to paragraph (b)(3) of this section, if the wood heater meets either of the following conditions:

(1) The wood heaters of the model line are similar in all material respects, as defined in this subpart, to another model line that has already been issued a certificate of compliance. A manufacturer that seeks a waiver of certification testing must identify the model line that has been certified, and must submit a copy of an agreement with the owner of the design permitting the applicant to produce wood heaters of that design.

(2) The manufacturer has previously conducted a valid certification test to demonstrate that the wood heaters of the model line meet the applicable standard specified in § 60.532(a), and that test also demonstrates that the wood heaters of the model line meet the applicable standard specified in § 60.532(b). This option is only potentially available a maximum of one time per model line.

(h) *Certification Period.* Unless revoked sooner by the Administrator, a certificate of compliance will be valid for the following periods as applicable:

(1) For a model line certified as meeting the emission standards in § 60.532(a), a certificate of compliance will be valid for 5 years from the date of issuance.

(2) For a model line certified as meeting emission standards in § 60.532(b), a certificate of compliance will be valid for 5 years from the date of issuance.

(3) For a model line certified as meeting emission standards in § 60.532(c), a certificate of compliance will be valid for 5 years from the date of issuance.

(i) *Renewal of Certification.*

(1) The certificate must be recertified or renewed every 5 years or the manufacture may choose to no longer manufacture or sell that model. If the manufacturer chooses to no longer

manufacture or sell that model, then the manufacturer must submit a statement to EPA for that model. A manufacturer of an affected wood heater may apply to the Administrator for potential renewal of their certificate by submitting the material specified in § 60.533(b) and following the procedures specified in § 60.533(f) or by affirming in writing that the wood heater has been subject to no changes that would impact emissions and requesting a potential waiver from certification testing.

(2) If the Administrator grants a renewal of certification, the Administrator will give written notice to the manufacturer setting forth the basis for the determination and issue a certification renewal.

(3) If the Administrator denies the request for a renewal of certification, the Administrator will give written notice to the manufacturer setting forth the basis for the determination.

(j) [*Reserved*]

(k) *Recertification.*

(1) The manufacturer must recertify a model line whenever any change is made in the design submitted pursuant to paragraph (b)(2) of this section that is presumed to affect the particulate matter emission rate for that model line. The manufacturer of an affected wood heater must apply to the Administrator for potential recertification by submitting the material specified in § 60.533(b) and following the procedures specified in § 60.533(f) or by affirming in writing that the wood heater has been subject to no changes that would impact emissions and requesting a potential waiver from certification testing. The Administrator may potentially waive this requirement upon written request by the manufacturer, if it is determined that the change may not reasonably be anticipated to cause wood heaters in the model line to exceed the applicable emission limits. The granting of such a waiver does not relieve the manufacturer of any compliance obligations under this subpart.

(2) Any change in the design tolerances of any of the following components (where such components are applicable) is presumed to affect particulate matter and carbon monoxide emissions and efficiency if that change exceeds ±0.64 cm (±¼ inch) for any linear dimension and ±5 percent for any cross-sectional area relating to air introduction systems and catalyst bypass gaps unless other dimensions and cross-sectional areas are previously approved by the Administrator under paragraph (c)(1)(ii) of this section:

(i) Firebox: Dimensions;

(ii) Air introduction systems: Cross-sectional area of restrictive air inlets and outlets, location and method of control;

(iii) Baffles: Dimensions and locations;

(iv) Refractory/insulation: Dimensions and location;

(v) Catalyst: Dimensions and location;

(vi) Catalyst bypass mechanism and catalyst bypass gap tolerances (when bypass mechanism is in closed position): Dimensions, cross-sectional area, and location;

(vii) Flue gas exit: Dimensions and location;

(viii) Door and catalyst bypass gaskets: Dimensions and fit;

(ix) Outer shielding and coverings: Dimensions and location;

(x) Fuel feed system: For wood heaters that are designed primarily to burn wood pellets and other wood heaters equipped with a fuel feed system, the fuel feed rate, auger motor design and power rating, and the angle of the auger to the firebox; and

(xi) Forced air combustion system: For wood heaters so equipped, the location and horsepower of blower motors and the fan blade size.

(3) Any change in the materials used for the following components is presumed to affect particulate matter emissions and efficiency:

(i) Refractory/insulation; or

(ii) Door and catalyst bypass gaskets.

(4) A change in the make, model, or composition of a catalyst is presumed to affect particulate matter and carbon monoxide emissions and efficiency, unless the change has been approved in advance by the Administrator, based on test data in the same model stove that demonstrate that the replacement catalyst is equivalent to or better than the original catalyst in terms of particulate matter emission reduction.

(l) *Criteria for Revocation of Certification.*

(1) The Administrator may revoke certification if it is determined that the wood heaters being manufactured or sold in that model line do not comply with the requirements of this subpart. Such a determination will be based on all available evidence, including but not limited to:

(i) Test data from a retesting of the original unit on which the certification test was conducted or a similar unit;

(ii) A finding that the certification test was not valid. (iii) A finding that the labeling of the wood heater model line or the owner's manual or marketing information does not comply with the requirements of § 60.536;

(iii) Failure by the manufacturer to comply with reporting and recordkeeping requirements under § 60.537;

(iv) Physical examination showing that a significant percentage (as defined in the quality assurance plan, but no larger than 1 percent) of production units inspected is not similar in all material respects to the representative affected wood heater submitted for testing; or

(v) Failure of the manufacturer to conduct a quality assurance program in conformity with paragraph (m) of this section.

(2) Revocation of certification under this paragraph will not take effect until the manufacturer concerned has been given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity to request a review under § 60.539.

(m) *Quality Assurance Program.*

(1) On or after [EFFECTIVE DATE OF FINAL RULE], for each certified model line, the manufacturer must conduct a quality assurance program that satisfies the requirements of this section The quality assurance program requirements of this section supersede the quality assurance plan requirements specified in § 60.533(o) of the 1988 rule. By [60 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], for model lines that had a valid EPA certification on [60 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], manufacturers must submit the quality assurance plan to the EPA Administrator for review and approval.

(i) The manufacturer must prepare and operate according to a quality assurance plan for each certified model line that has specific inspection and testing requirements for ensuring that units within a model line accurately reflect emission-critical components of the model line design and meet the emissions standards in § 60.532.

(ii) The quality assurance plan must be approved within 30 days by the certifying entity as part of the certification of conformity process specified in paragraph (f) of this section.

(iii) Within 30 days after approval by the certifying entity, the quality control plan must also be submitted to EPA for review and approval.

(iv) The certifying entity must conduct quarterly unannounced audits under ISO–IEC Guide 17065 and ISO–EC Standard 17020 to ensure that the manufacturer's quality control plan is being implemented.

(v) The certifying entity must prepare a report for each audit under ISO–IEC Guide 17065 and ISO–EC Standard 17020 that fully documents the results of the audit, and the manufacturer must include in their contract with the certifying entity the authorization and requirement to submit all such reports

to the EPA within 30 days. In the audit report, the certifying entity must identify deviations from the manufacturer's quality control plan and specify the corrective actions that need to be taken to address each identified deficiency.

(vi) The manufacturer must report within 30 days to the certifying entity and to the EPA its responses to any deficiencies identified in an audit report.

(n) *EPA Compliance Audit Testing.*

(1)(i) The Administrator may select by written notice wood heaters for compliance audit testing to determine compliance with the emission standards in § 60.532.

(ii) The written notification shall be forwarded to the manufacturer by the Administrator and shall include the name and address of the laboratory selected to perform the audit test and the model name and serial number of the wood heater(s) selected to undergo audit testing.

(2)(i) The Administrator may test, or direct the manufacturer to have tested, the wood heater(s) selected under paragraph (n)(1)(i) of this section in a laboratory accredited under § 60.535 that is selected pursuant to paragraph (n)(3) of this section.

(ii) The expense of the compliance audit test is the responsibility of the wood heater manufacturer. A manufacturer may require the laboratory that performed the certification test to bear the expense of an audit test by means of the contract required under paragraph (e) of this section. The manufacturer will bear the cost of audit testing if the laboratory with which the manufacturer had a contract has ceased business or is otherwise legally unable to honor the contract. The manufacturer will also bear the cost of audit testing if the manufacturer has not entered into contract with an accredited test laboratory to perform audit testing.

(iii) The test must be conducted using the same test method and procedure used to obtain certification or a new test method approved by the EPA Administrator. If the certification test consisted of more than one particulate matter sampling test method, the Administrator may direct the test laboratory as to which of these methods to use for the purpose of audit testing. The Administrator will notify the manufacturer at least 1 week prior to any test under this paragraph, and allow the manufacturer and/or his authorized representatives to observe the test.

(3) The Administrator may select any accredited test laboratory or federal laboratory for audit testing.

(4) Revocation of Certification.

(i) If emissions from a wood heater tested under paragraph (n)(2) of this section exceed the certification emission values limit by more than 50 percent, the Administrator will notify the manufacturer that certification for that model line is suspended effective 72 hours from the receipt of the notice, unless the suspension notice is withdrawn by the Administrator. The suspension will remain in effect until withdrawn by the Administrator, or 30 days from its effective date (if a revocation notice under paragraph (n)(5)(ii) of this section is not issued within that period), or the date of final agency action on revocation, whichever occurs earlier.

(ii)(A) If emissions from a wood heater tested under paragraph (n)(2) of this section exceed the applicable emission limit, the Administrator will notify the manufacturer that certification is revoked for that model line.

(B) A suspension under paragraph (n)(4)(i) or a revocation notice under paragraph (n)(4)(ii)(A) of this section will become final and effective 60 days after receipt by the manufacturer, unless it is withdrawn, a supplemental review is requested under § 60.539, or the deadline for requesting a supplemental review is extended.

(C) The Administrator may extend the deadline for requesting a supplemental review for up to 60 days for good cause.

(D) A manufacturer may extend the deadline for requesting a supplemental review for up to 6 months, by agreeing to a voluntary suspension of certification.

(iii) Any notification under paragraph (n)(4)(i) or (n)(4)(ii) of this section will include a copy of a preliminary test report from the accredited test laboratory or federal test laboratory. The test laboratory must provide a preliminary test report to the Administrator within 10 days of the completion of testing, if a wood heater exceeds the applicable emission limit in § 60.532. The test laboratory must provide the Administrator and the manufacturer, within 30 days of the completion of testing, all documentation pertaining to the test, including the complete test report and raw data sheets, laboratory technician notes, and test results for all test runs.

(iv) Upon receiving notification of a test failure under paragraph (n)(4)(ii) of this section, the manufacturer may request up to four additional wood heaters from the same model line be selected under paragraph (n)(1) of this section for testing at the manufacturer's expense, at the test laboratory that performed the emissions test for the Administrator.

(v) Whether or not the manufacturer proceeds under paragraph (n)(4)(iv) of this section, the manufacturer may submit any relevant information to the Administrator, including any other test data generated pursuant to this subpart. The manufacturer must pay the expense of any additional testing.

(vi) The Administrator will withdraw any notice issued under paragraph (n)(4)(ii) of this section if tests under paragraph (n)(4)(iv) of this section show either—

(A) That all wood heaters tested for the manufacturer met the applicable emission limits; or

(B) That the second and third wood heaters selected met the applicable emission limits and the average of all three (including the original audit test) was below the applicable emission limits.

(C) The Administrator will revise the certification values based on the test data and other relevant information and the manufacturer must revise the labels and marketing information accordingly.

(vii) The Administrator may withdraw any proposed revocation, if the Administrator finds that an audit test failure has been rebutted by information submitted by the manufacturer under paragraph (n)(4)(iv) of this section and/or (n)(4)(v) of this section or by any other relevant information available to the Administrator.

§ 60.534 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?

Test methods and procedures specified in this section or in appendices of this part, except as provided under § 60.8(b), must be used to determine compliance with the standards and requirements for certification under § § 60.532 and 60.533 as follows:

(a)(1) Method 28 of appendix A–8 of this part must be used to establish the certification test conditions and the particulate matter emission values for affected wood heaters subject to the 1990 particulate matter standards specified in § 60.532(a).

(2) For affected wood heaters subject to the 2015 particulate matter standards specified in § 60.532(b), you must conduct testing according to paragraphs § 60.534(a)(2)(i) and (ii) of this section and submit the full test reports. You have the option of submitting the test results of either (a)(2)(i) or (ii) of this section to the Administrator as specified under § 60.537 for certification compliance.

(i) Conduct testing with crib wood using EPA Method 28R of appendix A–8 of this part to establish the certification test conditions and the particulate matter emission values.

(ii) Conduct testing with cord wood using EPA Method 28R of appendix A–8 of this part to establish the certification test conditions and the particulate matter emission values.

(3) For affected wood heaters subject to the 2020 particulate matter standards specified in § 60.532(c), you must conduct testing with cord wood using EPA Method 28R of appendix A–8 of this part to establish the certification test conditions, except that you should first test Burn Rate Categories 1 and 4 and then test 2 more times for whichever burn rate category is worse and then report the results separately per burn rate category.

(b) For affected wood heaters subject to the 1990 particulate matter standards specified in § 60.532(a), emission concentrations must be measured with Method 5G of appendix A–3 of this part, *i.e.,* using a dilution tunnel sampling location. Method 5H is no longer allowed for certification testing.

(c) For affected wood heaters subject to the 2015 and 2020 particulate matter standards specified in § 60.532(b) and (c), emission concentrations must be measured with ASTM E2515–10.

(d) Canadian Standards Administration Method B415.1–10, section 13.7, must be used to measure the efficiency and carbon monoxide output of the tested appliance.

(e) [*Reserved*]

(f) The manufacturer of an affected wood heater must notify the Administrator of the date that certification testing is scheduled to begin by email to Wood Heater NSPS Compliance Program at *www.epa.gov/Wood_Heater_NSPS_Compliance_Program*. This notice must be received by the EPA at least 30 days before the start of testing. The notification of testing must include the manufacturer's name and physical and email addresses, the accredited test laboratory's name and physical and email addresses, certifying entity name, the model name and number (or, if unavailable, some other way to distinguish between models), and the dates of testing.

(g) The accredited test laboratory must allow the manufacturer, the EPA and delegated states to observe certification testing. However, manufacturers must not involve themselves in the conduct of the test after the pretest burn has begun. Communications between the manufacturer and laboratory or certifying entity personnel regarding operation of the wood heater must be limited to written communications transmitted prior to the first pretest burn of the certification series. Written communications between the manufacturer and laboratory personnel may be exchanged during the certification test only if deviations from the test procedures are observed that constitute improper conduct of the test. All communications must be included in the test documentation required to be submitted pursuant to § 60.533(b)(3) and must be consistent with instructions provided in the owner's manual required under § 60.536(f), except to the extent that they address details of the certification tests that would not be relevant to owners or regulators.

§ 60.535 What procedures must I use for laboratory accreditation or certifying body accreditation?

(a)(1) A laboratory must apply to the Administrator for accreditation as an EPA accredited test laboratory by submitting documentation that the laboratory is accredited by a nationally recognized accrediting entity under ISO–IEC Standard 17025 to perform testing using the test methods specified under § 60.534.

(2) As part of the application, the test laboratory must:

(i) Agree to enter into a contract as described in § 60.533(e) with each wood heater manufacturer for whom a certification test has been performed;

(ii) Agree to participate biennially in a proficiency testing program conducted by the Administrator;

(iii) Agree to allow the Administrator and delegated states and certifying bodies access to observe certification testing;

(iv) Agree to comply with reporting and recordkeeping requirements that affect testing laboratories; and

(v) Agree to perform a compliance audit test (as determined by the Administrator) at the cost normally charged to manufacturers if it is selected to conduct the compliance audit test of a model line originally tested for certification at another laboratory.

(vi) Have no conflict of interest and receive no financial benefit from the outcome of certification testing conducted pursuant to § 60.533.

(vii) Agree to not perform initial certification tests on any models manufactured by a manufacturer for which the laboratory has conducted research and development tests within the last 5 years.

(3) If the EPA approves the accreditation, the Administrator will provide the test laboratory with a certificate of accreditation. If the EPA denies the accreditation, the Administrator will give written notice to the laboratory setting forth the basis for the determination.

(b)(1) The Administrator may revoke the EPA laboratory accreditation if it is determined that the laboratory:

(i) Is no longer is accredited by the nationally recognized ISO certifying entity;

(ii) Does not follow required procedures or practices;

(iii) Has falsified data or otherwise misrepresented emission data;

(iv) Failed to participate in a proficiency testing program, in accordance with its commitment under paragraph (a)(2)(ii) of this section; or

(v) Failed to seal the wood heater in accordance with paragraph (d) of this section.

(2) Revocation of accreditation under this paragraph will not take effect until the laboratory concerned has been given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity for a Petition for Supplemental Review under § 60.539. However, if revocation is ultimately upheld, all tests conducted by the laboratory after written notice was given will, at the discretion of the Administrator, be declared invalid.

(c)(1) With the exception of laboratories meeting the provisions of paragraph (c)(2) of this section, and unless revoked sooner, a certificate of accreditation as an accredited test laboratory granted by the Administrator is valid for 5 years from the date of issuance.

(2) Laboratories accredited by the EPA by February 3, 2014 under the provisions of § 60.535 in effect prior to that date may continue to be accredited until [1 YEAR AFTER EFFECTIVE DATE OF FINAL RULE], at which time the accreditation ends unless the laboratory has obtained accreditation under § 60.535 as in effect beginning on [EFFECTIVE DATE OF FINAL RULE].

(d) A laboratory accredited by the Administrator must seal any wood heater on which it performed certification tests, immediately upon completion or suspension of certification testing, by using a laboratory-specific seal. For any tests that are suspended, the laboratory must email the EPA immediately with the date suspended, the reason(s) why, and the projected date for re-starting. The laboratory must submit the operation and test data obtained, even if the test is not completed.

(e)(1) A Certifying Entity may apply to the Administrator for approval to be an EPA-approved certifying entity by submitting credentials demonstrating that they have been accredited by a

nationally recognized accrediting entity to perform certifications and inspections under ISO–17025, ISO–IEC Standard 17065 and ISO–IEC Standard 10720.

(2) As part of the application, the certifying entity must:

(i) Agree to enter into a contract as described in § 60.533(e) with each wood heater manufacturer for whom a certification test has been performed and a test report has been received and reviewed;

(ii) Agree to periodically conduct audits as described in § 60.534 and manufacturer's QA/QC Plan;

(iii) Agree to participate biennially in a proficiency testing program conducted by the Administrator;

(iv) Agree to comply with reporting and recordkeeping requirements that affect accredited wood heater testing laboratories and certifying entities;

(v) Have no conflict of interest and receive no financial benefit from the outcome of certification testing conducted pursuant to § 60.533;

(vi) Agree to make available to the EPA supporting documentation for each wood heater certification and audit; and

(vii) Agree to not perform initial certification reviews on any models manufactured by a manufacturer for which the certifying entity has conducted research and development within the last 5 years.

(3) If approved, the Administrator will provide the certifying entity with a certificate of accreditation. The accreditation will expire 5 years after being issued unless renewed by the certifying entity. If the EPA denies the accreditation, the Administrator will give written notice to the certifying entity for the basis for the determination.

(f)(1) The Administrator will revoke the EPA certifying entity accreditation if it is determined that the certifying entity;

(i) Is no longer accredited by the nationally recognized ISO certifying entity

(ii) Does not follow required procedures or practices;

(iii) Has falsified certification data or otherwise misrepresented emission data; or

(iv) Failed to participate in the EPA proficiency testing program.

(2) Revocation of accreditation under this paragraph will not take effect until the certifying entity concerned is given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity for a Petition for Supplemental Review under § 60.539. However, if revocation is upheld, all tests reviewed by the certifying entity will, at the discretion of the Administrator, be declared invalid.

§ 60.536 What requirements must I meet for permanent labels and owner's manuals?

(a) *Permanent Label Requirements.* (1) Each affected wood heater manufactured on or after the date the applicable standards come into effect as specified in § 60.532, must have a permanent label affixed to it that meets the requirements of this section.

(2) Except for wood heaters subject to § 60.530(b)(1) through (b)(5), the permanent label must contain the following information:

(i) Month and year of manufacture of the individual unit;

(ii) Model name or number; and

(iii) Serial number.

(3) The permanent label must:

(i) Be affixed in a readily visible or accessible location in such a manner that it can be easily viewed before and after the appliance is installed;

(ii) Be at least 8.9 cm long and 5.1 cm wide (3½ inches long and 2 inches wide);

(iii) Be made of a material expected to last the lifetime of the wood heater;

(iv) Present required information in a manner so that it is likely to remain legible for the lifetime of the wood heater; and

(v) Be affixed in such a manner that it cannot be removed from the appliance without damage to the label.

(4) The permanent label may be combined with any other label, as long as the required information is displayed, the integrity of the permanent label is not compromised, and the permanent label still meets the requirements in § 60.536(a)(3).

(5) Any label statement under paragraph (b) or (c) of this section constitutes a representation by the manufacturer as to any wood heater that bears it:

(i) That certification of compliance was in effect at the time the wood heater left the possession of the manufacturer;

(ii) That the manufacturer was, at the time the label was affixed, conducting a quality assurance program in conformity with § 60.533(o); and

(iii) That any wood heater individually tested for emissions by the manufacturer under § 60.533(o)(2) or (o)(4) met the applicable emissions limits.

(b) If the adjustable burn rate wood heater or pellet stove belongs to a model line certified under § 60.533, and it has been found to meet the applicable emission limits or tolerances through quality assurance testing, one of the following statements, as appropriate, must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with 1990 particulate emission standards. Not approved for sale or operation after [6 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE] or

U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with 2015 particulate emission standards. Not approved for sale or operation after [5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE] or

U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with 2020 particulate emission standards.

(c) If the single burn rate wood heater belongs to a model line certified under § 60.533, and it has been found to meet the applicable emission limits or tolerances through quality assurance testing, the following statements must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with 2015 particulate emission standards. Not approved for sale or operation after [5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE] or

U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with 2020 particulate emission standards.

(d)(1) If an affected wood heater is manufactured in the United States for export as provided in § 60.530(b)(1), the following statement must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY Export stove. May not be sold or operated within the United States.

(2) If an affected wood heater is manufactured for use for research and development purposes as provided in § 60.530(b)(2), the following statement must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY Not certified. Research Stove. Not approved for sale or for operation other than research.

(3) If an affected wood heater is exclusively a non wood-burning heater as provided § 60.530(b)(3) the following statement must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY This heater is not certified for wood burning. Use of any wood fuel is a violation of federal law.

(4) If an affected wood heater is a cookstove that meets the applicable definition in § 60.531, the following statement must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY This unit is not a certified residential wood heater. The primary use for this unit is for cooking or baking.

(5) If an affected wood heater is a camp stove that meets the applicable definition in § 60.531, the following statement must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY This unit is not a certified residential wood heater. For portable and temporary use only.

(e) The permanent label for all certified wood heaters must also contain the following statement:

''This wood heater needs periodic inspection and repair for proper operation. Consult owner's manual for further information. It is against the law to operate this wood heater in a manner inconsistent with operating instructions in the owner's manual.''

(f) *Owner's Manual.*

(1) Each affected wood heater offered for sale by a commercial owner must be accompanied by an owner's manual that must contain the information listed in paragraphs (f)(2) and (f)(3) of this section. Such information must be adequate to enable consumers to achieve optimal emissions performance. Such information must be consistent with the operating instructions provided by the manufacturer to the accredited test laboratory for operating the wood heater during certification testing, except for details of the certification test that would not be relevant to the ultimate purchaser. The commercial owner must also make current and historical owner's manuals available on the company Web site and upon request to the EPA.

(2) Installation information: Requirements for achieving proper draft.

(3) Operation and maintenance information:

(i) Fuel loading procedures, recommendations on fuel selection, and warnings on what fuels not to use, such as treated wood, colored paper, cardboard, solvents, trash and garbage.

(ii) Fire starting procedures

(iii) Proper use of air controls

(iv) Ash removal procedures

(v) Instructions for replacement of gaskets, air tubes and other parts that are critical to the emissions performance of the unit and other maintenance and repair instructions

(vi) For catalytic models, information on the following pertaining to the catalytic combustor: Procedures for achieving and maintaining catalyst activity, maintenance procedures, procedures for determining deterioration or failure, procedures for replacement, and information on how to exercise warranty rights

(vii) For catalytic models, the following statement:

''This wood heater contains a catalytic combustor, which needs periodic inspection and replacement for proper operation. It is against federal law to operate this wood heater in a manner inconsistent with operating instructions in this manual, or if the catalytic element is deactivated or removed.''

(viii) For noncatalytic models, the following statement:

''This wood heater needs periodic inspection and repair for proper operation. It is against federal law to operate this wood heater in a manner inconsistent with operating instructions in this manual.''

(4) Any manufacturer using the EPA-recommended language contained in appendix I of this part to satisfy any requirement of this paragraph (f) will be considered to be in compliance with that requirement, provided that the particular language is printed in full, with only such changes as are necessary to ensure accuracy for the particular wood heater model line.

(5) Wood heaters that are affected by this subpart, but that have been owned and operated by a noncommercial owner, are not subject to paragraphs (f) of this section when offered for resale.

§ 60.537 What records must I keep and what reports must I submit?

(a)(1) Each manufacturer who holds a certificate of compliance under § 60.533(c) or (f) for a model line must maintain records containing the information required by paragraph (a) of this section with respect to that model line.

(2) All documentation pertaining to the certification test used to obtain certification, including the full test report and raw data sheets, laboratory technician notes, calculations, and the test results for all test runs.

(3) Results of the quality assurance program inspections required by § 60.533(m).

(4) For emissions tests conducted pursuant to the quality assurance program required by § 60.533(o), all test reports, data sheets, laboratory technician notes, calculations, and test results for all test runs, the remedial actions taken, if any, and any follow-up actions such as additional testing.

(b) Each accredited test laboratory and certifying entity must maintain records consisting of all documentation pertaining to each certification test, QA/QC inspection and audit test, including the full test report and raw data sheets, technician notes, calculations, and the test results for all test runs. Each accredited test laboratory must submit initial and biennial proficiency test results to the Administrator. Each certifying entity must submit each certification test, QA/QC inspection report and ISO IEC accreditation credentials to the Administrator.

(c) Each manufacturer must retain each wood heater upon which certification tests were performed based upon which certification was granted under § 60.533(c) or (f) at the manufacturer's facility for as long as the model line in question is manufactured. Each heater or furnace must remain sealed and unaltered. Any such wood heater must be made available to the Administrator upon request for inspection and testing.

(d) Each manufacturer of an affected wood heater certified under § 60.533(c) or (f) must submit a report to the Administrator every 2 years following issuance of a certificate of compliance for each model line. This report must include the sales for each model by state and certify that no changes in the design or manufacture of this model line have been made that require recertification under § 60.533(k).

(e)(1) Unless otherwise specified, all records required under this section must be maintained by the manufacturer, commercial owner of the affected wood heater, accredited test laboratory or certifying entity for a period of no less than 5 years.

(2) Unless otherwise specified, all reports to the Administrator required under this subpart must be made to: Wood Heater NSPS Compliance Program at *www.epa.gov/Wood_Heater_NSPS_Compliance_Program.*

(f) Within 60 days after the date of completing each performance test, each manufacturer or accredited test laboratory or certifying entity must submit performance test data electronically to the EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool (ERT) (*http://www.epa.gov/ttn/chief/ert/index.html*). Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically to the EPA's CDX. Manufacturers may submit compliance reports to the EPA via regular mail at the address listed below if the test methods they use are not compatible with ERT or if ERT is not available to accept reports at the time the final rule is published. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a completed ERT file, including information claimed to be CBI on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives), to the EPA, and the same ERT

file, with the CBI omitted, to the EPA via CDX as described earlier in this paragraph. The compact disk must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. Emission data, including all information necessary to determine compliance, except sensitive engineering drawings and sensitive detailed material specifications, may not be claimed as CBI.

§ 60.538 What activities are prohibited under this subpart?

(a) No person is permitted to operate an affected wood heater that does not have affixed to it a permanent label pursuant to § 60.536 (b), (c), or (d)(2) through (d)(5).

(b) No commercial owner is permitted to advertise for sale, offer for sale, or sell an affected wood heater labeled under § 60.536(d)(1) except for export.

(c)(1) No commercial owner is permitted to advertise for sale, offer for sale or sell an affected wood heater permanently labeled under § 60.536 (b) or (c) unless:

(i) The affected wood heater has been certified to comply with 2020 particulate emission standards. This prohibition does not apply to wood heaters affected by this subpart that have been previously owned and operated by a noncommercial owner; and

(ii) The commercial owner provides any purchaser or transferee with an owner's manual that meets the requirements of § 60.536(f), a copy of the warranty and a moisture meter.

(2) No commercial owner is permitted to advertise for sale, offer for sale, or sell an affected wood heater permanently labeled under § 60.536(d)(3), unless the affected wood heater has been certified to comply with 2020 particulate emission. This prohibition does not apply to wood heaters affected by this subpart that have been previously owned and operated by a noncommercial owner.

(3) A commercial owner other than a manufacturer complies with the requirements of paragraph (c)(1) of this section if the commercial owner:

(i) Receives the required documentation from the manufacturer or a previous commercial owner; and

(ii) Provides that documentation unaltered to any person to whom the wood heater that it covers is sold or transferred.

(d)(1) In any case in which the Administrator revokes a certificate of compliance either for the knowing submission of false or inaccurate information or other fraudulent acts, or based on a finding under § 60.533(l)(1)(ii) that the certification test was not valid, the Administrator may give notice of that revocation and the grounds for it to all commercial owners.

(2) On and after the date of receipt of the notice given under paragraph (d)(1) of this section, no commercial owner is permitted to sell any wood heater covered by the revoked certificate (other than to the manufacturer) unless the model line has been recertified in accordance with this subpart.

(e) No person is permitted to install or operate an affected wood heater except in a manner consistent with the instructions on its permanent label and in the owner's manual pursuant to § 60.536(f).

(f) No person is permitted to operate an affected wood heater that was originally equipped with a catalytic combustor if the catalytic element is deactivated or removed.

(g) No person is permitted to operate an affected wood heater that has been physically altered to exceed the tolerance limits of its certificate of compliance.

(h) No person is permitted to alter, deface, or remove any permanent label required to be affixed pursuant to § 60.536.

(i) No certifying entity is permitted to certify its own certification test report.

§ 60.539 What Petition for Review procedures apply to me?

(a)(1) In any case where the Administrator—

(i) Denies an application under § 60.530(c) or § 60.533(f);

(ii) Issues a notice of revocation of certification under § 60.533(l);

(iii) Denies an application for laboratory accreditation under § 60.535(a); or

(iv) Issues a notice of revocation of laboratory accreditation under § 60.535(b), the manufacturer or laboratory affected may submit to the EPA, a Petition for Review request under this section within 30 days following receipt of the required notification of the action in question.

(2) In any case where the Administrator issues a notice of revocation under § 60.533(p), the manufacturer may submit to the EPA a Petition for Review request under this section with the time limits set out in § 60.533(p)(4).

(b) Any Petition for Review request must be in writing, must be signed by an authorized representative of the petitioning manufacturer or laboratory, and must include a statement and supporting documentation setting forth with particularity the petitioner's objection to the Administrator's determination or proposed determination.

(c) Upon receipt of a Petition for Review under paragraph (a) of this section, the Administrator shall provide a written response within 45 days.

§ 60.539a Who implements and enforces this subpart?

(a) In delegating implementation and enforcement authority to a state under section 111(c) of the Act, the authorities contained in paragraph (b) of this section must be retained by the Administrator and not transferred to a state.

(b) Authorities that must not be delegated to states:

(1) Section 60.531, Definitions;

(2) Section 60.533, Compliance and certification;

(3) Section 60.534, Test methods and procedures; and

(4) Section 60.535, Laboratory accreditation.

§ 60.539b What parts of the General Provisions do not apply to me?

The following provisions of subpart A of part 60 do not apply to this subpart:

(a) Section 60.7;

(b) Section 60.8(a), (c), (d), (e), (f) and (g); and

(c) Section 60.15(d).

■ 4. Add subpart QQQQ to read as follows:

Subpart QQQQ—Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces

Sec.

60.5472 Am I subject to this subpart?
60.5473 What definitions must I know?
60.5474 What standards and requirements must I meet and by when?
60.5475 What compliance and certification requirements must I meet and by when?
60.5476 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?
60.5477 What procedures must I use for laboratory accreditation?
60.5478 What requirements must I meet for permanent labels and owner's manuals?
60.5479 What records must I keep and what reports must I submit?
60.5480 What activities are prohibited under this subpart?
60.5481 What Petition for Review procedures apply to me?
60.5482 Who implements and enforces this subpart?
60.5483 What parts of the General Provisions do not apply to me?

Subpart QQQQ—Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces

§ 60.5472 Am I subject to this subpart?

(a) You are subject to this subpart if you operate, manufacture, sell, offer for sale, import for sale, distribute, offer to distribute, introduce, or deliver for introduction, into commerce in the United States, residential hydronic heater or forced-air furnace manufactured on or after [EFFECTIVE DATE OF FINAL RULE].

(b) Each residential hydronic heater or forced-air furnace must comply with the provisions of this subpart unless exempted under paragraphs (b)(1) through (b)(3) of this section.

(1) Affected residential hydronic heaters or forced-air furnaces manufactured in the United States for export are exempt from the applicable emission limits of § 60.5474 and the requirements of § 60.5475.

(2) Affected residential hydronic heaters or forced-air furnaces used for research and development purposes that are never offered for sale or sold and that are not used to provide heat are exempt from the applicable emission limits of § 60.5474 and the requirements of § 60.5475. No more than 12 affected residential hydronic heaters or forced-air furnaces manufactured per model line may be exempted for this purpose.

(3) Appliances that do not burn wood or wood pellets (such as coal-only hydronic heaters or forced-air furnaces that meet the definition in § 60.5473 or corn-only hydronic heaters or forced-air furnaces) are exempt from the applicable emission limits of § 60.5474 and the requirements of § 60.5475.

(c) The following are not affected residential hydronic heaters or forced-air furnaces and are not subject to this subpart:

(1) Residential wood heaters subject to subpart AAA of this part.

(2) Residential masonry heaters subject to subpart RRRR of this part.

§ 60.5473 What definitions must I know?

As used in this subpart, all terms not defined herein have the same meaning given them in the Clean Air Act and subpart A of this part.

Accredited test laboratory means a test laboratory that is accredited for residential hydronic heater or forced-air furnace certification testing under § 60.5477 and is an independent third-party test laboratory that is accredited by a nationally recognized accrediting entity under ISO–IEC Standard 17025 to perform testing using the test methods specified in § 60.5476 and approved by the EPA for conducting certification tests under this subpart.

At retail means the sale by a commercial owner of a residential hydronic heater or forced-air furnace to the ultimate purchaser.

Central heater means a fuel-burning device designed to burn wood or wood pellet fuel that warms spaces other than the space where the device is located, by the distribution of air heated by the furnace through ducts or liquid heated in the device and distributed typically through pipes. Unless otherwise specified, these devices include residential forced-air furnaces and residential hydronic heaters.

Certifying entity means an independent third party that is accredited by a nationally recognized accrediting entity under ISO–IEC Standard 17020 to perform certifications, inspections and audits under ISO–IEC Guide 17065 and approved by the EPA for conducting certifications, inspections and audits under this subpart.

Coal-only hydronic heater or forced-air furnace means an enclosed, coal-burning appliance capable of space heating or domestic water heating that has all of the following characteristics:

(1) Installation instructions that state that the use of wood in the appliance, except for coal ignition purposes, is prohibited by law; and

(2) The model is listed by a nationally recognized safety-testing laboratory for coal use only, except for coal ignition purposes.

Commercial owner means any person who owns or controls a residential hydronic heater or forced-air furnace in the course of the business of the manufacture, importation, distribution, or sale of the unit.

Manufactured means completed and ready for shipment (whether or not packaged) for purposes of determining the date of manufacture.

Manufacturer means any person who constructs or imports into the United States a residential hydronic heater or forced-air furnace.

Model line means all residential hydronic heaters or forced-air furnaces offered for sale by a single manufacturer that are similar in all material respects as defined in this section.

Particulate matter (PM) means total particulate matter including PM_{10} and $PM_{2.5.}$

Pellet fuel means refined and densified solid wood shaped into small pellets or briquettes that are uniform in size, shape, moisture, density and energy content.

Representative residential hydronic heater or forced-air furnace means an individual residential hydronic heater or forced-air furnace that is similar in all material respects as defined in this section to other residential hydronic heaters or forced-air furnaces within the model line it represents.

Residential forced-air furnace means a fuel burning device designed to burn wood or wood pellet fuel that warms spaces other than the space where the furnace is located, by the distribution of air heated by the furnace through ducts.

Residential hydronic heater means a fuel burning device designed to burn wood or wood pellet fuel for the purpose of heating building space and/or water through the distribution, typically through pipes, of a fluid heated in the device, typically water or a water and antifreeze mixture.

Sale means the transfer of ownership or control, except that a transfer of control of an affected residential hydronic heater or forced-air furnace for research and development purposes within the scope of § 60.5472(b)(2) is not a sale.

Seasoned wood means wood with a moisture content of 20 percent or less.

Similar in all material respects means that the construction materials, exhaust and inlet air system, and other design features are within the allowed tolerances for components identified in § 60.533(k).

Valid certification test means a test that meets the following criteria:

(1) The Administrator was notified about the test in accordance with § 60.5476(f);

(2) The test was conducted by an accredited test laboratory as defined in this section;

(3) The test was conducted on a residential hydronic heater or forced-air furnace similar in all material respects as defined in this section to other residential hydronic heaters or forced-air furnaces of the model line that is to be certified; and

(4) The test was conducted in accordance with the test methods and procedures specified in § 60.5476.

§ 60.5474 What standards and requirements must I meet and by when?

(a) *Particulate Matter Standards.* Unless exempted under § 60.5472, no person is permitted to:

(1) On or after [EFFECTIVE DATE OF FINAL RULE], manufacture or sell at retail a residential hydronic heater unless it has been certified to meet the 2015 particulate matter emission limits in paragraph (b)(1) of this section.

(2) On or after [5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE] manufacture or sell at retail a residential hydronic heater unless it has been

certified to meet the 2020 particulate matter emission limit in paragraph (b)(2) of this section.

(3) On or after [EFFECTIVE DATE OF FINAL RULE], manufacture or sell at retail a residential forced-air furnace unless it has been certified to meet the 2015 particulate matter emission limits in paragraph (b)(3) of this section.

(4) On or after [5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE] manufacture or sell at retail a residential forced-air furnace unless it has been certified to meet the 2020 particulate matter emission limit in paragraph (b)(4) of this section.

(b)(1) 2015 residential hydronic heater particulate matter emission limit: 0.32 lb/million Btu (0.137 g/megajoule) heat output and 7.5 g/hr (0.017 lb/hr) as determined by the test methods and procedures in § 60.5476.

(2) 2020 residential hydronic heater particulate matter emission limit: 0.06 lb/million Btu (0.026 g/megajoule) heat output as determined by the test methods and procedures in § 60.5476.

(3) 2015 forced-air furnace particulate matter emission limit: 0.93 lb/million Btu (0.40 g/megajoule) heat output and 7.5 g/hr (0.017 lb/hr) as determined by the test methods and procedures in § 60.5476.

(4) 2020 forced-air furnace particulate matter emission limit: 0.06 lb/million Btu (0.026 g/megajoule) heat output as determined by the test methods and procedures in § 60.5476.

(c) [*Reserved*]

(d) [*Reserved*]

(e) *Pellet Fuel Requirements.* Operators of outdoor residential hydronic heaters, indoor residential hydronic heaters, or residential forced-air furnaces that are certified to burn pellet fuels may only burn pellets that have been produced under a licensing agreement with the Pellet Fuels Institute or an equivalent organization approved by the EPA. The pellet fuel must meet the following minimum requirements:

(1) Density: consistent hardness and energy content with a minimum density of 38 pounds/cubic foot;

(2) Dimensions: maximum length of 1.5 inches and diameter between 0.230 and 0.285 inches;

(3) Inorganic fines: less than or equal to 1 percent;

(4) Chlorides: less than or equal to 300 parts per million by weight; and

(5) Ash content: no more than 2 percent.

(6) A quality assurance process licensed by the Pellet Fuel Institute or equivalent organization approved by EPA.

(f) *Prohibited Fuel Types.* No person is permitted to burn any of the following materials in an outdoor residential hydronic heater, indoor residential hydronic heater, or residential forced-air furnace:

(1) Residential or commercial garbage;

(2) Lawn clippings or yard waste;

(3) Materials containing rubber, including tires;

(4) Materials containing plastic;

(5) Waste petroleum products, paints or paint thinners, or asphalt products;

(6) Materials containing asbestos;

(7) Construction or demolition debris;

(8) Paper products; cardboard, plywood or particleboard. The prohibition against burning these materials does not prohibit the use of fire starters made from paper, cardboard, saw dust, wax and similar substances for the purpose of starting a fire in an affected residential hydronic heater or forced-air furnace;

(9) Railroad ties or pressure treated lumber;

(10) Manure or animal remains;

(11) Salt water driftwood or other or other previously salt water saturated materials;

(12) Unseasoned wood; or

(13) Any materials that were not included in the certification tests for the subject heater or furnace.

(g) *Owner's Manual.* A person must not operate an outdoor residential hydronic heater, indoor residential hydronic heater, or residential forced-air furnace in a manner inconsistent with the owner's manual. The owner's manual must clearly specify that operation in a manner inconsistent with the owner's manual would violate the warranty.

§ 60.5475 What compliance and certification requirements must I meet and by when?

(a)(1) *Certification Requirement.* Each affected residential hydronic heater and forced-air furnace must be certified to be in compliance with the applicable emission standards and other requirements of this subpart. For each model line manufactured or sold by a single entity, *e.g.,* company or manufacturer, compliance with applicable emission standards of § 60.5474(b) must be determined based on testing of representative affected residential hydronic heaters and forced-air furnaces within the model line. If one entity licenses a model line to another entity, each entity's model line must be certified. If a entity changes the name of the entity or the name of the model, the manufacturer must apply for a new certification.

(2) The manufacturer of each model line must submit the information required in § 60.533(b) and follow the certification procedure specified in § 60.533(f) except that, for the purposes of this paragraph, the references in § 60.533(f) to the ''emission standards'' in § 60.532 must be understood to refer to the emission limits in § 60.5474(b).

(b) *Waiver from Submitting Test Results.* An applicant for certification may apply for a potential waiver of the requirements to submit the results of a certification test pursuant to the certification procedures specified in § 60.533(f) according to the procedure specified in § 60.533(g)(1).

(c) *Certification Period.* Unless revoked sooner by the Administrator, a certificate of compliance will be valid 5 years from the date of issuance.

(d) *Renewal of Certification.* (1) Any manufacturer of an affected residential hydronic heater or forced-air furnace may apply to the Administrator for potential renewal of a certificate of compliance by submitting the material specified in § 60.533(b) and following the procedures specified in § 60.533(f).

(2) The certificate must be recertified or renewed every 5 years or the manufacture may choose to no longer manufacture or sell that model. If the manufacturer chooses to no longer manufacture or sell that model, then the manufacturer must submit a statement to the EPA for that model. A manufacturer may apply for potential renewal of their certificate by submitting certification information in accordance with § 60.533(b) or by affirming in writing that the wood heater has been subject to no changes that would impact emissions and request a potential waiver from certification testing.

(3) If the Administrator grants or waives certification testing under paragraph (d)(2) of this section, the Administrator will give written notice to the manufacturer setting forth the basis for the determination and issue a certification renewal.

(4) If the Administrator denies the request for a renewal of certification, the Administrator will give written notice to the manufacturer setting forth the basis for the determination.

(e) *Recertification.* The procedure specified in § 60.533(k) must be used to determine when a product line must be recertified.

(f) *Criteria for Revocation of Certification.* (1) The Administrator may revoke certification of a product line if it is determined that the residential hydronic heaters or forced-air furnaces being manufactured or sold in that model line do not comply with the requirements of this subpart. Such a determination will be based on all

available evidence, including but not limited to:

(i) Test data from retesting of the original unit on which the certification was conducted or a similar unit;

(ii) A finding that the certification test was not valid. The finding will be based on problems or irregularities with the certification test or its documentation, but may be supplemented by other information;

(iii) A finding that the labeling of the residential hydronic heater or forced-air furnace model line or the owner's manual or marketing information does not comply with the requirements of § 60.5478;

(iv) Failure by the manufacturer to comply with the reporting and recordkeeping requirements of § 60.5479;

(v) Physical examination showing that a significant percentage (as defined in the quality assurance plan, but no larger than 1 percent) of production units inspected is not similar in all material respects as defined in this subpart to the representative affected hydronic heater or forced-air furnace submitted for testing; or

(vi) Failure of the manufacturer to conduct a quality assurance program in conformity with paragraph (g) of this section.

(2) Revocation of certification under this paragraph will not take effect until the manufacturer concerned has been given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity to request a review under § 60.5481.

(g) *Quality Assurance Program.* For each certified model line, the manufacturer must conduct a quality assurance program according to the requirements of § 60.533(m).

