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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–FV–11–0047; FV11–930–1 FR]

Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Suspension of Order Regulations Regarding Random Row Diversion

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the grower diversion regulations prescribed under the marketing order for tart cherries (order). The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin and is administered locally by the Cherry Industry Administrative Board (Board). This rule suspends indefinitely the regulations establishing random row as a method of grower diversion. With growers consistently choosing other diversion methods which offer more flexibility and fewer potential problems, the Board recommended this suspension to bring grower diversion requirements in line with current industry practices.

DATES: *Effective Date:* October 22, 2011.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or E-mail: *Jennie.Varela@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule changes the grower diversion regulations prescribed under the order. This rule suspends indefinitely the regulations establishing random row as a method of grower diversion. With growers consistently choosing other diversion methods which offer more flexibility and fewer potential problems, the Board recommended this suspension to bring grower diversion requirements in line with current industry practices. The Board unanimously recommended this action at a meeting on March 24, 2011.

Section 930.58 of the order provides authority for voluntary grower diversion. Under volume regulation, growers can divert all or a portion of their cherries which otherwise, upon delivery to a handler, would be subject to regulation. Section 930.158 prescribes the rules and regulations for grower diversion, including the procedures and deadline dates for applying for diversion and the types of diversion available to growers. Currently, there are four types of grower diversion: Random row, whole block, partial block, and in-orchard tank. This rule suspends the portions of § 930.158 that provide random row as an option under grower diversion.

The order contains volume control provisions that allow the industry to address fluctuations in production from season to season, helping to stabilize supplies and prices. When volume control is in effect, free and restricted percentages are established. Handlers can meet their restricted percentage obligation by placing cherries in inventory reserve, diverting cherries themselves, or redeeming grower diversion certificates.

Under voluntary grower diversion, growers can divert cherries from production in exchange for Board issued grower diversion certificates stating the quantity diverted. Growers can then present these certificates to handlers who may redeem them as a method of complying with their restricted percentage obligation under volume regulation. By diverting cherries from production, growers can avoid the costs of harvesting and transporting fruit, reduce the supply, and mitigate the downward pressure on prices that result from oversupply.

Following the promulgation of the order in 1996, the Board recommended regulations outlining two grower diversion options for the 1997 crop year, whole block and random row (63 FR 20019). Under whole block diversion, growers select entire orchard blocks to be left unharvested. With random row diversion, the Board randomly selects rows of trees the grower is to leave unharvested, providing growers with a way to divert a portion of an orchard rather than a whole orchard block.

For the 1998 crop year and subsequent seasons, the grower

diversion program was expanded to include two additional options, partial block and in-orchard tank diversions (63 FR 33523). Partial block diversion allows the grower to select a contiguous portion of an orchard block that will be left unharvested. With in-orchard tank diversion, cherries are harvested into tanks, the volume is calculated, and then diverted in the orchard.

The addition of these options provided growers with greater flexibility when considering diversion, and marked a substantial decline in the use of random row. For the last ten years, random row has been the least utilized grower diversion option, and accounted for less than three percent of total grower diversion during the last three seasons.

During the discussion of this issue, the Board noted several issues that have contributed to the nominal use of random row as a grower diversion option. Random row diversion is the least flexible of grower diversion options in terms of quality control. When a grower selects a whole block or partial block to divert, the grower controls which fruit will be harvested and which trees will be left unharvested. Similarly, under in-orchard tank diversion, the grower determines what fruit is picked and stored in the tanks for diversion. Consequently, these three methods allow the grower to incorporate quality into the decision of which cherries to divert. Delivering higher quality fruit not only brings the grower a greater return, but higher quality benefits the industry overall.

Under the random row method of diversion, the diverted rows are selected randomly by the Board. This could result in the best quality fruit being left in the orchard, with lower quality fruit delivered to handlers, leading to lower grower returns.

In addition to quality concerns, the logistics of random row also present particular challenges to the grower. With the exception of in-orchard tank diversion, all grower diversion methods require the grower to submit an orchard map to the Board. The burden of having to keep orchard maps precisely up-to-date is borne by growers. The random selection of rows by the Board places additional importance on the accuracy and precision of submitted maps. Inaccurate maps can lead to harvesting errors, with rows selected for diversion being inadvertently harvested.