(h) *EPA Compliance Audit Testing.* The Administrator will conduct compliance audit testing according to the requirements of § 60.533(n). For the purposes of this paragraph, references in § 60.533(n) to § § 60.532 through 60.535 must be understood to refer to the comparable paragraphs in §§ 60.5474 through 60.5477 and the associated test methods specified in this subpart.

§ 60.5476 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?

Test methods and procedures specified in this section or in appendix A of this part, except as provided under § 60.8(b), must be used to determine compliance with the standards and requirements for certification under §§ 60.5474 and 60.5475 as follows:

(a)(1) Method 28 WHH must be used to measure the heat output (million Btu/hr) of outdoor and indoor residential hydronic heaters.

(2) If the model is subject to the 2015 particulate matter standards specified in § 60.5474(a)(1) and is equipped with an external heat storage unit, you must conduct testing according to paragraph § 60.5476(a)(2)(i) and (ii) of this section. You have the option of submitting the test results of either (a)(2)(i) or (ii) of this section to the Administrator as specified under § 60.5479 for certification compliance.

(i) Conduct testing using crib wood as specified in Method 28 WHH. The heat input and heat output measurements must be performed according to ASTM method E2618–13 entitled ''Standard Test Method for Determining Particulate Matter Emissions and Heating of Outdoor Solid Fuel-fired Hydronic Heating Appliances.'' Testing conducted with continuously fed biomass as the fuel(s) must be conducted according to the relevant section of the ASTM method.

(ii) Conduct testing using cord wood as specified in ''A Test Method for Certification of Cord Wood-Fired Hydronic Heating Appliances with Partial Thermal Storage: Measurement of Particulate Matter (PM) and Carbon Monoxide (CO) Emissions and Heating Efficiency of Wood-Fired Hydronic Heating Appliances with Partial Thermal Storage.''

(3) If the model is subject to the 2020 particulate matter standards specified in § 60.5474(a)(2) and is equipped with an external partial heat storage unit, you must conduct cord wood testing according to the test methods and procedures of ''A Test Method for Certification of Cord Wood-Fired Hydronic Heating Appliances with Partial Thermal Storage: Measurement of Particulate Matter (PM) and Carbon Monoxide (CO) Emissions and Heating Efficiency of Wood-Fired Hydronic Heating Appliances with Partial Thermal Storage.''

(b) Method 28 WHH in conjunction with ASTM E2515–10 must be used to measure the particulate matter emission rate (lb/million Btu heat output) of outdoor and indoor residential hydronic heaters, except that for the 2020 standards, you should first test Burn Rate Categories 1 and 4 and then test 2 more times for whichever burn rate category is worse on a lb/million BTU heat output basis and report the results separately per burn rate category.

(c) Canadian Standards Administration (CSA) Method B415.1–10 must be used to measure the heat output (million Btu/hr) and particulate matter emission rate (lb/million Btu heat output) of forced-air furnaces, except that for the 2020 standards, you should first test Burn Rate Categories 1 and 4 and then test 2 more times for whichever burn rate category is worse on a lb/million BTU heat output basis and report the results separately per burn rate category.

(d) CSA Method B415.1–10, section 13.7, must be used to measure the thermal efficiency of outdoor and indoor residential hydronic heaters.

(e) [*Reserved*]

(f) The manufacturer of an affected residential hydronic heater or forced-air furnace must notify the Administrator of the date that certification testing is to begin, by email, to Wood Heater NSPS Compliance Program at *www.epa.gov/Wood_Heater_NSPS_Compliance_Program*. This notice must be at least 30 days before the start of testing. The notification of testing must include the manufacturer's name and address, the accredited test laboratory's name and address, certifying entity name, the model name and number (or, if unavailable, some other way to distinguish between models), and the dates of testing.

(g) The accredited test laboratory must allow the manufacturer, the EPA and delegated states to observe certification testing. However, manufacturers must not involve themselves in the conduct of the test after the pretest burn (as defined by EPA Method 28 WHH) has begun. Communications between the manufacturer and laboratory or certifying entity personnel regarding operation of the hydronic heater must be limited to written communications transmitted prior to the first pretest burn of the certification series. Written communications between the manufacturer and laboratory personnel may be exchanged during the certification test only if deviations from the test procedures are observed that constitute improper conduct of the test. All communications must be included in the test documentation required to be submitted pursuant to § 60.533(b)(3) and must be consistent with instructions provided in the owner's manual required under § 60.5478(f), except to the extent that they address details of the certification tests that would not be relevant to owners.

§ 60.5477 What procedures must I use for laboratory accreditation?

The accreditation procedure specified in § 60.535 must be used to certify test laboratories under this subpart.

§ 60.5478 What requirements must I meet for permanent labels and owner's manuals?

(a) *Permanent Label Requirements.*

(1) Each affected residential hydronic heater or forced-air furnace manufactured or sold on or after the date the applicable standards come into effect as specified in § 60.5474, must have a permanent label affixed to it that meets the requirements of this section.

(2) The permanent label must contain the following information:

(i) Month and year of manufacture of the individual unit;

(ii) Model name or number; and

(iii) Serial number.

(3) The permanent label must:

(i) Be affixed in a readily visible or accessible location in such a manner that it can be easily viewed before and after the appliance is installed;

(ii) Be at least 8.9 cm long and 5.1 cm wide (3 1/2 inches long and 2 inches wide);

(iii) Be made of a material expected to last the lifetime of the residential hydronic heater or forced-air furnace;

(iv) Present required information in a manner so that it is likely to remain legible for the lifetime of the residential hydronic heater or forced-air furnace; and

(v) Be affixed in such a manner that it cannot be removed without damage to the label.

(4) The permanent label may be combined with any other label, as long as the required information is displayed, the integrity of the permanent label is not compromised, and the requirements of § 60.5478(a)(3) are still met.

(b) If the residential hydronic heater or forced-air furnace belongs to a model line certified under § 60.5475, and it has been found to meet the applicable emission limits or tolerances through quality assurance testing, one of the following statements, as appropriate, must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with 2015 particulate emission standards.

or

U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with 2020 particulate emission standards.

(c) The label under paragraph (b) of this section must also contain the following statement on the permanent label:

''This appliance needs periodic inspection and repair for proper operation. Consult owner's manual for further information. It is against the law to operate this appliance in a manner inconsistent with operating instructions in the owner's manual.''

(d) Any label statement under paragraph (b) of this section constitutes a representation by the manufacturer as to any residential hydronic heater or forced-air furnace that bears it:

(1) That the certification of compliance was in effect at the time the residential hydronic heater or forced-air furnace left the possession of the manufacturer;

(2) That the manufacturer was, at the time the label was affixed, conducting a quality assurance program in conformity with the manufacturer's quality assurance program; and

(3) That as to any residential hydronic heater or forced-air furnace individually tested for emissions by the manufacturer under § 60.5475(f), it met the applicable emission limit.

(e)(1) If an affected residential hydronic heater or forced-air furnace is manufactured in the United States for export as provided in § 60.5472(b)(1), the following statement must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY Export appliance. May not be operated in the United States.

(2) If an affected residential hydronic heater or forced-air furnace is manufactured for use for research and development purposes as provided in § 60.5472(b)(2), the following statement must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY Not certified. Research Appliance. Not approved for sale.

(3) If an affected residential hydronic heater or forced-air furnace is a non wood-burning hydronic heater or forced-air furnace exclusively as provided in § 60.5472(b)(3) the following statement must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY This appliance is not certified for wood burning. Use of any wood fuel is a violation of federal law.

(f) *Owner's Manual.* (1) Each affected residential hydronic heater or forced-air furnace offered for sale by a commercial owner must be accompanied by an owner's manual that must contain the information listed in paragraph (f)(2) of this section (pertaining to installation), and paragraph (f)(3) of this section (pertaining to operation and maintenance). Such information must be adequate to enable consumers to achieve optimal emissions performance. Such information must be consistent with the operating instructions provided by the manufacturer to the accredited test laboratory for operating the residential hydronic heater or forced-air furnace during certification testing, except for details of the certification test that would not be relevant to the ultimate purchaser. The commercial owner must also make current and historical owner's manuals available on the company Web site.

(2) Installation information: Requirements for achieving proper draft.

(3) Operation and maintenance information:

(i) Fuel loading procedures, recommendations on fuel selection, and warnings on what fuels not to use, such as treated wood, colored paper, cardboard, solvents, trash and garbage.

(ii) Fire starting procedures

(iii) Proper use of air controls

(iv) Ash removal procedures

(v) Instructions for replacement of gaskets and other parts that are critical to the emissions performance of the unit and other maintenance and repair instructions

(vi) The following statement: ''This wood heating appliance needs periodic inspection and repair for proper operation. It is against federal law to operate this wood heating appliance in a manner inconsistent with operating instructions in the manual.''

(4) Any manufacturer using the EPA model language contained in appendix I of this part to satisfy any requirement of this paragraph (f) will be considered to be in compliance with that requirement, provided that the particular model language is printed in full, with only such changes as are necessary to ensure accuracy for the particular model line.

(5) Residential hydronic heaters and forced-air furnaces that are affected by this subpart but have been operated by a noncommercial owner are not subject to paragraph (f) of this section when offered for resale.

§ 60.5479 What records must I keep and what reports must I submit?

(a) Each manufacturer who holds a certificate of compliance pursuant to § 60.5475(a)(2) for a model line must maintain records containing the following information with respect to that model line.

(1) All documentation pertaining to the certification test used to obtain certification, including the full test report and raw data sheets, laboratory technician notes, calculations, and the test results for all test runs.

(2) Results of the quality assurance program inspections required pursuant to § 60.5475(g).

(3) For emissions tests conducted pursuant to the quality assurance program required by § 60.5475(g), all test reports, data sheets, laboratory technician notes, calculations, and test results for all test runs, the corrective actions taken, if any, and any follow-up actions such as additional testing.

(b) Each accredited test laboratory must maintain records consisting of all documentation pertaining to each certification test and audit test, including the full test report and raw data sheets, laboratory technician notes, calculations, and the test results for all test runs. Each accredited test laboratory must submit initial and biennial proficiency test results to the Administrator.

(c) Each manufacturer must retain each residential hydronic heater and forced-air furnace upon which certification tests were performed and certification granted under § 60.5475(a)(2) at the manufacturer's facility for as long as the model line is manufactured. Each heater or furnace must remain sealed and unaltered. Any such residential hydronic heater or forced-air furnace must be made available upon request to the Administrator for inspection and testing.

(d) Each manufacturer of an affected residential hydronic heater or forced-air furnace certified pursuant to § 60.5475(a)(2) must submit a report to the Administrator every 2 years following issuance of a certificate of compliance for each model line. This report must include the sales for each model by state and certify that no changes in the design or manufacture of the model line have been made that require recertification pursuant to § 60.5475(e).

(e)(1) Unless otherwise specified, all records required under this section must be maintained by the manufacturer, commercial owner of the affected residential hydronic heater or forced-air furnace, accredited test laboratory or certifying entity for a period of no less than 5 years.

(2) Unless otherwise specified, all reports to the Administrator required under this subpart must be made to: Wood Heater NSPS Compliance Program at *www.epa.gov/Wood_Heater_NSPS_Compliance_Program*.

(f) Within 60 days after the date of completing each performance test, each manufacturer or accredited test laboratory or certifying entity must submit performance test data electronically to the EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool (ERT) (*http://www.epa.gov/ttn/chief/ert/index.html*). Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically to EPA's CDX. Manufacturers may submit compliance reports to the EPA via regular mail at the address listed below if the test methods they use are not compatible with ERT or if ERT is not available to accept reports at the time the final rule is published. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a completed ERT file, including information claimed to be CBI on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives), to the EPA and the same ERT file, with the CBI omitted, to the EPA via CDX as described earlier in this paragraph. The compact disk must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. Emission data and all information necessary to determine compliance, except sensitive engineering drawings and sensitive detailed material specifications, may not be claimed as CBI.

§ 60.5480 What activities are prohibited under this subpart?

(a) No person is permitted to operate an affected residential hydronic heater or forced-air furnace that does not have affixed to it a permanent label pursuant to § 60.5478(b) or (c).

(b)(1) No commercial owner is permitted to advertise for sale, offer for sale, or sell an affected residential hydronic heater or forced-air furnace that does not have affixed to it a permanent label pursuant to § 60.5478(b) or (e)(3).

(2) No commercial owner is permitted to advertise for sale, offer for sale, or sell an affected residential hydronic heater or forced-air furnace labeled under § 60.5478(e)(1) except for export.

(c)(1) No commercial owner is permitted to advertise for sale, offer for sale, or sell an affected residential hydronic heater or forced-air furnace permanently labeled under § 60.5478(b) or (e)(3) unless:

(i) The affected appliance has been certified to comply with 2020 particulate emission standards. This prohibition does not apply to affected residential hydronic heaters or forced-air furnaces regulated under this subpart that have been previously owned and operated by a noncommercial owner; and

(ii) The commercial owner provides any purchaser or transferee with an owner's manual that meets the requirements of § 60.5478(f), a copy of the warranty and a moisture meter.

(2) A commercial owner other than a manufacturer complies with the requirements of paragraph (c)(1) of this section if the commercial owner:

(i) Receives the required documentation from the manufacturer or a previous commercial owner; and

(ii) Provides that documentation unaltered to any person to whom the residential hydronic heater or forced-air furnace that it covers is sold or transferred.

(d)(1) In any case in which the Administrator revokes a certificate of compliance either for the knowing submission of false or inaccurate information or other fraudulent acts, or based on a finding under § 60.5475(e)(1)(ii) that the certification test was not valid, the Administrator may give notice of that revocation and the grounds for it to all commercial owners.

(2) On and after the date of receipt of the notice given under paragraph (d)(1) of this section, no commercial owner is permitted to sell any residential hydronic heater or forced-air furnace covered by the revoked certificate (other than to the manufacturer) unless the model line has been recertified in accordance with this subpart.

(e) No person is permitted to install or operate an affected residential hydronic heater or forced-air furnace except in a manner consistent with the instructions on its permanent label and in the owner's manual pursuant to § 60.5478(f), including only using fuels for which the unit is certified.

(f) No person is permitted to operate an affected residential hydronic heater or forced-air furnace that has been physically altered to exceed the tolerance limits of its certificate of compliance.

(g) No person is permitted to alter, deface, or remove any permanent label required to be affixed pursuant to § 60.5478.

(h) No certifying entity is permitted to certify its own certification test report.

§ 60.5481 What Petition for Review procedures apply to me?

(a) In any case where the Administrator:

(1) Denies an application under § 60.5475(a)(2);

(2) Issues a notice of revocation of certification pursuant to § 60.5475(e);

(3) Denies an application for laboratory accreditation pursuant to § 60.5477; or

(4) Issues a notice of revocation of laboratory accreditation pursuant to § 60.5477, the manufacturer or laboratory affected may submit to the EPA a request for review under this section pursuant to the procedures specified in § 60.539 within 30 days following receipt of the required notification of the action in question.

(b) In any case where the Administrator issues a notice of revocation pursuant to § 60.5475(g), the manufacturer may submit to the EPA a Petition for Review request under this section with the time limits set out in § 60.533(p)(4).

§ 60.5482 Who implements and enforces this subpart?

(a) In delegating implementation and enforcement authority to a state under section 111(c) of the Clean Air Act, the authorities contained in paragraph (b) of this section must be retained by the Administrator and not transferred to a state.

(b) Authorities that must not be delegated to states:

(1) Section 60.5473, Definitions;

(2) Section 60.5475, Compliance and certification;

(3) Section 60.5476, Test methods and procedures; and

(4) Section 60.5477, Laboratory accreditation.

§ 60.5483 What parts of the General Provisions do not apply to me?

The following provisions of subpart A of part 60 do not apply to this subpart:

(a) Section 60.7;

(b) Section 60.8(a), (c), (d), (e), (f) and (g); and

(c) Section 60.15(d).

■ 5. Add subpart RRRR to read as follows:

Subpart RRRR—Standards of Performance for New Residential Masonry Heaters

Sec.

60.5484 Am I subject to this subpart?
60.5485 What definitions must I know?
60.5486 What standards and requirements must I meet and by when?
60.5487 What compliance and certification requirements must I meet and by when?
60.5488 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?
60.5489 What procedures must I use for laboratory accreditation?
60.5490 What requirements must I meet for permanent labels and owner's manuals?
60.5491 What records must I keep and what reports must I submit?
60.5492 What activities are prohibited under this subpart?
60.5493 What Petition for Review procedures apply to me?
60.5494 Who implements and enforces this subpart?
60.5495 What parts of the General Provisions do not apply to me?

Subpart RRRR—Standards of Performance for New Residential Masonry Heaters

§ 60.5484 Am I subject to this subpart?

(a) You are subject to this subpart if you operate, manufacture, sell, offer for sale, import for sale, distribute, offer to distribute, introduce, or deliver for introduction, into commerce in the United States, a residential masonry heater manufactured on or after [EFFECTIVE DATE OF FINAL RULE].

(b) Each affected masonry heater must comply with the provisions of this subpart unless exempted under paragraphs (b)(1) through (b)(3) of this section.

(1) Affected masonry heaters manufactured in the United States for export are exempt from the applicable emission limits of § 60.5486 and the requirements of § 60.5487.

(2) Affected masonry heaters used for research and development purposes that are never offered for sale or sold and that are not used to provide heat are exempt from the applicable emission limits of § 60.5486 and the requirements of § 60.5487. No more than six affected masonry heaters manufactured per model line may be exempted for this purpose.

(3) Affected masonry heaters that do not burn wood or wood pellets (such as coal-only heaters that meet the definition in § 60.5485 or corn-only heaters) are exempt from the applicable emission limits of § 60.5486 and the requirements of § 60.5487.

(c) The following are not affected masonry heaters and are not subject to this subpart:

(1) Residential wood heaters subject to subpart AAA of this part.

(2) Residential hydronic heaters and forced-air furnaces subject to subpart QQQQ of this part.

§ 60.5485 What definitions must I know?

As used in this subpart, all terms not defined herein have the same meaning given them in the Clean Air Act and subpart A of this part.

Accredited test laboratory means a test laboratory that is accredited for masonry heater certification testing under § 60.5489 or is an independent third party test laboratory that is accredited by a nationally recognized accrediting entity under ISO–IEC Standard 17025 to perform testing using the test methods specified in § 60.5488 and approved by the EPA for conducting certification tests under this subpart.

At retail means the sale by a commercial owner of a residential masonry heater to the ultimate purchaser.

Certifying entity means an independent third party that is accredited by a nationally recognized accrediting entity under ISO–IEC Standard 17020 to perform certifications and inspections under ISO–IEC Guide 17065 and approved by the EPA for conducting certifications, inspections and audits under this subpart.

Coal-only heater means an enclosed, coal-burning appliance capable of space heating or domestic water heating which has all of the following characteristics:

(1) Installation instructions that state that the use of wood in the heater, except for coal ignition purposes, is prohibited by law; and

(2) The model is listed by a nationally recognized safety-testing laboratory for coal use only, except for coal ignition purposes.

Commercial owner means any person who owns or controls a residential masonry heater in the course of the business of the manufacture, importation, distribution, or sale of the unit.

Manufactured means completed and ready for shipment (whether or not packaged) or installed in a residence in the case of custom-built masonry heaters for purposes of determining the date of manufacture.

Manufacturer means any person who constructs or imports into the United States a residential masonry heater.

Model line means all residential masonry heaters offered for sale by a single manufacturer that are similar in all material respects as defined in this section.

Particulate matter (PM) means total particulate matter including PM_{10} and $PM_{2.5}$.

Pellet fuel means refined and densified wood shaped into small pellets or briquettes that are uniform in size, shape, moisture, density and energy content.

Representative affected masonry heater means an individual residential masonry heater that is similar in all material respects as defined in this section to other residential masonry heaters within the model line it represents.

Residential masonry heater means a factory-built or site-built wood-burning device that has the following characteristics:

(1) The device has a core constructed primarily of manufacturer-built, supplied, or specified masonry materials (such as stone, cemented aggregate, clay, tile, or other non-combustible, non-metallic solid materials) that weighs at least 1700 pounds;

(2) The firebox effluent of the masonry heater travels horizontally and/or downward through one or more heat absorbing masonry duct(s) for a distance at least the length of the largest single internal firebox dimension before

leaving the masonry heater. These parameters are determined as follows:

(i) Horizontal or downward travel distance is defined as the net horizontal and/or downward internal duct length, measured from the top of the uppermost firebox door opening(s) to the exit of the masonry heater as traveled by any effluent on a single pathway through duct channel(s) within the heater (or average of net internal duct lengths for multiple pathways of different lengths, if applicable). Net internal duct length is measured from the center of the internal side or top surface of a duct, horizontally or vertically to the center of the opposite side or the bottom surface of the same duct, and summed for multiple ducts or directions on a single pathway, if applicable. For duct channel(s) traversing horizontal angles of less than ninety degrees from vertical, only the net actual horizontal distance traveled is included in the total duct length; and

(ii) The largest single internal firebox dimensions is defined as the longest of either the length or the width of the firebox hearth and the height of the firebox, measured from the hearth to the top of the uppermost firebox door opening(s);

(3) The device has one or more air-controlling doors for fuel-loading that are designed to be closed during the combustion of fuel loads, and that control the entry of combustion air (beyond simple spark arresting screens) to one or more inlets as prescribed by the masonry heater manufacturer; and

(4) The device is assembled in conformance with Underwriters Laboratories' and/or manufacturer's specifications for its assembly and, if the core is constructed with a substantial portion of materials not supplied by the manufacturer, is certified by a representative of the manufacturer to be substantially in conformance with those specifications.

Sale means the transfer of ownership or control, except that a transfer of control of an affected heater for research and development purposes within the scope of § 60.5484(b)(2) is not a sale.

Seasoned wood means wood with a moisture content of 20 percent or less.

Similar in all material respects means that the construction materials, exhaust and inlet air system, and other design features are within the allowed tolerances for components identified in § 60.533(k).

Valid certification test means a test that meets the following criteria:

(1) The Administrator was notified about the test in accordance with § 60.5488(d)

(2) The test was conducted by an accredited test laboratory as defined in this section;

(3) The test was conducted on a residential masonry heater similar in all material respects as defined in this section to other residential masonry heaters of the model line that is to be certified; and

(4) The test was conducted in accordance with the test methods and procedures specified in § 60.5488.

§ 60.5486 What standards and requirements must I meet and by when?

(a) *Particulate Matter Standard.* Unless exempted under § 60.5484:

(1) On or after [EFFECTIVE DATE OF FINAL RULE], no person is permitted to manufacture and, on or after [6 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], no person is permitted to sell at retail a residential masonry heater unless the heater has been certified to meet the particulate matter emission limit in paragraph (b) of this section or the manufacturer is a small manufacturer as defined in paragraph (a)(2) of this section.

(2) On or after [5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], no small manufacturer is permitted to manufacture a residential masonry heater unless it has been certified to meet the particulate matter emission limit in paragraph (b) of this section. For the purposes of this subpart, a small manufacturer is defined as a manufacturer that constructs less than 15 residential masonry heaters per year. A small manufacturer may elect to comply with the emission limit in paragraph (b) of this section earlier than specified in this paragraph.

(b) Residential masonry heater particulate matter emission limit: 0.32 lb/million Btu (0.137 g/megajoule) heat output as determined by the test methods and procedures in § 60.5488.

(c) *Pellet Fuel Requirements.* Operators of masonry heaters that are certified to burn pellet fuels may only burn pellets that have been produced under a licensing agreement with the Pellet Fuel Institute or an equivalent organization approved by EPA. The pellet fuel must meet the following minimum requirements:

(1) Density: consistent hardness and energy content with a minimum density of 38 pounds/cubic foot;

(2) Dimensions: maximum length of 1.5 inches and diameter between 0.230 and 0.285 inches;

(3) Inorganic fines: less than or equal to 1 percent;

(4) Chlorides: less than or equal to 300 parts per million by weight; and

(5) Ash content: no more than 2 percent.

(6) A quality assurance process licensed by the Pellet Fuel Institute or equivalent organization approved by the EPA.

(d) *Prohibited Fuel Types.* No person is permitted to burn any of the following materials in a residential masonry heater:

(1) Residential or commercial garbage;

(2) Lawn clippings or yard waste;

(3) Materials containing rubber, including tires;

(4) Materials containing plastic;

(5) Waste petroleum products, paints or paint thinners, or asphalt products;

(6) Materials containing asbestos;

(7) Construction or demolition debris;

(8) Paper products, cardboard, plywood, or particleboard. The prohibition against burning these materials does not prohibit the use of fire starters made from paper, cardboard, saw dust, wax and similar substances for the purpose of starting a fire in an affected masonry heater;

(9) Railroad ties or pressure treated wood;

(10) Manure or animal remains; or

(11) Salt water driftwood or other previously salt water saturated materials.

(e) *Owner's Manual.* A person must not operate a residential masonry heater in a manner inconsistent with the owner's manual. The owner's manual must clearly specify that operation in a manner inconsistent with the owner's manual would violate the warranty.

§ 60.5487 What compliance and certification requirements must I meet and by when?

(a)(1) *Certification Requirement.* Each affected residential masonry heater must be certified to be in compliance with the applicable emission standards and other requirements of this subpart. For each model line manufactured or sold by a single entity, *e.g.,* company or manufacturer, compliance with applicable emission standards of § 60.5486(b) must be determined based on testing of representative affected appliances within the model line. If one entity licenses a model line to another entity, each entity's model line must be certified. If an entity changes the name of the entity or the name of the model, the manufacturer must apply for a new certification.

(2) The manufacturer of each model line must submit to the EPA the information required in paragraph (b) of this section and follow the certification procedure specified in § 60.533(f) except that, for the purposes of this paragraph, the reference in § 60.533(f) to the emission limits in § 60.532 must be understood to refer to the emission

limits in § 60.5486(b) and the associated test methods are those specified in this subpart.

(3) As an alternative to the certification process described in paragraph (a)(2) of this section, an applicant may choose to submit a computer model simulation program for review and certification by the certifying entity and subsequent review and approval by the Administrator for use as a surrogate for emissions testing. The Administrator will post the certified model on the EPA Burnwise Web site.

(b) *Waiver from Submitting Test Results.*

(1) An applicant for certification may apply for a potential waiver of the requirements to submit the results of a certification test pursuant to the certification procedures specified in § 60.533(f) according to the procedure specified in § 60.533(g)(1).

(2) Alternatively, an applicant may submit results using a validated computer model simulation program that demonstrates the masonry heater design meets the emission limit in § 60.5486(b).

(c) *Certification Period.*

(1) Unless revoked sooner by the Administrator, a certificate of compliance will be valid for 5 years from the date of issuance.

(2) If the manufacturer qualifies as a small manufacturer as defined in § 60.5486(a)(2) and the model was certified using the procedure defined in paragraph (a)(3) of this section, the certificate of compliance will be valid for the life of the model line unless it is revoked by the Administrator.

(d) *Renewal of Certification.*

(1) Any manufacturer of an affected masonry heater may apply to the Administrator for potential renewal of a certificate of compliance by submitting the material specified in § 60.533(b) and following the process specified in § 60.533(f).

(2) A certificate issued pursuant to paragraph (c)(1) of this section must be recertified or renewed every 5 years or the manufacture may choose to no longer manufacture or sell that model. If the manufacturer chooses to no longer manufacture or sell that model, then the manufacturer must submit a statement to EPA for that model. A manufacturer may apply to the Administrator for potential renewal of their certificate by submitting certification information in accordance with § 60.533(b) or by affirming in writing that the wood heater has been subject to no changes that would impact emissions and request a potential waiver from certification testing.

(3) If the Administrator waives certification testing under paragraph (c)(2) of this section, the Administrator will give written notice to the manufacturer setting forth the basis for the determination and issue a certification.

(4) If the Administrator denies the request, the Administrator will give written notice to the manufacturer setting forth the basis for the determination.

(e) *Recertification.*

(1) The procedure specified in § 60.533(k) must be used to determine when a model line must be recertified.

(2) If the manufacturer qualifies as a small manufacturer as defined in § 60.5486(a)(2) and the model line was certified using the procedure defined in paragraph (a)(3) of this section, the recertification provisions of paragraph (e)(1) of this section do not apply.

(f) *Criteria for Revocation of Certification.*

(1) The Administrator may revoke certification of a model line if it is determined that the residential masonry heaters produced in that model line do not comply with the requirements of this subpart. Such a determination will be based on all available evidence, including but not limited to:

(i) Test data from retesting of the original unit on which the certification was conducted or a similar unit;

(ii) A finding that the certification test or model simulation was not valid;

(iii) A finding that the labeling of the residential masonry heater model line or the associated owner's manual or marketing information does not comply with the requirements of § 60.5490;

(iv) Failure by the manufacturer to comply with the reporting and recordkeeping requirements of § 60.5491;

(v) Physical examination showing that an inspected production unit is not similar in all material respects as defined in this subpart to the representative affected masonry heater submitted for testing; or

(vi) Failure of the manufacturer to conduct a quality assurance program in conformity with paragraph (f) of this section.

(2) Revocation of certification under this paragraph will not take effect until the manufacturer concerned has been given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity to request a Petition for Review under § 60.5493.

(g) *Quality Assurance Program.* For each certified model line, except for any model line at small manufacturers as defined in § 60.5486(a)(2) and where the model line was certified using the procedure defined in paragraph (a)(3) of this section, the manufacturer must conduct a quality assurance program according to the requirements of § 60.533(m).

(h) *EPA Compliance Audit Testing.* The Administrator may conduct compliance audit testing according to the requirements of § 60.533(n). For the purposes of this paragraph, references in § 60.533(p) to § § 60.532 through 60.535 must be understood to refer to the comparable paragraphs in § § 60.5486 through 60.5489, respectively. The requirements of this paragraph do not apply to small manufacturers as defined in § 60.5486(a)(2) and where the model line was certified using the procedure defined in paragraph (a)(3) of this section.

§ 60.5488 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?

Test methods and procedures specified in this section or in appendix A of this part, except as provided under § 60.8(b), must be used to determine compliance with the standards and requirements for certification under § § 60.5486 and 60.5487 as follows:

(a) ASTM E2817–11, Standard Test Method for Test Fueling Masonry Heaters, must be used to measure the heat output (million Btu/hr) of residential masonry heaters.

(b) ASTM E2515–10 must be used in conjunction with ASTM E2817–11 to measure the particulate emission rate (lb/million BTU heat output) of residential masonry heaters.

(c)(1) ASTM WK26558, New Specification for Calculation Method for Custom Designed, Site Built Masonry Heaters may be used as an alternative to certification testing as specified in paragraphs (a), (b) and (d) of this section.

(2) If the Administrator approves an alternative computer model simulation program pursuant to § 60.5487(a)(3), the approved simulation program also may be used as an alternative to certification testing as specified in paragraphs (a) and (b) of this section.

(d) Method 10 in appendix A–4 of this part must be used to measure CO emissions of residential masonry heaters.

(e) The manufacturer of an affected masonry heater must notify the Administrator of the date that certification testing is to begin, by email, to Wood Heater NSPS Compliance Program at *www.epa.gov/Wood_Heater_NSPS_Compliance_Program*. This notice must be received at least 30 days

before the start of testing. The notification of testing must include the manufacturer's name and address, the accredited test laboratory's name and address, certifying entity name, the model name and number (or, if unavailable, some other way to distinguish between models), and the dates of testing.

(f) The accredited test laboratory must allow the manufacturer, the EPA and delegated states to observe certification testing. However, manufacturers must not involve themselves in the conduct of the test after the pretest burn (as defined by ASTM E2817–11) has begun. Communications between the manufacturer and laboratory or certifying entity personnel regarding operation of the masonry heater must be limited to written communications transmitted prior to the first pretest burn of the certification series. Written communications between the manufacturer and laboratory personnel may be exchanged during the certification test only if deviations from the test procedures are observed that constitute improper conduct of the test. All communications must be included in the test documentation required to be submitted pursuant to § 60.533(b)(3) and must be consistent with instructions provided in the owner's manual required under § 60.5490(g), except to the extent that they address details of the certification tests that would not be relevant to owners.

§ 60.5489 What procedures must I use for laboratory accreditation?

The accreditation procedure specified in § 60.535 must be used to certify test laboratories under this subpart.

§ 60.5490 What requirements must I meet for permanent labels and owner's manuals?

(a) *Permanent Label Requirements.*

(1) Each affected masonry heater manufactured on or after the date the applicable standards come into effect as specified in § 60.5486, must have a permanent label affixed to it that meets the requirements of this section.

(2) The permanent label must contain the following information:

(i) Month and year of manufacture of the individual unit;

(ii) Model name or number; and

(iii) Serial number.

(3) The permanent label must:

(i) Be affixed in a readily visible or accessible location in such a manner that it can be easily viewed before and after the appliance is installed;

(ii) Be at least 8.9 cm long and 5.1 cm wide (3 1/2 inches long and 2 inches wide);

(iii) Be made of a material expected to last the lifetime of the residential masonry heater;

(iv) Present required information in a manner so that it is likely to remain legible for the lifetime of the residential masonry heater; and

(v) Be affixed in such a manner that it cannot be removed without damage to the label.

(4) The permanent label may be combined with any other label, as long as the required information is displayed, the integrity of the permanent label is not compromised, and the requirements of § 60.5490(3) are still met.

(b)(1) If the residential masonry heater belongs to a model line certified under § 60.5487, and it has been found to meet the applicable emission limits or tolerances through quality assurance testing, the following statement must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with 2015 particulate emissions standards.

(2) If the masonry heater belongs to a model line owned by a manufacturer that qualifies for the small volume manufacturer delay as specified in § 60.5486(a)(2), the following statement must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY This masonry heater was produced by a small volume manufacturer that manufactures or exports to the United States fewer than 15 masonry heaters per year. This appliance cannot be sold after [5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

(c) The label under paragraph (b) of this section must also contain the following statement on the permanent label: ''This appliance needs periodic inspection and repair for proper operation. Consult owner's manual for further information. It is against the law to operate this appliance in a manner inconsistent with operating instructions in the owner's manual.''

(d) Any label statement under paragraph (b) of this section constitutes a representation by the manufacturer as to any residential masonry heater that bears it:

(1) That the certification was in effect at the time the residential masonry heater left the possession of the manufacturer;

(2) That the manufacturer was, at the time the label was affixed, conducting a quality assurance program in conformity with the manufacturer's quality assurance program; and

(3) That as to any residential masonry heater individually tested for emissions by the manufacturer under § 60.5487(f), it met the applicable emission limit.

(e)(1) If an affected masonry heater is manufactured in the United States for export as provide in § 60.5484(b)(1), the following statement must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY Export unit. May not be operated in the United States.

(2) If an affected masonry heater is manufactured for research and development purposes as provided in § 60.5484(b)(2), the following statement must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY Not certified. Research unit. Not approved for sale.

(3) If an affected masonry heater is a non wood-burning masonry heater exclusively as provided § 60.5484(b)(3) the following statement must appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY This appliance is not certified for wood burning. Use of any wood fuel is a violation of federal law.

(f) *Owner's Manual.*

(1) Each affected masonry heater offered for sale by a commercial owner must be accompanied by an owner's manual that must contain the information listed in paragraph (f)(2) of this section (pertaining to installation), and paragraph (f)(3) of this section (pertaining to operation and maintenance). Such information must be adequate to enable consumers to achieve optimal emissions performance. Such information must be consistent with the operating instructions provided by the manufacturer to the accredited test laboratory for operating the residential masonry heater, except for details of the certification test that would not be relevant to the ultimate purchaser. The commercial owner must also make current and historical owner's manuals available on the company Web site.

(2) Installation information: Requirements for achieving proper draft.

(3) Operation and maintenance information:

(i) Fuel loading procedures, recommendations on fuel selection, and warnings on what fuels not to use, such as treated wood, colored paper, cardboard, solvents, trash and garbage.

(ii) Fire starting procedures

(iii) Proper use of air controls

(iv) Ash removal procedures

(v) Instructions for replacement of gasket and other parts that are critical to the emissions performance of the unit and other maintenance and repair instructions

(vi) The following statement: ''This wood heating appliance needs periodic inspection and repair for proper operation. It is against federal law to operate this wood heating appliance in a manner inconsistent with operating instructions in the manual.''

(4) Any manufacturer using the EPA model language contained in appendix I of this part to satisfy any requirement of this paragraph (f) will be considered to be in compliance with that requirement, provided that the particular model language is printed in full, with only such changes as are necessary to ensure accuracy for the particular model line.

(5) Residential masonry heaters that are affected by this subpart but have been operated by a noncommercial owner are not subject to paragraph (f) of this section when offered for resale.

§ 60.5491 What records must I keep and what reports must I submit?

(a) Each manufacturer who holds a certificate of compliance pursuant to § 60.5487(a)(2) for a model line must maintain records containing the information required by this paragraph (a) with respect to that model line.

(1) All documentation pertaining to the certification test or computer simulation used to obtain certification.

(i) For certification tests, this includes the full test report and raw data sheets, laboratory technician notes, calculations, and the test results for all test runs.

(ii) For computer simulations, this includes all data input into the simulation program and all computer-generated output.

(2) Results of the quality assurance program inspections required pursuant to § 60.5487(f).

(3) For emissions tests conducted pursuant to the quality assurance program required by § 60.5487(f), all test reports, data sheets, laboratory technician notes, calculations, and test results for all test runs, the remedial actions taken, if any, and any follow-up actions such as additional testing.

(4) If a masonry heater manufacturer qualifies as a small volume manufacturer as specified in § 60.5486(a)(2) and elects to defer compliance as allowed by that paragraph, records of the number of masonry heaters produced or constructed per year during the deferral period.

(b) Each accredited test laboratory must maintain records consisting of all documentation pertaining to each certification test, audit test, or computer simulation, including the full test report and raw data sheets, laboratory technician notes, calculations, and the test results for all test runs. Each accredited test laboratory must submit initial and biennial proficiency test results to the Administrator.

(c) Each manufacturer must retain each residential masonry heater upon which certification tests were performed and certification granted pursuant to § 60.5487(a)(2) at the manufacturer's facility for as long as the model line is manufactured. Each masonry heater must remain sealed and unaltered. Any such residential masonry heater must be made available upon request to the Administrator for inspection and testing.

(d)(1) Each manufacturer of an affected masonry heater certified pursuant to § 60.5487 must submit a report to the Administrator every 2 years following issuance of a certificate of compliance for each model line. This report must include the sales for each model by state and certify that no changes in the design or manufacture of the model line have been made that require recertification pursuant to § 60.5487(d).

(2) If the manufacturer qualifies as a small manufacturer as defined in § 60.5486(b)(2) and the model line was certified using the procedure defined in paragraph (a)(3) of this section, the reporting provision of paragraph (d)(1) of this section does not apply.

(e)(1) Unless otherwise specified, all records required under this section must be maintained by the manufacturer, commercial owner of the affected masonry heater, accredited test laboratory or certifying entity for a period of no less than 5 years.

(2) Unless otherwise specified, all reports to the Administrator required under this subpart must be made to: Wood Heater NSPS Compliance Program at *www.epa.gov/Wood_Heater_NSPS_Compliance_Program*.

(f) Within 60 days after the date of completing each performance test, each manufacturer or accredited test laboratory or certifying entity must submit performance test data, except opacity data, electronically to the EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool (ERT) (*http://www.epa.gov/ttn/chief/ert/index.html*). Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically to the EPA's CDX. Manufacturers may submit compliance reports to the EPA via regular mail at the address listed below if the test methods they use are not compatible with ERT or if ERT is not available to accept reports at the time the final rule is published. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a completed ERT file, including information claimed to be CBI, on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives), to the EPA, and the same ERT file, with the CBI omitted, to the EPA via CDX as described earlier in this paragraph. The compact disk must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. Emission data and all information necessary to determine compliance, except sensitive engineering drawings and sensitive detailed material specifications, may not be claimed as CBI.

§ 60.5492 What activities are prohibited under this subpart?

(a) No person is permitted to operate an affected masonry heater manufactured after [EFFECTIVE DATE OF FINAL RULE] or sold at retail after [6 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE] that does not have affixed to it a permanent label pursuant to § 60.5490.

(b)(1) No manufacturer or commercial owner is permitted to advertise for sale, offer for sale, or sell an affected masonry heater manufactured after [EFFECTIVE DATE OF FINAL RULE] or sold at retail after [6 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE] that does not have affixed to it a permanent label pursuant to § 60.5490.

(2) No manufacturer or commercial owner is permitted to advertise for sale, offer for sale, or sell an affected masonry heater manufactured after [EFFECTIVE DATE OF FINAL RULE] or sold at retail after [6 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE] labeled under § 60.5490(d)(1) except for export.

(c)(1) No commercial owner is permitted to advertise for sale, offer for sale or sell an affected masonry heater permanently labeled under § 60.5490(b) unless:

(i) The affected appliance regulated under this subpart was previously owned and operated by a noncommercial owner;

(ii) The commercial owner provides any purchaser or transferee with an owner's manual that meets the requirements of § 60.5490(g), a copy of the warranty and a moisture meter.

(2) A commercial owner other than a manufacturer complies with the requirements of paragraph (c) of this section if the commercial owner:

(i) Receives the required documentation from the manufacturer or a previous commercial owner; and

(ii) Provides that documentation unaltered to any person to whom the residential masonry heater that it covers is sold or transferred.

(d)(1) In any case in which the Administrator revokes a certificate of compliance either for the knowing submission of false or inaccurate information or other fraudulent acts, or based on a finding under § 60.5487(e)(1)(ii) that the certification test was not valid, the Administrator may give notice of that revocation and the grounds for it to all commercial owners.

(2) On and after the date of receipt of the notice given under paragraph (d)(1) of this section, no commercial owner is permitted to sell any residential masonry heater covered by the revoked certificate (other than to the manufacturer) unless the model line has been recertified in accordance with this subpart.

(e) No person is permitted to install or operate an affected masonry heater except in a manner consistent with the instructions on its permanent label and in the owner's manual pursuant to § 60.5490(g), including only using fuels for which the unit is certified.

(f) No person is permitted to operate an affected masonry heater that has been physically altered to exceed the tolerance limits of its certificate of compliance.

(g) No person is permitted to alter, deface, or remove any permanent label required to be affixed pursuant to § 60.5490.

(h) No certifying entity is permitted to certify its own certification test report.

§ 60.5493 What Petition for Review procedures apply to me?

(a) In any case where the Administrator:

(1) Denies an application under § 60.5487(a)(2);

(2) Issues a notice of revocation of certification under § 60.5487(e);

(3) Denies an application for laboratory accreditation pursuant to § 60.5489; or

(4) Issues a notice of revocation of laboratory accreditation pursuant to § 60.5489, the manufacturer or laboratory affected may submit to the EPA a Petition for Review request under this section pursuant to the procedures specified in § 60.593 within 30 days following receipt of the required notification of the action in question.

(b) In any case where the Administrator issues a notice of revocation under § 60.5487(e), the manufacturer may submit to the EPA a Petition for Review request under this section pursuant to the procedures specified in § 60.5493 with the time limits set out in § 60.533(p)(4).

§ 60.5494 Who implements and enforces this subpart?

(a) In delegating implementation and enforcement authority to a state under section 111(c) of the Clean Air Act, the authorities contained in paragraph (b) of this section must be retained by the Administrator and not transferred to a state.

(b) Authorities that must not be delegated to states:

(1) Section 60.5473, Definitions;

(2) Section 60.5475, Compliance and certification;

(3) Section 60.5476, Test methods and procedures; and

(4) Section 60.5477, Laboratory accreditation.

§ 60.5495 What parts of the General Provisions do not apply to me?

The following provisions of subpart A of part 60 do not apply to this subpart:

(a) Section 60.7;

(b) Section 60.8(a), (c), (d), (e), and (f); and

(c) Section 60.15(d).

6. Part 60 Appendix A–8 is amended by adding Methods 28R, 28WHH, and 28WHH–PTS to follow Method 28A to read as follows:

Appendix A–8 to Part 60—Test Methods 26 through 30B

* * * * *

Test Method 28R for Certification and Auditing of Wood Heaters

1.0 Scope and Application

1.1 This test method applies to certification and auditing of wood-fired room heaters and fireplace inserts.

1.2 The test method covers the fueling and operating protocol for measuring particulate emissions, as well as determining burn rates, heat output and efficiency.

1.3 Particulate emissions are measured by the dilution tunnel method as specified in ASTM E2515–10 *Standard Test Method for Determination of Particulate Matter Emissions Collected in a Dilution Tunnel.*

2.0 Procedures

2.1 This method incorporates the provisions of ASTM E2780–10 except as follows:

2.1.1 The burn rate categories, low burn rate requirement, and weightings in Method 28 shall be used.

2.1.2 The startup procedures shall be the same as in Method 28.

2.1.3 The equation for converting the emission test values between the EPA Reference Method 5G ''Determination of Particulate Emissions From Wood Heaters From a Dilution Tunnel Sampling Location'' and EPA Reference Method 5H ''Determination of Particulate Emissions From Wood Heaters From a Stack Location'' shall be the same as in Method 28.