Even if maps are kept current, diverting random rows during harvest can be challenging. While whole and partial block diversions allow growers to leave contiguous areas unharvested, random row diversions require that specified rows be left unharvested, increasing the likelihood of error. Further, given the prevalence of contract harvesting, workers are often unfamiliar with the orchards they are harvesting, and mistakes are made in identifying the specific rows to be left unharvested.

The greater potential for error during harvesting is of major concern to growers because penalties for errors in random row diversion are costly. If a grower discovers an error during harvest, two trees must be left unharvested for every one of the trees improperly harvested in order to remain in compliance, with the grower only receiving the original diversion amount. If the grower reports an error at the end of harvesting, a reduced diversion amount is calculated. If an unreported error is discovered by the Board after harvesting is complete, no diversion certificate would be issued.

In addition to the issues affecting grower interest in this option, the Board also has concerns regarding the use of random row diversion. Specifically, the Board is concerned about the potential for miscalculations or misuse that could lead to overstated diversion amounts. Random row diversion differs from the other options in that the diverted tonnage receiving certificates is calculated based on volume delivered from the orchard. In contrast, whole and partial block diversions involve sampling trees in the selected area to determine the volume being diverted before harvest takes place, and in-orchard tank diversion is determined by the actual volume measured in the tanks.

Calculating the diverted volume after delivery creates opportunity for error. It can be difficult to determine if the volume delivered to the handler all came from appropriately mapped groves, included in the grower's diversion application. With diversion calculations based on delivered volume, it is important that the volume only include cherries from those orchards in which random rows were diverted. Some growers care for and deliver fruit from orchards other than their own. There is concern that the handler accepting delivery could easily mistake how much volume came from the grower's own mapped orchards, resulting in the overstatement of the amount diverted.

With the availability of other diversion options that offer the grower more flexibility and less potential problems, random row represents a very small percentage of total grower diversion. Further, with the higher potential for harvesting errors and for miscalculations of diversion amounts, the Board believes random row is the most problematic of the diversion options. Consequently, the Board unanimously recommended this action which suspends the regulations providing random row as a grower diversion option. The Board voted to suspend the regulations rather than eliminating them altogether in the event the industry would want to reinstate random row diversion in the future.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 40 handlers of tart cherries who are subject to regulation under the marketing order and approximately 600 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service, and Board data, the average annual grower price for tart cherries during the 2009–2010 season was $0.197 per pound, and total shipments were around 227 million pounds. Therefore, average receipts for tart cherry producers were around $75,000, well below the SBA threshold for small producers. The Food Institute estimates an f.o.b. price of $0.84 per pound for frozen tart cherries, which make up the majority of processed tart cherries. Using this data, average annual handler receipts were about $4.8 million, also below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

This action changes the grower diversion regulations prescribed under the order. This rule suspends

indefinitely the regulations in § 930.158 establishing random row as a method of grower diversion. With growers consistently choosing other diversion methods which offer more flexibility and fewer potential problems, the Board recommended this suspension to bring grower diversion requirements in line with current industry practices. The authority for this action is provided for in § 930.58 of the order. The Board unanimously recommended this action at a meeting on March 24, 2011.

This final rule will not impose any additional costs on growers. The grower diversion program under the order is completely voluntary. In an effort to stabilize supplies and prices, the tart cherry industry uses mechanisms under the order to attempt to bring supply and demand into balance. Under voluntary grower diversion, growers can divert cherries from production in exchange for Board issued grower diversion certificates stating the quantity diverted. Growers can then present these certificates to handlers who may redeem them as a method of complying with their restricted percentage obligation under volume regulation. By diverting cherries from production, growers can avoid the costs of harvesting and transporting fruit, reduce the supply, and mitigate the downward pressure on prices that result from oversupply.

This action suspends only the regulations that provide random row as a method of grower diversion. The other three options, whole block, partial block, and in-orchard tank, remain unchanged by this action. Random row is the least utilized of the grower diversion options, with the other three options accounting for 97 percent of diversion volume. Consequently, this change brings the regulations in line with current industry preferences and practices. Further, the remaining grower diversion options offer the grower some flexibility to control quality, which in turn could increase grower returns. The effects of this rule are not expected to be disproportionately greater or less for small entities than for larger entities.