2.1.4 Manufacturers shall not specify a smaller volume of the firebox for testing than the full usable firebox.

2.1.5 The test fuel moisture content, fuel load, and coal bed depth shall be as follows:

(a) The fuel load dry-basis moisture content shall be within a range of 22.5 percent +/− 1 percent;

(b) The fuel load weight shall be 7 lb/ft^3 +/− 1 percent (or 7 lb +/−0.07 lb) of the fuel load weight, calculated in accordance with Method 28; and

(c) The range for the test-initiation coal-bed weight shall be 22 percent +/− 1 percent of the fuel load weight.

Test Method 28 WHH for Measurement of Particulate Emissions and Heating Efficiency of Wood-Fired Hydronic Heating Appliances

1.0 Scope and Application

1.1 This test method applies to wood-fired hydronic heating appliances. The units typically transfer heat through circulation of a liquid heat exchange media such as water or a water-antifreeze mixture.

1.2 The test method measures particulate emissions and delivered heating efficiency at specified heat output rates based on the appliance's rated heating capacity.

1.3 Particulate emissions are measured by the dilution tunnel method as specified in ASTM E2515–10 *Standard Test Method for Determination of Particulate Matter Emissions Collected in a Dilution Tunnel.* Delivered Efficiency is measured by determining the heat output through measurement of the flow rate and temperature change of water circulated through a heat exchanger external to the appliance and determining the input from the mass of dry wood fuel and its higher heating value. Delivered efficiency does not attempt to account for pipeline loss.

1.4 Products covered by this test method include both pressurized and non-pressurized heating appliances intended to be fired with wood. These products are wood-fired hydronic heating appliances that the manufacturer specifies for indoor or outdoor installation. They are often connected to a heat exchanger by insulated pipes and normally include a pump to circulate heated liquid. They are used to heat structures such as homes, barns and greenhouses and can heat domestic hot water, spas or swimming pools.

1.5 Distinguishing features of products covered by this standard include:

1.5.1 Manufacturer specifies for indoor or outdoor installation.

1.5.2 A firebox with an access door for hand loading of fuel.

1.5.3 Typically an aquastat that controls combustion air supply to maintain the liquid in the appliance within a predetermined temperature range provided sufficient fuel is available in the firebox.

1.5.4 A chimney or vent that exhausts combustion products from the appliance.

1.6 The values stated are to be regarded as the standard whether in I–P or SI units. The

values given in parentheses are for information only.

2.0 Summary of Method and References

2.1 Particulate matter emissions are measured from a wood-fired hydronic heating appliance burning a prepared test fuel crib in a test facility maintained at a set of prescribed conditions. Procedures for determining burn rates, and particulate emissions rates and for reducing data are provided.

2.2 Referenced Documents

2.2.1 EPA Standards

2.2.1.1 Method 28 Certification and Auditing of Wood Heaters

2.2.2 Other Standards

2.2.2.1 ASTM E2515–10 *Standard Test Method for Determination of Particulate Matter Emissions Collected in a Dilution Tunnel.*

2.2.2.2 CAN/CSA–B415.1–2010 *Performance Testing of Solid-Fuel-Burning Heating Appliances.*

3.0 Terminology

3.1 Definitions

3.1.1 Hydronic Heating—A heating system in which a heat source supplies energy to a liquid heat exchange media such as water that is circulated to a heating load and returned to the heat source through pipes.

3.1.2 Aquastat—A control device that opens or closes a circuit to control the rate of fuel consumption in response to the temperature of the heating media in the heating appliance.

3.1.3 Delivered Efficiency—The percentage of heat available in a test fuel charge that is delivered to a simulated heating load as specified in this test method.

3.1.4 Manufacturer's Rated Heat Output Capacity—The value in BTU/hr (MJ/hr) that the manufacturer specifies that a particular model of hydronic heating appliance is capable of supplying at its design capacity as verified by testing, in accordance with Section 13.

3.1.5 Burn rate—The rate at which test fuel is consumed in an appliance. Measured in pounds (lbs) of wood (dry basis) per hour (kg/hr).

3.1.6 Firebox—The chamber in the appliance in which the test fuel charge is placed and combusted.

3.1.7 Test fuel charge—The collection of Test Fuel layers placed in the appliance at the start of the emission test run.

3.1.8 Test Fuel Layer—Horizontal arrangement of Test Fuel Units.

3.1.9 Test Fuel Unit—One or more Test Fuel Pieces with ¾ inch (19 mm) spacers attached to the bottom and to one side. If composed of multiple Test Fuel Pieces, the bottom spacer may be one continuous piece.

3.1.10 Test Fuel Piece—A single 4 x 4 (4 ± 0.25 inches by 4 ± 0.25 inches)[100 ± 6 mm by 100 ± 6 mm] white or red oak wood piece cut to the length required.

3.1.11 Test Run—An individual emission test that encompasses the time required to consume the mass of the test fuel charge.

3.1.12 Overall Efficiency (SLM)—The efficiency for each test run as determined using the CSA B415.1–2010 Stack Loss Method.

3.1.13 Thermopile—A device consisting of a number of thermocouples connected in series, used for measuring differential temperature.

4.0 Summary of Test Method

4.1 Dilution Tunnel. Emissions are determined using the ''dilution tunnel'' method specified in ASTM E2515 *Standard Test Method for Determination of Particulate Matter Emissions Collected in a Dilution Tunnel.* The flow rate in the dilution tunnel is maintained at a constant level throughout the test cycle and accurately measured. Samples of the dilution tunnel flow stream are extracted at a constant flow rate and drawn through high efficiency filters. The filters are dried and weighed before and after the test to determine the emissions catch and this value is multiplied by the ratio of tunnel flow to filter flow to determine the total particulate emissions produced in the test cycle.

4.2 Efficiency. The efficiency test procedure takes advantage of the fact that this type of appliance delivers heat through circulation of the heated liquid (water) from the appliance to a remote heat exchanger and back to the appliance. Measurements of the water temperature difference as it enters and exits the heat exchanger along with the measured flow rate allow for an accurate determination of the useful heat output of the appliance. The input is determined by weight of the test fuel charge, adjusted for moisture content, multiplied by the Higher Heating Value. Additional measurements of the appliance weight and temperature at the beginning and end of a test cycle are used to correct for heat stored in the appliance. Overall Efficiency (SLM) is determined using the CSA B415.1–2010 stack loss method for data quality assurance purposes.

4.3 Operation. Appliance operation is conducted on a hot-to-hot test cycle meaning that the appliance is brought to operating temperature and a coal bed is established prior to the addition of the test fuel charge and measurements are made for each test fuel charge cycle. The measurements are made under constant heat draw conditions within predetermined ranges. No attempt is made to modulate the heat demand to simulate an indoor thermostat cycling on and off in response to changes in the indoor environment. Four test categories are used. These are:

4.3.1 Category I: A heat output of 15 percent or less of Manufacturer's Rated Heat Output Capacity.

4.3.2 Category II: A heat output of 16 percent to 24 percent of Manufacturer's Rated Heat Output Capacity.

4.3.3 Category III: A heat output of 25 percent to 50 percent of Manufacturer's Rated Heat Output Capacity.

4.3.4 Category IV: Manufacturer's Rated Heat Output Capacity.

5.0 Significance and Use

5.1 The measurement of particulate matter emission rates is an important test method widely used in the practice of air pollution control.

5.1.1 These measurements, when approved by state or federal agencies, are often required for the purpose of determining compliance with regulations and statutes.

5.1.2 The measurements made before and after design modifications are necessary to demonstrate the effectiveness of design changes in reducing emissions and make this standard an important tool in manufacturers' research and development programs.

5.2 Measurement of heating efficiency provides a uniform basis for comparison of product performance that is useful to the consumer. It is also required to relate emissions produced to the useful heat production.

5.3 This is a laboratory method and is not intended to be fully representative of all actual field use. It is recognized that users of hand-fired, wood-burning equipment have a great deal of influence over the performance of any wood-burning appliance. Some compromises in realism have been made in the interest of providing a reliable and repeatable test method.

6.0 Test Equipment

6.1 Scale. A platform scale capable of weighing the appliance under test and associated parts and accessories when completely filled with water to an accuracy of ±1.0 pound (±0.5 kg).

6.2 Heat exchanger. A water-to-water heat exchanger capable of dissipating the expected heat output from the system under test.

6.3 Water Temperature Difference Measurement. A Type–T 'special limits' thermopile with a minimum of 5 pairs of junctions shall be used to measure the temperature difference in water entering and leaving the heat exchanger. The temperature difference measurement uncertainty of this type of thermopile is equal to or less than ± 0.05 °F (± 0.25 °C). Other temperature measurement methods may be used if the temperature difference measurement uncertainty is equal to or less than. ± 0.50 °F (± 0.25 °C).

6.4 Water flow meter. A water flow meter shall be installed in the inlet to the load side of the heat exchanger. The flow meter shall have an accuracy of ± 1 percent of measured flow.

6.4.1 Optional—Appliance side water flow meter. A water flow meter with an accuracy of ± 1 percent of the flow rate is recommended to monitor supply side water flow rate.

6.5 Optional Recirculation Pump. Circulating pump used during test to prevent stratification of liquid being heated.

6.6 Water Temperature Measurement—Thermocouples or other temperature sensors to measure the water temperature at the inlet and outlet of the load side of the heat exchanger. Must meet the calibration requirements specified in 10.1.

6.7 Wood Moisture Meter—Calibrated electrical resistance meter capable of measuring test fuel moisture to within 1 percent moisture content. Must meet the calibration requirements specified in 10.4.

6.8 Flue Gas Temperature Measurement—Must meet the requirements of CSA B415.1–2010, Clause 6.2.2.

6.9 Test Room Temperature Measurement—Must meet the requirements of CSA B415.1–2010, Clause 6.2.1.

6.10 Flue Gas Composition Measurement—Must meet the requirements of CSA B415.1–2010, Clauses 6.3.1 through 6.3.3.

7.0 Safety

7.1 These tests involve combustion of wood fuel and substantial release of heat and products of combustion. The heating system also produces large quantities of very hot water and the potential for steam production and system pressurization. Appropriate precautions must be taken to protect personnel from burn hazards and respiration of products of combustion.

8.0 Sampling, Test Specimens and Test Appliances

8.1 Test specimens shall be supplied as complete appliances including all controls and accessories necessary for installation in the test facility. A full set of specifications and design and assembly drawings shall be provided when the product is to be placed under certification of a third-party agency. The manufacturer's written installation and operating instructions are to be used as a guide in the set-up and testing of the appliance.

9.0 Preparation of Test Equipment

9.1 The appliance is to be placed on a scale capable of weighing the appliance fully loaded with a resolution of ± 1.0 lb (0.5 kg).

9.2 The appliance shall be fitted with the type of chimney recommended or provided by the manufacturer and extending to 15 ± 0.5 feet (4.6 ± 0.15 m) from the upper surface of the scale. If no flue or chimney system is recommended or provided by the manufacturer, connect the appliance to a flue of a diameter equal to the flue outlet of the appliance. The flue section from the appliance flue collar to 8 ± 0.5 feet above the scale shall be single wall stove pipe and the remainder of the flue shall be double wall insulated class A chimney.

9.3 Optional Equipment Use

9.3.1 A recirculation pump may be installed between connections at the top and bottom of the appliance to minimize thermal stratification if specified by the manufacturer. The pump shall not be installed in such a way as to change or affect the flow rate between the appliance and the heat exchanger.

9.3.2 If the manufacturer specifies that a thermal control valve or other device be installed and set to control the return water temperature to a specific set point, the valve or other device shall be installed and set per the manufacturer's written instructions.

9.4 Prior to filling the tank, weigh and record the appliance mass.

9.5 Heat Exchanger

9.5.1 Plumb the unit to a water-to-water heat exchanger with sufficient capacity to draw off heat at the maximum rate anticipated. Route hoses, electrical cables, and instrument wires in a manner that does not influence the weighing accuracy of the scale as indicated by placing dead weights on the platform and verifying the scale's accuracy.

9.5.2 Locate thermocouples to measure the water temperature at the inlet and outlet of the load side of the heat exchanger.

9.5.3 Install a thermopile meeting the requirements of 6.3 to measure the water temperature difference between the inlet and outlet of the load side of the heat exchanger.

9.5.4 Install a calibrated water flow meter in the heat exchanger load side supply line. The water flow meter is to be installed on the cooling water inlet side of the heat exchanger so that it will operate at the temperature at which it is calibrated.

9.5.5 Place the heat exchanger in a box with 2 in. (50 mm) of expanded polystyrene (EPS) foam insulation surrounding it to minimize heat losses from the heat exchanger.

9.5.6 The reported efficiency and heat output rate shall be based on measurements made on the load side of the heat exchanger.

9.5.7 Temperature instrumentation per 6.6 shall be installed in the appliance outlet and return lines. The average of the outlet and return water temperature on the supply side of the system shall be considered the average appliance temperature for calculation of heat storage in the appliance (TF_{avg} and TI_{avg}). Installation of a water flow meter in the supply side of the system is optional.

9.6 Fill the system with water. Determine the total weight of the water in the appliance when the water is circulating. Verify that the scale indicates a stable weight under operating conditions. Make sure air is purged properly.

10.0 Calibration and Standardization

10.1 Water Temperature Sensors. Temperature measuring equipment shall be calibrated before initial use and at least semi-annually thereafter. Calibrations shall be in compliance with National Institute of Standards and Technology (NIST) Monograph 175, Standard Limits of Error.10.2 Heat Exchanger Load Side Water Flow Meter.

10.2.1 The heat exchanger load side water flow meter shall be calibrated within the flow range used for the test run using NIST Traceable methods. Verify the calibration of the water flow meter before and after each test run and at least once during each test run by comparing the water flow rate indicated by the flow meter to the mass of water collected from the outlet of the heat exchanger over a timed interval. Volume of the collected water shall be determined based on the water density calculated from section 13, Eq. 8, using the water temperature measured at the flow meter. The uncertainty in the verification procedure used shall be 1 percent or less. The water flow rate determined by the collection and weighing method shall be within 1 percent of the flow rate indicated by the water flow meter.

10.3 Scales. The scales used to weigh the appliance and test fuel charge shall be calibrated using NIST Traceable methods at least once every 6 months.

10.4 Moisture Meter. The moisture meter shall be calibrated per the manufacturer's instructions and checked before each use.

10.5 Flue Gas Analyzers—In accordance with CSA B415.1–2010, Clause 6.8.

11.0 Conditioning

11.1 Prior to testing, the noncatalytic appliance is to be operated for a minimum of 10 hours using a medium heat draw rate. Catalytic units shall be operated for a minimum of 50 hours using a medium heat draw rate. The pre-burn for the first test can be included as part of the conditioning requirement. If conditioning is included in pre-burn, then the appliance shall be aged with fuel meeting the specifications outlined in sections 12.2 with a moisture content between 19 and 25 percent on a dry basis. Operate the appliance at a medium burn rate (Category II or III) for at least 10 hours for noncatalytic appliances and 50 hours for catalytic appliances. Record and report hourly flue gas exit temperature data and the hours of operation. The aging procedure shall be conducted and documented by a testing laboratory.

12.0 Procedure

12.1 Appliance Installation. Assemble the appliance and parts in conformance with the manufacturer's written installation instructions. Clean the flue with an appropriately sized, wire chimney brush before each certification test series.

12.2 Fuel. Test fuel charge fuel shall be red (*Quercus ruba L.)* or white (*Quercus alba*) oak 19 to 25 percent moisture content on a dry basis. Piece length shall be 80 percent of the firebox depth rounded down to the nearest 1 inch (25mm) increment. For example, if the firebox depth is 46 inches (1168mm) the 4 × 4 piece length would be 36 inches (46 inches × 0.8 = 36.8 inches round down to 36 inches). Pieces are to be placed in the firebox parallel to the longest firebox dimension. For fireboxes with sloped surfaces that create a non-uniform firebox length, the piece length shall be adjusted for each layer based on 80 percent of the length at the level where the layer is placed. Pieces are to be spaced ¾ inches (19 mm) apart on all faces. The first fuel layer may be assembled using fuel units consisting of multiple 4 × 4s consisting of single pieces with bottom and side spacers of 3 or more pieces if needed for a stable layer. The second layer may consist of fuel units consisting of no more than two pieces with spacers attached on the bottom and side. The top two layers of the fuel charge must consist of single pieces unless the fuel charge is only three layers. In that instance only the top layer must consist of single units. Three-quarter inch (19 mm) by 1.5 inch (38 mm) spacers shall be attached to the bottom of piece to maintain a ¾ inch (19 mm) separation. When a layer consists of two or more units of 4 × 4s an additional ¾ inch (19 mm) thick by 1.5 inch (38 mm) wide spacer shall be attached to the vertical face of each end of one 4 × 4, such that the ¾ inch (19 mm) space will be maintained when two 4 × 4 units or pieces are loaded side by side. In cases where a layer contains an odd number of 4 × 4s one piece shall not be attached, but shall have spacers attached in a manner that will provide for the ¾ inch (19 mm) space to be maintained. (See Figure 1). Spacers shall be attached perpendicular to the length of the 4 × 4s such that the edge of the spacer is 1 ± 0.25 inch from the end of the 4 × 4s in the previous layers. Spacers shall be red or white oak and will be attached with either nails (non-galvanized), brads or

oak dowels. The use of kiln-dried wood is not allowed.

12.2.1 Using a fuel moisture meter as specified in 6.7 of the test method, determine the fuel moisture for each test fuel piece used for the test fuel load by averaging at least five fuel moisture meter readings measured parallel to the wood grain. Penetration of the moisture meter insulated electrodes for all readings shall be ¼ the thickness of the fuel piece or 19 mm (¾ in.), whichever is lesser. One measurement from each of three sides shall be made at approximately 3 inches from each end and the center. Two additional measurements shall be made centered between the other three locations. Each individual moisture content reading shall be in the range of 18 to 28 percent on a dry basis. The average moisture content of each piece of test fuel shall be in the range of 19 to 25 percent. It is not required to measure the moisture content of the spacers. Moisture shall not be added to previously dried fuel pieces except by storage under high humidity conditions and temperature up to 100 °F. Fuel moisture shall be measured within four hours of using the fuel for a test.

12.2.2 Firebox Volume. Determine the firebox volume in cubic feet. Firebox volume shall include all areas accessible through the fuel loading door where firewood could reasonably be placed up to the horizontal plane defined by the top of the loading door. A drawing of the firebox showing front, side and plan views or an isometric view with interior dimensions shall be provided by the manufacturer and verified by the laboratory. Calculations for firebox volume from computer aided design (CAD) software programs are acceptable and shall be included in the test report if used. If the firebox volume is calculated by the laboratory the firebox drawings and calculations shall be included in the test report.

12.2.3 Test Fuel charge. Test fuel charges shall be determined by multiplying the firebox volume by 10 pounds (4.54 kg) per ft^3 (28L), or a higher load density as recommended by the manufacturer's printed operating instructions, of wood (as used wet weight). Select the number of pieces of standard fuel that most nearly match this target weight. This is the standard fuel charge for all tests. For example, if the firebox loading area volume is 10 ft^3 (280L) and the firebox depth is 46 inches (1168 mm), test fuel charge target is 100 lbs (45 kg) minimum and the piece length is 36 inches (914 mm). If 8–4 × 4s, 36 inches long weigh 105 lbs (48 kg), use 8 pieces for each test fuel charge. All test fuel charges will be of the same configuration.

12.3 Sampling Equipment. Prepare the particulate emission sampling equipment as defined by ASTM E2515–10 *''Standard Test Method For Determination of Particulate Matter Emissions Collected In a Dilution Tunnel.''*

12.4 Appliance Startup. The appliance shall be fired with wood fuel of any species, size and moisture content at the laboratories discretion to bring it up to operating temperature. Operate the appliance until the water is heated to the upper operating control limit and has cycled at least two times. Then remove all unburned fuel, zero the scale and verify the scales accuracy using dead weights.

12.4.1 Pre-Test Burn Cycle. Reload appliance with oak wood and allow it to burn down to the specified coal bed weight. The Pre-Test burn cycle fuel charge weight shall be within ±10 percent of the test fuel charge weight. Piece size and length shall be selected such that charcoalization is achieved by the time the fuel charge has burned down to the required coal bed weight. Pieces with a maximum thickness of approximately 2 inches have been found to be suitable. Charcoalization is a general condition of the test fuel bed evidenced by an absence of large pieces of burning wood in the coal bed and the remaining fuel pieces being brittle enough to be broken into smaller charcoal pieces with a metal poker. Manipulations to the fuel bed prior to the start of the test run are to be done to achieve charcoalization while maintaining the desired heat output rate. During the pre-test burn cycle and at least one hour prior to starting the test run, adjust water flow to the heat exchanger to establish the target heat draw for the test. For the first test run the heat draw rate shall be equal to the manufacturer's rated heat output capacity.

12.4.1.1 Allowable Adjustments. Fuel addition or subtractions, and coal bed raking shall be kept to a minimum but are allowed up to 15 minutes prior to the start of the test run. For the purposes of this method, coal bed raking is the use of a metal tool (poker) to stir coals, break burning fuel into smaller pieces, dislodge fuel pieces from positions of poor combustion, and check for the condition of charcoalization. Record all adjustments to and additions or subtractions of fuel, and any other changes to the appliance operations that occur during pretest ignition period. During the 15-minute period prior to the start of the test run, the wood heater loading door shall not be open more than a total of 1 minute. Coal bed raking is the only adjustment allowed during this period.

12.4.2 Coal Bed Weight. The appliance is to be loaded with the test fuel charge when the coal bed weight is between 10 percent and 20 percent of the test fuel charge weight. Coals may be raked as necessary to level the coal bed but may only be raked and stirred once between 15 to 20 minutes prior to the addition of the test fuel charge.

12.5 Test Runs. For all test runs, the return water temperature to the hydronic heater must be equal to or greater than 120 °F. Aquastat or other heater output control device settings that are adjustable shall be set using manufacturer specifications, either as factory set or in accordance with the owner's manual, and shall remain the same for all burn categories.

Complete a test run in each heat output rate category, as follows:

12.5.1 Test Run Start. Once the appliance is operating normally and the pretest coal bed weight has reached the target value per 12.4.2, tare the scale and load the full test charge into the appliance. Time for loading shall not exceed 5 minutes. The actual weight of the test fuel charge shall be measured and recorded within 30 minutes prior to loading. Start all sampling systems.

12.5.1.1 Record all water temperatures, differential water temperatures and water flow rates at time intervals of one minute or less.

12.5.1.2 Record particulate emissions data per the requirements of ASTM E2515.

12.5.1.3 Record data needed to determine Overall Efficiency (SLM) per the requirements of CSA B415.1–2010 Clauses 6.2.1, 6.2.2, 6.3, 8.5.7, 10.4.3(a), 10.4.3(f), and 13.7.9.3.

12.5.1.3.1 Measure and record the test room air temperature in accordance with the requirements of Clauses 6.2.1, 8.5.7 and 10.4.3(g).

12.5.1.3.2 Measure and record the flue gas temperature in accordance with the requirements of Clauses 6.2.2, 8.5.7 and 10.4.3(f).

12.5.1.3.3 Determine and record the Carbon Monoxide (CO) and Carbon Dioxide (CO_2) concentrations in the flue gas in accordance with Clauses 6.3, 8.5.7 and 10.4.3(i) and (j).

12.5.1.3.4 Measure and record the test fuel weight per the requirements of Clauses 8.5.7 and 10.4.3(h).

12.5.1.3.5 Record the test run time per the requirements of Clause 10.4.3(a).

12.5.1.4 Monitor the average heat output rate on the load side of the heat exchanger. If the heat output rate gets close to the upper or lower limit of the target range (±5 percent) adjust the water flow through the heat exchanger to compensate. Make changes as infrequently as possible while maintaining the target heat output rate. The first test run shall be conducted at the category IV heat output rate to validate that the appliance is capable of producing the manufacturer's rated heat output capacity.

12.5.2 Test Fuel Charge Adjustment. It is acceptable to adjust the test fuel charge (*i.e.,* reposition) once during a test run if more than 60 percent of the initial test fuel charge weight has been consumed and more than 10 minutes have elapsed without a measurable (1 lb or 0. 5 kg) weight change while the operating control is in the demand mode. The time used to make this adjustment shall be less than 60 seconds.

12.5.3 Test Run Completion. The test run is completed when the remaining weight of the test fuel charge is 0.0 lb (0.0 kg). End the test run when the scale has indicated a test fuel charge weight of 0.0 lb (0.0 kg) or less for 30 seconds.

12.5.3.1 At the end of the test run, stop the particulate sampling train and Overall Efficiency (SLM) measurements, and record the run time, and all final measurement values.

12.5.4 Heat Output Capacity Validation. The first test run must produce a heat output rate that is within 10 percent of the manufacturer's rated heat output capacity (Category IV) throughout the test run and an average heat output rate within 5 percent of the manufacturer's rated heat output capacity. If the appliance is not capable of producing a heat output within these limits, the manufacturer's rated heat output capacity is considered not validated and testing is to be terminated. In such cases, the tests may be restarted using a lower heat output capacity if requested by the manufacturer.

12.5.5 Additional Test Runs. Using the Manufacturer's Rated Heat Output Capacity as a basis, conduct a test for additional heat output categories as specified in 4.3. It is not required to run these tests in any particular order.

12.5.6 Alternative Heat Output Rate for Category I. If an appliance cannot be operated in the category I heat output range due to stopped combustion, two test runs shall be conducted at heat output rates within Category II. When this is the case, the weightings for the weighted averages indicated in Table 2 shall be the average of the category I and II weightings and shall be applied to both category II results. Appliances that are not capable of operation within Category II (<25 percent of maximum) cannot be evaluated by this test method.

12.5.6.1 Stopped Fuel Combustion. Evidence that an appliance cannot be operated at a category I heat output rate due to stopped fuel combustion shall include documentation of two or more attempts to operate the appliance in burn rate Category I and fuel combustion has stopped prior to complete consumption of the test fuel charge. Stopped fuel combustion is evidenced when an elapsed time of 60 minutes or more has occurred without a measurable (1 lb or 0.5 kg) weight change in the test fuel charge while the appliance operating control is in the demand mode. Report the evidence and the reasoning used to determine that a test in burn rate Category I cannot be achieved. For example, two unsuccessful attempts to operate at an output rate of 10 percent of the rated output capacity are not sufficient evidence that burn rate Category I cannot be achieved.

12.5.7 Appliance Overheating. Appliances shall be capable of operating in all heat output categories without overheating to be rated by this test method. Appliance overheating occurs when the rate of heat withdrawal from the appliance is lower than the rate of heat production when the unit control is in the idle mode. This condition results in the water in the appliance continuing to increase in temperature well above the upper limit setting of the operating control. Evidence of overheating includes: 1 Hour or more of appliance water temperature increase above the upper temperature set-point of the operating control, exceeding the temperature limit of a safety control device (independent from the operating control), boiling water in a non-pressurized system or activation of a pressure or temperature relief valve in a pressurized system.

12.6 Additional Test Runs. The testing laboratory may conduct more than one test run in each of the heat output categories specified in section 4.4.1. If more than one test run is conducted at a specified heat output rate, the results from at least two-thirds of the test runs in that heat output rate category shall be used in calculating the weighted average emission rate (See section 15.1.14). The measurement data and results of all test runs shall be reported regardless of which values are used in calculating the weighted average emission rate.

13.0 Calculation of Results

13.1 Nomenclature

E_T —Total particulate emissions for the full test run as determined per ASTM E2515 in grams.

$E_{g/MJ}$—Emissions rate in grams per mega joule of heat output.

$El_{b/mmBtu\ output}$—Emissions rate in pounds per million Btu's of heat output.

$E_{g/kg}$—Emissions factor in grams per kilogram of dry fuel burned.

$E_{g/hr}$—Emissions factor in grams per hour.

HHV—Higher Heating Value of fuel = 8600 Btu/lb (19.990 MJ/kg).

LHV—Lower Heating Value of fuel = 7988 Btu/lb (18.567 MJ/kg).

ΔT—Temperature difference between water entering and exiting the heat exchanger.

Q_{out}—Total heat output in BTU's (mega joules).

Q_{in}—Total heat input available in test fuel charge in BTU's (mega joules).

M—Mass flow rate of water in lb/min (kg/min).

V_i—Volume of water indicated by a totalizing flow meter at the ith reading in gallons (liters).

V_f—Volumetric Flow rate of water in heat exchange system in gallons per minute (liters/min).

Θ—Total length of test run in hours

t_i—Data sampling interval in minutes.

η_{del}—Delivered heating efficiency in percent.

F_i—Weighting factor for heat output category i. (See Tables 2A and 2B)

T1—Temperature of water at the inlet on the supply side of the heat exchanger.

T2—Temperature of the water at the outlet on the supply side of the heat exchanger.

T3–Temperature of water at the inlet to the load side of the heat exchanger.

TI_{avg}—Average temperature of the appliance and water at start of the test.

$$TI_{avg} = (T1 + T2)/2 \text{ at the start of the test, °F} \qquad \text{Eq.1}$$

TF_{avg} – Average temperature of the appliance and water at the end of the test.

$$TF_{avg} = (T1 + T2)/2 \text{ at the end of the test, °F} \qquad \text{Eq.2}$$

MC—Fuel moisture content in percent dry basis.

MC_i—Average moisture content of individual 4 × 4 fuel pieces in percent dry basis.

MC_{sp}—Moisture content of spacers assumed to be 10 percent dry basis.

σ—Density of water in pounds per gallon.

C_p—Specific Heat of Water in Btu/lb °−F.

C_{steel}—Specific Heat of Steel (0.1 Btu/lb−°F).

W_{fuel}—Fuel charge weight in pounds (kg).

W_i—Weight of individual fuel 4 × 4 pieces in pounds (kg).

W_{sp}—Weight of all spacers used in a fuel load in pounds (kg).

W_{app}—Weight of empty appliance in pounds.

W_{wat}— Weight of water in supply side of the system in pounds.

13.2 After the test is completed, determine the particulate emissions E_T in accordance with ASTM E2515.

13.3 Determine Average Fuel Load Moisture Content

$$MC_{Ave} = [[\ \Sigma\ W_i \text{ x } MC_i\ ] + [\ W_{sp} \text{ x } MC_{sp}\ ]] \div W_{fuel}, \% \qquad \text{Eq. 3}$$

13.4 Determine heat input

$$Q_{in} = (W_{fuel}/(1+(MC/100))) \text{ x HHV, BTU} \qquad \text{Eq. 4}$$

$$Q_{in\ LHV} = (W_{fuel}/(1+(MC/100))) \text{ x LHV, BTU} \qquad \text{Eq. 5}$$

13.5 Determine heat output and efficiency.

13.5.1 Determine heat output as: Q_{out} = Σ [Heat output determined for each sampling time interval]+ Change in heat stored in the appliance.

$$Q_{out} = \left[\sum (C_{pi} \bullet \Delta T_i \bullet \dot{M}_i \bullet t_i)\right] + (W_{app} \bullet C_{Steel} + C_{pa} W_{water}) \bullet (TF_{avg} - TI_{avg}) \text{, BTU} \quad \text{Eq. 6}$$

Note: The subscript (i) indicates the parameter value for sampling time interval t_i.

M_i = Mass flow rate = gal/min x Density of Water (lb/gal) = lb/min

$M_i = V_{fi} \cdot \sigma_i$, lb/min Eq. 7

$\Sigma_i = (62.56 + (-.0003413 \text{ x } T3_i) + (-.00006225 \text{ x } T3_i^2))\ 0.1337$, lbs/gal Eq. 8

$C_p = 1.0014 + (-.000003485 \text{ x } T3_i)$ Btu/lb-°F Eq. 9

$C_{steel} = 0.1$ Btu/lb-°F

$C_{pa} = 1.0014 + (-.000003485 \text{ X } (TI_{avg} + TF_{avg})/2)$, Btu/lb-°F Eq. 10

$V_{fi} = (V_i - V_{i-1})/(t_i - t_{i-1})$, gal/min Eq. 11

Note: V_i is the total water volume at the end of interval i and V_{i-1} is the total water volume at the beginning of the time interval. This calculation is necessary when a totalizing type water meter is used.

13.5.2 Determine Heat output rate as:

Heat Output Rate = Q_{out}/Θ, BTU/hr Eq. 12

13.5.3 Determine Emission Rates and Emission Factors as:

$E_{g/MJ} = E_T/(Q_{out} \text{ x } 0.001055)$, g/MJ Eq. 13

$E_{lb/MM\ BTU\ output} = (E_T/453.59)/(Q_{output} \text{ x } 10^{-6})$, lb/MMBtu Out Eq. 14

$E_{g/kg} = E_T/(W_{fuel}/(1+MC/100))$, g/dry kg Eq, 15

$E_{g/hr} = E_T/\Theta$, g/hr Eq. 16

13.5.4 Determine delivered efficiency as:

$\eta_{del} = (Q_{out}/Q_{in}) \text{ x } 100$, % Eq. 17

$\eta_{del\ LHV} = (Q_{out}/Q_{in\ LHV}) \text{ x } 100$, % Eq. 18

13.5.5 Determine η_{SLM}—Overall Efficiency (SLM) using Stack Loss For determination of the average overall thermal efficiency (η_{SLM}) for the test run, use the data collected over the full test run and the calculations in accordance with CSA B415.1–2010, Clause 13.7 except for 13.7.2 (e), (f), (g), and (h), use the following average fuel properties for oak: percent C = 50.0, percent H = 6.6, percent O = 43.2, percent Ash = 0.2 percent.

13.5.5.1 Whenever the CSA B415.1–2010 overall efficiency is found to be lower than the overall efficiency based on load side measurements, as determined by Eq. 16 of this method, section 14.1.7 of the test report must include a discussion of the reasons for this result.

13.6 Weighted Average Emissions and Efficiency

13.6.1 Determine the weighted average emission rate and delivered efficiency from the individual tests in the specified heat output categories. The weighting factors (Fi) are derived from an analysis of ASHRAE Bin Data which provides details of normal building heating requirements in terms of percent of design capacity and time in a particular capacity range—or ''bin''—over the course of a heating season. The values used in this method represent an average of data from several cities located in the northern United States.

$$\text{Weighted average delivered efficiency: } \eta_{avg} = \Sigma\, \eta_i \times F_i, \% \quad \text{Eq. 17}$$

$$\text{Weighted average emissions: } E_{avg} = \Sigma E_i \times F_i, \% \quad \text{Eq. 18}$$

13.7 Average Heat Output ($Q_{out\text{-}8hr}$) and Efficiency (($\eta_{avg\text{-}8hr}$) for 8 hour burn time.

13.7.1 Units tested under this standard typically require infrequent fuelling, 8 to 12 hours intervals being typical. Rating unit's based on an Average Output sustainable over an 8 hour duration will assist consumers in appropriately sizing units to match the theoretical heat demand of their application.

13.7.2 Calculations:

$$Q_{out\text{-}8hr} = X1 + \{ (8 - Y1) \times [(X2 - X1) / (Y2 - Y1)] \}, \% \quad \text{Eq. 19}$$

$$\eta_{avg\text{-}8hr} = \eta_{del1} + \{ (8 - Y1) \times [(\eta_{del2} - \eta_{del1}) / (Y2 - Y1)] \}, \% \quad \text{Eq. 20}$$

Where:
Y1 = Test Duration just above 8 hrs
Y2 = Test Duration just below 8 hrs
X1 = Actual Load for duration Y1
X2 = Actual Load for duration Y2

η_{del1} = Average Delivered Efficiency for duration Y1

η_{del2} = Average Delivered Efficiency for duration Y2

13.7.2.1 Determine the Test Durations and Actual Load for each Category as recorded in Table 1A.

13.7.2.2 Determine the data point that has the nearest duration greater than 8 hrs. X1 = Actual Load,

Y1 = Test Duration and

η_{del1} = Average Delivered Efficiency for this data point.

13.7.2.3 Determine the data point that has the nearest duration less than 8 hrs.

X2 = Actual Load,

Y2 = Test Duration and

η_{del2} = Average Delivered Efficiency for this data point.

13.7.2.4 Example:

CATEGORY ACTUAL LOAD DURATION

[Category Actual Load Duration ηdel]

	(Btu/Hr)	(Hr)	(%)
1	15,000	10.2	70.0
2	26,000	8.4	75.5
3	50,000	6.4	80.1
4	100,000	4.7	80.9

Category 2 Duration is just above 8 hours, therefore: X1 = 26,000 BTU/hr, η_{del1} = 75.5% and Y1 = 8.4 Hrs

Category 3 Duration is just below 8 hours, therefore: X2 = 50,000 BTU/hr, η_{del2} = 80.1% and Y2 = 6.4 Hrs

$Q_{out\text{-}8hr}$ = 26,000 + {(8—8.4) × [(50,000—26,000)/(6.4—8.4)]}
= 30,800 BTU/hr

$\eta_{avg\text{-}8hr}$ = 75.5 + {(8—8.4) × [(80.1—75.5)/(6.4—8.4)]} = 76.4%

14.0 Report

14.1.1 The report shall include the following.

14.1.2 Name and location of the laboratory conducting the test.

14.1.3 A description of the appliance tested and its condition, date of receipt and dates of tests.

14.1.4 A statement that the test results apply only to the specific appliance tested.

14.1.5 A statement that the test report shall not be reproduced except in full, without the written approval of the laboratory.

14.1.6 A description of the test procedures and test equipment including a schematic or other drawing showing the location of all required test equipment. Also, a description of test fuel sourcing, handling and storage practices shall be included.

14.1.7 Details of deviations from, additions to or exclusions from the test method, and their data quality implications on the test results (if any), as well as information on specific test conditions, such as environmental conditions.

14.1.8 A list of participants and observers present for the tests.

14.1.9 Data and drawings indicating the fire box size and location of the fuel charge.

14.1.10 Drawings and calculations used to determine firebox volume.

14.1.11 Information for each test run fuel charge including piece size, moisture content, and weight.

14.1.12 All required data for each test run shall be provided in spreadsheet format. Formulae used for all calculations shall be accessible for review.

14.1.13 Test run duration for each test.

14.1.14 Calculated results for delivered efficiency at each burn rate and the weighted average Emissions reported as total emissions in grams, pounds per million Btu of delivered heat, grams per mega-joule of delivered heat, grams per kilogram of dry fuel and grams per hour. Results shall be reported for each heat output category and the weighted average.

14.1.15 Tables 1A, 1B, 1C and 2 must be used for presentation of results in test reports.

14.1.16 A statement of the estimated uncertainty of measurement of the emissions and efficiency test results.

14.1.17 Raw data, calibration records, and other relevant documentation shall be retained by the laboratory for a minimum of 7 years.

15.0 Precision and Bias

15.1 Precision—It is not possible to specify the precision of the procedure in Draft Test because the appliance

operation and fueling protocols and the appliances themselves produce variable amounts of emissions and cannot be used to determine reproducibility or repeatability of this measurement method.

15.2 Bias—No definitive information can be presented on the bias of the procedure in Draft Test Method 28 WHH for measuring solid fuel burning hydronic heater emissions because no material having an accepted reference value is available.

16.0 Keywords

16.1 Solid fuel, hydronic heating appliances, wood-burning hydronic heaters.

Table 1A. Data Summary Part A

						Θ	W_{fuel}	MC_{ave}	Q_{in}	Q_{out}
Category	Run No	Load % Capacity	Target Load	Actual Load	Act Load	Test Duration	Wood Wt	Wood Moisture	Heat Input	Heat Output
			BTU/hr	BTU/hr	% of max	hrs	lb	% DB	BTU	BTU
I		< 15% of max								
II		16-24% of max								
III		25-50% of max								
IV		Max capacity								

Table 1B. Data Summary Part B

			T2 Min	E_T	E	E	$E_{g/hr}$	$E_{g/kg}$	η_{del}	η_{SLM}
Category	Run No	Load % Capacity	Min Return Water Temp.	Total PM Emissions	PM Output Based	PM Output Based	PM Rate	PM Factor	Delivered Efficiency	Stack Loss Efficiency
			°F	g	$lb_{MMBTU\ Out}$	g/MJ	g/hr	g/kg	%	%
I		< 15% of max								
II		16-24% of max								
III		25-50% of max								
IV		Max capacity								

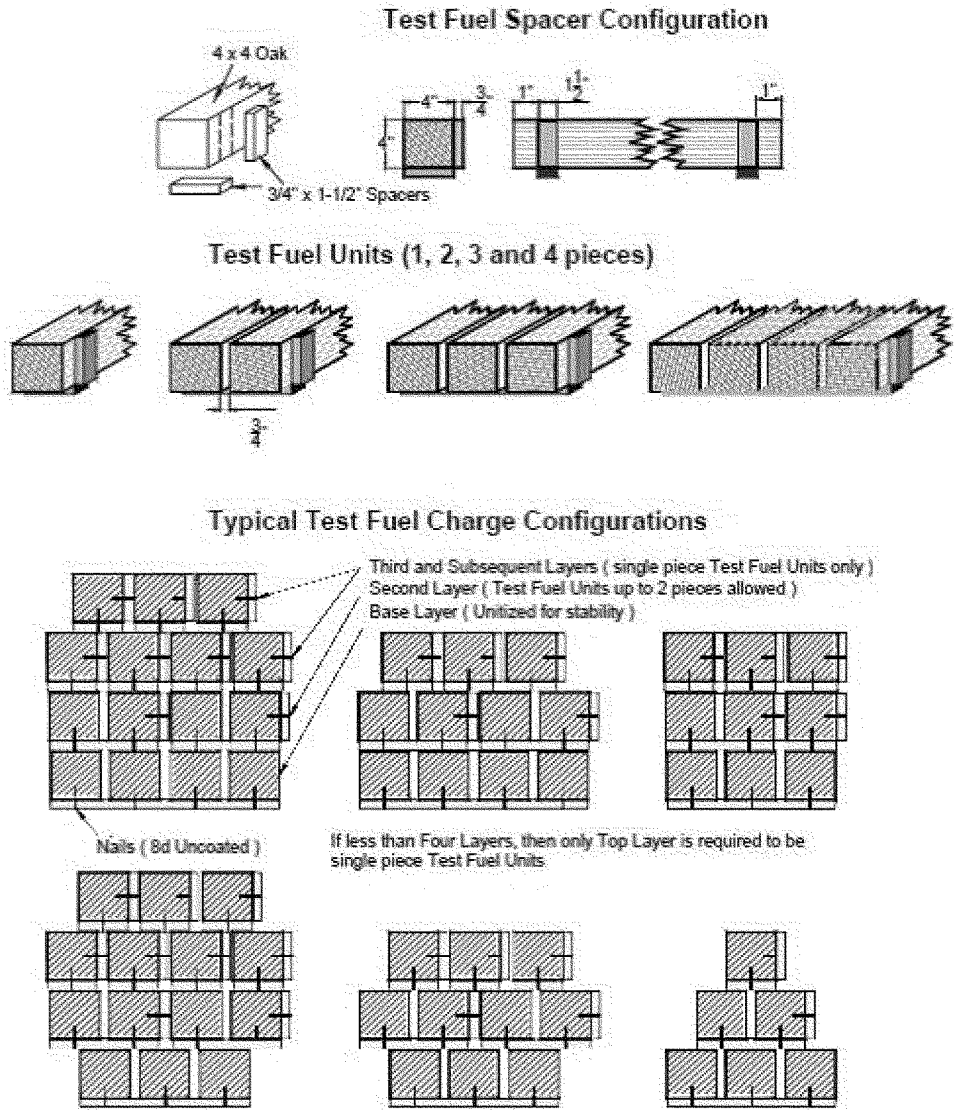
Table 1C: Hangtag Information

MANUFACTURER:			
MODEL NUMBER:			
8-HOUR OUTPUT RATING:	$Q_{out-8hr}$		BTU/HR
8-HOUR AVERAGE EFFICIENCY:	$\eta_{avg-8hr}$		**(Using higher heating value)**
			(Using lower heating value)
ANNUAL EFFICIENCY RATING:	η_{avg}		**(Using higher heating value)**
			(Using lower heating value)
PARTICLE EMISSIONS:	E_{avg}		GRAMS/HR (average)
			LBS/MILLION BTU OUTPUT

Table 2. Year Round Use Weighting

Category	Weighting Factor (F_i)	$\eta_{del,i} \times F_i$	$E_{g/MJ,i} \times F_i$	$E_{g/kg,i} \times F_i$	$E_{lb/MMBTU\ Out,i} \times F_i$	$E_{g/hr,i} \times F_i$
I	0.437					
II	0.024					
III	0.275					
IV	0.050					
Totals	1.000					

Figure 1. Typical Test Fuel Piece



Method 28WHH–PTS A Test Method for Certification of Cord Wood-Fired Hydronic Heating Appliances With Partial Thermal Storage: Measurement of Particulate Matter (PM) and Carbon Monoxide (CO) Emissions and Heating Efficiency of Wood-Fired Hydronic Heating Appliances With Partial Thermal Storage

1.0 Scope and Application

1.1 This test method applies to wood-fired hydronic heating appliances with heat storage external to the appliance. The units typically transfer heat through circulation of a liquid heat exchange media such as water or a water-antifreeze mixture. Throughout this document, the term ''water'' will be used to denote any of the heat transfer liquids approved for use by the manufacturer.