One alternative action considered by the Board was to remove the regulations pertaining to random row diversion. However, the Board agreed that suspension would be the most appropriate action should the industry determine it would like to reinstate random row as a diversion option in the future. Thus, termination was rejected as an alternative.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0177, Tart Cherries Grown in the States of MI, NY, PA, OR, UT, WA and WI. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. Further, the public comments received concerning the proposal did not address the initial regulatory flexibility analysis.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the March 24, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action as published in the **Federal Register** on Monday, July 18, 2011 (76 FR 42072). Copies of the rule were mailed or sent via facsimile to all Board members and tart cherry handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending July 28, 2011, was provided to allow interested persons to respond to the proposal.

One comment was received during the comment period. The commenter, a small grower, opposed the proposed change. The commenter claimed that random row diversion allows their operation to save time and labor. The commenter stated that by using random row they do not have to wait for weights and estimates for each load and it speeds up harvesting as the trees that are to remain unpicked are marked in advance.

Grower diversion is a voluntary program established under the order. Growers can choose whether or not they want to participate. While this action suspends random row as an option under grower diversion, three options remain: whole block, partial block, and in-orchard tank. Of these options, whole block and partial block can be used similarly to random row by leaving segments of the grower's production unharvested. Further, like random row, weights and estimates of each load are not required and the trees that are to remain unharvested are determined in advance, so harvest speeds are not affected. In addition to having characteristics similar to random row, whole and partial block diversions also provide the grower with control over which trees will be left unharvested, allowing the grower some flexibility to control for quality.

Accordingly, no changes will be made to the rule as proposed, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that the provision suspended, as hereinafter set forth, no longer tends to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already processing tart cherries from the 2011 crop and the Board wants to implement this change as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 10-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart Cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 930.158 [Amended]

■ 2. In § 930.158:
■ A. Suspend paragraph (b)(1) indefinitely.
■ B. In paragraph (c)(3), redesignate the first two sentences as paragraph (c)(3)(i) and the remaining sentences as paragraph (c)(3)(ii).
■ C. Newly designated paragraph (c)(3)(ii) is suspended indefinitely.

Dated: October 14, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–27276 Filed 10–20–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 953

[Doc. No. AMS–FV–11–0027; FV11–953–1 FR]

Irish Potatoes Grown in Southeastern States; Suspension of Marketing Order Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule continues in effect the interim rule that suspended the marketing order for Irish potatoes grown in Southeastern states (order), and the rules and regulations implemented thereunder, through March 1, 2014. The order regulates the handling of Irish potatoes grown in Southeastern states and is administered locally by the Southeastern Potato Committee (Committee). The Committee believes advances in farming technology and production quality have reduced the need for the order. When considering the costs associated with continuing the order, the Committee unanimously recommended that the order be suspended.

DATES: *Effective Date:* October 22, 2011 through March 1, 2014.

FOR FURTHER INFORMATION CONTACT: Dawana J. Clark, Marketing Specialist, or Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (301) 734–5243, *Fax:* (301) 734–5275, or *E-mail: Dawana.Clark@ams.usda.gov* or *Kenneth.Johnson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 104 and Marketing Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in Southeastern states, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the interim rule that suspended the order and all provisions prescribed thereunder through March 1, 2014. The suspension includes, but is not limited to, grade, size, quality, assessment, reporting, and inspection requirements. The Committee believes advances in farming technology and production quality have reduced the need for the order. When considering the costs associated with continuing the order, the Committee agreed that the order should be suspended. The Committee met on February 17, 2011, and unanimously recommended suspending the order for three years, through March 1, 2014.

The order was promulgated in 1948, and regulates the handling of Irish potatoes grown in designated counties of Virginia and North Carolina. The order has been used to provide the industry with grade, size, quality, and inspection requirements. The order also authorizes reporting and recordkeeping functions required for the operation of the order. The program is funded by assessments imposed on handlers.

Over the past several years, the Southeastern potato industry has been in decline, with acreage and production trending downward. Production has fallen from an estimated 1,600,000 hundredweight for the 1996–97 season, to a current estimate of 600,000 hundredweight for the 2010–11 season. In 1996, there were approximately 150 growers and 60 handlers in the production area. Currently, there are approximately 20 growers and 10 handlers covered in the production area.