1.2 The test method measures PM and CO emissions and delivered heating efficiency at specified heat output rates referenced against the appliance's rated heating capacity as specified by the manufacturer and verified under this test method.

1.3 PM emissions are measured by the dilution tunnel method as specified in the EPA Method 28 WHH and the standards referenced therein with the exceptions noted in Section 12.5.9. Delivered Efficiency is measured by determining the fuel energy input and appliance output. Heat output is determined through measurement of the flow rate and temperature change of water circulated through a heat exchanger external to the appliance and the increase in energy of the external storage. Heat input is determined from the mass of dry wood fuel and its higher heating value (HHV). Delivered efficiency does not attempt to account for pipeline loss.

1.4 Products covered by this test method include both pressurized and non-pressurized hydronic heating appliances intended to be fired with wood and for which the manufacturer specifies for indoor or outdoor installation. The system, which includes the heating appliance and external storage, is commonly connected to a heat exchanger by insulated pipes and normally includes a pump to circulate heated liquid. These systems are used to heat structures such as homes, barns and greenhouses. They also provide heat for domestic hot water, spas and swimming pools.

1.5 Distinguishing features of products covered by this standard include:

1.5.1 The manufacturer specifies the application for either indoor or outdoor installation.

1.5.2 A firebox with an access door for hand loading of fuel.

1.5.3 Typically an aquastat mounted as part of the appliance that controls combustion air supply to maintain the liquid in the appliance within a predetermined temperature range provided sufficient fuel is available in the firebox. The appliance may be equipped with other devices to control combustion.

1.5.4 A chimney or vent that exhausts combustion products from the appliance.

1.5.5 A liquid storage system, typically water, which is not large enough to accept all of the heat produced when a full load of wood is burned and the storage system starts a burn cycle at 125 °F.

1.5.6 The heating appliances require external thermal storage and these units will only be installed as part of a system which includes thermal storage. The manufacturer specifies the minimum amount of thermal storage required. However, the storage system shall be large enough to ensure that the boiler (heater) does not cycle, slumber, or go into an off-mode when operated in a Category III load condition (See section 4.3).

1.6 The values stated are to be regarded as the standard whether in I–P or SI units. The values given in parentheses are for information only.

2.0 Summary of Method and References

2.1 PM and CO emissions are measured from a wood–fired hydronic heating appliance burning a prepared test fuel charge in a test facility maintained at a set of prescribed conditions. Procedures for determining heat output rates, PM and CO emissions, and efficiency and for reducing data are provided.

2.2 Referenced Documents

2.2.1 EPA Standards

2.2.1.1 Method 28 Certification and Auditing of Wood Heaters

2.2.1.2 Method 28 WHH Measurement of Particulate Emissions and Heating Efficiency of Wood-Fired Hydronic Heating Appliances and the standards referenced therein.

2.2.2 Other Standards

2.2.2.1 CAN/CSA–B415.1–2010 *Performance Testing of Solid-Fuel-Burning Heating Appliances*

3.0 Terminology

3.1 Definitions

3.1.1 Hydronic Heating—A heating system in which a heat source supplies energy to a liquid heat exchange media such as water that is circulated to a heating load and returned to the heat source through pipes.

3.1.2 Aquastat—A control device that opens or closes a circuit to control the rate of fuel consumption in response to the temperature of the heating media in the heating appliance.

3.1.3 Delivered Efficiency—The percentage of heat available in a test fuel charge that is delivered to a simulated heating load or the storage system as specified in this test method.

3.1.4 Emission factor—the emission of a pollutant expressed in mass per unit of energy (typically) output from the boiler/heater

3.1.5 Emission index—the emission of a pollutant expressed in mass per unit mass of fuel used

3.1.6 Emission rate—the emission of a pollutant expressed in mass per unit time

3.1.7 Manufacturer's Rated Heat Output Capacity − The value in Btu/hr (MJ/hr) that the manufacturer specifies that a particular model of hydronic heating appliance is capable of supplying at its design capacity as verified by testing, in accordance with section 12.5.4.

3.1.8 Heat output rate—The average rate of energy output from the appliance during a specific test period in Btu/hr (MJ/hr)

3.1.9 Firebox—The chamber in the appliance in which the test fuel charge is placed and combusted.

3.1.10 NIST—National Institute of Standards and Technology

3.1.11 Test fuel charge—The collection of test fuel placed in the appliance at the start of the emission test run.

3.1.12 Test Run—An individual emission test which encompasses the time required to consume the mass of the test fuel charge. The time of the test run also considers the time for the energy to be drawn from the thermal storage.

3.1.13 Test Run Under ''Cold-to-Cold'' Condition—under this test condition the test fuel is added into an empty chamber along with kindling and ignition materials (paper). The boiler/heater at the start of this test is typically 125° to 130° F.

3.1.14 Test Run Under ''Hot-to-Hot'' Condition—under this test condition the test fuel is added onto a still-burning bed of charcoals produced in a pre-burn period. The boiler/heater water is near its operating control limit at the start of the test.

3.1.15 Overall Efficiency, also known as Stack Loss Efficiency—The efficiency for each test run as determined using the CSA B415.1–2010 Stack Loss Method (SLM).

3.1.16 Phases of a Burn Cycle. The ''startup phase'' is defined as the period from the start of the test until 15 percent of the test fuel charge is consumed. The ''steady state phase'' is defined as the period from the end of the startup phase to a point at which 80 percent of the test fuel charge is consumed. The ''end phase'' is defined as the time from the end of the steady state period to the end of the test.

3.1.17 Thermopile—A device consisting of a number of thermocouples connected in series, used for measuring differential temperature.

3.1.18 Slumber Mode—This is a mode in which the temperature of the water in the boiler/heater has exceeded the operating control limit and the control has changed the boiler/heater fan speed, dampers, and/or other operating parameters to minimize the heat output of the boiler/heater.

4.0 Summary of Test Method

4.1 Dilution Tunnel. Emissions are determined using the ''dilution tunnel'' method specified in EPA Method 28 WHH and the standards referenced therein. The flow rate in the dilution tunnel is maintained at a constant level throughout the test cycle and accurately measured. Samples of the dilution tunnel flow stream are extracted at a constant flow rate and drawn through high efficiency filters. The filters are dried and weighed before and after the test to determine the emissions collected and this value is multiplied by the ratio of tunnel flow to filter flow to determine the total particulate emissions produced in the test cycle.

4.2 Efficiency. The efficiency test procedure takes advantage of the fact that this type of system delivers heat through circulation of the heated liquid (water) from the system to a remote heat exchanger (*e.g.* baseboard radiators in a room) and back to the system. Measurements of the cooling

water temperature difference as it enters and exits the test system heat exchanger along with the measured flow rate allow for an accurate determination of the useful heat output of the appliance. Also included in the heat output is the change in the energy content in the storage system during a test run. Energy input to the appliance during the test run is determined by weight of the test fuel charge, adjusted for moisture content, multiplied by the Higher Heating Value. Additional measurements of the appliance weight and temperature at the beginning and end of a test cycle are used to correct for heat stored in the appliance. Overall Efficiency (SLM) is determined using the CSA B415.1–2010 stack loss method for data quality assurance purposes.

4.3 Operation. Four test categories are defined for use in this method. These are:

4.3.1 Category I: A heat output of 15 percent or less of Manufacturer's Rated Heat Output Capacity.

4.3.2 Category II: A heat output of 16 percent to 24 percent of Manufacturer's Rated Heat Output Capacity.

4.3.3 Category III: A heat output of 25 percent to 50 percent of Manufacturer's Rated Heat Output Capacity.

4.3.4 Category IV: Manufacturer's Rated Heat Output Capacity. These heat output categories refer to the output from the system by way of the load heat exchanger installed for the test. The output from just the boiler/heater part of the system may be higher for all or part of a test, as part of this boiler/heater output goes to storage.

For the Category III and IV runs, appliance operation is conducted on a hot-to-hot test cycle meaning that the appliance is brought to operating temperature and a coal bed is established prior to the addition of the test fuel charge and measurements are made for each test fuel charge cycle. The measurements are made under constant heat draw conditions within pre-determined ranges. No attempt is made to modulate the heat demand to simulate an indoor thermostat cycling on and off in response to changes in the indoor environment.

For the Category I and II runs, the unit is tested with a ''cold start.'' At the manufacturer's option, the Category II and III runs may be waived and it may be assumed that the particulate emission values and efficiency values determined in the startup, steady-state, and end phases of Category I are applicable in Categories II and III for the purpose of determining the annual averages in lb/MMBtu and g/MJ (See section 13). For the annual average in g/hr, the length of time for stored heat to be drawn from thermal storage shall be determined for the test load requirements of the respective Category.

All test operations and measurements shall be conducted by personnel of the laboratory responsible for the submission of the test report.

5.0 Significance and Use

5.1 The measurement of particulate matter emission and CO rates is an important test method widely used in the practice of air pollution control.

5.1.1 These measurements, when approved by state or federal agencies, are often required for the purpose of determining compliance with regulations and statutes.

5.1.2 The measurements made before and after design modifications are necessary to demonstrate the effectiveness of design changes in reducing emissions and make this standard an important tool in manufacturer's research and development programs.

5.2 Measurement of heating efficiency provides a uniform basis for comparison of product performance that is useful to the consumer. It is also required to relate emissions produced to the useful heat production.

5.3 This is a laboratory method and is not intended to be fully representative of all actual field use. It is recognized that users of hand-fired, wood-burning equipment have a great deal of influence over the performance of any wood-burning appliance. Some compromises in realism have been made in the interest of providing a reliable and repeatable test method.

6.0 Test Equipment

6.1 Scale. A platform scale capable of weighing the boiler/heater under test and associated parts and accessories when completely filled with water to an accuracy of ± 1.0 pound (± 0.5 kg) and a readout resolution of ± 0.2 pound (± 0.1 kg).

6.2 Heat Exchanger. A water-to-water heat exchanger capable of dissipating the expected heat output from the system under test.

6.3 Water Temperature Difference Measurement. A Type–T 'special limits' thermopile with a minimum of 5 pairs of junctions shall be used to measure the temperature difference in water entering and leaving the heat exchanger. The temperature difference measurement uncertainty of this type of thermopile is equal to or less than ± 0.50 °F (± 0.25 °C). Other temperature measurement methods may be used if the temperature difference measurement uncertainty is equal to or less than ± 0.50 °F (± 0.25 °C). This measurement uncertainty shall include the temperature sensor, sensor well arrangement, piping arrangements, lead wire, and measurement/recording system. The response time of the temperature measurement system shall be less than half of the time interval at which temperature measurements are recorded.

6.4 Water Flow Meter. A water flow meter shall be installed in the inlet to the load side of the heat exchanger. The flow meter shall have an accuracy of ± 1 percent of measured flow.

6.4.1 Optional—Appliance side water flow meter. A water flow meter with an accuracy of ± 1 percent of the flow rate is recommended to monitor supply side water flow rate.

6.5 Optional Recirculation Pump. Circulating pump used during test to prevent stratification, in the boiler/heater, of liquid being heated.

6.6 Water Temperature Measurement—Thermocouples or other temperature sensors to measure the water temperature at the inlet and outlet of the load side of the heat exchanger must meet the calibration requirements specified in 10.1 of this method.

6.7 Lab Scale—For measuring the moisture content of wood slices as part of the overall wood moisture determination. Accuracy of ± 0.01 pounds.

6.8 Flue Gas Temperature Measurement—Must meet the requirements of CSA B415.1–2010, Clause 6.2.2.

6.9 Test Room Temperature Measurement—Must meet the requirements of CSA B415.1–2010, Clause 6.2.1.

6.10 Flue Gas Composition Measurement—Must meet the requirements of CSA B415.1–2010, Clauses 6.3.1 through 6.3.3.

6.11 Dilution Tunnel CO Measurement—In parallel with the flue gas composition measurements, the CO concentration in the dilution tunnel shall also be measured and reported at time intervals not to exceed one minute. This analyzer shall meet the zero and span drift requirements of CSA B415.1–2012. In addition the measurement repeatability shall be better than ±15 ppm over the range of CO levels observed in the dilution tunnel.

7.0 Safety

7.1 These tests involve combustion of wood fuel and substantial release of heat and products of combustion. The heating system also produces large quantities of very hot water and the potential for steam production and system pressurization. Appropriate precautions must be taken to protect personnel from burn hazards and respiration of products of combustion.

8.0 Sampling, Test Specimens and Test Appliances

8.1 Test specimens shall be supplied as complete appliances, as described in marketing materials, including all controls and accessories necessary for installation in the test facility. A full set of specifications, installation and operating instructions, and design and assembly drawings shall be provided when the product is to be placed under certification of a third-party agency. The manufacturer's written installation and operating instructions are to be used as a guide in the set-up and testing of the appliance and shall be part of the test record.

8.2 The size, connection arrangement, and control arrangement for the thermal storage shall be as specified in the manufacturer's documentation. It is not necessary to use the specific storage system that the boiler/heater will be marketed with. However, the capacity of the system used in the test cannot be greater than that specified as the minimum allowable for the boiler/heater.

8.3 All system control settings shall be the as-shipped, default settings. These default settings shall be the same as those communicated in a document to the installer or end user. These control settings and the documentation of the control settings as to be provided to the installer or end user shall be part of the test record.

8.4 Where the manufacturer defines several alternatives for the connection and loading arrangement, one shall be defined in the appliance documentation as the default or standard installation. It is expected that this will be the configuration for use with a simple baseboard heating system. This is the

configuration to be followed for these tests. The manufacturer's documentation shall define the other arrangements as optional or alternative arrangements.

9.0 Preparation of Test Equipment

9.1 The appliance is to be placed on a scale capable of weighing the appliance fully loaded with a resolution of ± 0.2 lb (0.1 kg).

9.2 The appliance shall be fitted with the type of chimney recommended or provided by the manufacturer and extending to 15 ± 0.5 feet (4.6 ± 0.15 m) from the upper surface of the scale. If no flue or chimney system is recommended or provided by the manufacturer, connect the appliance to a flue of a diameter equal to the flue outlet of the appliance. The flue section from the appliance flue collar to 8 ± 0.5 feet above the scale shall be single wall stove pipe and the remainder of the flue shall be double wall insulated class A chimney.

9.3 Optional Equipment Use

9.3.1 A recirculation pump may be installed between connections at the top and bottom of the appliance to minimize thermal stratification if specified by the manufacturer. The pump shall not be installed in such a way as to change or affect the flow rate between the appliance and the heat exchanger.

9.3.2 If the manufacturer specifies that a thermal control valve or other device be installed and set to control the return water temperature to a specific set point, the valve or other device shall be installed and set per the manufacturer's written instructions.

9.4 Prior to filling the boiler/heater with water, weigh and record the appliance mass.

9.5 Heat Exchanger

9.5.1 Plumb the unit to a water-to-water heat exchanger with sufficient capacity to draw off heat at the maximum rate anticipated. Route hoses and electrical cables and instrument wires in a manner that does not influence the weighing accuracy of the scale as indicated by placing dead weights on the platform and verifying the scale's accuracy.

9.5.2 Locate thermocouples to measure the water temperature at the inlet and outlet of the load side of the heat exchanger.

9.5.3 Install a thermopile (or equivalent instrumentation) meeting the requirements of section 6.3 to measure the water temperature difference between the inlet and outlet of the load side of the heat exchanger.

9.5.4 Install a calibrated water flow meter in the heat exchanger load side supply line. The water flow meter is to be installed on the cooling water inlet side of the heat exchanger so that it will operate at the temperature at which it is calibrated.

9.5.5 Place the heat exchanger in a box with 2 in. (50 mm) of expanded polystyrene (EPS) foam insulation surrounding it to minimize heat losses from the heat exchanger.

9.5.6 The reported efficiency and heat output rate shall be based on measurements made on the load side of the heat exchanger.

9.5.7 Temperature instrumentation per section 6.6 shall be installed in the appliance outlet and return lines. The average of the outlet and return water temperature on the supply side of the system shall be considered the average appliance temperature for calculation of heat storage in the appliance (TF_{avg} *and* TI_{avg}). Installation of a water flow meter in the supply side of the system is optional.

9.6 Storage Tank. The storage tank shall include a destratification pump as illustrated in Figure 1. The pump will draw from the bottom of the tank and return to the top as illustrated. Temperature sensors (TS1 and TS2 in Figure 1) shall be included to measure the temperature in the recirculation loop. The valve plan in Figure 1 allows the tank recirculation loop to operate and the boiler/heater-to-heat exchanger loop to operate at the same time but in isolation. This would typically be done before the start of a test or following completion of a test to determine the end of test average tank temperature. The nominal flow rate in the storage tank recirculation loop can be estimated based on pump manufacturer's performance curves and any significant restriction in the recirculation loop.

9.7 Fill the system with water. Determine the total weight of the water in the appliance when the water is circulating. Verify that the scale indicates a stable weight under operating conditions. Make sure air is purged properly.

10.0 Calibration and Standardization

10.1 Water Temperature Sensors. Temperature measuring equipment shall be calibrated before initial use and at least semi-annually thereafter. Calibrations shall be in compliance with National Institute of Standards and Technology (NIST) Monograph 175, Standard Limits of Error.

10.2 Heat Exchanger Load Side Water Flow Meter.

10.2.1 The heat exchanger load side water flow meter shall be calibrated within the flow range used for the test run using NIST-traceable methods. Verify the calibration of the water flow meter before and after each test run and at least once during each test run by comparing the water flow rate indicated by the flow meter to the mass of water collected from the outlet of the heat exchanger over a timed interval. Volume of the collected water shall be determined based on the water density calculated from section 13, Eq. 12, using the water temperature measured at the flow meter. The uncertainty in the verification procedure used shall be 1 percent or less. The water flow rate determined by the collection and weighing method shall be within 1 percent of the flow rate indicated by the water flow meter.

10.3 Scales. The scales used to weigh the appliance and test fuel charge shall be calibrated using NIST-traceable methods at least once every 6 months.

10.4 Flue Gas Analyzers—In accordance with CSA B415.1–2010, Clause 6.8.

11.0 Conditioning

11.1 Prior to testing, a non-catalytic appliance is to be operated for a minimum of 10 hours using a medium heat draw rate. Catalytic units shall be operated for a minimum of 50 hours using a medium heat draw rate. The pre-burn for the first test can be included as part of the conditioning requirement. If conditioning is included in pre-burn, then the appliance shall be aged with fuel meeting the specifications outlined in section 12.2 with a moisture content between 19 and 25 percent on a dry basis. Operate the appliance at a medium heat output rate (Category II or III) for at least 10 hours for non-catalytic appliances and 50 hours for catalytic appliances. Record and report hourly flue gas exit temperature data and the hours of operation. The aging procedure shall be conducted and documented by a testing laboratory.

12.0 Procedure

12.1 Appliance Installation. Assemble the appliance and parts in conformance with the manufacturer's written installation instructions. Clean the flue with an appropriately sized, wire chimney brush before each certification test series.

12.2 Fuel. Test fuel charge fuel shall be red (*Quercus ruba L.) or* white (*Quercus Alba*) oak 19 to 25 percent moisture content on a dry basis. Piece length shall be 80 percent of the firebox depth rounded down to the nearest 1 inch (25mm) increment. For example, if the firebox depth is 46 inches (1168mm) the piece length would be 36 inches (46 inches x 0.8 = 36.8 inches round down to 36 inches). Pieces are to be placed in the firebox parallel to the longest firebox dimension. For fireboxes with sloped surfaces that create a non-uniform firebox length, the piece length shall be adjusted for each layer based on 80 percent of the length at the level where the layer is placed. The test fuel shall be cord wood with cross section dimensions and weight limits as defined in CSA B415.1–2010, section 8.3, Table 4. The use of dimensional lumber is not allowed.

12.2.1 Select three pieces of cord wood from the same batch of wood as the test fuel and the same weight as the average weight of the pieces in the test load ± 1.0 lb. From each of these three pieces, cut three slices. Each slice shall be ½ inch to ¾ inch thick. One slice shall be cut across the center of the length of the piece. The other two slices shall be cut half way between the center and the end. Immediately measure the mass of each piece in pounds. Dry each slice in an oven at 220 °F for 24 hours or until no further weight change occurs. The slices shall be arranged in the oven so as to provide separation between faces. Remove from the oven and measure the mass of each piece again as soon as practical in pounds.

The moisture content of each slice, on a dry basis shall be calculated as:

$$MC_{slice} = \frac{100 \cdot (W_{SliceWet} - W_{SliceDry})}{W_{SliceDry}}$$

Where:

$W_{SliceWet}$ = weight of the slice before drying in pounds

$W_{SliceDry}$ = weight of the slice after drying in pounds

MC_{Slice} = moisture content of the slice in % dry basis

The average moisture content of the entire test load (MC) shall be determined using Eq. 6. Each individual slice shall have a moisture content in the range of 18 percent to 28 percent on a dry basis. The average moisture content for the test fuel load shall be in the range of 19 percent to 25 percent. Moisture shall not be added to previously dried fuel pieces except by storage under high humidity conditions and temperature up to 100 °F. Fuel moisture measurement shall begin within four hours of using the fuel batch for a test. Use of a pin-type meter to estimate the moisture content prior to a test is recommended.

12.2.2 Firebox Volume. Determine the firebox volume in cubic feet. Firebox volume shall include all areas accessible through the fuel loading door where firewood could reasonably be placed up to the horizontal plane defined by the top of the loading door. A drawing of the firebox showing front, side and plan views or an isometric view with interior dimensions shall be provided by the manufacturer and verified by the laboratory. Calculations for firebox volume from computer aided design (CAD) software programs are acceptable and shall be included in the test report if used. If the firebox volume is calculated by the laboratory the firebox drawings and calculations shall be included in the test report.

12.2.3 Test Fuel charge. Test fuel charges shall be determined by multiplying the firebox volume by 10 pounds (4.54 kg) per ft^3 (28L), or a higher load density as recommended by the manufacturer's printed operating instructions, of wood (as used wet weight). Select the number of pieces of cord wood that most nearly match this target weight. However, the test fuel charge cannot be less than the target of 10 pounds (4.54 kg) per ft^3 (28L).

12.3 Sampling Equipment. Prepare the particulate emission sampling equipment as defined by EPA Method 28 WHH and the standards referenced therein.

12.4 Appliance Startup. The appliance shall be fired with wood fuel of any species, size and moisture content at the laboratories discretion to bring it up to operating temperature. Operate the appliance until the water is heated to the upper operating control limit and has cycled at least two times. Then remove all unburned fuel, zero the scale and verify the scales accuracy using dead weights.

12.4.1 Startup Procedure for Category III and IV Test Runs, ''Hot-to-Hot''

12.4.1.1 Pre-Test Burn Cycle. Following appliance startup (section 12.4), reload appliance with oak cord wood and allow it to burn down to the specified coal bed weight. The pre-test burn cycle fuel charge weight shall be within ±10 percent of the test fuel charge weight. Piece size and length shall be selected such that charcoalization is achieved by the time the fuel charge has burned down to the required coal bed weight. Pieces with a maximum thickness of approximately 2 inches have been found to be suitable. Charcoalization is a general condition of the test fuel bed evidenced by an absence of large pieces of burning wood in the coal bed and the remaining fuel pieces being brittle enough to be broken into smaller charcoal pieces with a metal poker. Manipulations to the fuel bed prior to the start of the test run are to be done to achieve charcoalization while maintaining the desired heat output rate. During the pre-test burn cycle and at least one hour prior to starting the test run, adjust water flow to the heat exchanger to establish the target heat draw for the test. For the first test run the heat draw rate shall be equal to the manufacturer's rated heat output capacity.

12.4.1.2 Allowable Adjustments. Fuel addition or subtractions, and coal bed raking shall be kept to a minimum but are allowed up to 15 minutes prior to the start of the test run. For the purposes of this method, coal bed raking is the use of a metal tool (poker) to stir coals, break burning fuel into smaller pieces, dislodge fuel pieces from positions of poor combustion, and check for the condition of charcoalization. Record all adjustments to and additions or subtractions of fuel, and any other changes to the appliance operations that occur during pretest ignition period. During the 15-minute period prior to the start of the test run, the wood heater loading door shall not be open more than a total of 1 minute. Coal bed raking is the only adjustment allowed during this period.

12.4.1.3 Coal Bed Weight. The appliance is to be loaded with the test fuel charge when the coal bed weight is between 10 percent and 20 percent of the test fuel charge weight. Coals may be raked as necessary to level the coal bed but may only be raked and stirred once between 15 to 20 minutes prior to the addition of the test fuel charge.

12.4.1.4 Storage. The Category III and IV test runs may be done either with or without the thermal storage. If thermal storage is used the initial temperature of the storage must be 125 °F or greater at the start of the test. The storage may be heated during the pre-test burn cycle or it may be heated by external means. If thermal storage is used, prior to the start of the test run, the storage tank destratification pump, shown in Figure 1, shall be operated until the total volume pumped exceeds 1.5 times the tank volume and the difference between the temperature at the top and bottom of the storage tank (TS_1 and TS_2) is less than 1 °F. These two temperatures shall then be recorded to determine the starting average tank temperature. The total volume pumped may be based on the nominal flow rate of the destratification pump (See section 9.6). If the Category III and IV runs are done with storage, it is recognized that during the last hour of the pre-burn cycle the storage tank must be mixed to achieve a uniform starting temperature and cannot receive heat from the boiler/heater during this time. During this time period the boiler/heater might cycle or go into a steady reduced output mode. (Note—this would happen, for example, in a Category IV run if the actual maximum output of the boiler/heater exceed the manufacturer's rated output.) A second storage tank may be used temporarily to enable the boiler/heater to operate during this last hour of the pre-burn period as it will during the test period. The temperature of this second storage tank is not used in the calculations but the return water to the boiler/heater (after mixing device if used) must be 125 °F or greater.

12.4.2 Startup Procedure for Category I and II test runs, ''cold-to-cold.''

12.4.2.1 Initial Temperatures. This test shall be started with both the boiler/heater and the storage at a minimum temperature of 125 °F. The boiler/heater maximum temperature at the start of this test shall be 135 °F. The boiler/heater and storage may be heated through a pre-burn or it may be heated by external means.

12.4.2.2 Firebox Condition at Test Start. Prior to the start of this test remove all ash and charcoal from the combustion chamber(s). The loading of the test fuel and kindling should follow the manufacturer's recommendations, subject to the following constraints: Up to 10 percent kindling and paper may be used which is in addition to the fuel load. Further, up to 10 percent of the fuel load (*i.e.,* included in the 10 lb/ft^3) may be smaller than the main fuel. This startup fuel shall still be larger than 2 inches.

12.4.2.3 Storage. The Category I and II test runs shall be done with thermal storage. The initial temperature of the storage must be 125 °F or greater at the start of the test. The storage may be heated during the pre-test burn cycle or it may be heated by external means. Prior to the start of the test run, the storage tank destratification pump, shown in Figure 1, shall be operated until the total volume pumped exceeds 1.5 times the tank volume and the difference between the temperature at the top and bottom of the storage tank (TS_1 and TS_2) is less than 1 °F. These two temperatures shall then be recorded to determine the starting average tank temperature. The total volume pumped may be based on the nominal flow rate of the destratification pump (See section 9.6).

12.5 Test Runs. For all test runs, the return water temperature to the hydronic heater must be equal to or greater than 120 °F (this is lower than the initial tank temperature to allow for any pipeline losses). Where the storage system is used, flow of water from the boiler/heater shall be divided between the storage tank and the heat

exchanger such that the temperature change of the circulating water across the heat exchanger shall be 30 ± 5 °F, averaged over the entire test run. This is typically adjusted using the system valves.

Complete a test run in each heat output rate category, as follows:

12.5.1 Test Run Start. For Category III and IV runs: once the appliance is operating normally and the pretest coal bed weight has reached the target value per 12.4.1, tare the scale and load the full test charge into the appliance. Time for loading shall not exceed 5 minutes. The actual weight of the test fuel charge shall be measured and recorded within 30 minutes prior to loading. Start all sampling systems.

For Category I and II runs: once the appliance has reached the starting temperature, tare the scale and load the full test charge, including kindling into the appliance. The actual weight of the test fuel charge shall be measured and recorded within 30 minutes prior to loading. Light the fire following the manufacturer's written normal startup procedure. Start all sampling systems.

12.5.1.1 Record all water temperatures, differential water temperatures and water flow rates at time intervals of one minute or less.

12.5.1.2 Record particulate emissions data per the requirements of EPA Method 28 WHH and the standards referenced therein.

12.5.1.3 Record data needed to determine Overall Efficiency (SLM) per the requirements of CSA B415.1–2010 Clauses 6.2.1, 6.2.2, 6.3, 8.5.7, 10.4.3 (a), 10.4.3(f), and 13.7.9.3

12.5.1.3.1 Measure and record the test room air temperature in accordance with the requirements of Clauses 6.2.1, 8.5.7 and 10.4.3 (g).

12.5.1.3.2 Measure and record the flue gas temperature in accordance with the requirements of Clauses 6.2.2, 8.5.7 and 10.4.3 (f).

12.5.1.3.3 Determine and record the Carbon Monoxide (CO) and Carbon Dioxide (CO_2) concentrations in the flue gas in accordance with Clauses 6.3, 8.5.7 and 10.4.3 (i) and (j).

12.5.1.3.4 Measure and record the test fuel weight per the requirements of Clauses 8.5.7 and 10.4.3 (h).

12.5.1.3.5 Record the test run time per the requirements of Clause 10.4.3 (a).

12.5.1.3.6 Record and document all settings and adjustments, if any, made to the boiler/heater as recommended/required by manufacturer's instruction manual for different combustion conditions or heat loads. These may include temperature setpoints, under and over-fire air adjustment, or other adjustments that could be made by an operator to optimize or alter combustion. All such settings shall be included in the report for each test run.

12.5.1.4 Monitor the average heat output rate on the load side of the heat exchanger based on water temperatures and flow. If the heat output rate over a 10 minute averaging period gets close to the upper or lower limit of the target range (± 5 percent), adjust the water flow through the heat exchanger to compensate. Make changes as infrequently as possible while maintaining the target heat output rate. The first test run shall be conducted at the category IV heat output rate to validate that the appliance is capable of producing the manufacturer's rated heat output capacity.

12.5.2 Test Fuel Charge Adjustment. It is acceptable to adjust the test fuel charge (*i.e.,* reposition) once during a test run if more than 60 percent of the initial test fuel charge weight has been consumed and more than 10 minutes have elapsed without a measurable (1 lb or 0.5 kg) weight change while the operating control is in the demand mode. The time used to make this adjustment shall be less than 60 seconds.

12.5.3 Test Run Completion. For the Category III and IV, ''hot-to-hot'' test runs, the test run is completed when the remaining weight of the test fuel charge is 0.0 lb (0.0 kg). ($W_{FuelBurned} = W_{fuel}$) End the test run when the scale has indicated a test fuel charge weight of 0.0 lb (0.0 kg) or less for 30 seconds.

For the Category I and II ''cold-to-cold'' test runs, the test run is completed; and the end of a test is defined at the first occurrence of any one of the following:

(a) The remaining weight of the test fuel charge is less than 1 percent of the total test fuel weight ($W_{FuelBurned} > 0.99 \cdot W_{fuel}$);

(b) The automatic control system on the boiler/heater switches to an off mode. In this case the boiler/heater fan (if used) is typically stopped, and all air flow dampers are closed by the control system. Note that this off mode cannot be an ''overheat'' or emergency shutdown which typically requires a manual reset; or

(c) If the boiler/heater does not have an automatic off mode: After 90 percent of the fuel load has been consumed and the scale has indicated a rate of change of the test fuel charge of less than 1.0 lb/hr for a period of 10 minutes or longer. Note—this is not considered ''stopped fuel combustion,'' See section 12.5.6.1.

12.5.3.1 At the end of the test run, stop the particulate sampling train and Overall Efficiency (SLM) measurements, and record the run time, and all final measurement values.

12.5.3.2 At the end of the test run, continue to operate the storage tank destratification pump until the total volume pumped exceeds 1.5 times the tank volume. The maximum average of the top and bottom temperatures measured after this time may be taken as the average tank temperature at the end of the tests (TFSavg, See section 13.1). The total volume pumped may be based on the nominal flow rate of the destratification pump (See section 9.6).

12.5.3.3 For the Category I and II test runs, there is a need to determine the energy content of the unburned fuel remaining in the chamber if the remaining mass in the chamber is greater than 1 percent of the test fuel weight. Following the completion of the test, as soon as safely practical, this remaining fuel is removed from the chamber, separated from the remaining ash and weighed. This separation could be implemented with a slotted ''scoop'' or similar tool. A ¼ inch opening size in the separation tool shall be used to separate the ash and charcoal. This separated char is assigned a heating value of 12,500 Btu/lb.

12.5.4 Heat Output Capacity Validation. The first test run must produce a heat output rate that is within 10 percent of the manufacturer's rated heat output capacity (Category IV) throughout the test run and an average heat output rate within 5 percent of the manufacturer's rated heat output capacity. If the appliance is not capable of producing a heat output within these limits, the manufacturer's rated heat output capacity is considered not validated and testing is to be terminated. In such cases, the tests may be restarted using a lower heat output capacity if requested by the manufacturer. Alternatively, during the Category IV run, if the rated output cannot be maintained for a 15 minute interval, the manufacturer may elect to reduce the rated output to match the test and complete the Category IV run on this basis. The target outputs for Cat I, II, and III shall then be recalculated based on this change in rated output capacity.

12.5.5 Additional Test Runs. Using the Manufacturer's Rated Heat Output Capacity as a basis, conduct a test for additional heat output categories as specified in 4.3. It is not required to run these tests in any particular order.

12.5.6 Alternative Heat Output Rate for Category I. If an appliance cannot be operated in the Category I heat output range due to stopped combustion, two test runs shall be conducted at heat output rates within Category II. When this is the case, the weightings for the weighted averages indicated in section 15.1.14 shall be the average of the Category I and II weighting's and shall be applied to both Category II results. Appliances that are not capable of operation within Category II (<25 percent of maximum) cannot be evaluated by this test method.

12.5.6.1 Stopped Fuel Combustion. Evidence that an appliance cannot be operated at a Category I heat output rate due to stopped fuel combustion shall include documentation of two or more attempts to operate the appliance in heat output rate Category I and fuel combustion has stopped prior to complete consumption of the test fuel charge. Stopped fuel combustion is evidenced when an elapsed time of 60 minutes or more has occurred without a measurable (1 lb or 0.5 kg) weight change in the test fuel charge while the appliance operating control is in the demand mode. Report the evidence and the reasoning used to determine that a test in heat output rate Category I cannot be achieved. For example, two unsuccessful attempts to operate at an output rate of 10 percent of the rated output capacity are not sufficient evidence that heat output rate Category I cannot be achieved.

12.5.7 Appliance Overheating. Appliances with their associated thermal storage shall be capable of operating in all heat output categories without overheating to be rated by this test method. Appliance overheating occurs when the rate of heat withdrawal from the appliance is lower than the rate of heat production when the unit control is in the idle mode. This condition results in the water in the appliance continuing to increase in temperature well

above the upper limit setting of the operating control. Evidence of overheating includes: 1 hour or more of appliance water temperature increase above the upper temperature set-point of the operating control, exceeding the temperature limit of a safety control device (independent from the operating control—typically requires manual reset), boiling water in a non-pressurized system or activation of a pressure or temperature relief valve in a pressurized system.

12.5.8 Option to Eliminate Tests in Category II and III. Following successful completion of a test run in Category I, the manufacturer may eliminate the Cat II and III tests. For the purpose of calculating the annual averages for particulates and efficiency, the values obtained in the Category I run shall be assumed to apply also to Category II and Category III. It is envisioned that this option would be applicable to systems which have sufficient thermal storage such that the fuel load in the Cat I test can be completely consumed without the system reaching its upper operating temperature limit. In this case the boiler/heater would likely be operating at maximum thermal output during the entire test and this output rate may be higher than the Manufacturer's Rated Heat Output Capacity. The Category II and III runs would then be the same as the Category I run. It may be assumed that the particulate emission values and efficiency values determined in the startup, steady-state, and end phases of Category I are applicable in Categories II and III, for the purpose of determining the annual averages in lb/MMBtu and g/MJ (See section 13). For the annual average in g/hr, the length of time for stored heat to be drawn from thermal storage shall be determined for the test load requirements of the respective Category.

12.5.9 Modification to Measurement Procedure in EPA Method 28 WHH to Determine Emissions Separately During the Startup, Steady-State and End Phases. With one of the two particulate sampling trains used, filter changes shall be made at the end of the startup phase and the steady state phase (See section 3.0). This shall be done to determine the particulate emission rate and particulate emission index for the startup, steady state, and end phases individually. For this one train, the particulates measured during each of these three phases shall be added together to also determine the particulate emissions for the whole run.

12.5.10 Modification to Measurement Procedure in EPA Method 28 WHH and the standards referenced therein on Averaging Period for Determination of Efficiency by the Stack Loss Method. The methods currently defined in Method 28 WHH allow averaging over 10 minute time periods for flue gas temperature, flue gas CO_2, and flue gas CO for the determination of the efficiency with the Stack Loss Method. However, under some cycling conditions the ''on'' period may be short relative to this 10 minute period. For this reason, during cycling operation the averaging period for these parameters may not be longer than the burner on period divided by 10. The averaging period need not be shorter than one minute. During the off period, under cycling operation, averaging periods as specified in EPA Method 28 WHH and the standards referenced therein may be used. Where short averaging times are used, however, the averaging period for fuel consumption may still be at 10 minutes. This average wood consumption rate shall be applied to all of the smaller time intervals included.

12.6 Additional Test Runs. The testing laboratory may conduct more than one test run in each of the heat output categories specified in section 4.3. If more than one test run is conducted at a specified heat output rate, the results from at least two-thirds of the test runs in that heat output rate category shall be used in calculating the weighted average emission rate. The measurement data and results of all test runs shall be reported regardless of which values are used in calculating the weighted average emission rate.

13.0 Calculation of Results

13.1 Nomenclature.

CO_s—Carbon monoxide measured in the dilution tunnel at arbitrary time in ppm dry basis.

$CO_{g/min}$—Carbon monoxide emission rate in g/min.

CO_T—Total carbon monoxide emission for the full test run in grams.

$CO_{_1}$—Startup period carbon monoxide emissions in grams.

$CO_{_2}$—Steady-state period carbon monoxide emission in grams.

$CO_{_3}$—End period carbon monoxide emission in grams.

E_T—Total particulate emissions for the full test run as determined per EPA Method 28 WHH and the standards referenced therein in grams.

E_1 = Startup period particulate emissions in grams.

E_2 = Steady-state period particulate emissions in grams.

E_3 = End period particulate emissions in grams.

$E_{1_g/kg}$ = Startup period particulate emission index in grams per kg fuel.

$E_{2_g/kg}$ = Steady-state period particulate emission index in grams per kg fuel.

$E_{3_g/kg}$ = End period particulate emission index in grams per kg fuel.

$E_{1_g/hr}$ = Startup period particulate emission rate in grams per hour.

$E_{2_g/hr}$ = Steady-state period particulate emission rate in grams per hour.

$E_{3_g/hr}$ = End period particulate emission rate in grams per hour.

$E_{g/MJ}$—Emission rate in grams per MJ of heat output.

$E_{lb/mmBtu\ output}$—Emissions rate in pounds per million Btu's of heat output.

$E_{g/kg}$—Emissions factor in grams per kilogram of dry fuel burned.

$E_{g/hr}$—Emission factor in grams per hour.

HHV—Higher Heating Value of fuel = 8600 Btu/lb (19.990 MJ/kg).

LHV—Lower Heating Value of fuel = 7988 Btu/lb (18.567 MJ/kg).

ΔT—Temperature difference between cooling water entering and exiting the heat exchanger.

Q_{out} − Total heat output in Btu's (MJ).

Q_{in} − Total heat input available in test fuel charge in Btu's (MJ).

Q_{std}—Volumetric flow rate in dilution tunnel in dscfm.

M—Mass flow rate of water in lb/min (kg/min).

V_i—Volume of water indicated by a totalizing flow meter at the i_{th} reading in gallons (liters).

V_f—Volumetric flow rate of water in heat exchange system in gallons per minute (liters/min).

Θ—Total length of burn period in hours ($\Theta_1 + \Theta_2 + \Theta_3$).

Θ_1—Length of time of the startup period in hours.

Θ_2—Length of time of the steady state period in hours.

Θ_3—Length of time of the end period in hours.

Θ_4—Length of time for stored heat to be used following a burn period in hours.

t_i—Data sampling interval in minutes.

η_{del}—Delivered heating efficiency in percent.

F_i—Weighting factor for heat output category i. See Table 2.

T1—Temperature of water at the inlet on the supply side of the heat exchanger, °F.

T2—Temperature of the water at the outlet on the supply side of the heat exchanger, °F.

T3—Temperature of cooling water at the inlet to the load side of the heat exchanger, °F.

T4—Temperature of cooling water at the outlet of the load side of the heat exchanger, °F.

T5—Temperature of the hot water supply as it leaves the boiler/heater, °F.

T6—Temperature of return water as it enters the boiler/heater, °F.

T7—Temperature in the boiler/heater optional destratification loop at the top of the boiler/heater, °F.

T8—Temperature in the boiler/heater optional destratification loop at the bottom of the boiler/heater, °F.

TI_{avg}—Average temperature of the appliance and water at start of the test.

TIS_1—Temperature at the inlet to the storage system at the start of the test.

TIS_2—Temperature at the outlet from the storage system at the start of the test.

TFS_1—Temperature at the inlet to the storage system at the end of the test.

TFS_2—Temperature at the outlet from the storage system at the end of the test.

TIS_{avg}—Average temperature of the storage system at the start of the test.

TI_{avg} – (T5 + T6)/2 at the start of the test, °F. Eq. 1

TF_{avg} – Average temperature of the appliance and water at the end of the test.

TF_{avg} – (T5 + T6)/2 at the end of the test, °F. Eq. 2

TIS_{avg} – $(TIS_1 + TIS_2)/2$ at the end of the test. Eq. 3

TFS_{avg} – Average temperature of the storage system at the end of the test.

TFS_{avg} – $(TFS_1 + TFS_2)/2$. Eq. 4

MC—Fuel moisture content in percent dry basis.
σ—Density of water in pounds per gallon.
$\sigma_{Initial}$—Density of water in the boiler/heater system at the start of the test in pounds per gallons.
$\sigma_{boiler/heater}$—Density of water in the boiler/heater system at arbitrary time during the test in pounds per gallon.
C_p—Specific heat of water in Btu/lb – °F.
C_{steel}—Specific heat of steel (0.1 Btu/lb – °F).
$V_{boiler/heater}$—total volume of water in the boiler/heater system on the weight scale in gallons.
W_{fuel}—Fuel charge weight, as-fired or ''wet'', in pounds (kg).
W_{fuel_1}—Fuel consumed during the startup period in pounds (kg).
W_{fuel_2}—Fuel consumed during the steady state period in pounds (kg).
W_{fuel_3}—Fuel consumed during the end period in pounds (kg).
$W_{FuelBurned}$—Weight of fuel that has been burned from the start of the test to an arbitrary time, including the needed correction for the change in density and weight of the water in the boiler/heater system on the scale in pounds (kg).
$W_{RemainingFuel}$—weight of unburned fuel separated from the ash at the end of a test. Useful only for Cat I and Cat II tests.
W_{app}—Weight of empty appliance in pounds (kg).
W_{wat}—Weight of water in supply side of the system in pounds (kg).
$W_{ScaleInitial}$—weight reading on the scale at the start of the test, just after the test load has been added in pounds (kg).
W_{Scale}—Reading of the weight scale at arbitrary time during the test run in pounds (kg).
$W_{StorageTank}$—Weight of the storage tank empty in pounds (kg).
$W_{WaterStorage}$—Weight of the water in the storage tank at TIS_{avg} in pounds (kg).

13.2 After the test is completed, determine the particulate emissions ET in accordance with EPA Method 28 WHH and the standards referenced therein.

13.3 Determination of the weight of fuel that has been burned at arbitrary time

For the purpose of tracking the consumption of the test fuel load during a test run the following may be used to calculate the weight of fuel that burned since the start of the test:

$$W_{FuelBurned} = (W_{ScaleInitial} - W_{Scale}) + V_{Boiler/heater} \cdot (\sigma_{Initial} - \sigma_{boiler/heater}) \quad \text{Eq. 5}$$

Water density, σ, is calculated using Equation 12.

13.4 Determine Average Fuel Load Moisture Content.

$$MC = \frac{\sum W_{SliceWet_i} - MC_{Slice_i}}{\sum W_{SliceWet_i}} \quad \text{Eq. 6}$$

13.5 Determine heat input.

Q_{in} = (W_{fuel}/(1+(MC/100))) x HHV, Btu (MJ). Eq. 7

$Q_{in\ LHV}$ = (W_{fuel}/(1+(MC/100))) x LHV, Btu (MJ). Eq. 8

13.5.1 Correction to Q_{in} for the Category I and II tests, where there is greater than 1 percent of the test fuel charge in the chamber at the end of the test period.

$$Q_{InCorrected} = Q_{in} - W_{Remaining} \cdot 12{,}500 \frac{Btu}{lb} \quad \text{Eq. 9}$$

13.6 Determine heat output, efficiency, and emissions

13.6.1 Determine heat output as:

$$Qout = \Sigma[C_{pi} \cdot \Delta T_i \cdot M_i \cdot t_i] + (W_{app} \cdot C_{steel} + W_{water} \cdot C_{pa}) \cdot (TF_{avg} - TI_{avg})$$

$$+ (W_{StorageTank} \cdot C_{steel} + W_{WaterStorage} \cdot C_{pa}) \cdot (TFS_{avg} - TIS_{avg}) \text{ Btu (MJ)} \quad \text{Eq. 10}$$

Note: The subscript (i) indicates the parameter value for sampling time interval t_i.

Q_{out} = Σ [Heat output determined for each sampling time interval] + Change in heat stored in the appliance + Change in heat in storage tank.

M_i = Mass flow rate = gal/min × Density of Water (lb/gal) = lb/min.

$$M_i = V_{fi} \cdot \sigma_i, \text{ lb/min.} \quad \text{Eq. 11}$$

$$\sigma_i = (62.56 + (-.0003413 \text{ x } T3_i) + (-.00006225 \text{ x } T3_i^2)) \, 0.1337, \text{ lbs/gal.} \quad \text{Eq. 12}$$

$$C_p = 1.0014 + (-.000003485 \text{ x } T3_i) \text{ Btu/lb-°F.} \quad \text{Eq. 13}$$

$$C_{steel} = 0.1 \text{ Btu/lb-°F.}$$

$$C_{pa} = 1.0014 + (-.000003485 \text{ X } (TI_{avg} + TF_{avg})/2), \text{ Btu/lb-°F.} \quad \text{Eq. 14}$$

$$V_{fi} = (V_i - V_{i-1})/(t_i - t_{i-1}), \text{ gal/min.} \quad \text{Eq. 15}$$

Note: V_i is the total water volume at the end of interval i and V_{i-1} is the total water volume at the beginning of the time interval. This calculation is necessary when a totalizing type water meter is used.

13.6.2 Determine Heat Output Rate Over Burn Period ($\Theta_1 + \Theta_2 + \Theta_3$) as:

$$\text{Heat Output Rate} = Q_{out}/\Theta, \text{ Btu/hr (MJ/hr).} \quad \text{Eq. 16}$$

13.6.3 Determine Emission Rates and Emission Factors as:

$$E_{g/MJ} = E_T/(Q_{out} \text{ x } 0.001055), \text{ g/MJ.} \quad \text{Eq. 17}$$

$$E_{lb/MM\ Btu\ output} = (E_T/453.59)/(Q_{out} \text{ x } 10^{-6}), \text{ lb/MMBtu Out.} \quad \text{Eq. 18}$$

$$E_{g/kg} = E_T/(W_{fuel}/(1+MC/100)), \text{ g/dry kg.} \quad \text{Eq. 19}$$

$$E_{g/hr} = E_T/(\Theta_1 + \Theta_2 + \Theta_3 + \Theta_4), \text{ g/hr.} \quad \text{Eq. 20}$$

$$\Theta_4 = (W_{StorageTank} \cdot C_{steel} + W_{WaterStorage} \cdot C_{pa}) \cdot (TFS_{avg} - TIS_{avg})/(Q_{out}/\Theta) \quad \text{Eq. 21}$$

If thermal storage is not used in a Category III or IV run, then $\Theta_4 = 0$

$E_{1_g/kg} = E_1/(W_{fuel_1}/(1+MC/100))$, g/dry kg

$E_{2_g/kg} = E_2/(W_{fuel_2}/(1+MC/100))$, g/dry kg

$E_{3_g/kg} = E_3/(W_{fuel_3}/(1+MC/100))$, g/dry kg

$E_{1_g/hr} = E_1/\Theta_1$, g/hr

$E_{2_g/hr} = E_2/\Theta_2$, g/hr

$E_{3_g/hr} = E_3/\Theta_3$, g/hr

13.6.4 Determine delivered efficiency as:

$$\eta_{del} = (Q_{out}/Q_{InCorrected}) \text{ x } 100, \%. \quad \text{Eq. 22}$$

$$\eta_{del\ LHV} = (Q_{out}/Q_{in\ LHV}) \text{ x } 100, \%. \quad \text{Eq. 23}$$

13.6.5 Determine η_{SLM}—Overall Efficiency, also known as Stack Loss Efficiency, using Stack Loss Method (SLM).

For determination of the average overall thermal efficiency (η_{SLM}) for the test run, use the data collected over the full test run and the calculations in accordance with CSA B415.1–2010, Clause 13.7 except for 13.7.2 (e), (f), (g), and (h), use the following average fuel properties for oak: %C = 50.0, %H = 6.6, %O = 43.2, %Ash = 0.2.

13.6.5.1 Whenever the CSA B415.1–2010 overall efficiency is found to be lower than the overall efficiency based on load side measurements, as determined by Eq. 22 of this method, section 14.1.7 of the test report must include a discussion of the reasons for this result. For a test where the CSA B415.1–2010 overall efficiency SLM is less than 2 percentage points lower than the overall efficiency based on load side measurements,

the efficiency based on load side measurements shall be considered invalid. *[Note on the rationale for the 2 percentage points limit. The SLM method does not include boiler/heater jacket losses and, for this reason, should provide an efficiency which is actually higher than the efficiency based on the energy input and output measurements or ''delivered efficiency.'' A delivered efficiency that is higher than the efficiency based on the SLM could be considered suspect. A delivered efficiency greater than 2 percentage points higher than the efficiency based on the SLM, then, clearly indicates a measurement error.]*

13.6.6 Carbon Monoxide Emissions

For each minute of the test period, the carbon monoxide emission rate shall be calculated as:

$$CO_{g/min} = Q_{std} \cdot CO_s \cdot 3.298\text{x}10^{-5} \qquad \text{Eq. 24}$$

Total CO emissions for each of the three test periods (CO_1, CO_2, CO_3) shall be calculated as the sum of the emission rates for each of the 1 minute intervals. Total CO emission for the test run, CO_T, shall be calculated as the sum of CO_1, CO_2, and CO_3.

13.7 Weighted Average Emissions and Efficiency.

13.7.1 Determine the weighted average emission rate and delivered efficiency from the individual tests in the specified heat output categories. The weighting factors (F_i) are derived from an analysis of ASHRAE Bin Data which provides details of normal building heating requirements in terms of percent of design capacity and time in a particular capacity range—or ''bin''—over the course of a heating season. The values used in this method represent an average of data from several cities located in the northern United States.

$$\text{Weighted average delivered efficiency: } \eta_{avg} = \Sigma\, \eta_i \text{ x } F_i, \%. \qquad \text{Eq. 25}$$

$$\text{Weighted average emissions: } E_{avg} = \Sigma\, E_i \text{ x } F_i, \% \qquad \text{Eq. 26}$$

If, as discussed in section 12.5.8, the option to eliminate tests in Category II and III is elected, the values of efficiency and particulate emission rate as measured in Category I, shall be assigned also to Category II and III for the purpose of determining the annual averages.

14.0 Report

14.1.1 The report shall include the following:

14.1.2 Name and location of the laboratory conducting the test.

14.1.3 A description of the appliance tested and its condition, date of receipt and dates of tests.

14.1.4 A description of the minimum amount of external thermal storage that is required for use with this system. This shall be specified both in terms of volume in gallons and stored energy content in Btu with a storage temperature ranging from 125 °F to the manufacturer's specified setpoint temperature.

14.1.5 A statement that the test results apply only to the specific appliance tested.

14.1.6 A statement that the test report shall not be reproduced except in full, without the written approval of the laboratory.

14.1.7 A description of the test procedures and test equipment including a schematic or other drawing showing the location of all required test equipment. Also, a description of test fuel sourcing, handling and storage practices shall be included.

14.1.8 Details of deviations from, additions to or exclusions from the test method, and their data quality implications on the test results (if any), as well as information on specific test conditions, such as environmental conditions.

14.1.9 A list of participants and their roles and observers present for the tests.

14.1.10 Data and drawings indicating the fire box size and location of the fuel charge.

14.1.11 Drawings and calculations used to determine firebox volume.

14.1.12 Information for each test run fuel charge including piece size, moisture content and weight.

14.1.13 All required data and applicable blanks for each test run shall be provided in spreadsheet format both in the printed report and in a computer file such that the data can be easily analyzed and calculations easily verified. Formulas used for all calculations shall be accessible for review.

14.1.14 For each test run, Θ_1,Θ_2, Θ_3, the total CO and particulate emission for each of these three periods, and Θ_4.

14.1.15 Calculated results for delivered efficiency at each heat output rate and the weighted average emissions reported as total emissions in grams, pounds per million Btu of delivered heat, grams per MJ of delivered heat, grams per kilogram of dry fuel and grams per hour. Results shall be reported for each heat output category and the weighted average.

14.1.16 Tables 1A, 1B, 1C, 1D, 1E and 2 must be used for presentation of results in test reports.

14.1.17 A statement of the estimated uncertainty of measurement of the emissions and efficiency test results.

14.1.18 A plot of CO emission rate in grams/minute vs. time, based on 1 minute averages, for the entire test period, for each run.

14.1.19 A plot of estimated boiler/heater energy release rate in Btu/hr based on 10 minute averages, for the entire test period, for each run. This will be calculated from the fuel used, the wood heating value and moisture content, and the SLM efficiency during each 10 minute period.

14.1.20 Raw data, calibration records, and other relevant documentation shall be retained by the laboratory for a minimum of 7 years.

15.0 Precision and Bias

15.1 Precision—It is not possible to specify the precision of the procedure in this test method because the appliance operation and fueling protocols and the appliances themselves produce variable amounts of emissions and cannot be used to determine reproducibility or repeatability of this test method.

15.2 Bias—No definitive information can be presented on the bias of the procedure in this test method for measuring solid fuel burning hydronic heater emissions because no material having an accepted reference value is available.

16.0 Keywords

16.1 Solid fuel, hydronic heating appliances, wood-burning hydronic heaters, partial thermal storage.

TABLE 1A—DATA SUMMARY PART A

Category	Run No.	Load % capacity Btu/hr	Target load Btu/hr	Actual load % of max	Actual load hrs	Θ Test duration lb	W_{fuel} Wood weight as-fired %DB	MC_{ave} Wood moisture Btu	Q_{in} Heat input Btu	Q_{out} Heat input
I		<15% of max								
II		16–24% of max.								
III		25–50% of max.								
IV		Max capacity ..								

TABLE 1B—DATA SUMMARY PART B

Category	Run No.	Load % capacity	T2 Min Min return water temp. °F	E_T Total PM emissions g	E PM output based lb/MMBtu Out	E PM output based g/MJ	$E_{g/hr}$ PM rate g/hr	$E_{g/kg}$ PM factor g/kg	η_{del} Delivered efficiency %	H_{SLM} Stack loss efficiency %
I		<15% of max								
II		16–24% of max.								
III		25–50% of max.								
IV		Max capacity ..								

TABLE 1C—DATA SUMMARY PART C

Category	Run No.	Load % capacity	Θ_1 Startup time. min	Θ_2 Steady state time min	Θ_3 End time min	CO_1 Startup CO emission g	CO_2 Steady state CO emission g	CO_3 End CO emission g	CO_T Total CO emission g
I		<15% of max							
II		16–24% of max							
III		25–50% of max							
IV		Max capacity							

TABLE 1D—DATA SUMMARY PART D

Category	Run No.	Load % capacity	E_1 Startup PM g	E_2 Steady state PM g	E_3 End PM g	$E_{1_g/kg}$ Startup PM emission index g/kg fuel	$E_{2_g/kg}$ Steady state PM emission index g/kg fuel	$E_{3_g/kg}$ End PM emission index g/kg fuel
I		<15% of max						
II		16–24% of max						
III		25–50% of max						
IV		Max capacity						

TABLE 1E—LABEL SUMMARY INFORMATION

MANUFACTURER:			
MODEL NUMBER:			
ANNUAL EFFICIENCY RATING:	η_{avg}		(Using higher heating value).
PARTICLE EMISSIONS:	E_{avg}		GRAMS/HR (average).
			LBS/MILLION Btu/hr OUTPUT.

TABLE 2—ANNUAL WEIGHTING

Category	Weighting factor (F_i)	$\eta_{del,i} \times F_i$	$E_{g/MJ,i} \times F_i$	$E_{g/kg,i} \times F_i$	$E_{lb/MMBtu\ Out,i} \times F_i$	$E_{g/hr,i} \times F_i$
I	0.437					
II	0.238					

TABLE 2—ANNUAL WEIGHTING—Continued

Category	Weighting factor (F_i)	$\eta_{del,i} \times F_i$	$E_{g/MJ,i} \times F_i$	$E_{g/kg,i} \times F_i$	$E_{lb/MMBtu\ Out,i} \times F_i$	$E_{g/hr,i} \times F_i$
III	0.275					
IV	0.050					
Totals	1.000					

Figure 1. Schematic of Equipment Test Setup

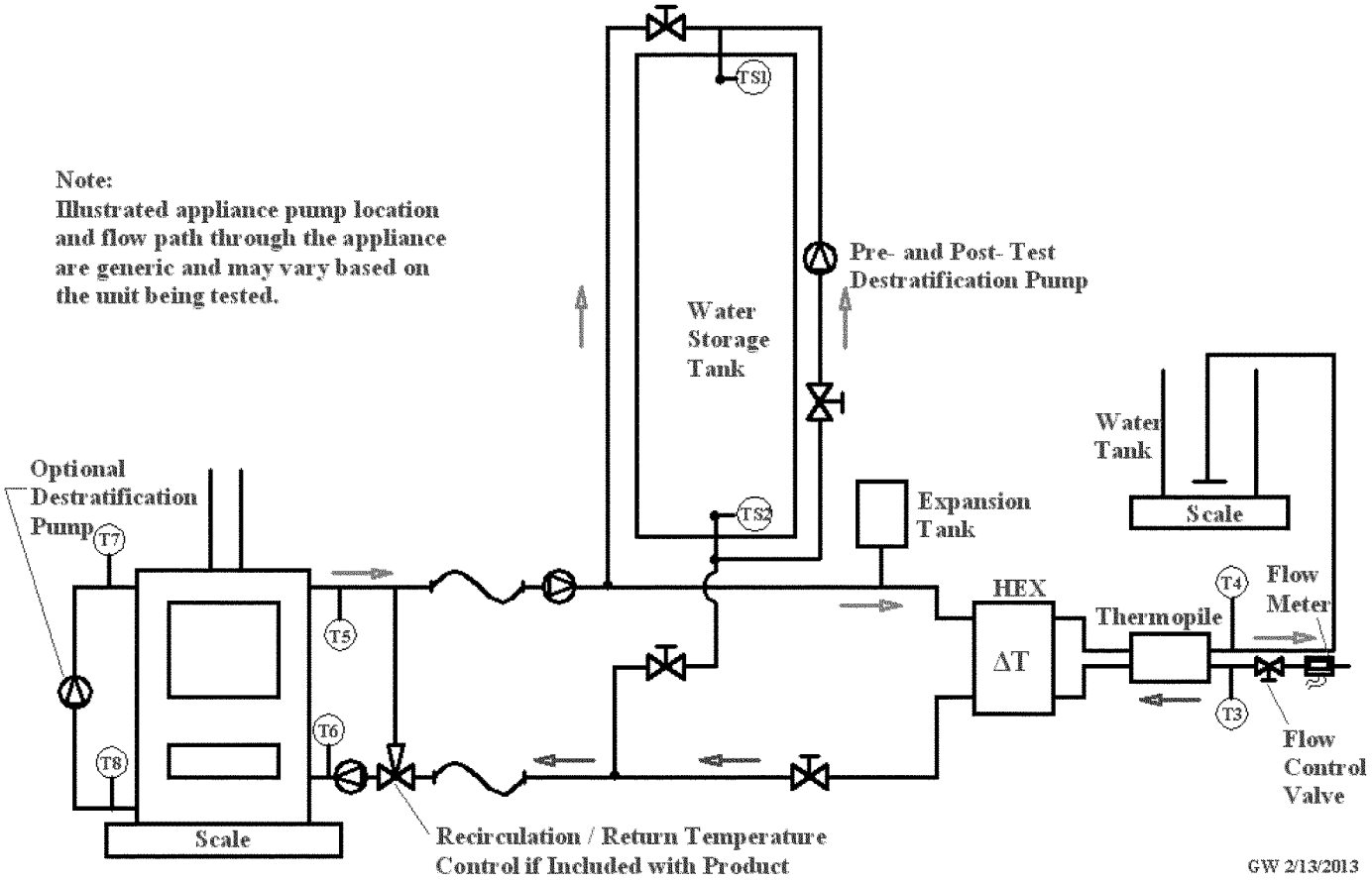
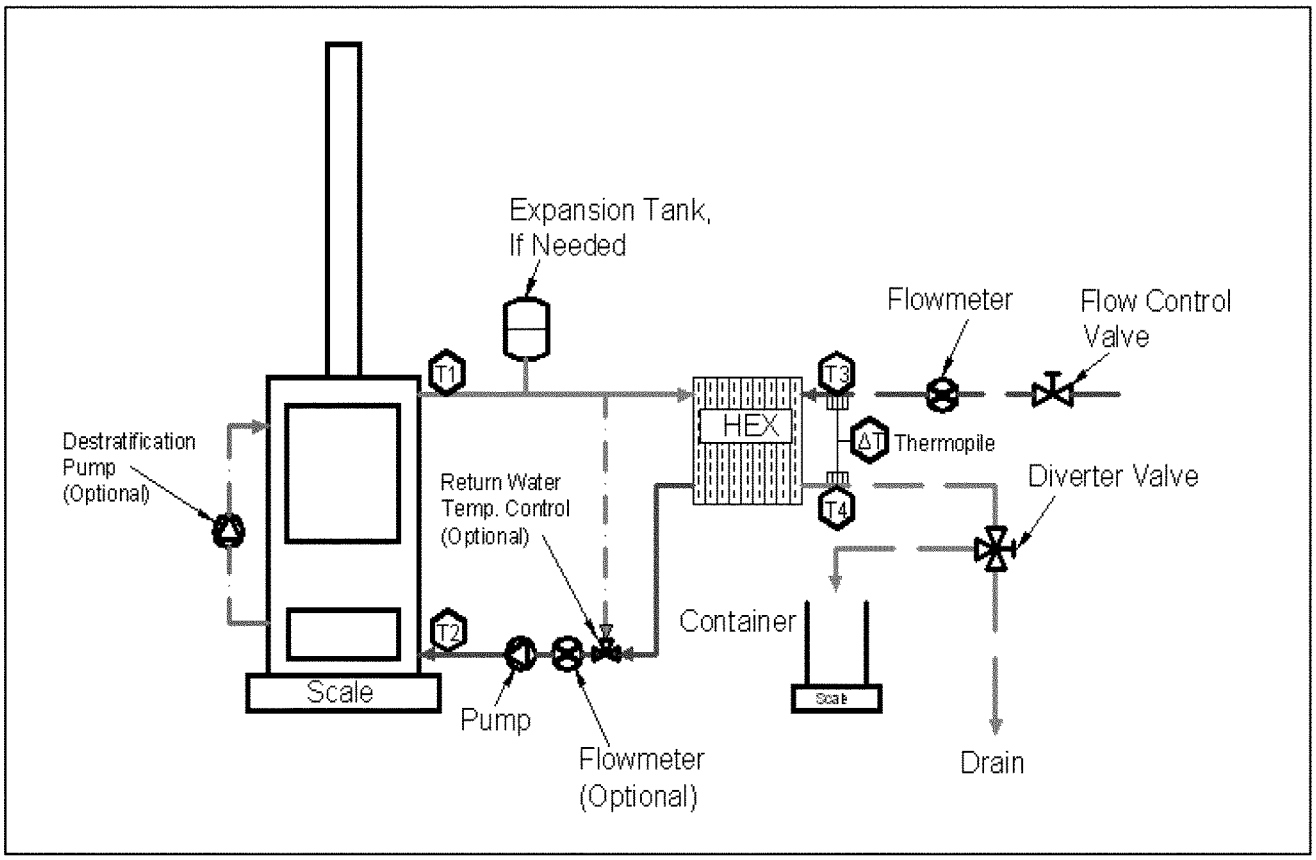


Figure 2. Schematic of Test Equipment Set-up



Note: Illustrated appliance pump location and flow path through the appliance.

■ 7. Revise Appendix I to Part 60 to read as follows:

Appendix I to Part 60—Owner's Manuals for Wood-Burning Heaters Subject to Subparts AAA, QQQQ, and RRRR of Part 60

1. Introduction

The purpose of this appendix is to provide specific instructions to manufacturers for compliance with the owner's manual provisions of subparts AAA, QQQQ, and RRRR of this part.

2. Instructions for Preparation of Wood Heater Owner's Manuals

2.1 Introduction

Although the owner's manuals do not require premarket approval, EPA will monitor the contents to ensure that sufficient information is included to provide heater operation and maintenance information affecting emissions to consumers. The purpose of this section is to provide instructions to manufacturers for compliance with the owner's manual provisions of § 60.536(f) of subpart AAA that applies to wood heaters, § 60.5478(f) of subpart QQQQ that applies to hydronic heaters and forced-air furnaces, and § 60.5490(g) of subpart RRRR that applies to masonry heaters. A checklist of topics and illustrative language is provided as instructions. Owner's manuals should be tailored to specific wood heater models, as appropriate.

2.2 Topics Required To Be Addressed in Owner's Manual

(a) Wood heater description and compliance status;
(b) Tamper warning;
(c) Catalyst information and warranty (if catalyst equipped);
(d) Fuel selection;
(e) Achieving and maintaining catalyst light-off (if catalyst equipped);
(f) Catalyst monitoring (if catalyst equipped);
(g) Troubleshooting catalytic equipped heaters (if catalyst equipped);
(h) Catalyst replacement (if catalyst equipped);
(i) Wood heater operation and maintenance; and
(j) Wood heater installation: achieving proper draft.

2.3 Sample Text/Descriptions

(a) The following are example texts and/or further descriptions illustrating the topics identified above. Although the regulation requires manufacturers to address (where applicable) the ten topics identified above, the exact language is not specified. Manuals should be written specific to the model and design of the wood heater. The following instructions are composed of generic descriptions and texts.

(b) If manufacturers choose to use the language provided in the example, the portion in italics should be revised as appropriate. Any manufacturer electing to use the EPA example language will be considered to be in compliance with owner's manual requirements provided that the particular language is printed in full with only such changes as are necessary to ensure accuracy.

Example language is not provided for certain topics, since these areas are generally heater specific. For these topics, manufacturers should develop text that is specific to the operation and maintenance of their particular products.

2.3.1 Wood Heater Description and Compliance Status

Owner's Manuals must include:
(a) Manufacturer and model;
(b) Compliance status (exempt, 1990 std., 2015 std., etc.); and
(c) Heat output range.

Exhibit 1—Example Text covering (a), (b), and (c) above:

''This manual describes the installation and operation of the Brand X, Model 0 catalytic equipped wood heater. This heater meets the U.S. Environmental Protection Agency's emission limits for wood heaters sold after January 1, 2015. Under specific test

conditions this heater has been shown to deliver heat at rates ranging from 8,000 to 35,000 Btu/hr.''

2.3.2 Tamper Warning

The following statement must be included in the owner's manual for catalyst-equipped units:

''This wood heater contains a catalytic combustor, which needs periodic inspection and replacement for proper operation. It is against the law to operate this wood heater in a manner inconsistent with operating instructions in this manual, or if the catalytic element is deactivated or removed.''

2.3.3 Catalyst Information

The following information must be included with or supplied in the owner's and warranty manuals:

(a) Catalyst manufacturer and model;

(b) Catalyst warranty details; and

(c) Instructions for warranty claims.

Exhibit 2—Example Text covering (a), (b), and (c):

''The combustor supplied with this heater is a Brand Z, Long Life Combustor. Consult the catalytic combustor warranty also supplied with this wood heater. Warranty claims should be addressed to:
Stove or Catalyst Manufacturer _____
Address _____
Phone # _____

2.3.3.1 This section should also provide clear instructions on how to exercise the warranty (how to package for return shipment, etc.).

2.3.4 Fuel Selection

Owner's manuals must include:

(a) Instructions on acceptable fuels; and

(b) Warning against inappropriate fuels.

Exhibit 3—Example Text covering (a) and (b):

''This heater is designed to burn natural wood only. Higher efficiencies and lower emissions generally result when burning air dried seasoned hardwoods, as compared to softwoods or to green or freshly cut hardwoods.

DO NOT BURN:

- Treated Wood
- Coal
- Garbage
- Cardboard
- Solvents
- Colored Paper
- Trash

Burning treated wood, garbage, solvents, colored paper or trash may result in release of toxic fumes and may poison or render ineffective the catalytic combustor. Burning coal, cardboard, or loose paper can produce soot, or large flakes of char or fly ash that can coat the combustor, causing smoke spillage into the room, and rendering the combustor ineffective.''

2.3.5 Achieving and Maintaining Catalyst Light-Off

Owner's manuals must describe in detail proper procedures for:

(a) Operation of catalyst bypass (stove specific),

(b) Achieving catalyst light-off from a cold start, and

(c) Achieving catalyst light-off when refueling.

2.3.5.1 No example text is supplied for describing operation of catalyst bypass mechanisms (Item (a) above) since these are typically stove-specific. Manufacturers must provide instructions specific to their model describing:

(1) Bypass position during startup;

(2) Bypass position during normal operation; and

(3) Bypass position during reloading.

Exhibit 4—Example Text for Item (b):

''The temperature in the stove and the gases entering the combustor must be raised to between 500° to 700°F for catalytic activity to be initiated. During the startup of a cold stove, a medium to high firing rate must be maintained for about 20 minutes. This ensures that the stove, catalyst, and fuel are all stabilized at proper operating temperatures. Even though it is possible to have gas temperatures reach 600°F within 2 to 3 minutes after a fire is started, if the fire is allowed to die down immediately it may go out or the combustor may stop working. Once the combustor starts working, heat generated in it by burning the smoke will keep it working.''

Exhibit 5—Example Text for Item (c):

''REFUELING: During the refueling and rekindling of a cool fire, or a fire that has burned down to the charcoal phase, operate the stove at a medium to high firing rate for about 10 minutes to ensure that the catalyst reaches approximately 600 °F.''

2.3.6 Catalyst Monitoring

Owner's manuals must include:

(a) Recommendation to visually inspect combustor at least three times during the heating season;

(b) Discussion on expected combustor temperatures for monitor-equipped units; and

(c) Suggested monitoring and inspection techniques.

Exhibit 6—Example Text covering (a), (b) and (c):

''It is important to periodically monitor the operation of the catalytic combustor to ensure that it is functioning properly and to determine when it needs to be replaced. A non-functioning combustor will result in a loss of heating efficiency, and an increase in creosote and emissions. Following is a list of items that should be checked on a periodic basis:

- Combustors should be visually inspected at least three times during the heating season to determine if physical degradation has occurred. Actual removal of the combustor is not recommended unless more detailed inspection is warranted because of decreased performance. If any of these conditions exists, refer to Catalyst Troubleshooting section of this owner's manual.
- This catalytic heater is equipped with a temperature probe to monitor catalyst operation. Properly functioning combustors typically maintain temperatures in excess of 500 °F, and often reach temperatures in excess of 1,000 °F. If catalyst temperatures are not in excess of 500 °F, refer to Catalyst Troubleshooting section of this owner's manual.
- You can get an indication of whether the catalyst is working by comparing the amount of smoke leaving the chimney when the smoke is going through the combustor and catalyst light-off has been achieved, to the amount of smoke leaving the chimney when the smoke is not routed through the combustor (bypass mode).

Step 1—Light stove in accordance with instructions in 3.3.5.

Step 2—With smoke routed through the catalyst, go outside and observe the emissions leaving the chimney.

Step 3—Engage the bypass mechanism and again observe the emissions leaving the chimney.

Significantly more smoke should be seen when the exhaust is not routed through the combustor (bypass mode). Be careful not to confuse smoke with steam from wet wood.''

2.3.7 Catalyst Troubleshooting

The owner's manual must provide clear descriptions of symptoms and remedies to common combustor problems. It is recommended that photographs of catalyst peeling, plugging, thermal cracking, mechanical cracking, and masking be included in the manual to aid the consumer in identifying problems and to provide direction for corrective action.

2.3.8 Catalyst Replacement

The owner's manual must provide clear step-by-step instructions on how to remove and replace the catalytic combustor. The section should include diagrams and/or photographs.

2.3.9 Wood Heater Operation and Maintenance

Owner's manual must include:

(a) Recommendations about building and maintaining a fire;

(b) Instruction on proper use of air controls;

(c) Ash removal and disposal;

(d) Instruction on gasket replacement; and

(e) Warning against overfiring.

2.3.9.1 No example text is supplied for (a), (b), and (d) since these items are model specific. Manufacturers should provide detailed instructions on building and maintaining a fire including selection of fuel pieces, fuel quantity, and stacking arrangement. Manufacturers should also provide instruction on proper air settings (both primary and secondary) for attaining minimum and maximum heat outputs and any special instructions for operating thermostatic controls. Step-by-step instructions on inspection and replacement of gaskets should also be included. Manufacturers should provide diagrams and/or photographs to assist the consumer. Gasket type and size should be specified.

Exhibit 7—Example Text for Item (c):

''Whenever ashes get 3 to 4 inches deep in your firebox or ash pan, and when the fire has burned down and cooled, remove excess ashes. Leave an ash bed approximately 1 inch deep on the firebox bottom to help maintain a hot charcoal bed.''

''Ashes should be placed in a metal container with a tight-fitting lid. The closed container of ashes should be placed on a noncombustible floor or on the ground, away

from all combustible materials, pending final disposal. The ashes should be retained in the closed container until all cinders have thoroughly cooled.''

Exhibit 8—Example Text covering Item (e):

''DO NOT OVERFIRE THIS HEATER''

''Attempts to achieve heat output rates that exceed heater design specifications can result in permanent damage to the heater and to the catalytic combustor if so equipped.''

2.3.10 Wood Heater Installation: Achieving Proper Draft

Owner's manual must include:

(a) Importance of proper draft;

(b) Conditions indicating inadequate draft; and

(c) Conditions indicating excessive draft.

Exhibit 9—Example Text for Item (a):

''Draft is the force which moves air from the appliance up through the chimney. The amount of draft in your chimney depends on the length of the chimney, local geography, nearby obstructions, and other factors. Too much draft may cause excessive temperatures in the appliance and may damage the catalytic combustor. Inadequate draft may cause backpuffing into the room and 'plugging' of the chimney or the catalyst.''

Exhibit 10—Example Text for Item (b):

''Inadequate draft will cause the appliance to leak smoke into the room through appliance and chimney connector joints.''

Exhibit 11—Example Text for Item (c):

''An uncontrollable burn or a glowing red stove part or chimney connector indicates excessive draft.''

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Part IV

Department of Homeland Security

Chemical Facility Anti-Terrorism Standards Personnel Surety Program; Notice

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0061]

Chemical Facility Anti-Terrorism Standards Personnel Surety Program

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-Day notice and request for comments; New Information Collection Request: 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Security Compliance Division (ISCD) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The Department previously published a notice about the CFATS Personnel Surety Program Information Collection Request in the **Federal Register** on March 22, 2013, for a 60-day public comment period.[1] On May 21, 2013, the Department extended the comment period an additional 14 days.[2] In this notice, NPPD is (1) responding to 28 comments submitted in response to the 60-day notice previously published about this ICR, and (2) soliciting public comments concerning this ICR for an additional 30 days. This notice also describes the nature of the CFATS Personnel Surety Program Information Collection Request, the categories of respondents, the estimated burden (in hours), and the estimated burden cost necessary to implement the Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program pursuant to 6 CFR 27.230(a)(12)(iv).

DATES: Comments are encouraged and will be accepted until March 5, 2014. This process is conducted in accordance with 5 CFR 1320.8.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, National Protection and Programs Directorate. Comments must be identified by the docket number DHS–2012–0061 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Email: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI),[3] Sensitive Security Information (SSI),[4] or Protected Critical Infrastructure Information (PCII)[5] should not be submitted to the public regulatory docket. Please submit such comments separately from other comments in response to this notice. Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and submitted by mail to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, care of the DHS/NPPD/IP/ISCD CFATS Program Manager at the Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0610, Arlington, VA 20528–0610. Comments must be identified by docket number DHS–2012–0061.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

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[1] *See* 78 FR 17680 (March 22, 2013). The 60-day **Federal Register** notice for Information Collection 1670–NEW, which solicited comments for 60 days, may be found at *https://federalregister.gov/a/2013-06184.*

[2] *See* 78 FR 29759 (May 21, 2013). The **Federal Register** notice that extended the comment period an additional 14 days may be viewed at *https://federalregister.gov/a/2013-12059.*

[3] For more information about CVI see 6 CFR 27.400 and the CVI Procedural Manual at *http://www.dhs.gov/xlibrary/assets/chemsec_cvi_proceduresmanual.pdf.*

[4] For more information about SSI see 49 CFR part 1520 and the SSI Program Web page *at http://www.tsa.gov/ssi.*

[5] For more information about PCII see 6 CFR part 29 and the PCII Program Web page at *http://www.dhs.gov/protected-critical-infrastructure-information-pcii-program.*

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I. Supplementary Information

Section 550 of the Department of Homeland Security Appropriations Act of 2007, Public Law 109–295 (2006) (''Section 550''), provides the Department with the authority to identify and regulate the security of high-risk chemical facilities using a risk-based approach. On April 9, 2007, the Department issued the CFATS Interim Final Rule (IFR) implementing this statutory mandate. *See* 72 FR 17688 (April 9, 2007).

Section 550 requires that the Department establish risk-based performance standards (RBPS) for high-risk chemical facilities and under CFATS the Department promulgated 18 RBPS. Each chemical facility that has been finally determined by the Department to be high-risk must submit a Site Security Plan (SSP), or an Alternative Security Program (ASP) if the facility so chooses, for Department approval that satisfies each applicable RBPS. RBPS 12—Personnel Surety—requires high-risk chemical facilities to:

> Perform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets, including, (i) Measures designed to verify and validate identity; (ii) Measures designed to check criminal history; (iii) Measures designed to verify and validate legal authorization to work; and (iv) Measures designed to identify people with terrorist ties[.]

See 6 CFR 27.230(a)(12).

As explained by the Department in the preamble to the CFATS IFR, the ability to identify affected individuals (i.e., facility personnel or unescorted visitors with access to restricted areas or critical assets at high-risk chemical facilities) who have terrorist ties is an inherently governmental function and necessarily requires the use of information held in government-maintained databases that are unavailable to high-risk chemical facilities. *See* 72 FR 17709 (April 9, 2007). Thus, under RBPS 12(iv), the Department and high-risk chemical facilities must work together to satisfy the ''terrorist ties'' aspect of the Personnel Surety performance standard. As a result, the CFATS Personnel Surety Program will identify individuals with terrorist ties that have or are seeking access to the restricted areas and/or critical assets at the nation's high-risk chemical facilities. Accordingly, in the preamble to the CFATS IFR, the Department outlined two potential approaches to help high-risk chemical facilities satisfy that particular standard, both of which would involve high-risk chemical facilities submitting certain information to the Department. *See id.*

The first approach would involve facilities submitting certain information about affected individuals to the Department, which the Department would use to vet those individuals for terrorist ties. Specifically, identifying information about affected individuals would be compared against identifying information of known or suspected terrorists contained in the federal government's consolidated and integrated terrorist watchlist, the Terrorist Screening Database (TSDB), which is maintained on behalf of the federal government by the Department of Justice (DOJ) Federal Bureau of Investigation (FBI) in the Terrorist Screening Center (TSC).[6]

In order to avoid unnecessary duplication of terrorist screening, the Department also described an additional approach under which high-risk chemical facilities would submit information about affected individuals possessing certain credentials that rely on security threat assessments conducted by the Department. *See* 72 FR 17709 (April 9, 2007).

The Department has developed a CFATS Personnel Surety Program that will provide high-risk chemical facilities additional options to comply with RBPS 12(iv) while continuing to make available the two alternatives outlined in the preamble to the CFATS IFR. In addition to the alternatives expressly described in this document, the Department also intends to permit high-risk chemical facilities to propose other alternative measures for terrorist ties identification in their SSPs or ASPs, which the Department will consider on a case-by-case basis in evaluating high-risk chemical facilities' SSPs or ASPs.

As a result of the CFATS Personnel Surety Program, regardless of the option selected by the high-risk chemical facility, the Department will identify individuals with terrorist ties that have or are seeking access to the restricted areas and/or critical assets at the nation's high-risk chemical facilities.

The first option is consistent with the primary approach described in the CFATS IFR preamble, as discussed above. Under Option 1—Direct Vetting, high-risk chemical facilities (or others acting on their behalf) would submit certain information about affected individuals to the Department through a Personnel Surety application in an online technology system developed under CFATS called the Chemical Security Assessment Tool (CSAT). Access to and the use of CSAT is provided free of charge to high-risk chemical facilities (or others acting on their behalf).

Under this option, information about affected individuals submitted by, or on behalf of, high-risk chemical facilities would be vetted against information contained in the federal government's consolidated and integrated terrorist watchlist.

The second option is also consistent with the second approach described in the CFATS IFR preamble. Under Option 2—Use Of Vetting Conducted Under Other DHS Programs, high-risk chemical facilities (or others acting on their behalf) would also submit certain information about affected individuals to the Department through the CSAT Personnel Surety application.

Option 2 would, however, allow high-risk chemical facilities and the Department to take advantage of the vetting for terrorist ties already being conducted on affected individuals enrolled in the Transportation Worker Identification Credential (TWIC) Program, Hazardous Materials Endorsement (HME) Program, as well as the NEXUS, Secure Electronic Network for Travelers Rapid Inspection (SENTRI), Free and Secure Trade (FAST), and Global Entry Trusted Traveler Programs.[7] All of these programs conduct terrorist ties vetting equivalent to the terrorist ties vetting that would be conducted under Option 1.[8] Under Option 2, high-risk chemical

[6] For more information about the TSDB, see DOJ/FBI—019 Terrorist Screening Records System, 72 FR 47073 (August 22, 2007).

[7] U.S. Customs and Border Protection (CBP) has introduced SENTRI and Global Entry as Trusted Traveler Programs since the publication of CFATS in April 2007. The Department, therefore, intends to enable high-risk chemical facilities (or their designees) to submit information about affected individuals' SENTRI and Global Entry enrollments to DHS under Option 2, even though SENTRI and Global Entry were not listed along with the other Trusted Traveler Programs in the CFATS IFR preamble. *See* 72 FR 17709 (April 9, 2007).

[8] Each of the DHS programs referenced conducts recurrent vetting, which is equivalent to the terrorist ties vetting conducted under Option 1. Recurrent vetting compares an affected individual's information against new and/or updated TSDB

Continued

facilities, or their designees (e.g., third parties), could submit information to the Department about affected individuals possessing the appropriate credentials to enable the Department to electronically verify the affected individuals' enrollments in these other programs. The Department would subsequently notify the Submitter of the high-risk chemical facility whether or not an affected individual's enrollment in one of these other DHS programs was electronically verified. The Department would also periodically re-verify each affected individual's continued enrollment in one of these other programs, and notify the appropriate designee of the high-risk chemical facility of significant changes in the status of an affected individual's enrollment (e.g., if an affected individual who has been enrolled in the HME Program ceases to be enrolled, the Department would change the status of the affected individual in the CSAT Personnel Surety application and notify the Submitter).[9] Electronic verification and re-verification would enable the Department and the high-risk chemical facility to ensure that an affected individual's credential or endorsement is appropriate to rely on (i.e., an indicator that the affected individual is being recurrently vetted for terrorist ties) in compliance with RBPS 12(iv).

In addition to Option 1 and Option 2, the Department has considered other potential options to help high-risk chemical facilities satisfy RBPS 12(iv). In particular, the Department has investigated the feasibility of options that would not involve the submission of information about an affected individual if the affected individual participated in one of the programs identified under Option 2. The Department believes that, for the purpose of compliance with RBPS 12(iv), simply relying on a visual inspection of a credential or endorsement is inadequate because the credential or endorsement could be expired, revoked, or fraudulent. However, the Department has concluded that information about an affected individual, enrolled in a DHS program that conducts vetting for terrorist ties equivalent to the vetting that would be conducted under Option 1, would not need to be submitted to the Department if the credential in the possession of the affected individual is electronically verified and validated.

Accordingly, the Department plans to offer high-risk chemical facilities a third option. Under Option 3—Electronic Verification of TWIC, a high-risk chemical facility (or others acting on their behalf) would not submit information about affected individuals in possession of TWICs to the Department if the high-risk chemical facility (or others acting on their behalf) electronically verify and validate the affected individuals' TWICs[10] through the use of TWIC readers (or other technology that is periodically updated using the with revoked card information).[11] Any high-risk chemical facilities that choose this option would need to describe in their SSPs or ASPs the procedures they will follow if they choose to use TWIC readers for compliance with RBPS 12(iv).[12]

High-risk chemical facilities would have discretion as to which option(s) to use for an affected individual. For example, even though a high-risk chemical facility could comply with RBPS 12(iv) for certain affected individuals by using Option 2, the high-risk chemical facility could choose to use Option 1 for those affected individuals. Similarly, a high-risk chemical facility, at its discretion, may choose to use either Option 1 or Option 2 rather than Option 3 for affected individuals who have TWICs. High-risk chemical facilities also may choose to combine Option 1 with Option 2 and/or Option 3, as appropriate, to ensure that adequate terrorist ties checks are performed on different types of affected individuals (e.g., employees, contractors, unescorted visitors). Each high-risk chemical facility will need to describe how it will comply with RBPS 12(iv) in its SSP or ASP.

In addition to the options described above for satisfying RBPS 12(iv), high-risk chemical facilities are welcome to propose alternative or supplemental options not described in this PRA notice in their SSPs or ASPs. The Department will assess the adequacy of such alternative or supplemental options on a facility-by-facility basis, in the course of evaluating each facility's SSP or ASP.

Although outside the scope of this PRA notice and the underlying ICR, the Department would like to highlight that high-risk chemical facilities also have other methods to address, or minimize the impacts of, compliance with RBPS 12(iv). For example, facilities may restrict the numbers and types of persons whom they allow to access their restricted areas and critical assets, thus limiting the number of persons who will need to be checked for terrorist ties. Facilities also have wide latitude in how they define their restricted areas and critical assets in their SSPs or ASPs, thus potentially limiting the number of persons who will need to be checked for terrorist ties. High-risk chemical facilities also may choose to escort visitors to restricted areas and critical assets in lieu of performing the background checks required by RBPS 12. For example, high-risk chemical facilities could propose in their SSPs or ASPs traditional escorting solutions and/or innovative escorting alternatives such as video monitoring (which may reduce facility security costs), as appropriate, to address the unique security risks present at each facility.

Summary of Options Available to High-Risk Chemical Facilities To Comply With RBPS 12(iv)

The purpose of the CFATS Personnel Surety Program is to identify individuals with terrorist ties that have or are seeking access to the restricted areas and/or critical assets at the nation's high-risk chemical facilities. As described above, under the CFATS Personnel Surety Program, for each affected individual a high-risk chemical facility would have at least three options under RBPS 12(iv):

- OPTION 1—DIRECT VETTING: High-risk chemical facilities (or their designees) may submit information to the Department about an affected individual to be compared against information about known or suspected terrorists, and/or
- OPTION 2 –USE OF VETTING CONDUCTED UNDER OTHER DHS PROGRAMS: High-risk chemical

records as those new and/or updated records become available. Recurrent vetting is a Department best practice.

[9] When the Department notifies the appropriate designee of the high-risk chemical facility of significant changes in the status of an affected individual's enrollment, such a notification should not be construed to indicate that an individual has terrorist ties or be treated as derogatory information.

[10] Verification and validation of an affected individual's TWIC requires authentication that the affected individual's TWIC is (1) a valid credential issued by TSA, and (2) contains the Card Holder Unique Identifier and correct digital signature.

[11] The Department currently offers two ways to determine if a TWIC has been revoked (or reported lost or stolen). One is the Canceled Card List (CCL), the other is the Certificate Revocation List (CRL). More information about the Canceled Card List may be found at *http://www.tsa.gov/sites/default/files/publications/pdf/twic/canceled_card_list_ccl_faq.pdf.* More information about the CRL may be in the TWIC NPRM published on March 29, 2009 at 74 FR 13364 which may be accessed at *https://www.federalregister.gov/articles/2009/03/27/E9-6852/transportation-worker-identification-credential-twic-reader-requirements#p-122.*

[12] On March 22, 2013, the U.S. Coast Guard published a notice of proposed rulemaking (NPRM) titled ''TWIC Reader Requirements.'' The procedures for using TWIC readers that are discussed in that NPRM would not apply to high-risk chemical facilities regulated under CFATS. Likewise, the ways in which high-risk chemical facilities could leverage TWICs as part of the CFATS Personnel Surety Program do not apply to maritime facilities or vessels regulated by the U.S. Coast Guard.

facilities (or their designees) may submit information to the Department about an affected individual's enrollment in another DHS program so that the Department may electronically verify and validate that the affected individual is enrolled in the other program, and/or

• OPTION 3—ELECTRONIC VERIFICATION OF TWIC: High-risk chemical facilities may electronically verify and validate an affected individual's TWIC, through the use of TWIC readers (or other technology which is periodically updated with revoked card information), rather than submitting information about the affected individual to the Department.