The Committee met February 17, 2011, to discuss the continued need for the order. During the discussion, several members mentioned that the order was promulgated at a time when the industry was having an issue with the quality of potatoes being produced. The purpose of the order was to establish standards to improve the quality of marketed product.

Since the implementation of the order, the quality of Southeastern potatoes has greatly improved. Advances in farm machinery and improvements in the grading process have helped to ensure that only quality product is being shipped to buyers. Concerns the industry previously had prior to implementation of the order are no longer an issue, and for the past several years, some industry members have started questioning the continued need for the order and its associated costs.

At the meeting, members were informed that to maintain the order, the Committee would have to incur some additional administrative expenses. To cover these costs, the Committee would need to increase the assessment rate. Committee members agreed that the industry would not support an assessment increase.

In addition to the assessment costs, comments were also made regarding the cost of inspection by the Committee required under the order. It was stated that some industry members see the cost of mandatory inspection as an unnecessary burden. Other Committee members expressed concern over whether inspection would still be available if the order was suspended. This issue was resolved when members were assured that inspection would still

be available for those who request it, regardless of the status of the order.

Based on discussion at the meeting, and on letters from growers who were not able to attend, changes in the industry and industry practices have diminished the need for the order. Further, there are concerns regarding the costs associated with maintaining the order, and no industry support for raising assessments to cover increasing administrative costs. Therefore, the Committee unanimously recommended suspending the order for three years, through March 1, 2014.

The Committee recommended suspension of the order, not termination, to allow the industry an opportunity to review the effectiveness of operating without order requirements. If problems develop, Committee members wanted the industry to have the alternative of reactivating the order. During the suspension period, the industry will be able to monitor the Southeastern potato industry to determine if quality issues reoccur. A meeting will be held prior to March 1, 2014, to review the state of the industry and determine whether to continue the suspension, or to reactivate or terminate the order.

It is hereby determined that Federal Marketing Order No. 953, and the rules and regulations issued thereunder, do not tend to effectuate the declared policy of the Act. This action continues to suspend, through March 1, 2014, the provisions of Federal Marketing Order No. 953, and the rules and regulations issued thereunder, including but not limited to: Provisions of the order dealing with the establishment and the responsibilities of the Committee; provisions of the order dealing with expenses and the collection of assessments; all rules and regulations; and, all information collection and reporting requirements.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 10 handlers of Irish potatoes grown in Southeastern states who are subject to regulation under the order and approximately 20 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Using AMS Market News Service reported prices, the average f.o.b. price for Southeastern potatoes for the 2010 marketing season was around $20 per hundredweight. The Committee estimated production for the 2010–11 season at approximately 600,000 hundredweight of potatoes. Based on this information, average annual receipts for handlers would be less than $7,000,000. Information provided by the National Agricultural Statistics Service indicates that the average producer price for Irish potatoes grown in North Carolina and Virginia in 2010 was approximately $11.63 per hundredweight. Considering estimated production, average producer revenue would be about $350,000 for the 2010–11 season. Therefore, the majority of Southeastern potato handlers and producers may be classified as small entities.

This rule continues in effect the action that suspended the order and the rules and regulations implemented thereunder through March 1, 2014. The Committee believes advances in farming technology and production quality have reduced the need for the order. When considering the costs associated with continuing the order, the Committee unanimously recommended that the order be suspended. The Committee made this recommendation on February 17, 2011. Authority for this action is provided in section 8c(16)(A) of the Act.

Suspension of the order and its corresponding regulations relieves handlers of quality, inspection, and assessment burdens during the suspension period. Also, handler reports will not be required. Additionally, growers may be relieved of some costs, such as assessment expenses, which are often passed onto them by handlers. Suspension of the order is therefore expected to reduce the regulatory burden on handlers and growers of all sizes.

The Committee considered alternatives to this rule, including maintaining the order or terminating it rather than suspending. Support was not shown for either of these options. Therefore these alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 13), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large Southeastern potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Further, the Committee's meeting was widely publicized throughout the Southeastern potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the February 17, 2011, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim rule concerning this action was published in the **Federal Register** on June 10, 2011 (76 FR 33967). Copies of the rule were mailed or sent via facsimile to all Committee members and potato handlers. Finally, the rule was made available through the Internet by USDA and Office of the **Federal Register**. A 60-day comment period ending August 9, 2011, was provided to allow interested persons to respond to the rule.