Regardless of the option, in the event that there is a potential match, the Department has procedures in place that it will follow to resolve the match and coordinate with appropriate law enforcement entities as necessary.

The Department intends to provide high-risk chemical facilities, and their designees, the ability to create an alert within the CSAT Personnel Surety application that can notify them when the Department has received information about an affected individual(s), under Option 1 or Option 2. Further, the Department will also allow high-risk chemical facilities the ability to view the status (e.g., that some information about an affected individual has been inputted into CSAT but not yet submitted to the Department under Option 1 or Option 2; that information about an affected individual has been submitted; etc.) of records about affected individuals associated with their facility within the CSAT Personnel Surety application.

Scope of This Notice and Commitment To Explore Additional Options in the Future

Between August 2012, and publication of the 60-day notice in March 2013, the Department had substantial dialogue with key CFATS stakeholders. The discussion included program design issues, the CSAT Personnel Surety application, options the Department has been considering to date, and additional options stakeholders have recommended for the Department's consideration, both in the short and long term.

The options described in this notice and, if approved, the ICR that the Department will submit to OMB would allow high-risk chemical facilities and the Department to implement the CFATS Personnel Surety Program within the Department's existing statutory and regulatory authority, and U.S. Government watchlisting policies.

The Department is committed, however, to continuing to work with interested stakeholders to identify additional potential options that could further reduce the burdens related to the CFATS Personnel Surety Program, while still meeting the national security mandate to reduce the risk of an individual with terrorist ties obtaining access to the restricted areas or critical assets at a high-risk chemical facility. The Department will consider and review any alternatives suggested as part of public comments on this notice. Through both the PRA process and other ongoing dialogues, the Department will, as appropriate, also continue to work with stakeholders to identify potential additional alternatives as new technologies emerge, and as other terrorist ties vetting programs are modified or become available over time, so as to reduce the burden of this new information collection.

Who is Impacted by the CFATS Personnel Surety Program?

The CFATS Personnel Surety Program will provide high-risk chemical facilities the ability to submit certain biographic information about affected individuals to the Department. As explained above, affected individuals are (1) facility personnel who have access, either unescorted or otherwise, to restricted areas or critical assets, and (2) unescorted visitors who have access to restricted areas or critical assets.

There are also certain groups of persons that the Department does not consider to be affected individuals, such as (1) Federal officials that gain unescorted access to restricted areas or critical assets as part of their official duties; (2) state and local law enforcement officials that gain unescorted access to restricted areas or critical assets as part of their official duties; and (3) emergency responders at the state or local level that gain unescorted access to restricted areas or critical assets during emergency situations.

In some emergency or exigent situations, access to restricted areas or critical assets by other individuals who have not had appropriate background checks under RBPS 12 may be necessary. For example, emergency responders not described above may require such access as part of their official duties under appropriate circumstances. If high-risk chemical facilities anticipate that any individuals will require access to restricted areas or critical assets without visitor escorts or without the background checks listed in RBPS 12 under exceptional circumstances (e.g., foreseeable but unpredictable circumstances), facilities may describe such situations and the types of individuals who might require access in those situations in their SSPs or ASPs. The Department will assess the appropriateness of such situations, and any security measures to mitigate the inherent vulnerability in such situations, on a case-by-case basis as it reviews each high-risk chemical facility's SSP or ASP.

What/Who is the Source of the Information Under Option 1 And Option 2

High-risk chemical facilities are responsible for complying with RBPS 12(iv). However, companies operating multiple high-risk chemical facilities, as well as companies operating only one high-risk chemical facility, may comply with RBPS 12(iv) in a variety of ways. High-risk chemical facilities, or their parent companies, may choose to comply with RBPS 12(iv) by identifying and submitting the information about affected individuals to the Department directly. Alternatively, high-risk chemical facilities, or their parent companies, may choose to comply with RBPS 12(iv) by outsourcing the information submission process to third parties.

The Department anticipates that many high-risk chemical facilities will rely on businesses that provide contract services (e.g., complex turn-arounds, freight delivery services, lawn mowing) to the high-risk chemical facilities to identify and submit the appropriate information about affected individuals they employ to the Department for vetting pursuant to RBPS 12(iv). Businesses that provide services to high-risk chemical facilities may in turn choose to manage compliance with RBPS 12(iv) themselves or to acquire the services of other third party companies to submit appropriate information about affected individuals to the Department.

CSAT User Roles and Responsibilities

To minimize the burden of submitting information about affected individuals, under Options 1 and 2 (as described above), high-risk chemical facilities would have wide latitude in assigning CSAT user roles to align with their business operations and/or the business operations of third parties that provide contracted services to them.[13] Furthermore, the Department intends to structure the CSAT Personnel Surety application to allow designees of high-

[13] CSAT user registration and the assignment of user roles within CSAT are covered under a different Information Collection (i.e., 1670–0007), which can be found at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201001-1670-007#*.

risk chemical facilities to submit information about affected individuals directly to the Department on behalf of high-risk chemical facilities.

High-risk chemical facilities and their designees will be able to structure their CSAT user roles to submit information about affected individuals to the Department in several ways:

(1) A high-risk chemical facility could directly submit information about affected individuals, and designate one or more officers or employees of the facility with appropriate CSAT user roles; and/or

(2) A high-risk chemical facility could ensure the submission of information about affected individuals by designating one or more persons affiliated with a third party (or with multiple third parties); and/or

(3) A company owning several high-risk chemical facilities could consolidate its submission process for affected individuals. Specifically, the company could designate one or more persons to submit information about affected individuals on behalf of all of the high-risk chemical facilities on a company-wide basis.

The Department may, upon request, also consider allowing CSAT users with the ability to submit information about affected individuals to the Department via a Web-service. The ability to submit information about affected individuals via a Web-service will be provided on a case by cases basis, when in the opinion of the Department, sufficient additional security and privacy safeguards have been agreed to by the CSAT user.[14]

Burden Resulting From the Submission of Duplicate Records About an Affected Individual

The Department is aware that an affected individual may be associated with multiple high-risk chemical facilities, and thus information about an affected individual may be submitted to the Department multiple times by different high-risk chemical facilities and/or their designated third parties. However, the Department has learned in its dialogue with stakeholders (including third-party companies that conduct background checks for high-risk chemical facilities) that the duplicate submission of records about affected individuals is a common industry practice for companies when managing information about individuals. Specifically, when a person who has already had a background check (e.g., verification of legal authorization to work or criminal history) needs a new background check for different companies or for a new or different purpose (e.g., change in jobs or contract), third parties that routinely conduct background checks routinely will submit information about a person again to agencies responsible for maintaining relevant information (e.g., state government agencies responsible for maintaining state motor vehicle databases). Therefore, for the purpose of this notice, the Department's estimation of burden accounts for potential multiple submissions of information about affected individuals by high-risk chemical facilities and their designated third parties.

Compliance With RBPS 12(iv) and the Potential for Increased Burden To Enter the Restricted Areas or Critical Assets at a High-Risk Chemical Facility

Since the Department first began seeking to implement the CFATS Personnel Surety Program, stakeholders have expressed concern that the submission of information about affected individuals under Option 1 and Option 2 to the Department would impede the ability of affected individuals to enter the restricted areas or critical assets at high-risk chemical facilities. The Department does not believe that if a facility complies with RBPS 12(iv) the high-risk chemical facility will, on a routine basis, experience an unreasonable impact in allowing affected individuals access to restricted areas or critical assets.

In general, the Department expects that high-risk chemical facilities or their designees (e.g., third parties or companies employing affected individuals that provide services to high-risk chemical facilities) will already possess much, if not all, of the necessary information about affected individuals as a result of standard business practices related to employment or managing of service contracts. In the event that high-risk chemical facilities, or their designees, need to collect any additional information for the purpose of complying with RBPS 12(iv), they have significant flexibility in how to collect this information since CFATS does not prescribe how to do so.

The Department also expects that high-risk chemical facilities will likely consolidate RBPS 12(iv) processing with related routine hiring and access control procedures involving background checks that are already occurring prior to access by facility personnel or unescorted visitors to restricted areas or critical assets. Consolidating RBPS 12(iv) processing with these other routine procedures would allow submission of personal information already collected and maintained by facilities or their designees (e.g., a third party, contracted service company, or third party acting on behalf of a contracted service company) to the Department under RBPS 12(iv) before affected individuals require access to restricted areas or critical assets.

As mentioned above, third parties could submit screening information to the Department on behalf of high-risk chemical facilities as part of facilities' routine hiring and access control procedures. Some stakeholders have expressed concerns to the Department about submission of screening information by third parties, suggesting that in such cases facilities would not be able to adequately oversee third parties' work to ensure appropriate information submission to the Department. The Department expects, however, that high-risk chemical facilities could audit and/or review their third party designees' information collection and submission processes, to ensure that their designees submit appropriate information.

The Department has provided below several illustrative examples about how high-risk chemical facilitates or designees are likely to consolidate RBPS 12(iv) processing with routine background check activities related to those required by RBPS 12(i)–(iii), namely, (i) measures designed to verify and validate identity; (ii) measures designed to check criminal history; and (iii) measures designed to verify and validate legal authorization to work. By consolidating RBPS 12(iv) with routine background check activities related to RBPS 12(i)-(iii), high-risk chemical facilities will likely choose to incorporate the submission of information about affected individuals to the Department under RBPS 12(iv) into the routine background check activities required by RBPS 12(i)–(iii).

Although estimating the burden of RBPS 12(i)–(iii) is not within the scope of this Paperwork Reduction Act notice, when and how high-risk chemical facilities could collect information for submission to the Department has influenced the Department's design of the CFATS Personnel Surety Program. The Department believes that the illustrative examples provided below show how, if the CFATS Personnel Surety Program is implemented, a high-risk chemical facility and its associated third party companies could access the CSAT Personnel Surety application for purposes of submitting terrorist ties screening information to the Department on its behalf under RBPS 12(iv), in

[14] A Web-service is software system designed to support interoperable machine-to-machine interaction over a network.

coordination with other normal business activities not required by RBPS 12(iv).

SCENARIO #1: Employees Who Are ''Facility Personnel''

This scenario could apply to a high-risk chemical facility that has a number of employees it deems in its SSP or ASP to be ''facility personnel'' with access to restricted areas and/or critical assets.

In its SSP or ASP, the high-risk chemical facility could choose to comply with RBPS 12(i)–(iii) for these employees by either:

- Hiring a third party background check company to perform identity, criminal history, and legal authorization to work background checks on these employees.
  - A contract or agreement between the high-risk chemical facility and the third party could establish the criteria for these background checks, and could establish which background check results qualify individuals to access the restricted areas or critical assets at the high-risk chemical facility or disqualify individuals from accessing the restricted areas or critical assets at the high-risk chemical facility.
  - The third party could submit appropriate information, under Option 1 and/or Option 2, to the Department while it conducts these identity, criminal history, and legal authorization to work background checks.
  - The high-risk chemical facility could audit or review the background checks being conducted to ensure contractual compliance.

Or,

- Performing identity, criminal history, and legal authorization to work background checks itself.
  - The high-risk chemical facility could establish the criteria for these background checks, and could establish which background check results qualify individuals to access the restricted areas or critical assets at the high-risk chemical facility or disqualify individuals from accessing the restricted areas or critical assets at the high-risk chemical facility.
  - The facility could submit appropriate information, under Option 1 and/or Option 2, to the Department while it conducts these identity, criminal history, and legal authorization to work background checks.

Prior to an employee being granted access to restricted areas or critical assets (i.e., prior to being issued a facility-specific access credential/card, or door/gate key(s)), identity, criminal history, and legal authorization to work background checks could be completed by the third party or the high-risk chemical facility in accordance with the high-risk chemical facility's SSP or ASP. If appropriate, based upon the results of those background checks, the employee could then be determined suitable to access the high-risk chemical facility's restricted areas and/or critical assets.

The third party or the high-risk chemical facility could then report its suitability finding to the appropriate party at the high-risk chemical facility so that facility-specific access credentials/cards, or door/gate key(s) could be granted, if appropriate. Completion of submission of information about the affected individual to the Department in compliance with RBPS 12(iv) therefore would not impede the routine access control procedures of the high-risk chemical facility because the information submission would likely be accomplished in concert with the other background check activities, prior to access.

SCENARIO #2: Resident Contractors Who Are ''Facility Personnel''

This scenario could apply to a high-risk chemical facility that has a number of resident contractors it deems in its SSP or ASP to be ''facility personnel'' with access to restricted areas or critical assets.

In its SSP or ASP, the high-risk chemical facility could choose to comply with RBPS 12(i)–(iii) for resident contractors by:

- Stipulating in a contract between the high-risk chemical facility and the company employing the resident contractors that the contractors' employer will perform or provide for identity, criminal history, and legal authorization to work background checks to be conducted on the resident contractors.
  - A contract or agreement between the high-risk chemical facility and the company employing the resident contractors could establish the criteria for these background checks, and could establish which background check results qualify individuals to access the restricted areas or critical assets at the high-risk chemical facility or disqualify individuals from accessing the restricted areas or critical assets at the high-risk chemical facility.
  - The high-risk chemical facility could audit or review the background checks being conducted to ensure contractual compliance.
- Prior to a resident contractor being granted access to the restricted areas or critical assets of the high-risk chemical facility (i.e., being issued a facility-specific access credential/card, door/gate key(s)), identity, criminal history, and legal authorization to work background checks could be completed by the company employing the resident contractor in accordance with the high-risk chemical facility's SSP or ASP.
  - The company employing the resident contractor could conduct these identity, criminal history, and legal authorization to work background checks.
  - The company employing the resident contractor could submit appropriate information, under Option 1 and/or Option 2, to the Department while it conducts these identity, criminal history, and legal authorization to work background checks.
- The company employing the resident contractor, however, might not perform the actual background checks itself. Rather, the company employing the resident contractor could hire a third party background check company to perform identity, criminal history, and legal authorization to work background checks on its employees (including the resident contractors at the high-risk chemical facility).
  - If the company employing the resident contractor hires a third party background check company for this purpose, a contract or agreement between the company employing the resident contractor and the third party background check company could establish the criteria for these background checks and could establish which background check results are acceptable for access to the restricted areas and critical assets at the high-risk chemical facility for which the resident contractor performs services.
  - The third party background check company could submit appropriate information, under Option 1 and/or Option 2, to the Department while it conducts these identity, criminal history, and legal authorization to work background checks.

Prior to the resident contractor being granted access to restricted areas or critical assets of the high-risk chemical facility (i.e., being issued a facility-specific access credential/card, or door/gate key(s)), identity, criminal history, and legal authorization to work background checks could be completed by the company employing the resident contractor, or by a third party background check company in accordance with the high-risk chemical facility's SSP or ASP. If appropriate, based on the results of those background checks, the resident contractor could then be determined suitable to access the high-risk chemical facility's restricted areas and/or critical assets.

The company employing the resident contractor, or a third party background

check company, could then report suitability findings to the high-risk chemical facility. The appropriate party at the high-risk chemical facility could then grant the resident contractor facility-specific access credentials/cards, or door/gate key(s), if appropriate based on those suitability findings. The submission of information about the affected individual to the Department in compliance with RBPS 12(iv) therefore would not impede the routine access control procedures of the high-risk chemical facility because the submission of information would likely be accomplished in concert with the other background check activities, prior to access.

SCENARIO #3: Frequent ''Unescorted Visitors''

This scenario could apply to a high-risk chemical facility that has a number of frequent unescorted visitors that have or are seeking repeated access to the restricted areas or critical assets of the facility, pursuant to a contractual relationship with a company employing the frequent unescorted visitors.

In its SSP or ASP, the high-risk chemical facility could choose to comply with RBPS 12(i)–(iii) for frequent unescorted visitors by:

- Stipulating in a contract between the high-risk chemical facility and the company employing the frequent unescorted visitors that the frequent unescorted visitors' employer will perform or provide for identity, criminal history, and legal authorization to work background checks to be conducted on the frequent unescorted visitors.
  - A contract or agreement between the high-risk chemical facility and the company employing the frequent unescorted visitors could establish the criteria for these background checks, and could establish which background check results qualify individuals to access the restricted areas or critical assets at the high-risk chemical facility or disqualify individuals from accessing the restricted areas or critical assets at the high-risk chemical facility.
  - The high-risk chemical facility could audit or review the background checks being conducted to ensure contractual compliance.
- Prior to a frequent unescorted visitor being granted access to the restricted areas or critical assets of the facility (i.e., being issued a facility-specific access credential/card, door/gate key(s)), identity, criminal history, and legal authorization to work background checks could be completed by the company employing the frequent unescorted visitor in accordance with the high-risk chemical facility's SSP or ASP.
  - The company employing the frequent unescorted visitor could conduct these identity, criminal history, and legal authorization to work background checks.
  - The company employing the frequent unescorted visitor could submit appropriate information, under Option 1 and/or Option 2, to the Department while it conducts these identity, criminal history, and legal authorization to work background checks.
- The company employing the frequent unescorted visitor, however, might not perform the actual background checks itself. Rather, the company employing the frequent unescorted visitor could hire a third party background check company to perform identity, criminal history, and legal authorization to work background checks on its employees (including the frequent unescorted visitors that access the restricted areas or critical assets of a high-risk chemical facility).
  - If the company employing the frequent unescorted visitor hires a third party background check company for this purpose, a contract or agreement between the company employing the frequent unescorted visitor and the third party background check company could establish the criteria for these background checks and could establish which background check results are acceptable for access to the restricted areas and critical assets at the high-risk chemical facility for which the frequent unescorted visitor performs services.
  - The third party background check company could submit appropriate information, under Option 1 and/or Option 2, to the Department while it conducts these identity, criminal history, and legal authorization to work background checks.

Prior to the frequent unescorted visitor being granted access to restricted areas or critical assets of the high-risk chemical facility (i.e., being issued a facility-specific access credential/card, or door/gate key(s)), identity, criminal history, and legal authorization to work background checks could be completed by the company employing the frequent unescorted visitor, or by a third party background check company in accordance with the high-risk chemical facility's SSP or ASP. If appropriate based on the results of those background checks, the frequent unescorted visitor could then be determined suitable to access the restricted areas or critical assets at the high-risk chemical facility.

The company employing the frequent unescorted visitor, or a third party background check company, could then report suitability findings to the high-risk chemical facility. The appropriate party at the high-risk chemical facility could then grant the frequent unescorted visitor facility-specific access credentials/cards, or door/gate key(s), if appropriate based on those suitability findings. The submission of information about the affected individual to the Department in compliance with RBPS 12(iv) therefore would not impede the routine access control procedures of the high-risk chemical facility because the information submission would likely be accomplished in concert with the other background check activities, prior to access.

SCENARIO #4: Infrequent ''Unescorted Visitors''

Since the Department first began developing the CFATS Personnel Surety Program, some stakeholders have expressed concern that the submission of information to DHS about unescorted visitors who have only rare or infrequent access to high-risk chemical facilities would be overly burdensome and would make access by such infrequent unescorted visitors too difficult. As a general matter, however, the Department does not believe it likely that many high-risk chemical facilities will propose in their SSPs or ASPs to allow large numbers of visitors who visit the high-risk chemical facility infrequently to have unescorted access to restricted areas and critical assets, because then all four types of background checks listed in RBPS 12 would be required to be conducted for them. High-risk chemical facilities could choose to escort infrequent visitors in lieu of performing the four types of RBPS 12 background checks on them.

However, even for infrequent unescorted visitors on whom the high-risk chemical facility chooses to conduct all four types of background checks, the Department does not expect data submission to the Department in compliance with RBPS 12(iv) to impede routine access procedures because the data submission is likely to be accomplished in concert with the other routine hiring and access control background checks related to RBPS 12(i)–(iii) described above. The Department believes that the data submission for RBPS 12(iv) will likely be accomplished in concert with the routine hiring and access control background checks related to RBPS 12(i)–(iii) because doing them in concert

is likely to generate the potential for cost savings.[15]

Additional Data Privacy Considerations

There are various privacy requirements for high-risk chemical facilities, their designees, and the Department related to the exchange of personally identifiable information (PII) for the CFATS Personnel Surety Program. Upon receipt of PII, the Department complies with all applicable federal privacy requirements including those contained in the Privacy Act, the E-Government Act, the Homeland Security Act, and Departmental policy. The United States also follows international instruments on privacy, all of which are consistent with the Fair Information Practice Principles (FIPPs).[16] High-risk chemical facilities, or their designees, are responsible for complying with the federal, state, and national privacy laws applicable to the jurisdictions in which they do business. The Department believes that high-risk chemical facilities, or their designees, have multiple, established legal avenues that enable them to submit PII to the Department, which may include the Safe Harbor Framework,[17] and meet their privacy obligations.

II. Information Collected About Affected Individuals

Option 1: Collecting Information To Conduct Direct Vetting

If high-risk chemical facilities select Option 1 to satisfy RBPS 12(iv) for any affected individuals, the following information about these affected individuals would be submitted to the Department:

- For U.S. Persons (U.S. citizens and nationals as well as U.S. lawful permanent residents):
  - Full Name
  - Date of Birth
  - Citizenship or Gender
- For Non-U.S. Persons:
  - Full Name
  - Date of Birth
  - Citizenship
  - Passport information and/or alien registration number

To reduce the likelihood of false positives in matching against records in the federal government's consolidated and integrated terrorist watchlist, high-risk chemical facilities would also be able to submit the following optional information about affected individuals to the Department:

- Aliases
- Gender (for Non-U.S. Persons)
- Place of Birth
- Redress Number[18]

If a high-risk chemical facility chooses to submit information about an affected individual under Option 1, the following table summarizes the biographic data that would be submitted to the Department.

TABLE 1—AFFECTED INDIVIDUAL REQUIRED AND OPTIONAL DATA UNDER OPTION 1

Data elements submitted to the department	For a U.S. person	For a non-U.S. person
Full Name	Required.	
Date of Birth	Required.	
Gender	Must provide Citizenship or Gender.	Optional.
Citizenship		Required.
Passport Information and/or Alien Registration Number.	N/A	Required.
Aliases	Optional.	
Place of Birth	Optional.	
Redress number.	Optional.	

Option 2: Collecting Information To Use Vetting Conducted Under Other DHS Programs

In lieu of submitting information to the Department under Option 1 for terrorist ties vetting, chemical facilities would also have the option, where appropriate, to submit information to the Department to electronically verify that an affected individual is currently enrolled in one of the following DHS programs:

- TWIC Program;
- HME Program;
- Trusted Traveler Programs, including:
  - NEXUS;
  - FAST;
  - SENTRI; and
  - Global Entry.

Information collected by the Department about affected individuals under Option 2 would not be used to conduct duplicative vetting against the federal government's consolidated and integrated terrorist watchlist.

To verify an affected individual's enrollment in one of these programs under Option 2, the Department would collect the following information about the affected individual:

- Full Name;
- Date of Birth; and
- Program-specific information or credential information, such as unique number, or issuing entity (e.g., State for Commercial Driver's License (CDL) associated with an HME).

To further reduce the potential for misidentification, high-risk chemical facilities may also submit the following optional information about affected individuals to the Department:

- Aliases
- Gender
- Place of Birth
- Citizenship

If a high-risk chemical facility chooses to submit information about an affected individual under Option 2, the following table summarizes the biographic data that would be submitted to the Department.

TABLE 2—AFFECTED INDIVIDUAL REQUIRED AND OPTIONAL DATA UNDER OPTION 2

Data elements submitted to the department	For affected individual with a TWIC	For affected individual with an HME	For affected individual enrolled in a trusted traveler programs (NEXUS, SENTRI, FAST, or global entry)
Full Name	Required.		

[15] This ICR does not estimate the potential cost savings high-risk chemical facilities or their designees could achieve as a result of submitting data in concert with the other routine hiring and access control background checks related to RBPS 12(i)–(iii) because the scope of this ICR is limited to the Departments obligation to estimate the burden of submitting information about affected individuals to identify terrorist ties under RBPS 12(iv) in accordance with the Paperwork Reduction Act.

[16] Examples of the international privacy instruments which the United States has endorsed are: (1) Organization for Economic Cooperation and Development (OECD) Guidelines on the Protection of Privacy and Trans-border Flows of Personal Data (1980), and (2) Asia Pacific Economic Cooperation (APEC) Privacy Framework (2004).

[17] The Safe Harbor Framework, which applies to commercial information, was developed by the U.S. Department of Commerce in consultation with the European Commission in order to provide a streamlined means for U.S. organizations to comply with the European Union Data Protection Directive 95/46/EC. More information on the Safe Harbor Framework can be found at *http://export.gov/safeharbor.*

[18] For more information about Redress Numbers, please go to *http://www.dhs.gov/one-stop-travelers-redress-process#1.*

TABLE 2—AFFECTED INDIVIDUAL REQUIRED AND OPTIONAL DATA UNDER OPTION 2—Continued

Data elements submitted to the department	For affected individual with a TWIC	For affected individual with an HME	For affected individual enrolled in a trusted traveler programs (NEXUS, SENTRI, FAST, or global entry)
Date of Birth	Required.		
Expiration Date	Required.		
Unique Identifying Number	TWIC Serial Number: Required	CDL Number: Required	PASS ID Number: Required.
Issuing State of CDL	N/A	Required	N/A.
Aliases	Optional.		
Gender	Optional.		
Place of Birth	Optional.		
Citizenship	Optional.		

Under the CFATS Personnel Surety Program, a high-risk chemical facility would be able to choose to follow the process described for Option 1, and would not have to implement Option 2, even if an affected individual seeking access to the high-risk chemical facility is already enrolled in the TWIC Program, HME Program, or one of the Trusted Traveler Programs.

Option 3: Electronic Verification of TWIC

Under Option 3, a high-risk chemical facility would not need to submit information about an affected individual enrolled in the TWIC Program to the Department, if the high-risk chemical facility is able to electronically verify and validate the affected individual's TWIC through the use of a TWIC reader (or other technology that is periodically updated with revoked card information).

As discussed above, under the CFATS Personnel Surety Program, high-risk chemical facilities would also be able to choose to follow the processes described for Option 1 and/or Option 2, for some or all affected individuals already enrolled in the TWIC Program, in lieu of or in addition to Option 3.

Other Information Collected

In addition to the information about affected individuals collected under Options 1 and 2, the Department plans to collect certain information that identifies the high-risk chemical facility, or facilities, at which each affected individual has or is seeking access to restricted areas or critical assets.

The Department may also contact a high-risk chemical facility or its designees to request additional information (e.g., visa information) pertaining to affected individuals in order to clarify suspected data errors or resolve potential matches (e.g., in situations where an affected individual has a common name). Such requests will not imply, and should not be construed to indicate, that an affected individual's information has been confirmed as a match to a record of an individual with terrorist ties.

In the event that a confirmed match is identified as part of the CFATS Personnel Surety Program, the Department may obtain references to and/or information from other government law enforcement and intelligence databases, or other relevant databases that may contain terrorism information.

The Department may collect information necessary to assist in the submission and transmission of records, including electronic verification that the Department has received a particular record.

The Department may also collect information about points of contact who the Department or federal law enforcement personnel may contact with follow-up questions. A request for additional information from the Department does not imply, and should not be construed to indicate, that an individual is known or suspected to be associated with terrorism.

The Department may also collect information provided by individuals or high-risk chemical facilities in support of any adjudications requested under Subpart C of the CFATS regulation,[19] or in support of any other redress requests.[20]

The Department may request information pertaining to affected individuals, previously provided to the Department by high-risk chemical facilities or their designees, in order to confirm the accuracy of that information, or to conduct data accuracy reviews and audits as part of the CFATS Personnel Surety Program.

The Department will also collect administrative or programmatic information (e.g., affirmations or certifications of compliance, extension requests, brief surveys for process improvement) necessary to manage the CFATS Personnel Surety Program.

Under Options 1 and 2, the Department will also collect information that will allow high-risk chemical facilities and their designees to manage their data submissions. Specifically, the Department will make available to high-risk chemical facilities and their designees blank data fields. These blank data fields may be used by a high-risk chemical facility or its designees to assign each record of an affected individual a unique designation or number that is meaningful to the high-risk chemical facility. Collecting this information will enable a high-risk chemical facility to manage the electronic records it submits into the CSAT Personnel Surety application. Entering this information into the CSAT Personnel Surety application will be voluntary, and is intended solely to enable high-risk chemical facilities and their designees to search through, sort, and manage the electronic records they submit.

III. Request for Exception to the Requirement Under 5 CFR 1320.8(b)(3)

The Department is requesting from OMB an exception for the CFATS Personnel Surety Program to the PRA notice requirement in 5 CFR 1320.8(b)(3), which requires federal agencies to confirm that their information collections provide certain reasonable notices under the PRA to affected individuals. If this exception is granted, the Department will be relieved of the potential obligation to require high-risk chemical facilities to collect signatures or other positive affirmations of these notices from affected individuals. Whether or not this exception is granted, Submitters must affirm that the required privacy notice regarding the collection of personal

[19] *See* 6 CFR 27.300–345.

[20] More information about access, correction, and redress requests under the Freedom of Information Act and the Privacy Act can be found in Section 7.0 of the Privacy Impact Assessment for the CFATS Personnel Surety Program, dated May 4, 2011, and available at *http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-nppd-cfats-ps.pdf.*

information has been provided to affected individuals before personal information is submitted to the Department.[21]

The Department's request for an exception to the PRA notice requirement under 5 CFR 1320.8(b)(3) would not exempt high-risk chemical facilities from having to adhere to applicable federal, state, local, or tribal laws, or to regulations or policies pertaining to the privacy of affected individuals.

IV. Responses to Comments Submitted During 60-Day Comment Period

The Department solicited comments on four questions:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

In response to the 60-day notice that solicited comments about the CFATS Personnel Surety Program ICR, the Department received 28 comments from 2 private citizens, 8 private sector companies[22], 14 trade associations, 1 union, 1 training council, and the Ranking Member of the House of Representatives Committee on Homeland Security.

Comments Related to 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

The Department did not receive any comments suggesting that the proposed collection of information was not necessary for the proper performance of the functions of the agency.

Comments Related to 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

Comment: Several commenters suggested that the annual turnover rate of 71% for frequent unescorted visitors estimated by the Department in the 60-day notice underestimated the annual turnover rate for delivery personnel.[23] One commenter suggested that the Department adopt a higher annual turnover rate of 81.75% for all frequent unescorted visitors.

Response: The Department agreed to adopt the higher estimated rate for frequent unescorted visitor annual turnover of 81.75%. The Department's burden estimates reflect this revised assumption.

Comment: One commenter suggested that the Department made an error in Table 18 of the 60-day notice by not differentiating between the turnover rates of employees, frequent visitors, and infrequent visitors.

Response: In this notice, the Department explicitly distinguishes the turnover rates of employees, frequent visitors, and infrequent visitors when estimating the annual burden estimate.

Comment: One commenter suggested that the Department did not accurately estimate the annual burden estimate in Table 19 of the 60-day notice. Specifically, the commenter suggested that Table 19 of the 60-day notice reflects a figure ''0.50'' hours for initial submission rather than ''0.5425'' hours which was the estimated time per respondent calculated in Table 18 of the 60-day notice.

Response: The Department disagrees and believes that in Table 19 it was accurate to use the figure ''0.50'' hours when estimating the annual burden. The figure 0.50 hours is distinct and is only associated with initial submission and not the other types of transactions covered by the ICR such as updates, corrections, and removals. The figure 0.5425 hours represented the weighted average of all types of transactions and thus would have been inappropriate to use in Table 19 of the 60-day notice when estimating the annual burden.

Comment: One commenter suggested that the Department did not account for costs imposed by information submission requests the Department may require. Specifically, when the Department ''may'' require facilities to provide other pieces of information pertaining to affected individuals including visa information, the submission and transmission of records such as electronic verification that the facility provided a particular record, points of contact at a facility, and information supporting any adjudications or redress requests.

Response: In the 60-day notice, Department estimated the average time per respondent to be 0.54 hours. The Department believes that the burden associated with requests from the Department for additional information about the affected individuals will be very rare and thus de minimus in nature. The Department also believes that the burden associated with information requests to support adjudication or redress requests will also be very rare and thus de minimus as well. Finally, the Department will collect submission and transmission of records, including electronic verification that the Department has received a particular record, automatically via system log files. This collection will not impose a burden on the high-risk chemical facility or designee. Therefore, for the reasons expressed above, the Department believes it has accurately estimated the estimated time per respondent.

Comment: One commenter states that the Department did not account for the cost facilities will incur for a ''facility-by-facility vetting of individuals accessing multiples facilities.''

Response: As mentioned earlier in this notice, the Department is aware that an affected individual may be associated with multiple high-risk chemical facilities, and thus information about an affected individual may be submitted to the Department multiple times by different high-risk chemical facilities and/or their designated third parties. Therefore, for the purposes of this notice, the Department's estimation of burden accounts for the notion that an affected individual's information may be submitted by multiple times by high-risk chemical facilities and their designated third parties.

Comment: Several commenters objected to the Department's assumptions related to the potential recordkeeping burden associated with RBPS 12(iv). Namely, they objected to the idea that no potential recordkeeping should be estimated in this notice in accordance with 5 CFR 1320.3(b)(2), which directs federal agencies to not count the costs associated with the time, effort, and financial resources incurred in the normal course of their activities (e.g., in compiling and maintaining business records) if the reporting,

[21] For more information, please see the Privacy Impact Assessment for the CFATS Personnel Surety Program, dated May 4, 2011 and available at *http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-nppd-cfats-ps.pdf.*

[22] One private sector company submitted two distinct comments.

[23] See Table 6 in the 60-day notice published on March 22, 2013 at 78 FR 17690.

recordkeeping, or disclosure activities are usual and customary. Furthermore, commenters objected to the Department's belief that the types of recordkeeping associated with RBPS 12(iv) are usual and customary costs that high-risk chemical facilities would incur to conduct background checks for identity, criminal history, and legal authorization to work as required by RBPS 12(i)–(iii) and also by various other federal, state, or local laws or regulations.

Response: As mentioned earlier in this notice, the Department expects that high-risk chemical facilities or their designees (e.g., third parties or companies employing affected individuals that provide services to high-risk chemical facilities) will already possess much, if not all, of the necessary information about affected individuals as a result of standard business practices related to employment or managing of service contracts. Furthermore, the Department also expects that high-risk chemical facilities will likely consolidate RBPS 12(iv) processing with related routine hiring and access control procedures involving background checks that are already occurring prior to access by facility personnel or unescorted visitors to restricted areas or critical assets. Consolidating RBPS 12(iv) processing with these other routine procedures would allow submission of personal information already collected and maintained by facilities or their designees (e.g., a third party, contracted service company, or third party acting on behalf of a contracted service company) to the Department under RBPS 12(iv). In this notice, the Department provides several illustrative examples to further clarify the Department's continued belief that the types of recordkeeping associated with RBPS 12(iv) are usual and customary costs that high-risk chemical facilities (or designees) would incur to conduct background checks for identity, criminal history, and legal authorization to work as required by RBPS 12(i)–(iii).

Comments Related to the Quality, Utility, and Clarity of the Information to be Collected

Comment: One commenter requested specifics about the mechanics of the process on how to submit information about affected individuals to the Department.

Response: The Department will publish a user manual when the CFATS Personnel Surety Program is implemented. The user manual will contain the necessary details about how information about affected individuals may be submitted, under Option1 or Option 2, through CSAT to the Department.

Comment: One commenter requested specific information about the security or information protection requirements necessary to serve as a Submitter.

Response: While an owner or operator of a chemical facility may designate someone to submit information on its behalf, the owner or operator is responsible for satisfying all the requirements of 6 CFR 27.230(a)(12)(iv). The Department provides at 6 CFR 27.200(b)(3) that any such submitter must be an officer of the corporation or other person designated by an officer of the corporation, and must be domiciled in the United States, and is responsible for attesting to the accuracy of the submitted information.

When a high-risk chemical facilities relies on third party companies to submit appropriate information about affected individuals to the Department the same requirements will apply. The submitter(s) must be designated by an officer of the corporation, must be domiciled in the United States, and is responsible for attesting to the accuracy of the submitted information.

Comments Related to Minimizing 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

Comment: One commenter requested the ability to submit information about affected individuals ''via some type of file (spreadsheet) upload as opposed to direct data entry into CSAT.''

Response: When implemented, high-risk chemical facilities (and their designees), under Option 1 and Option 2, will have the ability to input records about affected individuals in three ways: (1) Manual entry, (2) bulk upload via Microsoft Excel file or an Extensible Markup Language (XML) file, and (3) a direct Web Service connection.

Comment: One commenter requested clarification about Option 3, specifically, if the phrase ''other technology'' means computer access to the Internet.

Response: The Department's phrase ''other technology which is periodically updated using the CCL'' was intended to cover a variety of ways a high-risk chemical facility could, in its SSP or ASP, describe how it would determine if a TWIC was revoked for cause, or revoked because it was reported lost or stolen. Revoked cards could be determined from the CCL by using an electronic card reader to compare the TWIC's Federal Agency Smart Credential Number (FASC–N) to those listed on the CCL. This could be accomplished by periodically downloading the current CCL from the Internet to either a TWIC reader or a Physical Access Control System (PACS).[24] The status of a TWIC can also be confirmed by using a TWIC reader or PACS to check the Certificate Revocation List (CRL) for TWIC cards. The Department will also consider, in an SSP or ASP, any other specific innovative technologies that could allow high-risk chemical facilities to leverage the CCL or CRL for compliance with RBPS 12.

Other Comments Submitted in Response to the Information Collection Request

Comment: Several commenters suggested the Department develop substantially different processes than the processes described by the Department in the CFATS IFR published in April 2007. One commenter suggested that the Department establish a process to certify vendors so that high-risk chemical facilities could rely on the certification as proof that the vendor has implemented security measures to ensure that its employees do not have terrorist ties. Several commenters suggested establishing a voluntary process by which the Department could collect information directly from affected individuals, and subsequently issue individuals unique submission numbers. The commenters suggested that an affected individual could then present the unique submission number to the high-risk chemical facility as evidence that the Department had conducted a security threat assessment to determine whether or not they had any terrorist ties.

Response: Neither the notice published by the Department on March 22, 2013, nor this notice are rulemaking notices. These notices are published in accordance with the Paperwork Reduction Act and are not seeking to expand or change CFATS. Rather, these Paperwork Reduction Act notices are seeking comments on the burden associated with collecting information necessary to implement the CFATS Personnel Surety Program described in the CFATS IFR.

Comment: One commenter suggested that the Department's ''preconditions'' (i.e., the collection of information under Option 2 to verify enrollment in the TWIC, HME, and Trusted Traveler

[24] *See* footnote 8, *supra.*

Programs) ''ipso facto do not provide reciprocal recognition of these vetting programs.'' The commenter further suggested that the Department was not following White House recommendations to promote comparability and reciprocity across credentialing and screening programs.[25] Specifically, recommendation 16 of the Surface Transportation Security Priority Assessment, which recommends that the federal Government ''create a more efficient Federal credentialing system by reducing credentialing redundancy, leveraging existing investments, and implementing the principle of 'enroll once, use many' to reuse the information of individuals applying for multiple access privileges.''

Response: The collection of information under Option 2 to verify enrollment of an affected individual in the TWIC, HME, and the Trusted Traveler Programs does recognize and leverage the vetting activities of the TWIC, HME, and Trusted Traveler Programs. Further, the CFATS Personnel Surety Program aligns with the recommendations of the Surface Transportation Security Priority Assessment.

In discussions with high-risk chemical facilities over the past several years, the Department has attempted to correct the persistent misinterpretation held by commenters about the concept of ''enroll once, use many'' as meaning that an individual should only need to submit information to the Department once, and that the Department should never collect information from that individual again. Rather, the Department has defined, and continues to define, the ''enroll once, use many'' concept as the ability to reuse previously submitted program enrollment information and/or vetting results upon collection of sufficient information to confirm an individual's prior enrollment in a Department program or prior vetting results.

One example of how the Department has implemented ''enroll once, use many'' in a DHS program other than the CFATS Personnel Surety Program is when a person whose is enrolled in the TWIC Program seeks to obtain an HME. TSA collects sufficient information from the person enrolled in the TWIC Program to verify the person's identity and verify the existence of a current and valid security threat assessment.[26] If verified, the existing STA is leveraged for the HME, which provides for efficiencies such as reduced enrollment cost and shorter processing time.

Comment: Several commenters suggested that the collection of information under Option 2 to verify an affected individual's enrollment in the TWIC, HME, and the Trusted Traveler Programs qualifies as a duplicative background check.

Response: The information collected by the Department under Option 2 is used to verify an affected individual's enrollment in a DHS program. The information collected under Option 2 is not used to conduct a duplicative background check.

Comment: Another commenter suggested that the collection of information under Option 2 from affected individuals in possession of an HME as a proposal to ''screen drivers carrying hazardous materials'' violates 49 U.S.C. 5103a(g)(1)(B)(i) which states that ''[a]n individual with respect to whom the Transportation Security Administration—(I) has performed a security threat assessment under this section; and (II) has issued a final notification of no security threat, is deemed to have met the requirements of any other background check that is required for purposes of any Federal law applicable to transportation workers if that background check is equivalent to, or less stringent than, the background check required [to receive an HME].''

Response: Collecting information to verify an affected individual's enrollment, so that if verified the Department may rely on the results of the security threat assessment already performed and being recurrently performed, is not prohibited by 49 U.S.C. 5103a(g)(1)(B)(i), and comports with the means of vetting verification described in the CFATS IFR.

Comment: One commenter suggested that the credentials be accepted ''at face value.'' The commenter further suggested that, ''[t]he fact [that affected individuals] have a valid card meets the requirement specifically detailed in RBPS 1[2] and any further collection and submission of PII not only exceeds DHS' authority but results in duplication of effort and unnecessary cost to both the facilities and to DHS.'' Another commenter suggested that possession of a credential was ''proof'' that the affected individual was vetted and is being revetted for terrorist ties. Another commenter took an opposing view, and supported Option 2. The commenter agreed with the Department's intention to collect information to electronically verify and re-verify affected individuals' enrollments in the TWIC, HME, and Trusted Traveler Programs.

Response: While visual inspection has some security benefits, electronic verification is significantly more reliable than visual inspection for ensuring that a TWIC, HME, or Trusted Traveler Credential is not counterfeit or expired, or has not been reported lost, stolen, damaged, or revoked. Accordingly, if a high-risk chemical facility chooses to implement Option 2, the high-risk chemical facility (or its designees) must submit information to the Department about affected individuals possessing the appropriate credentials to enable the Department to electronically verify, with the relevant component of DHS (i.e., CBP or TSA) using their authoritative and original data, the affected individuals' enrollments in these other programs.

Comment: Several commenters suggested that the Department was requiring all visitors to have their information submitted to the Department 48 hours in advance of entering the site, which does not comport with the operational realities of the trucking industry.

Response: The Department disagrees that this ICR does not comport with the operational realities of the trucking industry. The Department disagrees for four reasons. First, if a high-risk chemical facility chooses to allow visitors (e.g., truck operators) access to the high-risk chemical facilities, for only those visitors with unescorted access to restricted areas or critical assets will the facility need to comply with RBPS 12. Second, the Department does not believe it likely that many high-risk chemical facilities will propose in their SSPs or ASPs to allow large numbers of visitors who visit the high-risk chemical facility infrequently to have unescorted access to restricted areas and critical assets, because then all four types of background checks listed in RBPS 12 would be required to be conducted for them. If the historical practice of a chemical facility has been to allow unescorted visitors access to the restricted areas or critical assets, without performing any background checks on them, the Department recognizes that the business practices of such a high-risk chemical facility will need to change as a result of RBPS 12(i), (ii), (iii), and (iv). Third, the Department generally expects that high-risk chemical facilities and designees will likely consolidate RBPS 12(iv) processing with related routine hiring and access control procedures already occurring prior to access by facility personnel or unescorted visitors to restricted areas or critical assets. As a

[25] Recommendation 16 of the Surface Transportation Security Priority Assessment may be found on page 21 of the 2010 White House report at *http://www.whitehouse.gov/sites/default/files/rss_viewer/STSA.pdf.*

[26] The online form may be found at *https://hazprints.tsa.dhs.gov/Public/STAStatus.aspx*

result of discussions with industry stakeholders the Department understands that, in general, routine hiring and access control procedures are already in place for individuals, likely to be designated as affected individuals because of access to restricted areas or critical assets, working on behalf of trucking companies. Fourth, in the default schedule provided later in this notice, the Department suggests that information about a new affected individual could be provided to the Department no later than 48 hours prior to that affected individual obtaining access to the restricted areas or critical assets at a high-risk chemical facility. The Department would like to highlight that information about a particular affected individual does not need to be re-submitted to the Department 48 hours prior to each instance of access by that particular affected individual. Rather, if a high-risk chemical facility, or its designees, are able to determine that an affected individual requires repeated access to restricted areas or critical assets, the high-risk chemical facility may structure the data submission to CSAT so as to indicate that the affected individual about whom the high-risk chemical facility or designee is submitting information to the Department will have access to restricted areas or critical assets on an ongoing basis. A high-risk chemical facility, or its designees, may also structure the data submission to CSAT to indicate that the affected individual will have access to restricted areas or critical assets for a discreet period of time.

Therefore, for the reasons provided above, the Department disagrees that this ICR does not comport with the operational realities of the trucking industry.

Comment: Several commenters raised objections to submitting a new affected individual's information at least 48 hours prior to their access to restricted areas or critical assets at high-risk chemical facilities. Some commenters suggested that submission of a new affected individual's information should occur, rather, only at the time the new affected individual actually accesses restricted areas or critical assets. Alternatively, some commenters suggested that that submission of a new affected individual's information should occur after the affected individual accessed restricted areas or critical assets.

Response: The Department, in the default schedule provided later in this notice, suggests that information about new affected individuals could be provided to the Department no later than 48 hours prior to the affected individual obtaining access to the restricted areas or critical assets at the high-risk chemical facility. The Department believes that 48 hours is a reasonable amount of time, which is necessary for the Department to successfully perform a background check for terrorist ties. Therefore the Department has suggested a period of time (i.e., 48 hours) as a default for when high-risk chemical facilities could submit information to the Department for new affected individuals rather than at the time, or after the time, a new affected individual obtains access to restricted areas or critical assets. Later in this notice, the Department also reiterates that it will consider alternative schedules suggested by high-risk chemical facilities in their SSPs or ASPs, for Option 1 or Option 2, based on their unique circumstances.

Comment: Several commenters expressed concern about contractors and visitors arriving upon short or no notice such as when a production unit goes down or otherwise requires emergency maintenance.

Response: The Department understands that contractors and visitors may arrive with only short or no notice such as when a production unit goes down or otherwise requires emergency maintenance. The Department described, in the illustrative examples provided earlier in this notice, how a high-risk chemical facility could comply with RBPS 12, ensuring that all four background checks are conducted in such situations. High-risk chemical facilities should describe in their SSP or ASP the procedures and process [27] to plan for and prepare for exceptional circumstances (e.g., unpredictable but foreseeable situations) that result in situations that require an affected individual to have short or no notice before accessing the restricted areas or critical assets at high-risk chemical facilities such as when a production unit goes down or otherwise requires emergency maintenance.

Comment: Several commenters pointed out to the Department that TSA recently modified the TWIC application form [28] to expand the population of individuals eligible to apply for a TWIC. The commenters uniformly suggested that the Department expand the population of individuals eligible to apply for a TWIC to include affected individuals that have or are seeking access to the restricted areas or critical assets of high-risk chemical facilities.

Response: Any determination the Department or TSA makes to expand or revise the population of individuals eligible to apply and pay for TWICs is outside the scope of this notice.

Comment: Some commenters supported the Department's determination that certain groups are not affected individuals, specifically, (1) Federal officials that gain unescorted access to restricted areas or critical assets as part of their official duties; (2) state and local law enforcement officials that gain unescorted access to restricted areas or critical assets as part of their official duties; and (3) emergency responders at the state or local level that gain unescorted access to restricted areas or critical assets during emergency situations. One commenter did not support the determination and suggested that this determination only incentivized terrorists to assume the identities of law enforcement officials rather than workers.

Response: The Department has opted to align how CFATS treats certain groups of persons with how those same populations are treated under the TWIC Program.[29]

Comment: One commenter objected to the inclusion of railroad employees as potentially affected individuals.

Response: Railroad employees may be affected individuals if the high-risk chemical facility has defined railroad employees in their SSP or ASP as either (1) facility personnel who have access, either unescorted or otherwise, to restricted areas or critical assets, or (2) unescorted visitors who have access to restricted areas or critical assets.

Each high risk chemical facility can choose which option or options it wishes to implement with regard to railroad employees that would be affected individuals. The Department notes that many railroad employees have TWICs and encourages high-risk chemical to consider whether Option 2 or Option 3 may provide a reasonable solution.

Comment: One commenter suggested that the 60-day notice was unclear as to which set of individuals would be subject to vetting for terrorist ties. The

[27] One example applied from the illustrative scenarios would be that the high-risk chemical facility would have in it contract clauses that require any contractors that provides emergency repair or maintenance to have background checks completed prior to arrival at the high-risk chemical facility, to include the submission of information about the affected individuals to the Department under Option 1 or Option 2.

[28] The revised TWIC application form may be viewed at (*http://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201210-1652-001&icID=182269*).

[29] See 33 CFR 101.514 at (*http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=ef5225aac07eddf7f914e57c3fda36bf&ty=HTML&h=L&r=PART&n=33y1.0.1.8.49#33:1.0.1.8.49.5.26.4*)

commenter pointed out that the Department used the term ''affected individuals'' inconsistently. In parts of the 60-day notice, the Department described the term to mean ''facility personnel or unescorted visitors with access to restricted areas or critical assets at high-risk chemical facilities.'' In other parts of the 60-day notice the Department described the term to mean ''(1) facility personnel who have access, either unescorted or otherwise, to restricted areas or critical assets, and (2) unescorted visitors who have access to restricted areas or critical assets.''

Response: 6 CFR 27.230(a)(12) defines the scope of individuals for whom RBPS 12 (and thus RBPS 12(iv)) background checks are required. 6 CFR 27.230(a)(12) defines the scope as ''facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets'' at high-risk chemical facilities. The Department has provided additional clarity in previous notices that affected individuals are (1) facility personnel who have access, either unescorted or otherwise, to restricted areas or critical assets, and (2) unescorted visitors who have access to restricted areas or critical assets.

In response to public comments received on earlier notices, the Department clarified, and does so here in this notice, that individual high-risk facilities may classify particular contractors or categories of contractors either as ''facility personnel'' or as ''visitors.'' This determination should be a facility-specific determination, and should be based on facility security, operational requirements, and business practices.

Comment: One commenter objected to the Department's intention to collect information that identifies the high-risk chemical facility or facilities at which each affected individual has or is seeking access.

Response: The Department requires this information so that in the event of a positive match, the Department may provide the information to appropriate federal law enforcement entities.

Comment: One commenter suggested that the ICR approach was deficient because the Department, based on public comments received, is unable to amend the text of 6 CFR part 27. The commenter suggested that without the benefit of a rule published in the Code of Federal Regulations, covered facilities will not know what identifying information is to be provided on individuals, and within what timeframes thus rendering the standards for personnel surety invisible.

Response: The ICR and the associated 60-day and 30-day notices do not modify 6 CFR part 27. The ICR and associated notices provide descriptions of the nature of the CFATS Personnel Surety Program's information collection, categories of respondents, estimated burden, and costs. The Department is publishing this notice in accordance with the Paperwork Reduction Act because, although the Department has the authority to implement the CFATS Personnel Surety Program, the Department must still comply with the Paperwork Reduction Act and its implementing regulations before collecting the necessary information from high-risk chemical facilities or designees.

Comment: One commenter suggested that the three options described in the 60-day notice are an impermissible mandate. The commenter states that RBPS 12 does not require that a facility continuously vet covered individuals against the TSDB.

Response: In April 2007, the CFATS IFR outlined two options, described earlier in this notice, for high-risk chemical facilities to identify individuals with terrorist ties. Both options rely on recurrent vetting, which was one of the underlying bases for including those options in the CFATS IFR.

Comment: Several commenters suggested that the CFATS Personnel Surety Program outlined in the ICR exceeds the Department's statutory authority, because the proposed CFATS Personnel Surety Program design conflicts with Section 550. Commenters suggested that the CFATS Personnel Surety Program's design eliminates a high-risk facility's flexibility to achieve compliance with RBPS–12. The commenters cited the following examples: (1) The ''48-hour rule,'' (2) ''submission of PII on valid TWIC, DOT HAZMAT, or Trusted Traveler card holders,'' and (3) ''notification when personnel depart a regulated site[.]''

Response: The CFATS Personnel Surety Program will not exceed the Department's statutory authority, nor will it violate or conflict with Section 550. With respect to the specific examples cited by commenters, the Department does not believe these examples demonstrate a violation of the statutory requirement that the Department not disapprove a Site Security Plan on the basis of the presence or absence of a particular security measure.

Not only does the Department disagree that 48-hour advance submission violates Section 550, the Department also disagrees with the characterization of the default schedule as a ''rule.'' As discussed earlier in this notice, the Department is not seeking to implement a new regulation. Rather, this notice is published in accordance with the Paperwork Reduction Act.

The Department disagrees that a default expectation that high-risk chemical facilities or designees submit information about new affected individuals at least 48 hours in advance of access eliminates a high-risk facility's flexibility to achieve compliance with RBPS–12. A high-risk chemical facility may suggest alternative schedules, for Option 1 or Option 2, based on their unique circumstances in their SSPs or ASPs.

The Department also disagrees that the ''submission of PII on valid TWIC, DOT HAZMAT, or Trusted Traveler card holders'' violates Section 550. The CFATS Personnel Surety Program will not exceed the Department's statutory authority, nor will it violate or conflict with Section 550 because the Department will provide and approve sufficient alternative methods for a high-risk chemical facility to satisfy the terrorism ties background check portion of RBPS 12. A high-risk chemical facility does not have to select Option 2. Rather, if a high-risk chemical facility or its designees is unable or unwilling to submit information about affected individuals to verify their enrollment, a high-risk chemical facility may select Option 1, Option 3, or propose another alternative.

The Department also notes the commenter's use of the term ''valid.'' Collection of information is necessary under Option 2 because it would be inappropriate to have confidence in the *validity* of a credential based solely on a visual inspection of the credential. Electronic verification of the affected individuals' enrollments in other programs provides significantly greater confidence that the credential in the possession of the affected individual is not counterfeit or expired, or has not been reported lost, stolen, damaged, or revoked.

Finally, the Department disagrees that ''notification when personnel depart a regulated site'' violates Section 550. The CFATS Personnel Surety Program does not require ''notification when personnel depart a regulated site.'' Rather the Department requires notification when an affected individual whose information has been submitted under Option 1 or Option 2 no longer has access to restricted areas or critical assets. This distinction is important—the Department has not suggested that it expects high-risk chemical facilities to update the information it sends to DHS through CSAT in real time as individuals depart the workplace, nor

has it suggested that notifications are required under Option 3 or under any other options high-risk chemical facilities might propose to DHS in their SSPs or ASPs. Notifications about individuals whose information has been submitted to DHS under Option 1 and Option 2, and who will subsequently lose access to restricted areas or critical assets, could occur before or after access is lost—high-risk facilities could propose schedules for this type of notification to DHS in their SSPs or ASPs, and DHS would evaluate these proposals on a case-by-case basis, taking into account unique facility operational and security needs.

The primary distinction between ''notification when personnel depart a regulated site'' and the Department's requirement to be notified under Options 1 and 2 when an affected individual no longer has access is that the CFATS Personnel Surety Program is not tracking the real-time access of an affected individual at a high-risk chemical facility. Rather, the Department, under the CFATS Personnel Surety Program is seeking to ensure that affected individuals (whether they enter several times a day or only once over the time period in which they have the capability to enter) are checked for terrorist ties. This difference means that high-risk chemical facilities or their designees only need to notify the Department when to cease vetting once. This is in stark contrast to the multiple notifications that would be necessary if the Department required notification when ''personnel depart a regulated site.''

High-risk chemical facilities and their designees have at least two alternatives in how to notify the Department that an affected individual whose information has been submitted to DHS under Option 1 or Option 2 no longer has access. The first alternative is to submit the notification when the affected individual no longer has access. Under this alternative, a high risk chemical facility or designee would submit information about the affected individual initially and later in a separate communication notify the Department that the affected individual no longer has access. A second alternative the Department has provided is to allow the high-risk chemical facility or designee the ability to specify when the Department should stop vetting at the time of the initial submission.

There are also additional alternatives available to high-risk chemical facilities. Under Option 3, the high risk chemical facilities may electronically verify and validate an affected individual's TWIC, through the use of TWIC readers (or other technology which is periodically updated with revoked card information), rather than submitting information about the affected individual to the Department. Consequently, there is no need for a high risk chemical facility to notify the Department when the affected individual no longer has access if the affected individual's TWIC is electronically verify and validated, through the use of TWIC readers (or other technology which is periodically updated with revoked card information). As previously discussed in this notice, high-risk chemical facilities are also able to propose other options for DHS consideration as part of their SSPs or ASPs.

In conclusion, the only way the Department will know that an affected individual no longer has or is seeking access, under Option 1 or Option2, is if the facility (or their designee) notifies the Department when personnel no longer have (or no longer are seeking) access to a regulated facility's restricted areas or critical assets. The Department disagrees that this aspect of the CFATS Personnel Surety Program exceeds the Department's statutory authority, violates, or conflict with Section 550.

Comment: Several commenters suggested that the Department, in particular NPPD, has in the design of the CFATS Personnel Surety Program refused to leverage credentials from comparable programs. The commenter implied that NPPD could consider how TSA opted to implement the ''Air Cargo Screening Program'', and how ATF implemented the Employee Possessor Program.

Response: Not all federal background checks conduct checks for terrorist ties that are equivalent to the background check for terrorist ties being conducted by the CFATS Personnel Surety Program. The Department has evaluated the ATF Employee Possessor Program and identified that the Employee Possessor Program conducts point-in-time vetting against the TSDB, which means that ATF's checks are conducted at only specified times, not on a recurrent basis. Recurrent vetting is a DHS best practice and compares an affected individual's information against new and/or updated TSDB records as new and/or updated records become available.

The Indirect Air Carrier (IAC) and the Certified Cargo Screening Program (CCSP) programs both conduct terrorist ties vetting equivalent to the terrorist ties vetting that would be conducted under Option 1. After the initial implementation of the CFATS Personnel Surety Program, if (A) the Department learns through interactions with CFATS stakeholders that a reasonable percentage of affected individuals participate in the IAC and CCSP programs, and (B) there is substantial interest from members of the regulated community in leveraging the IAC and CCSP programs, then NPPD may consider allowing high-risk chemical facilities to submit the full name, date of birth, and appropriate program-specific information or credential information necessary to enable the Department to electronically verify the affected individuals' enrollments in IAC and CCSP programs.

Comment: Several commenters suggested that the ICR claims to leverage the TWIC, HME, and the Trusted Traveler Programs, but facilities or their designees must submit more information under Option 2 than if the high-risk chemical facility or designee opted to submit the minimum information required under Option 1. The commenters conclude those who have already been screened face more burdens and greater scrutiny than those lacking any screening at all.

Response: The Department has long conceded that the minimum number of data elements necessary to conduct vetting under Option 1 may, in some cases, be less than the minimum number of data elements to electronically verify an affected individual's enrollment in the TWIC, HME or Trusted Traveler Programs. This is because of how the TWIC, HME, and Trusted Traveler databases were initially constructed, not because affected individuals undergo extra scrutiny when the Department electronically verifies their enrollment

Comment: One commenter requested clarification about the process of releasing employee information.

Response: The scope of this notice is limited to the information submitted by a high-risk chemical facility (or designee) to the Department, which is subject to the Privacy Act of 1974 (5 U.S.C. 552a). The Department will only release or disclose this information in accordance with the applicable Privacy Act System of Records Notice. The Submitter(s) of each high-risk chemical facility (or their designee) will be required to affirm that, in accordance with their Site Security Plans, notice required by the Privacy Act of 1974 has been given to affected individuals before their information is submitted to DHS. DHS has made available to high-risk chemical facilities a sample notice that complies with subsection (e)(3) of the Privacy Act (5 U.S.C. 552a(e)(3)) in the

CFATS Personnel Surety Program PIA.[30] This notice would: (1) Notify those individuals that their information is being submitted to DHS for vetting against the Terrorist Screening Database, and that in some cases additional information may be requested and submitted in order to resolve a potential match; (2) instruct those individuals how to access their information; (3) instruct those individuals how to correct their information; and (4) instruct those individuals on procedures available to them for redress if they believe their information has been improperly matched by the Department of Homeland Security to information contained in the Terrorist Screening Database. Individuals have the opportunity and/or right to decline to provide information, however, if an individual declines to provide information, he or she may impact a high-risk chemical facility's compliance with CFATS.

In addition, high-risk chemical facilities (or designees) may have information about an affected individual obtained for other purposes (e.g., compliance with RBPS 12(i)–(iii)) that was never submitted to the Department and thus not subject to the Privacy Act. While under CFATS no specific controls are required for information collected by high-risk chemical facilities with regard to RBPS 12(i)–(iii), the Department expects that high-risk chemical facilities will protect and safeguard the information as outlined in their SSP and in accordance with any other federal, State, or local privacy laws which do have jurisdiction relative to the collection of the information.

Comment: One commenter expressed concern about the Department's request for an exception to the PRA notice requirement in 5 CFR 1320.8(b)(3) when the Department is also requiring that Submitters must affirm that the required privacy notice regarding the collection of personal information has been provided to affected individuals before personal information is submitted to the Department. Specifically, the commenter suggested that ''in order to make such an affirmation in good faith, the facility would almost certainly need to obtain signatures or other positive affirmations from affected individuals to protect itself against any claims of non-compliance.''

Response: The Department believes that it is possible for a high-risk chemical facility or designee to affirm, in good faith, that the affected individual has been given adequate notice pursuant to the Privacy Act without collecting a signature from each and every affected individual. For example, a high-risk chemical facility or its designees could consider including an appropriate statement in pay checks, posting a sign near a restricted area or critical asset, including an appropriate statement within existing standard privacy notices provided to individuals when collecting information during a routine and normal hiring process, or including an appropriate statement in a letter.

Comment: One commenter requested clarification about what the Department will do with the information it collects. The commenter further suggested that reducing the security risk associated with personnel RBPS 12 could be in conflict with selecting the ''best qualified personnel/contractor'' to work in the restricted area or critical asset.

Response: The Department will, under this ICR, collect the information necessary to implement the CFATS Personnel Surety Program. The CFATS Personnel Surety Program will use the information to identify affected individuals with terrorist ties.

With respect to the potential conflict between reducing security risk and selecting the best qualified personnel/contractor, the Department stated in the CFATS IFR, ''that the level of screening for employees and contractors should be commensurate with the access provided. As part of this approach, the facility shall identify critical assets and restricted areas and establish which employees and contractors may need unescorted access to those areas or assets, and thus must undergo a background check . . .''.[31] A facility's approach to personnel surety, including its defined restricted areas and critical assets, shall be detailed in the Site Security Plan that the facility submits to the Department for approval.

Comment: Some commenters suggested that without a commitment from the Department to be notified when an affected individual has terrorist ties, there was little value to the default schedule which has high-risk chemical facilities submitting information about new affected individuals 48 hours prior to access to restricted areas or critical assets.

Response: The CFATS Personnel Surety Program, when implemented, will identify affected individuals with terrorist ties. The Department has procedures in place that it will follow to resolve the match and coordinate with appropriate law enforcement entities as necessary. The Department believes that 48 hours is a reasonable amount of time for the Department to successfully perform a background check for terrorist ties, and to coordinate with appropriate law enforcement entities as necessary.

Comment: Several commenters suggested that by not committing to notify high-risk chemical facilities or designees when an affected individual has terrorist ties, the Department is increasing the risk of an affected individual with terrorist ties obtaining access to the restricted areas or critical assets at a high-risk chemical facility.

Response: The Department's design of the CFATS Program is intended to promote and enhance the security of high-risk chemical facilities; the Personnel Surety Program is one element of the larger CFATS Program. To prevent a significant threat to a facility or loss of life, a high-risk chemical facility will be contacted where appropriate and in accordance with federal law and policy, as well as law enforcement and intelligence requirements.

Comment: One commenter suggested that the design of the CFATS Personnel Surety Program appears to indicate the Department is playing an investigative role rather than a preventative role.

Response: The CFATS Personnel Surety Program is designed to identify affected individuals with terrorist ties who have or are seeking access to restricted areas or critical assets at high-risk chemical facilities. The Department does not lead the investigation of any affected individual with terrorist ties; rather the Department supports law enforcement investigation activity. The Department recognizes the significant and vested interest the high-risk chemical facility or designee may have in ensuring an affected individual with terrorist ties does not successfully carry out a terrorist attack against or involving a high-risk chemical facility.

Comment: One commenter requested that the Department define what a high-risk chemical facility is.

Response: Public Law 109–295 required the Department to identify and regulate the security of high-risk chemical facilities. The CFATS regulations implement this statute and describe how DHS determines which chemical facilities are high-risk chemical facilities. Defining high-risk chemical facilities is beyond the scope of this notice and is beyond the scope of the ICR for the CFATS Personnel Surety Program.

[30] Available at *http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-nppd-cfats-ps.pdf.*

[31] *See* 72 FR 17688 (April 9, 2007) at *https://www.federalregister.gov/articles/2007/04/09/E7-6363/chemical-facility-anti-terrorism-standards#p-302.*

Comment: Several commenters pointed out that under Option 1, the Department will not be providing the results (i.e., that the affected individual does or does not have terrorist ties) to the high-risk chemical facility or designee, while under Option 2, the Department will be providing the results (i.e., that the Department was able to electronically verify that the affected individual is currently enrolled in either the TWIC, HME, or Trusted Traveler Programs). Some commenters suggested that not providing results under Option 1 but providing results under Option 2 was confusing. Some commenters suggested that by providing results under Option 2, high-risk chemical facilities will have greater confidence that the affected individual does not have terrorist ties (and the credential is not expired, has not been revoked, and is not fraudulent). The commenters pointed out that high-risk chemical facilities would also have greater confidence than when only relying on the visual inspection of the TWIC or other federal credential.

Response: The Department has designed the CFATS Personnel Surety Program to support high-risk chemical facilities' compliance with RBPS 12(iv) through a variety of options. The Department does agree that the flexibility high-risk chemical facilities and designees have does increase the complexity of the CFATS Personnel Surety Program, however, this flexibility increases the ability of each high-risk chemical facility to be able to tailor their SSP or ASP to their unique business operations when considering how to comply with RBPS 12(iv).

The Department also believes that this flexibility provides ancillary benefits. Specifically, a high-risk chemical facility may choose to rely on the electronic verification and re-verifications provided by the Department under Option 2 to demonstrate compliance with RBPS 12(i)–(iii). A high-risk chemical facility may choose to rely on the Department's electronic verification and re-verification (provided via CSAT) under Option 2 not only for RBPS 12(iv) but also RBPS 12(i)–(iii) because an affected individual's enrollment in the TWIC, HME, and Trusted Traveler Programs is dependent not only on an equivalent check for terrorist ties, but on several other factors such as a verification of identity, legal authorization to work, and a criminal history check.

Therefore, a high-risk chemical facility may, in their SSP or ASP, choose to rely on the Department's electronic verification and re-verification that an affected individual is currently enrolled in the TWIC, HME, and Trusted Traveler Programs as a means of complying with RBPS 12(i)–(iii). High-risk chemical facilities should carefully consider whether the specific elements of the security threat assessments performed under the TWIC, HME, or Trusted Traveler Programs meet their business and security needs before choosing to rely on them for compliance with RBPS 12(i)–(iii) in their SSP or ASP.

The Department would like to highlight that, under Option 2, high-risk chemical facilities or designees will be able to, for the first time, electronically verify an affected individual's enrollment in either the HME Program or Trusted Traveler Programs. Consequently, a high-risk chemical facility or designee may choose to rely on the Department verification of enrollment, Under Option 2, to comply with RBPS 12(iv) and RBPS 12(i)–(iii).

Comment: Several commenters suggested that providing information about an affected individual to the Department prior to access would complicate the ability of a high-risk chemical facility or designee to substitute contract workers, service providers, third party carriers, and the like on short notice in the event of an accident, illness or change in work assignment/scope.

Response: Earlier in this notice the Department outlined its understanding about how high-risk chemical facilities and designees could include steps for RBPS 12(iv) in their normal business operations when conducting the routine and normal background checks required for RBPS 12(i)–(iii). The steps a high-risk chemical facility normally takes to comply with RBPS 12(i)–(iii) when faced with substitute contract workers, service providers, third party carriers, and the like on short notice in the event of an accident, illness or change in work assignment/scope should be a part of a high-risk chemical facility's SSP or ASP. These steps, or specific alternative steps to comply with RBPS 12(iv) could also be a part of, or incorporated within, those steps a high-risk chemical facility implements to comply with RBPS 12(i)–(iii) in their SSP or ASP.

In addition, high-risk chemical facilities are welcome to propose alternative or supplemental options not described in this PRA notice in their SSPs or ASPs. The Department will assess the adequacy of such alternative or supplemental options on a facility-by-facility basis, in the course of evaluating each facility's SSP or ASP.

Comment: Submitters further suggested that providing information about an affected individual to the Department prior to access could also complicate the admittance of specialized crews brought in to accomplish emergency repairs or provide emergency response services. Some commenters suggested that the Department's approach to allow each high-risk chemical facility to address these issues in their SSP or ASP is not adequate because the absence of uniform guidance across all the sectors, programs and procedures will result in inconsistent processes and procedures.

Response: Section 550 of Public Law 109–295 established a standards based regulatory regime to allow each high-risk chemical facility to propose in their SSP or ASP those security measures which make sense for its business operations and security risk. This will naturally result in inconsistent processes and procedures across high-risk chemical facilities. The Department believes that the intent of Section 550 is that flexibility (and thus some subsequent variation) is in fact a desired outcome of CFATS rather than a negative and unanticipated result of the CFATS regulatory program.

The Department would also like to point out that P.L. 109–295 and its implementing regulations do not prohibit high-risk chemical facilities from developing consistent approaches or from adopting consistent security measures or security protocols.

Comment: Several commenters pointed out an apparent inconsistency between the Department's statement that high-risk chemical facilities are not required to create, keep, or retain records under RBPS 12(iv) and the Department's statement that it may request information pertaining to affected individuals, previously provided to the Department by high-risk chemical facilities, or their designees, in order to confirm the accuracy of that information, or to conduct data accuracy reviews and audits as part of the CFATS Personnel Surety Program. Commenters suggested that if records are not required to be kept it is unclear (1) how the Department can expect facilities to provide information on affected individuals to confirm the accuracy of previously submitted information or (2) how the Department can subject high-risk chemical facilities to data accuracy reviews and audits.

Response: The Department disagrees that there is a contradiction because high-risk chemical facilities or their designees will already possess or have access to information about many affected individuals as a result of standard business practices related to employment or managing of service contracts. The Department also

recognizes that, unrelated to this Information Collection, high-risk chemical facilities may propose to maintain different sorts of records or information related to RBPS 12 as part of their SSPs or ASPs, and the Department expects that the records or information available could vary from one high-risk chemical facility to another. The types of information the Department could request from high-risk chemical facilities as part of data accuracy reviews or audits could thus vary from facility to facility, based on each facility's standard business practices and SSP or ASP.

Comment: Several commenters stated that they do not routinely collect information about affected individuals who are not employees (e.g., contractors and visitors).

Response: The Department understands that high-risk chemical facilities may not routinely collect information about affected individuals who are not employees. Earlier in this notice the Department outlined several illustrative scenarios which describe some common business operations as part of which high-risk chemical facilities could manage the background check requirements of contractors and visitors under RBPS 12. In these illustrative scenarios there is not an expectation high-risk chemical facilities will receive and subsequently re-transmit the information to the Department under Option 1 or Option 2. Though such an approach is not precluded, the Department will allow wide latitude to high-risk chemical facilities to enable third parties to submit information about affected individuals directly to the Department, to satisfy RBPS 12(iv).

Comment: Several commenters requested clarity about what records would be considered government records.

Response: Information about affected individuals held by the Department are government records. Thus information about affected individuals obtained from the Department (via CSAT) by high-risk chemical facilities or their designees are government records. There is often confusion about copies of information which is best clarified through illustrations.

- ILLUSTRATION #1: A high-risk chemical facility or designee holds information about affected individuals which it obtained to perform the four background checks required under RBPS 12. This information does not qualify as government records.
- ILLUSTRATION #2: A high-risk chemical facility or designee holds information about affected individuals which it obtained to perform the four background checks required under RBPS 12. The high-risk chemical facility or designee submits portions of the information necessary under Option 1 and Option 2 to the Department via CSAT. The information in the possession of the high-risk chemical facility or designee does not qualify as government records.
- ILLUSTRATION #3: A high-risk chemical facility or designee holds information about affected individuals which it obtained to perform the four background checks required under RBPS 12. The high-risk chemical facility or designee submits portions of the information necessary under Option 1 and Option 2 to the Department via CSAT. The high-risk chemical facility or designee logs into CSAT and downloads, prints, or copies one or more records about affected individuals. Only the records downloaded, printed, or copied from CSAT are government records.
- ILLUSTRATION #4: A high-risk chemical facility or designee holds information about affected individuals which it obtained to perform the four background checks required under RBPS 12. The high-risk chemical facility or designee submits portions of the information necessary under Option 1 and Option 2 to the Department via CSAT. The high-risk chemical facility or designee logs into CSAT and downloads only whether or not an affected individual, under Option 2, has or has not been electronically verified as enrolled in the TWIC, HME, or Trusted Traveler Programs. The record of an affected individual's enrollment status provided by the Department is a government record.

Comment: Commenters requested additional information about what information and records, related to the CFATS Personnel Surety Program was and was not considered Chemical-terrorism Vulnerability Information (CVI).

Response: The Department does not generally expect information and records related to the CFATS Personnel Surety Program to contain CVI.

In the May 2011 CFATS Personnel Surety Program Privacy Impact Assessment (PIA), the Department previously indicated that it would issue a ''verification of receipt'' and that the ''verification of receipt qualifies as Chemical-terrorism Vulnerability Information.[.]'' [32] However, as discussed earlier in this notice, instead the Department now intends to provide high-risk chemical facilities, and their designees, the ability to create an alert within the CSAT Personnel Surety application that can notify them when the Department has received information about an affected individual(s). Such an alert would not be CVI.

Comment: One commenter was troubled by the information pertaining to RBPS–12 contained in Appendix C of the May 2009 Risk-Based Performance Standards Guidance (*http://www.dhs.gov/xlibrary/assets/chemsec_cfats_riskbased_performance_standards.pdf*), because the commenter believes that certain types of measures, procedures, policies, and plans mentioned in Appendix C are not appropriate for determining if chemical facility personnel are terrorist threats.

Response: The Department expects high-risk chemical facilities to implement appropriate security measures to conduct identity, criminal history, and legal authorization to work background checks. These security measures can vary from facility to facility commensurate with facility-specific risks, security issues, and business practices. The guidance referenced by the commenter (see pages 180 to 186 of the Risk-Based Performance Standards Guidance) and other guidance addressing identity, criminal history, and legal authorization to work background checks, however, is not guidance addressing compliance with 6 CFR 27.230(a)(12)(iv), and as such is not the subject of this notice, nor is it the subject of the underlying ICR or of the 60-day notice preceding this notice.

Comment: One commenter requested that the Department clarify what appeal or waiver options an affected individual has if his/her employer takes an adverse employment action against him/her based on RBPS–12 background checks or based on information received or obtained under the CFATS Personnel Surety Program. The commenter also requested that the Department prevent high-risk chemical facilities from using personal information collected from affected individuals as part of RBPS–12 for purposes other than conducting the background checks required by RBPS–12.

[32] See section 5.3 of the Privacy Impact Assessment for the CFATS Personnel Surety Program, dated May 4, 2011, and available at *http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-nppd-cfats-ps.pdf*. The Department also discussed ''verification of receipt'' in previous public notices related to an earlier (now withdrawn) ICR for the Personnel Surety Program—see for example NPPD's June 14, 2011 PRA Response to Comments Document, 76 FR 34720, 34721.

Response: High-risk chemical facilities' employment actions are not regulated by CFATS.

The ICR the Department will submit to OMB, the 60-day notice, and the 30-day notice address the CFATS Personnel Surety Program, not the identity, legal authorization to work, and criminal history background checks required by 6 CFR 230(a)(12)(i)–(iii). Discussion of information collected as part of those other three background checks, or employment decisions based on them, is beyond the scope of this notice. However, the Department expects that the high-risk chemical facilities and their designees will safeguard information collected and maintained under RBPS–12 as outlined in their SSP and in accordance with any other applicable federal, State, or local privacy laws which apply to the collection of the information.

Comment: One commenter requested information about the controls to prevent an individual or the facility from using the personal information for purposes other than RBPS 12(iv).

Response: The Department expects that high-risk chemical facilities and their designees will safeguard information collected and maintained under RBPS–12 as outlined in their SSP. While under CFATS, no additional specific controls are required by the Department for information collected by high-risk chemical facilities, the Department does expect that high-risk chemical facilities will protect and safeguard the information as outlined in their SSP or ASP in accordance with any other federal, State, or local privacy laws which apply to the collection of the information.

The information collected by a high-risk chemical facility pursuant to RBPS 12(iv) may be submitted to DHS under Option 1 and Option 2. Information collected or retained by the facility that has not been submitted to DHS and facility-generated copies of information that have been submitted to DHS are not considered government records and therefore are not covered under the Privacy Act of 1974. However, any information about affected individuals that is obtained from the CSAT Personnel Surety application is a government record and subject to the Privacy Act of 1974. Those government records must be protected as stated in the DHS CSAT Personnel Surety application Rules of Behavior, which every CSAT user will be required to affirm prior to receiving access to the application.

V. The Department's Methodology in Estimating the Burden

Summary of Changes From 60-Day Notice

When compared to the 60-day notice, the Department made only a few changes which impacted the burden estimates in this notice. Table 3 below briefly summarizes them.

TABLE 3—SUMMARY OF CHANGES

ICR Burden Variables	Description of changes
Frequency	No Changes.
Affected Public	No Changes.
Number of Respondents	Revised the turnover rate of frequent visitors from 71% to 81.75%. As a result, the number of respondents increased from 192,000 affected individuals to 195,000 affected individuals.
Estimated Time Per Respondent	Updated from 0.54 hours to 0.58 hours as a result of the revised turnover rate increase.
Total Burden Hours	Updated from 104,100 hours to 113,600 hours as a result of the revised turnover rate increase.
Total Burden Cost (Capital/Startup)	No Changes.
Total Recordkeeping	No Changes.
Total Burden Cost	Updated from $4,771,00 to $4,844,000 as a result of the revised turnover rate increase.

Frequency

The Department will expect, unless otherwise noted in an authorized or approved SSP or ASP, that high-risk chemical facilities submit information, under Option 1 and/or Option 2, about affected individuals in accordance with the schedule outlined below in Table 4. High-risk chemical facilities may suggest alternative schedules for Option 1 or Option 2 based on their unique circumstances in their SSPs or ASPs. The default schedule below would not apply to Option 3. Schedules for implementing Option 3, or alternative security measures other than Option 1 or Option 2, could vary from high-risk chemical facility to high-risk chemical facility, as described in individual facilities' SSPs or ASPs, subject to approval by the Department.

The Department will expect a high-risk chemical facility to begin submitting information about affected individuals under Option 1 and/or Option 2 under the schedule below after: (1) The high-risk chemical facility has been directed to comply with RBPS 12(iv); and (2) the high-risk chemical facility has been notified that the Department has implemented the CFATS Personnel Surety Program.

TABLE 4—COMPLIANCE SCHEDULE FOR OPTION 1 AND OPTION 2 UNDER THE CFATS PERSONNEL SURETY PROGRAM

	Tier 1	Tier 2	Tier 3	Tier 4
Initial Submission Of Affected Individuals' Information.	60 days after the day when both conditions are true: (1) DHS directs the facility to comply with RBPS 12(iv), AND	60 days after the day when both conditions are true: (1) DHS directs the facility to comply with RBPS 12(iv), AND	90 days after the day when both conditions are true: (1) DHS directs the facility to comply with RBPS 12(iv), AND	90 days after the day when both conditions are true: (1) DHS directs the facility to comply with RBPS 12(iv), AND

TABLE 4—COMPLIANCE SCHEDULE FOR OPTION 1 AND OPTION 2 UNDER THE CFATS PERSONNEL SURETY PROGRAM—Continued

	Tier 1	Tier 2	Tier 3	Tier 4
	(2) DHS provides notification that it has implemented the CFATS Personnel Surety Program.	(2) DHS provides notification that it has implemented the CFATS Personnel Surety Program.	(2) DHS provides notification that it has implemented the CFATS Personnel Surety Program.	(2) DHS provides notification that it has implemented the CFATS Personnel Surety Program.
Submission Of A New Affected Individual's Information.	48 hours prior to access to restricted areas or critical assets.	48 hours prior to access to restricted areas or critical assets.	48 hours prior to access to restricted areas or critical assets.	48 hours prior to access to restricted areas or critical assets.
Submission Of Updates And Corrections To An Affected Individual's Information	Within 90 days of becoming aware of the need for an update or correction.	Within 90 days of becoming aware of the need for an update or correction.	Within 90 days of becoming aware of the need for an update or correction.	Within 90 days of becoming aware of the need for an update or correction.
Submission Of Notification That An Affected Individual No Longer Has Access	Within 90 days of access being removed.	Within 90 days of access being removed.	Within 90 days of access being removed.	Within 90 days of access being removed.

Therefore, after evaluating the choices available to the Department under Question 16 on the Paperwork Reduction Act Submission form (Standard Form–83(i)),[33] the Department believes that the description of ''Other: In accordance with the compliance schedule or the facility SSP or ASP'' is the most appropriate choice.

Affected Public

Most high-risk chemical facilities regulated under CFATS are private businesses, or parts of private businesses. Most people that access the restricted areas and critical assets of high-risk chemical facilities do so for business purposes. Therefore, after evaluating the choices available to the Department on Standard Form 83(i), the Department selected the description of ''Business or other for-profit'' as the most appropriate selection for this proposed Information Collection.

Number of Respondents

The number of respondents under this collection is the number of affected individuals that high-risk chemical facilities or their designees submit information about in compliance with RBPS 12(iv). As described more fully below, for the purpose of this notice the number of respondents is estimated by multiplying:

- The estimated number and types of high-risk chemical facilities, and
- the estimated number of affected individuals at each type of high-risk chemical facility.

For the purpose of this notice, the Department estimates the number of affected individuals at each type of high-risk chemical facility as the sum of:

- the number of unescorted visitors at each type of high-risk chemical facility, and
- the number of facility personnel and resident contractors at each type of high-risk chemical facility.

Number and Type of High-Risk Chemical Facilities

In the 60-day notice, the Department followed the methodology used in the 2007 CFATS Regulatory Assessment [34] which recognized that each chemical facility is unique. In the 2007 CFATS Regulatory Assessment the Department determined that it was impractical to estimate costs for each high-risk chemical facility. Therefore, the Department created four categories of facilities for each tier; three categories of facilities where loss of containment of the chemicals of interest is the primary concern and one category of facilities where theft and diversion of chemicals is the primary concern. Specifically,

- Group A includes open facilities with 100 or more employees where loss of containment is the primary concern. These facilities are assumed to have five security entrances for the purpose of the cost analysis.
- Group B includes open facilities with 99 or fewer employees where loss of containment is the primary concern. In addition, facilities that store anhydrous ammonia for commercial refrigeration in outdoor vessels are also considered ''open'' for the purpose of this analysis because it is the outdoor storage that requires protection. These facilities are assumed to have two security entrances for the purpose of the cost analysis.
- Group C facilities are enclosed facilities where loss of containment is the primary concern (i.e., warehouses, enclosed manufacturing sites) that manufacture, process, use, store and/or distribute chemicals. The Department did not segment enclosed facilities by size because the same degree of variation between a large open facility (i.e., a 2,000-acre petrochemical complex) and a small open 3–5-acre facility does not exist. These facilities are assumed to have one security entrance for the purpose of the cost analysis.
- Theft/Diversion facilities are typically merchant wholesalers (often called chemical distributors), chemical manufacturers, or other manufacturers that manufacture, process, use, store or distribute chemicals that could be the target of theft and diversion. The theft of chemicals could include theft of portable containers by employees, visitors or adversaries. The diversion of chemicals involves what often looks like a legitimate transaction where an adversary, impersonating a legitimate customer, purchases chemicals that could later be turned into weapons. These facilities are assumed to have one security entrance for the purposes of cost analysis.

In the 60-day notice, the Department updated the number and type of high-risk chemical facilities estimated in the 2007 CFATS Regulatory Assessment. The updated analysis, hereafter referred to as the 2012 CFATS Personnel Surety Program Analysis, determined the high-risk chemical facility count for each of the 16 model facility categories identified in the 2007 Regulatory Assessment by analyzing high-risk chemical facilities designated with a final tier under CFATS as of August 2012. A comparison of the number of high-risk chemical facilities, estimated

[33] A blank copy of Standard Form 83(i) may be found at *http://www.whitehouse.gov/sites/default/files/omb/inforeg/83i-fill.pdf.*

[34] *See* CFATS Regulatory Assessment Section 5.1 (April 1, 2007), *http://www.regulations.gov/#!documentDetail;D=DHS-2006-0073-0116.*

by the 2007 CFATS Regulatory Assessment, to the number of high-risk chemical facilities identified within the 2012 CFATS Personnel Surety Program Analysis is presented in Table 5.

TABLE 5—NUMBER OF FACILITIES IN EACH MODEL FACILITY CATEGORY

	2007 CFATS regulatory assessment	2012 CFATS personnel surety program analysis (raw data)
Tier 1 Group A	81	4
Tier 1 Group B	89	6
Tier 1 Group C	24	10
Tier 1 Theft	6	93
Tier 2 Group A	166	8
Tier 2 Group B	64	16
Tier 2 Group C	80	15
Tier 2 Theft	189	400
Tier 3 Group A	315	22
Tier 3 Group B	438	33
Tier 3 Group C	329	66
Tier 3 Theft	718	935
Tier 4 Group A	242	72
Tier 4 Group B	690	190
Tier 4 Group C	599	13
Tier 4 Theft	970	1,683
Total	5,000	3,566

In the 60-day notice, the Department normalized the number of facilities in each model facility category of the 2012 CFATS Personnel Surety Program Analysis to 4,000 facilities by multiplying the number of high-risk chemical facilities in each category by a factor of 1.22.[35] The 2012 CFATS Personnel Surety Program Analysis revised (i.e., normalized) high-risk chemical facility count is compared to the 2007 CFATS Regulatory Assessment high-risk chemical facility count, by model facility category, in Table 6.

TABLE 6—NUMBER OF HIGH-RISK CHEMICAL FACILITIES IN EACH MODEL FACILITY CATEGORY

[Normalized to 4,000 facilities]

	2007 CFATS regulatory assessment	2012 CFATS personnel surety program analysis (normalized)
Tier 1 Group A	81	4
Tier 1 Group B	89	7
Tier 1 Group C	24	11
Tier 1 Theft	6	104
Tier 2 Group A	166	9
Tier 2 Group B	64	18
Tier 2 Group C	80	17
Tier 2 Theft	189	449
Tier 3 Group A	315	25
Tier 3 Group B	438	37
Tier 3 Group C	329	74
Tier 3 Theft	718	1,049
Tier 4 Group A	242	81
Tier 4 Group B	690	213
Tier 4 Group C	599	15
Tier 4 Theft	970	1,888
Total	5,000	4,000

As in the 60-day notice, this notice the Department continues to use the number and type of high-risk chemical facilities in each facility category estimated through the normalized 2012 CFATS Personnel Surety Program Analysis because the distribution of facility type (i.e., facility count) is based upon actual historical data.

[35] The factor of 1.22 was used because (4,000 facilities/3566 facilities) = 1.22.

Estimated Number of Affected Individuals at Each Type of High-Risk Chemical Facility—Unescorted Visitors With Access to Restricted Areas or Critical Assets

For the purpose of estimating the potential burden this information collection could impose, the Department determined that it was appropriate to continue to use the conservative assumptions from the American Chemistry Council (ACC) about frequent and infrequent visitors and treat them all as unescorted visitors.[36] Specifically, the ACC provided the Department with an estimate on the number and turnover of frequent and infrequent visitors at high-risk chemical facilities.

ACC's analysis suggests that 1,200 total visitors per year should be expected at large open manufacturing facilities that align with Group A (Tier 1 through 4) model facility categories; 300 visitors each at small open manufacturing facilities (Group B model facility categories, Tier 1 through 4) and enclosed manufacturing facilities (Group C model facility categories, Tier 1 through 4); and 50 visitors expected at theft/diversion model facilities (Tier 1 through 4). ACC estimated an annual turnover rate of 71 percent for frequent visitors (e.g., delivery personnel) and an annual turnover rate of 20 percent for infrequent visitors that only visit the facility once or twice a year (e.g., corporate auditors). In response to the 60-day notice, the Department received a comment from American Trucking Associations (ATA) that suggested the annual turnover rate for frequent visitors (e.g., delivery personnel) suggested by ACC is too low. ATA suggested that the Department use a turnover rate of 81.75% instead of 71%. As a result, the Department increased its estimate of the frequent visitor annual turnover rate to 81.75%.

The Department also continues to maintain the assumption in the 60-day notice that frequent and infrequent visitors were expected to compose equal volume of traffic at high-risk chemical facilities.

ACC's analysis assumed that all visitors count towards the number of affected individuals. However, high-risk chemical facilities will only be responsible for submitting information for unescorted visitors with access to restricted areas or critical assets. The Department does not expect high-risk chemical facilities to allow large numbers of visitors to have unescorted access to restricted areas or critical assets. As a general matter, the Department does not believe it to be likely that many high-risk chemical facilities will propose in their SSPs under CFATS to allow large numbers of visitors to have unescorted access to the restricted areas and critical assets of high-risk chemical facilities because then these visitors would be subject to all four types of background checks listed in RBPS 12. However, for the purpose of estimating the potential burden this information collection could impose, the Department continues to use ACC's conservative assumptions about frequent and infrequent visitors and treat them all as unescorted visitors.

Table 7 provides the Department's estimated number of unescorted visitors that have or are seeking access to restricted areas or critical assets.

TABLE 7—ESTIMATE OF UNESCORTED VISITORS THAT HAVE OR ARE SEEKING ACCESS TO RESTRICTED AREAS OR CRITICAL ASSETS

	A Infrequent visitors	B Frequent visitors	C* Infrequent visitor annual turnover (20%)	D** Frequent visitor annul turnover (81.75%)	E = C + D Unescorted visitor annual turnover	A + B + E Unescorted visitor estimate
Tier 1 Group A	600	600	120	491	611	1811
Tier 1 Group B	150	150	30	123	153	453
Tier 1 Group C	150	150	30	123	153	453
Tier 1 Theft	25	25	5	20	25	75
Tier 2 Group A	600	600	120	491	611	1811
Tier 2 Group B	150	150	30	123	153	453
Tier 2 Group C	150	150	30	123	153	453
Tier 2 Theft	25	25	5	20	25	75
Tier 3 Group A	600	600	120	491	611	1811
Tier 3 Group B	150	150	30	123	153	453
Tier 3 Group C	150	150	30	123	153	453
Tier 3 Theft	25	25	5	20	25	75
Tier 4 Group A	600	600	120	491	611	1811
Tier 4 Group B	150	150	30	123	153	453
Tier 4 Group C	150	150	30	123	153	453
Tier 4 Theft	25	25	5	20	25	75

* $C = A \times 0.20$, ** $D = B \times 0.8175$.

Estimated Number of Affected Individuals at Each Type of High-Risk Chemical Facility—Facility Personnel With Access to Restricted Areas or Critical Assets

The 2007 CFATS Regulatory Assessment also provided an estimate of full time employees and resident contractors for the 16 model facility categories, as shown in Table 8.[37]

[36] This cost estimate has been posted to Docket DHS–2012–0061, which may be accessed through the Federal eRulemaking Portal at *http://www.regulations.gov/#!documentDetail;D=DHS-2012-0061-0008.*

[37] *See* CFATS Regulatory Assessment Section 6.3.7, Table 15 (April 1, 2007), *http://www.regulations.gov/#!documentDetail;D=DHS-2006-0073-0116.*

TABLE 8—2007 CFATS REGULATORY ASSESSMENT ESTIMATE OF NUMBER OF FULL TIME EMPLOYEES AND RESIDENT CONTRACTORS

	A Number of full time employees per facility	B Resident contractors per facility (as percent of full time employees)	C* Resident contractors per facility	D** 20% Annual turnover (full time employees and resident contractors per facility)	A + C + D Number of full time employees and resident contractors per facility (including 20% annual turnover)
Tier 1 Group A	391	30	117	102	610
Tier 1 Group B	35	20	7	8	50
Tier 1 Group C	152	10	15	33	200
Tier 1 Theft	35	10	4	8	47
Tier 2 Group A	279	30	84	73	436
Tier 2 Group B	34	20	7	8	49
Tier 2 Group C	317	10	32	70	419
Tier 2 Theft	35	10	4	8	47
Tier 3 Group A	487	30	146	127	760
Tier 3 Group B	47	20	9	11	67
Tier 3 Group C	310	10	31	68	409
Tier 3 Theft	35	10	4	8	47
Tier 4 Group A	283	30	85	74	442
Tier 4 Group B	139	20	28	33	200
Tier 4 Group C	201	10	20	44	265
Tier 4 Theft	35	10	4	8	47
Total	n/a	n/a	n/a	n/a	n/a

*C = A × B, **D = (A + C) × 0.20.

In the June 2011 ICR, the Department updated the estimate of employees and resident contractors in the 2007 CFATS Regulatory Assessment in response to a survey submitted by the American Fuel and Petrochemical Manufacturers [38] during the 30 day comment period associated with the previous CFATS Personnel Surety Program ICR.[39] Specifically, the Department increased the estimated number of full time employees/contractors in Group A facilities by 5, as shown in Table 9.

TABLE 9—REVISED 2007 CFATS REGULATORY ASSESSMENT ESTIMATE OF NUMBER OF FULL TIME EMPLOYEES AND RESIDENT CONTRACTORS

	A Number of full time employees per facility	B Resident contractors per facility (as percent of full time employees)	C* Resident contractors per facility	D** 20% Annual turnover (full time employees and resident contractors per facility)	A + C + D Number of full time employees and resident contractors per facility (including 20% annual turnover)
Tier 1 Group A	1,955	30	587	508	3,050
Tier 1 Group B	35	20	7	8	50
Tier 1 Group C	152	10	15	33	201
Tier 1 Theft	35	10	4	8	46
Tier 2 Group A	1,395	30	419	363	2,176
Tier 2 Group B	34	20	7	8	49
Tier 2 Group C	317	10	32	70	418
Tier 2 Theft	35	10	4	8	46
Tier 3 Group A	2,435	30	731	633	3,799
Tier 3 Group B	47	20	9	11	68
Tier 3 Group C	310	10	31	68	409
Tier 3 Theft	35	10	4	8	46

[38] The American Fuel and Petrochemical Manufacturers is the name of the former National Petrochemical & Refiners Association, whose comment may be found at *http://www.regulations.gov/#!documentDetail;D=DHS-2009-0026-0029.*

[39] *See* Response To Comments Received During 30 Day Comment Period: New Information Collection Request 1670—NEW, 76 FR 34720 (June 14, 2011).

TABLE 9—REVISED 2007 CFATS REGULATORY ASSESSMENT ESTIMATE OF NUMBER OF FULL TIME EMPLOYEES AND RESIDENT CONTRACTORS—Continued

	A Number of full time employees per facility	B Resident contractors per facility (as percent of full time employees)	C* Resident contractors per facility	D** 20% Annual turnover (full time employees and resident contractors per facility)	A + C + D Number of full time employees and resident contractors per facility (including 20% annual turnover)
Tier 4 Group A	1,415	30	425	368	2,207
Tier 4 Group B	139	20	28	33	200
Tier 4 Group C	201	10	20	44	265
Tier 4 Theft	35	10	4	8	46
Total	n/a	n/a	n/a	n/a	n/a

*C = A × B, **D = (A + C) × 0.20.

In addition to submitting comments on the Department's June 2011 estimated burden about unescorted visitors, ACC also suggested that 80 percent of employees/resident contractors have access to restricted areas and/or critical assets at Group A, B and C facilities and only 15 percent of employees/resident contractors have access to theft/diversion facilities. To provide an additional estimate of the number of respondents the Department applied this ACC assumption to the revised 2012 CFATS Personnel Surety Program Analysis. The resulting estimate, referred to as the ''Adjusted June 2011 ICR Estimate of the Number of Full Time Employees and Resident Contractors'' is shown in Table 10.

TABLE 10—ADJUSTED JUNE 2011 ICR ESTIMATE OF THE NUMBER OF FULL TIME EMPLOYEES AND RESIDENT CONTRACTORS

	A Number of full time employees per facility	B Resident contractors per facility (as percent of full time employees)	C* Resident contractors per facility	D** 20% annual turnover (full time employees and resident contractors per facility)	A + C + D Number of full time employees and resident contractors per facility (including 20% annual turnover)	E ACC's estimate of full time employees and contractors with access to restricted areas or critical assets (percent)	(A+C+D) × E Number of full time employees and resident contractors per facility with access to restricted areas or critical assets (including 20% annual turnover)
Tier 1 Group A	1,955	30	587	508	3,050	80	2,440
Tier 1 Group B	35	20	7	8	50	80	40
Tier 1 Group C	152	10	15	33	201	80	161
Tier 1 Theft	35	10	4	8	46	15	7
Tier 2 Group A	1,395	30	419	363	2,176	80	1,741
Tier 2 Group B	34	20	7	8	49	80	39
Tier Group C	317	10	32	70	418	80	335
Tier 2 Theft	35	10	4	8	46	15	7
Tier 3 Group A	2,435	30	731	633	3,799	80	3,039
Tier 3 Group B	47	20	9	11	68	80	54
Tier 3 Group C	310	10	31	68	409	80	327
Tier 3 Theft	35	10	4	8	46	15	7
Tier 4 Group A	1,415	30	425	368	2,207	80	1,766
Tier 4 Group B	139	20	28	33	200	80	160
Tier 4 Group C	201	10	20	44	265	80	212
Tier 4 Theft	35	10	4	8	46	15	7
Total	n/a	n/a	n/a	n/a	n/a	n/a	n/a

*C = A × B, **D = (A + C) × 0.020.

For the purpose of this notice, the Department also evaluated whether or not the 2007 CFATS Regulatory Assessment should continue to be the basis for the estimate of full time employees and resident contractors. To

provide an additional estimate of the number of respondents, the 2012 CFATS Personnel Surety Program Analysis analyzed actual information submitted by high-risk chemical facilities in response to Top-Screen [40] Question Q:1.45–400.[41] Based upon the submitted information, the Department was able to estimate full time employees and resident contractors by each model facility category, as shown in Table 11.

TABLE 11—2012 CFATS PERSONNEL SURETY PROGRAM ANALYSIS' ESTIMATE OF THE NUMBER OF FULL TIME EMPLOYEES AND RESIDENT CONTRACTORS

	A Response to top screen question Q:1.45–400	Resident contractors per facility (as percent of full time employees)	Resident contractors per facility	B 20% annual turnover (full time employees and resident contractors per facility)	A + B Number of full time employees and resident contractors per facility (including 20% annual turnover)
Tier 1 Group A	599	N/A—Top Screen Question Q1:1.45–400 incorporates estimate of resident contractors		120	719
Tier 1 Group B	36			7	43
Tier 1 Group C	300			60	360
Tier 1 Theft	653			131	783
Tier 2 Group A	222			44	267
Tier 2 Group B	30			6	36
Tier 2 Group C	489			98	587
Tier 2 Theft	416			83	499
Tier 3 Group A	594			119	713
Tier 3 Group B	33			7	39
Tier 3 Group C	188			38	225
Tier 3 Theft	233			47	279
Tier 4 Group A	737			147	884
Tier 4 Group B	17			3	20
Tier 4 Group C	175			35	211
Tier 4 Theft	195			39	234
Total	n/a			n/a	n/a

* In question Top Screen Question Q:1.45–400, facilities provide both full time employees and resident contractors.

Table 12 compares the estimates of full time employees and resident contractors in the: (1) 2007 CFATS Regulatory Assessment; (2) ICR submitted in June of 2011; (3) adjusted June 2011 ICR Estimate of the Number of Full Time Employees and Resident Contractors; and (4) 2012 CFATS Personnel Surety Program Analysis.

TABLE 12—AVERAGE NUMBER OF FULL TIME EMPLOYEES AND CONTRACTORS PER FACILITY BY MODEL FACILITY CATEGORY

	2007 CFATS regulatory assessment	Estimate used in June 2011 ICR	June 2011 ICR (adjusted with ACC's assumption on facility personnel with access to restricted areas or critical assets)	2012 CFATS personnel surety program analysis
Tier 1 Group A	610	3,050	2,440	719
Tier 1 Group B	50	50	40	43
Tier 1 Group C	200	201	161	360
Tier 1 Theft	47	46	7	783
Tier 2 Group A	436	2,176	1,741	267
Tier 2 Group B	49	49	39	36
Tier 2 Group C	419	418	335	587
Tier 2 Theft	47	46	7	499
Tier 3 Group A	760	3,799	3,039	713
Tier 3 Group B	67	68	54	39
Tier 3 Group C	409	409	327	225
Tier 3 Theft	47	46	7	279
Tier 4 Group A	442	2,207	1,766	884
Tier 4 Group B	200	200	160	20

[40] Top-Screen is defined at 6 CFR 27.105.

[41] Q:1.45–400 refers to the specific question reference number in the online Top-Screen application which is not available to the general public. However, the exact text of the question is available on page 20 of the CSAT Top-Screen Survey Application User Guide v1.99 in the row entitled, ''Number of Full Time Employees.'' *See http://www.dhs.gov/xlibrary/assets/chemsec_csattopscreenusersmanual.pdf.*

TABLE 12—AVERAGE NUMBER OF FULL TIME EMPLOYEES AND CONTRACTORS PER FACILITY BY MODEL FACILITY CATEGORY—Continued

	2007 CFATS regulatory assessment	Estimate used in June 2011 ICR	June 2011 ICR (adjusted with ACC's assumption on facility personnel with access to restricted areas or critical assets)	2012 CFATS personnel surety program analysis
Tier 4 Group C	265	265	212	211
Tier 4 Theft	47	46	7	234

When evaluating the reasonable alternatives (*see* next section) to estimate the total number of respondents, the Department did not consider alternatives that used an assumption about the full time employees and resident contractors estimates from the 2007 CFATS Regulatory Assessment or the estimate in the June 2011 ICR.

Rather, when evaluating the reasonable alternatives to estimate the total number of respondents (see the next section of this document for this evaluation), the Department opted to use the best available industry estimates, as well as actual historical data collected directly from high-risk chemical facilities, to estimate the full time employees and resident contractors. Namely:

(1) the adjusted June 2011 ICR estimate of full time employees and resident contractors, and

(2) the estimate of full time employees and resident contractors in the 2012 CFATS Personnel Surety Program Analysis.

Summary of Alternatives To Estimate the Number of Respondents

As mentioned above, for the purpose of this notice, the number of respondents is estimated by multiplying:

- The number and type of high-risk chemical facilities, and
- the number of affected individuals at each type of high-risk chemical facility.

For the purpose of this notice, the Department estimates the number of affected individuals at each type of high-risk chemical facility as the sum of:

- The number of unescorted visitors at each type of high-risk chemical facility, and
- the number of facility personnel and resident contractors at each type of high-risk chemical facility.

In light of the data submitted by commenters and the Department's own analysis, three alternatives for the total number of respondents were considered by the Department.

First, the total number of respondents is based on:

a. The number and type of high-risk chemical facilities assumed in the 2012 CFATS Personnel Surety Program Analysis;

b. the ACC's estimates about unescorted visitors; and

c. the adjusted June 2011 ICR estimate of the number of full time employees and resident contractors.

This alternative results in an estimate of an initial 995,944 respondents with an annual turnover of 313,819 respondents. *See* Table 13.

TABLE 13—ESTIMATE OF NUMBER OF RESPONDENTS—ALTERNATIVE 1

	A Number of full time employees and resident contractors CFATS personnel surety program ICR withdrawn in July of 2012 (including 20% annual turnover) (Table 8)	B Estimate of full time employees and contractors with access to restricted areas or critical assets (Percent)	A Full time employees and resident contractors CFATS personnel surety program ICR withdrawn in July of 2012 with estimates of percentage of employees/resident contractors with restricted area and/or critical asset (Table 9)	B ACC unescorted visitor estimate (including 81.75% turnover for frequent visitors, 20% turnover for infrequent visitors) Table 6)	C Number of facilities (Table 5)	(A + B) × C Number of initial respondents (includes 20% annual turnover)	D CFATS personnel surety program ICR withdrawn in July of 2011 20% annual turnover (Table 9)	E ACC unescorted visitors annual turnover	(D + E) × C (Table 6) Annual respondent turnover
Tier 1 Group A	3,050	80	2,440	1,811	4	19,071	508	611	5,020
Tier 1 Group B	50	80	40	453	7	3,318	8	153	1,084

TABLE 13—ESTIMATE OF NUMBER OF RESPONDENTS—ALTERNATIVE 1—Continued

	A Number of full time employees and resident contractors CFATS personnel surety program ICR withdrawn in July of 2012 (including 20% annual turnover) (Table 8)	B Estimate of full time employees and contractors with access to restricted areas or critical assets (Percent)	A Full time employees and resident contractors CFATS personnel surety program ICR withdrawn in July of 2012 with estimates of percentage of employees/resident contractors with restricted area and/or critical asset (Table 9)	B ACC unescorted visitor estimate (including 81.75% turnover for frequent visitors, 20% turnover for infrequent visitors) Table 6)	C Number of facilities (Table 5)	(A + B) × C Number of initial respondents (includes 20% annual turnover)	D CFATS personnel surety program ICR withdrawn in July of 2011 20% annual turnover (Table 9)	E ACC unescorted visitors annual turnover	(D + E) × C (Table 6) Annual respondent turnover
Tier 1 Group C	201	80	161	453	11	6,878	33	153	2,087
Tier 1 Theft	46	15	7	75	104	8,592	8	25	3,457
Tier 2 Group A	2,176	80	1,741	1,811	9	31,870	363	611	8,733
Tier 2 Group B	49	80	39	453	18	8,826	8	153	2,886
Tier 2 Group C	418	80	335	453	17	13,248	70	153	3,741
Tier 2 Theft	46	15	7	75	449	36,957	8	25	14,868
Tier 3 Group A	3,799	80	3,039	1,811	25	119,671	633	611	30,689
Tier 3 Group B	68	80	54	453	37	18,759	11	153	6,067
Tier 3 Group C	409	80	327	453	74	57,744	68	153	16,348
Tier 3 Theft	46	15	7	75	1,049	86,387	8	25	34,754
Tier 4 Group A	2,207	80	1,766	1,811	81	288,842	368	611	79,018
Tier 4 Group B	200	80	160	453	213	130,592	33	153	39,638
Tier 4 Group C	265	80	212	453	15	9,695	44	153	2,870
Tier 4 Theft	46	15	7	75	1,888	155,496	8	25	62,558
Total	n/a	n/a	n/a	n/a	4,000	995,944	n/a	n/a	313,819

Second, the total number of respondents is based on:

a. The number and type of high-risk chemical facilities assumed in the 2012 CFATS Personnel Surety Program Analysis;

b. the ACC's estimates about unescorted visitors;

c. the number of full time employees and resident contractors estimated by the 2012 CFATS Personnel Surety Program Analysis; and

d. ACC's estimate of the percentage of resident employees and contractors with access to restricted areas or critical assets.

This alternative results in an estimate of an initial 919,646 respondents with an annual turnover of 416,879 respondents. *See* Table 14.

TABLE 14—ESTIMATE OF NUMBER OF RESPONDENTS—ALTERNATIVE 2

	A 2012 CFATS personnel surety program analysis average number of full time employees and contractors (including 20% turnover) (Table 10)	B Estimate of full time employees and contractors with access to restricted areas or critical assets (percent)	(A × B) = C Average number of full time employees and contractors (including 20% turnover)	D ACC unescorted visitor estimate (including 81.75% turnover for frequent visitors, 20% turnover for infrequent visitors) (Table 6)	E Number of facilities (Table 5)	(C + D) × E Number of initial respondents (includes 20% annual turnover)	F 2012 CFATS personnel surety program analysis 20% annual turnover (Table 10)	G ACC unescorted visitors annual turnover (Table 6)	(F + G) × E Annual respondent turnover
Tier 1 Group A	719	80	575	1811	4	10,702	120	611	3,277
Tier 1 Group B	43	80	34	453	7	3,278	7	153	1,075
Tier 1 Group C	360	80	288	453	11	8,304	60	153	2,384
Tier 1 Theft	783	15	118	75	104	20,127	131	25	16,273
Tier 2 Group A	267	80	213	1,811	9	18,161	44	611	5,877
Tier 2 Group B	36	80	29	453	18	8,645	6	153	2,848
Tier 2 Group C	587	80	469	453	17	15,514	98	153	4,214
Tier 2 Theft	499	15	75	75	449	67,405	83	25	48,700
Tier 3 Group A	713	80	571	1,811	25	58,760	119	611	17,999
Tier 3 Group B	39	80	31	453	37	17,917	7	153	5,892
Tier 3 Group C	225	80	180	453	74	46,854	38	153	14,079
Tier 3 Theft	279	15	42	75	1,049	123,087	47	25	75,533
Tier 4 Group A	884	80	707	1,811	81	203,357	147	611	61,209
Tier 4 Group B	20	80	16	453	213	99,897	3	153	33,243
Tier 4 Group C	211	80	168	453	15	9,057	35	153	2,737
Tier 4 Theft	234	15	35	75	1,888	208,578	39	25	121,538
Total	n/a	n/a	n/a	n/a	4,000	919,646	n/a	n/a	416,879

Third the total number of respondents is based on:

a. The number and type of high-risk chemical facilities assumed in the 2012 CFATS Personnel Surety Program Analysis;

b. the ACC's estimates about unescorted visitors;

c. the number of full time employees and resident contractors estimated by the 2012 CFATS Personnel Surety Program Analysis; and

d. does not include ACC's estimate of the percentage of resident employees and contractors with access to restricted areas or critical assets.

This alternative results in an estimate of an initial 1,830,356 respondents with an annual turnover of 416,879 respondents. *See* Table 15.

TABLE 15—ESTIMATE OF NUMBER OF RESPONDENTS—ALTERNATIVE 3

	A 2012 CFATS personnel surety proram analysis average number of full time employees and contractors (including 20% turnover) (Table 10)	B Estimate of full time employees and contractors with access to restricted areas or critical assets (percent)	(A × B) = C Average number of full time employees and contractors (including 20% turnover)	D ACC unescorted visitor estimate (including 81.75% turnover for frequent visitors, 20% turnover for infrequent visitors) (Table 6)	E Number of facilities (Table 5)	(C + D) × E Number of initial respondents	F 2012 CFATS personnel surety program analysis 20% annual turnover (Table 10)	G ACC unescorted visitors annual turnover (Table 6)	(F + G) × E Annual respondent turnover
Tier 1 Group A	719	100	719	1,811	4	11,347	120	611	3,277
Tier 1 Group B	43	100	43	453	7	3,336	7	153	1,075
Tier 1 Group C	360	100	360	453	11	9,111	60	153	2,384
Tier 1 Theft	783	100	783	75	104	89,587	131	25	16,273
Tier 2 Group A	267	100	267	1,811	9	18,640	44	611	5,877

TABLE 15—ESTIMATE OF NUMBER OF RESPONDENTS—ALTERNATIVE 3—Continued

	A 2012 CFATS personnel surety proram analysis average number of full time employees and contractors (including 20% turnover) (Table 10)	B Estimate of full time employees and contractors with access to restricted areas or critical assets (percent)	(A × B) = C Average number of full time employees and contractors (including 20% turnover)	D ACC unescorted visitor estimate (including 81.75% turnover for frequent visitors, 20% turnover for infrequent visitors) (Table 6)	E Number of facilities (Table 5)	(C + D) × E Number of initial respondents	F 2012 CFATS personnel surety program analysis 20% annual turnover (Table 10)	G ACC unescorted visitors annual turnover (Table 6)	(F + G) × E Annual respondent turnover
Tier 2 Group B	36	100	36	453	18	8,775	6	153	2,848
Tier 2 Group C	587	100	587	453	17	17,489	98	153	4,214
Tier 2 Theft	499	100	499	75	449	257,567	83	25	48,700
Tier 3 Group A	713	100	713	1,811	25	62,281	119	611	17,999
Tier 3 Group B	39	100	39	453	37	18,208	7	153	5,892
Tier 3 Group C	225	100	225	453	74	50,191	38	153	14,079
Tier 3 Theft	279	100	279	75	1,049	372,244	47	25	75,533
Tier 4 Group A	884	100	884	1,811	81	217,641	147	611	61,209
Tier 4 Group B	20	100	20	453	213	100,755	3	153	33,243
Tier 4 Group C	211	100	211	453	15	9,671	35	153	2,737
Tier 4 Theft	234	100	234	75	1,888	583,514	39	25	121,538
Total	n/a	n/a	n/a	n/a	4,000	1,830,356	n/a	n/a	416,879

These three alternatives are summarized in Table 16.

TABLE 16—COMPARISON OF NUMBER OF RESPONDENTS FOR ALTERNATIVES 1, 2 AND 3

	Initial Year	Year 2	Year 3	Number of respondents (annual average)
Alternative 1	995,944	313,819	313,819	541,194
Alternative 2	919,646	416,879	416,879	584,468
Alternative 3	1,830,356	416,879	416,879	888,038

For the purpose of this notice the Department selected alternative 3. Alternative 3 reasonably reflects the type and number of facilities regulated by CFATS, is based upon the actual number of full time employees and contractors as reported by high-risk chemical facilities, and explicitly estimates unescorted visitors as a separate population from facility employees and resident contractors.

Limitation of Respondents to Tier 1 and Tier 2 Facilities

The Department is proposing to limit this information collection, and to limit initial CFATS Personnel Surety Program implementation, to only Tier 1 and Tier 2 high-risk chemical facilities. A limited implementation would enable the Department to implement the CFATS Personnel Surety Program for those facilities presenting the highest risk, while not imposing the burden on all CFATS regulated facilities. Assuming this information collection request is approved, a subsequent ICR would be published and submitted to OMB for approval to incorporate any lessons learned and potential improvements to the CFATS Personnel Surety Program prior to collecting information from Tier 3 and Tier 4 high-risk chemical facilities. Table 17 provides the estimate of the number of respondents using alternative 3 for Tier 1 and 2 high-risk chemical facilities.

TABLE 17—ESTIMATE OF NUMBER OF TIER 1 & 2 RESPONDENTS

	A 2012 CFATS personnel surety program analysis average number of full time employees and contractors (including 20% turnover) (Table 10)	B Estimate of full time employees and contractors with access to restricted areas or critical assets (Percent)	(A × B) = C Average number of full time employees and contractors (Including 20% turnover)	D ACC unescorted visitor estimate (including 81.75% turnover for frequent visitors, 20% turnover for infrequent visitors) (Table 6)	E Number of facilities (Table 5)	(C + D) × E Number of initial respondents	F 2012 CFATS personnel surety program analysis 20% annual turnover (Table 10)	G ACC unescorted visitors annual turnover (Table 6)	(F = G) × E Annual respondent turnover
Tier 1 Group A	719	100	719	1,811	4	11,347	120	611	3,277
Tier 1 Group B	43	100	43	453	7	3,336	7	153	1,075
Tier 1 Group C	360	100	360	453	11	9,111	60	153	2,384
Tier 1 Theft	783	100	783	75	104	89,587	131	25	16,273
Tier 2 Group A	267	100	267	1,811	9	18,640	44	611	5,877
Tier 2 Group B	36	100	36	453	18	8,775	6	153	2,848
Tier 2 Group C	587	100	587	453	17	17,489	98	153	4,214
Tier 2 Theft	499	100	499	75	449	257,567	83	25	48,700
Total	n/a	n/a	n/a	n/a	n/a	415,852	n/a	n/a	84,648

Therefore, the annual average number of respondents is equal to 195,049, as shown in Table 18. The Department's rounded estimate is 195,000 respondents.

TABLE 18—ESTIMATE OF ANNUAL NUMBER OF RESPONDENTS FOR TIER 1 & 2 FACILITIES

	A Total respondents year 1	B Total respondents year 2	C Total respondents year 3	(A + B + C)/3 Number of respondents (annual average)
Tier 1 Group A	11,347	3,277	3,277	5,967
Tier 1 Group B	3,336	1,075	1,075	1,829
Tier 1 Group C	9,111	2,384	2,384	4,627
Tier 1 Theft	89,587	16,273	16,273	40,711
Tier 2 Group A	18,640	5,877	5,877	10,132
Tier 2 Group B	8,775	2,848	2,848	4,823
Tier 2 Group C	17,489	4,214	4,214	8,639
Tier 2 Theft	257,567	48,700	48,700	118,322
Total	415,852	84,648	84,648	195,049

Total Annual Burden Hours

The total annual burden hours were estimated in a three step process. The first step was to derive from previous tables in this notice the estimated number of initial submissions for Tier 1 and Tier 2 facilities: (1) Full time employees and contractors, (2) frequent visitors, and (3) infrequent visitors. The derived estimates are shown in Table 18.

TABLE 19—STEP 1 OF ESTIMATING THE TOTAL ANNUAL BURDEN HOURS

[Estimate of initial submissions for Tier 1 & 2 facilities in Year 1]

	A Response to top screen question Q:1.45–400 (Table 11)	B Initial submissions—frequent visitors (Table 7)	C Initial submissions—infrequent visitors (Table 7)	D 2012 CFATS personnel surety program analysis (normalized) (Table 6)	E = (A × D) Initial submissions—full time employees and contractors (Year 1)	F = (B × D) Initial submissions—frequent visitors (Year 1)	G = (C × D) Initial submissions—infrequent visitors (Year 1)
Tier 1 Group A	599	600	600	4	2,686	2,692	2,692
Tier 1 Group B	36	150	150	7	241	1,010	1,010
Tier 1 Group C	300	150	150	11	3,362	1,683	1,683
Tier 1 Theft	653	25	25	104	68,098	2,608	2,608
Tier 2 Group A	222	600	600	9	1,994	5,384	5,384
Tier 2 Group B	30	150	150	18	543	2,692	2,692
Tier 2 Group C	489	150	150	17	8,228	2,524	2,524
Tier 2 Theft	416	25	25	449	186,433	11,217	11,217
Total	n/a	n/a	n/a	n/a	271,585	29,809	29,809

The second step of estimating the total annual burden hours was to estimate the average annual number of submission by the type of submission. The average annual number of submissions, by the type of submission for Tier 1 and Tier 2 Facilities over three years is shown in Table 20.

TABLE 20—STEP 2 OF ESTIMATING THE TOTAL ANNUAL BURDEN HOURS

[Average annual estimate of total number of submissions, by type of submission, for Tier 1 and Tier 2 facilities in each year]

	A Initial submissions	B Annual turnover percentage	A × B = C Additional submissions due to industry turnover	(A + B) * 0.05 Update/corrections	C Removal due to turnover
Year 1					
Full Time Employees and Contractors	271,585	20	54,317	16,295	54,317
Frequent Visitors	29,809	81.75	24,369	2,709	24,369
Infrequent Visitors	29,809	20	5,962	1,789	5,962
Year 1 Submissions		415,853		20,793	84,648
Year 2					
Full Time Employees and Contractors	0		54,317	2,716	54,317
Frequent Visitors	0		24,369	1,218	24,369
Infrequent Visitors	0		5,962	298	5,962
Year 2 Submissions		84,648		4,232	84,648
Year 3					
Full Time Employees and Contractors	0		54,317	2,716	54,317
Frequent Visitors	0		24,369	1,218	24,369
Infrequent Visitors	0		5,962	298	5,962
Year 3 Submissions		84,648		4,232	84,648
Total Submissions Over 3 Years		585,149		29,257	253,944
Number of Average Annual Submissions		195,050		9,752	84,648

The third, and final step of estimating the total annual burden hours, was to sum the average annual burden hours for each type of submission.

The average annual burden hour for each type of submission was estimated by multiplying the average annual number of: (1) Initial respondents multiplied by the estimated time per initial respondent (0.50 hours or 30 minutes); (2) respondents for which a high-risk chemical facility will need to update/correct information multiplied by the number of hours necessary to type and submit each update/correction (i.e., 0.17 hours or 10 minutes); and (3) respondents that are expected to no longer have access to a high-risk chemical facility's restricted area(s) multiplied by the number of hours necessary to notify the Department (i.e., 0.17 hours or 10 minutes).

Both calculations described above are displayed below in Table 21.

TABLE 21—STEP 3 OF ESTIMATING THE ANNUAL BURDEN ESTIMATE

	A Average annual respondents	B Duration (hours)	(A × B) = C Burden hours
Initial Submissions	195,049	0.50	97,525
Updates/Corrections	9,752	0.17	1,658
Removal—Turnover	84,648	0.17	14,390
	.....	.....	113,573

Therefore, the average annual burden is estimated to be 113,573 hours. The Department's rounded estimate is 113,600 hours.

Estimated Time per Respondent

For the purpose of estimating the time per respondent, the Department considered making an assumption about the percentage of affected individuals under the three options outlined in the summary section of this notice (e.g., information about one-third of affected individuals would be submitted for direct vetting against the federal government's consolidated and integrated terrorist watchlist, information about one-third of affected individuals would be submitted to verify enrollment in other DHS programs, and information about one-third of affected individuals would not be submitted because they possess TWICs that high-risk chemical facilities would electronically verify through the use of TWIC readers). However, the Department concluded that such an assumption was unwarranted because: (1) The assumption would be without any factual basis; (2) the burden to submit information about an affected individual for direct vetting is approximately the same as the burden to submit information in order to verify enrollment (i.e., similar number of required data elements); and (3) the most conservative burden estimate would assume that information is submitted for all affected individuals (i.e., no facilities will choose to electronically verify the TWIC in the possession of an affected individual).

To avoid making unjustified assumptions, and to avoid underestimating the time per respondent, the Department decided to estimate the average burden per respondent by assuming each and every respondent's information will be manually submitted, rather than uploaded via a bulk file or web-service, to the Department for vetting for terrorist ties.

Accordingly, the Department's ''estimated time per respondent'' is estimated by dividing the average annual burden hours (113,573 hours) by the number of respondents (195,049). Therefore, for the purpose of this notice, the estimated time per respondent is 0.5822 hours. The Department's rounded estimate is 0.58 hours.

Total Burden Cost (Capital/Startup)

The Department expects no capital/startup cost for high-risk chemical facilities that choose to implement Option 1 or Option 2.

Although there are no costs associated with high-risk chemical facilities providing information to the Department under Option 3, the Department has nonetheless estimated the potential capital costs incurred by high-risk chemical facilities that choose to implement Option 3 under the CFATS Personnel Surety Program to ensure an appropriate accounting of the costs potentially incurred by this Information Collection. The capital cost of Option 3 can be estimated by multiplying (1) the number of high-risk chemical facilities that are likely to implement Option 3 by (2) the cost to acquire, install, and maintain TWIC readers at the high-risk chemical facilities.

Estimating Capital Costs for Option 3—Number and Type of High-Risk Chemical Facilities That May Choose To Use Option 3

High-risk chemical facilities and their designees have wide latitude in how they may implement Option 3, if they choose to do so. High-risk chemical facilities could propose, in their SSPs or ASPs, to share the costs of TWIC readers and any associated infrastructure at central locations, or high-risk chemical facilities could propose to purchase and install TWIC readers for their own use. The Department will assess the adequacy of such proposals on a facility-by-facility basis, in the course of evaluating each facility's SSP or ASP.

For the purpose of this notice, the Department estimates that the number of high-risk chemical facilities that are likely to implement Option 3 is the number of high-risk chemical facilities likely to have affected individuals who possess TWICs accessing their restricted areas or critical assets. Through the 2012 CFATS Personnel Surety Program Analysis, the Department determined that there are currently 32 high-risk chemical facilities that have claimed a partial Maritime Transportation Security Act (MTSA) exemption [42] and have received a final tier determination under CFATS. The Department then normalized the facility count by multiplying the number of facilities that claimed a partial exemption in each category by a factor of 1.22 (as it did in estimating the total number of facilities in Table 6 above), as shown in Table 22.

[42] Facilities that are partially regulated under both MTSA and CFATS have the opportunity to identify themselves in the CSAT Top-Screen. The text of the question is available on page 22 of the CSAT Top-Screen Survey Application User Guide v1.99. *See http://www.dhs.gov/xlibrary/assets/chemsec_csattopscreenusersmanual.pdf.*

TABLE 22—ESTIMATE OF NUMBER OF HIGH-RISK CHEMICAL FACILITIES THAT MAY CHOOSE TO USE TWIC READERS

	A 2012 CFATS personnel surety program analysis	A × 1.22 2012 CFATS personnel surety program analysis (normalized)
Tier 1 Group A	0	0
Tier 1 Group B	0	0
Tier 1 Group C	0	0
Tier 1 Theft	0	0
Tier 2 Group A	0	0
Tier 2 Group B	0	0
Tier 2 Group C	1	1
Tier 2 Theft	3	3
Tier 3 Group A	3	3
Tier 3 Group B	0	0
Tier 3 Group C	2	2
Tier 3 Theft	13	15
Tier 4 Group A	1	1
Tier 4 Group B	2	2
Tier 4 Group C	0	0
Tier 4 Theft	7	8
Total	32	35

Estimating Capital Costs for Option 3—TWIC Reader Costs

For the purpose of this notice, the Department has based the potential per high-risk chemical facility capital costs related to Option 3 on the TWIC Reader Requirements notice of proposed rulemaking (NPRM).[43] In the TWIC Reader Requirements NPRM, the Department estimated the initial phase-in costs annual recurring costs, and annual recurring costs that considers equipment replacement for container terminals, large passenger vessels/terminals, petroleum facilities, break-bulk terminals and small passenger vessels/towboats. For the purpose of this notice, the Department has based the capital costs related to Option 3 on the costs incurred by the petroleum facilities (i.e., bulk liquid facilities) in the TWIC Reader Requirements NPRM. Specifically, the Department estimated the capital costs in this notice to be the average of the initial phase-in cost plus three years of the annual reoccurring cost without equipment replacement. NPPD opted to use the annual reoccurring cost without equipment replacement to align with the TWIC Reader Requirements NPRM assumption that equipment replacement cost occurs every five years. This notice estimates average annual costs for a three year period. Thus, for the purposes of this notice the estimated the capital costs per facility is $99,953.33, [(($256,267 + ($14,531 × 3))/3].

The Department then calculated the capital costs for the 35 high-risk chemical facilities, as shown in Table 23.

TABLE 23—CAPITAL COST BURDEN ESTIMATE FOR HIGH-RISK CHEMICAL FACILITIES THAT MAY CHOOSE TO USE TWIC READERS

	A Number of facilities	B Average TWIC reader implementation cost per facility	(A × B) Capital cost of TWIC reader implementation
Tier 1 Group A	0	$99,953	$0
Tier 1 Group B	0	99,953	0
Tier 1 Group C	0	99,953	0
Tier 1 Theft	0	99,953	0
Tier 2 Group A	0	99,953	0
Tier 2 Group B	0	99,953	0
Tier 2 Group C	1	99,953	99,953
Tier 2 Theft	3	99,953	299,860
Tier 3 Group A	3	99,953	299,860
Tier 3 Group B	0	99,953	0
Tier 3 Group C	2	99,953	199,907
Tier 3 Theft	15	99,953	1,499,300

[43] *See* 78 FR 17781 (March 22, 2013). The TWIC Reader Requirements NPRM Table 4 may be found at *https://www.federalregister.gov/articles/2013/03/22/2013-06182/transportation-worker-identification-credential-twic-reader-requirements#t-6*. Future cost estimates for TWIC readers may change as a result of updates to price data and public comment received on the TWIC Reader Requirements NPRM.

TABLE 23—CAPITAL COST BURDEN ESTIMATE FOR HIGH-RISK CHEMICAL FACILITIES THAT MAY CHOOSE TO USE TWIC READERS—Continued

	A Number of facilities	B Average TWIC reader implementation cost per facility	(A × B) Capital cost of TWIC reader implementation
Tier 4 Group A	1	99,953	99,953
Tier 4 Group B	2	99,953	199,907
Tier 4 Group C	0	99,953	0
Tier 4 Theft	8	99,953	799,627
Total	35	n/a	3,498,367

The capital cost for the 35 high-risk chemical facilities totals $3,498,367.67; however, the Department intends to limit this information collection to only Tier 1 and Tier 2 facilities. Therefore, for the purpose of this notice, the Department estimates the capital cost for the implementation of TWIC readers is $399,813, as shown in Table 24. The Department's rounded estimate is $399,800.

TABLE 24—CAPITAL COST BURDEN ESTIMATE FOR TIER 1 & 2 HIGH-RISK CHEMICAL FACILITIES THAT MAY CHOOSE TO USE TWIC READERS

	A Number of facilities	B Average TWIC reader implementation cost per facility	(A × B) Capital cost of TWIC reader implementation
Tier 1 Group A	0	$99,953	$0
Tier 1 Group B	0	99,953	0
Tier 1 Group C	0	99,953	0
Tier 1 Theft	0	99,953	0
Tier 2 Group A	0	99,953	0
Tier 2 Group B	0	99,953	0
Tier 2 Group C	1	99,953	99,953
Tier 2 Theft	3	99,953	299,860
Total	4	n/a	399,813

Consideration of Other Capital Costs

The burden estimates outlined in this notice are limited in scope to those activities listed in 5 CFR 1320.3(b)(1). Specifically, 5 CFR 1320.3(b)(1) and 5 CFR 1320.8 require the Department to estimate the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. Therefore, many costs (e.g., physical modification of the facility layout) a facility may choose to incur to develop or implement its SSP or ASP should not be accounted for when estimating the capital costs associated with this information collection.

The Department did consider estimating certain facility capital costs such as: (1) Capital costs for computer, telecommunications equipment, software, and storage to manage the data collection, submissions, and tracking; (2) capital and ongoing costs for designing, deploying and operating information technology (IT) systems necessary to maintain the data collection, submissions, and tracking; (3) cost of training facility personnel to maintain the data collection, submissions, and tracking; and (4) site security officer time to manage the data collection, submissions, and tracking. However, the Department has concluded that these costs should be excluded in accordance with 5 CFR 1320.3(b)(2), which directs federal agencies to not count the costs associated with the time, effort, and financial resources incurred in the normal course of their activities (e.g., in compiling and maintaining business records) if the reporting, recordkeeping, or disclosure activities are usual and customary.

The Department believes that the time, effort, and financial resources are usual and customary costs because these are costs that high-risk chemical facilities would incur to conduct background checks for identity, criminal history, and legal authorization to work under 6 CFR 27.230(a)(12)(i)–(iii), and also under various other federal, state, or local laws or regulations.

Recordkeeping Costs

High-risk chemical facilities are not required to create, keep, or retain facility records under 6 CFR 27.255 to comply with RBPS 12(iv). If a high-risk chemical facility elects, for its own business purposes, to create, keep, or retain facility records that identify and manage the submission of information about affected individuals, those records are not government records.

The recordkeeping costs, if any, to create, keep, or retain facility records pertaining to background checks as part of a high-risk chemical facility's SSP or ASP, are properly estimated in the recordkeeping estimates associated with

the SSP Instrument under Information Collection 1670–0007.[44]

The Department considered estimating the potential recordkeeping burden associated with RBPS 12(iv), but subsequently concluded that no potential recordkeeping should be estimated in this notice in accordance with 5 CFR 1320.3(b)(2), which directs federal agencies to not count the costs associated with the time, effort, and financial resources incurred in the normal course of their activities (e.g., in compiling and maintaining business records) if the reporting, recordkeeping, or disclosure activities are usual and customary. The Department believes that the types of recordkeeping associated with RBPS 12(iv) are usual and customary costs that high-risk chemical facilities would incur to conduct background checks for identity, criminal history, and legal authorization to work as required by RBPS (12)(i)–(iii) and also by various other federal, state, or local laws or regulations.

Total Burden Cost (Operating/Maintaining)

The annual burden cost is equal to the sum of the: (1) Annual burden hours multiplied by the hourly wage rate for appropriate facility personnel; (2) the capital costs ($399,800); and (3) recordkeeping costs ($0).

Comments associated with the previous ICR suggested an appropriate wage rate between $20 and $40 per hour; the Department picked the midpoint of $30 to estimate the hourly direct wage rate, which corresponds to a fully loaded wage rate of $42.

Therefore, the annual burden not including capital costs and recordkeeping costs is $4,770,051 as shown in Table 25. The rounded estimate is $4,770,000.

TABLE 25—ESTIMATE OF ANNUAL BURDEN COST FOR TIER 1 & TIER 2 FACILITIES

	A	B	(A × B)
	Burden (hours)	Waste rate	Cost
Initial Submission	97,525	$42	$4,096,032
Updates/Corrections	1,658	42	69,633
Removal-Turnover	14,390	42	604,386
Total Burden Cost (operating/maintaining)	113,573	42	4,770,051

Therefore, the total annual burden cost is $4,844,008, after the inclusion of the $399,813 capital cost burden. The Department's rounded estimate is $4,844,000.

VI. Solicitation of Comments

OMB is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

VII. Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

Title: Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program.

OMB Number: 1670—NEW.

Frequency: Other: In accordance with the compliance schedule or the facility Site Security Plan or Alternative Security Plan.

Affected Public: Business or other for-profit.

Number of Respondents: 195,000 affected individuals.

Estimated Time per Respondent: 0.58 hours.

Total Burden Hours: 113,600 annual burden hours.

Total Burden Cost (capital/startup): $399,800.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $4,844,000.

Dated: January 17, 2014.

Scott Libby,

Deputy Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2014–02082 Filed 1–31–14; 8:45 am]

BILLING CODE 9110–9P–P

[44] Information Collection 1670–0007 may be viewed at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201001-1670-007#.*

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List January 29, 2014

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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February 4	Feb 19	Feb 25	Mar 6	Mar 11	Mar 21	Apr 7	May 5
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February 24	Mar 11	Mar 17	Mar 26	Mar 31	Apr 10	Apr 25	May 27
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