One comment was received during the comment period in response to the rule. The commenter supported suspending the marketing order for Irish potatoes, but added that the better choice would be to terminate the marketing order in its entirety as it is anti-competitive and raises prices for consumers.

The points made by the commenter were thoroughly discussed prior to the Committee vote. During its discussions, the Committee determined they would like to provide the industry an

opportunity to operate without marketing order requirements in order to review the effectiveness of the order. During the suspension period, the industry will be able to monitor the quality of potatoes being shipped. Should problems develop, suspension of the order will provide the Committee the alternative of reactivating the order. Therefore, the Committee voted to suspend, rather than terminate, the marketing order.

Accordingly, no changes will be made to the rule, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that the order suspended by this final rule, as hereinafter set forth, does not tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the interim rule.

List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim rule that suspended 7 CFR part 953 and that was published at 76 FR 33967 on June 10, 2011, is adopted as a final rule, without change.

Dated: October 14, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–27275 Filed 10–20–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket No. EERE–2011–BT–CE–0050]

RIN 1904–AC58

Energy Conservation Program: Compliance Date Regarding the Test Procedures for Walk-In Coolers and Freezers and the Certification for Metal Halide Lamp Ballasts and Fixtures

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

ACTION: Final rule.

SUMMARY: This document clarifies the compliance date by which manufacturers must begin to use portions of a recently promulgated test procedure (*i.e.,* the April 15, 2011 final rule) when certifying walk-in coolers and walk-in freezers. This document also adopts regulatory text changes to reflect the U.S. Department of Energy's (DOE) intent that only manufacturers of components of walk-in coolers and walk-in freezers are required to submit certification reports. Additionally, the final rule clarifies the types of test data needed to support the certification of compliance pursuant to DOE's existing test procedures for walk-in coolers and walk-in freezers and the recently promulgated test procedure for this equipment. Finally, DOE is adopting an extension to the compliance date for which manufacturers, including importers, need to certify compliance to the Department of metal halide lamp ballasts and fixtures.

DATES: This final rule is effective November 21, 2011.

ADDRESSES: The docket (*i.e.,* docket number EERE–2011–BT–CE–0050 and/or RIN number 1904–AC58) is available for review at *http://www.regulations.gov,* including **Federal Register** notices, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. E-mail: *Ashley.Armstrong@ee.doe.gov.*

In the Office of the General Counsel, contact Ms. Laura Barhydt, U.S. Department of Energy, Office of the General Counsel, GC–32, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 287–5772. E-mail: *Laura.Barhydt@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Test Procedures for Walk-In Coolers and Freezers

The Energy Policy and Conservation Act (EPCA), as amended by section 312(c) of the Energy Independence and Security Act (EISA 2007), requires the Department of Energy (DOE) to prescribe a test procedure to measure the energy use of walk-in coolers and freezers (collectively, walk-ins or WICFs). See 42 U.S.C. 6314(a). DOE recently satisfied this requirement by issuing a final rule establishing a test procedure for manufacturers to use when measuring the energy use or energy efficiency of certain walk-in components: Panels, non-display doors, display doors, and refrigeration systems. See 76 FR 21580 (April 15, 2011) (final rule prescribing walk-in test procedures) and 76 FR 33631 (June 9, 2011) (notice containing corrected formulas).

Since the publication of that rulemaking, DOE recognized a need to clarify the date by which manufacturers must begin using the test procedure. The **SUMMARY** and **DATES** sections of the preamble text to the final rule stated that the test procedures will be mandatory for making representations of energy usage or energy efficiency starting October 12, 2011; that is, 180 days after publication of the test procedure final rule. DOE published a notice of proposed rulemaking on August 9, 2011, which proposed to clarify that the compliance date for using the new test procedure for certifications of compliance will be the same as the compliance date for the performance-based energy conservation standards currently under development. 76 FR 48745. At this time, DOE plans to issue the performance-based standards final rule by 2012 and manufacturers must comply with those standards within three years of publication of the final rule. Thus, pending the completion of the performance-based energy conservation standards rulemaking, manufacturers will be required to certify compliance to those standards using the new test procedure in 2015, unless DOE adopts an alternative compliance date.[1] *Id.*

In addition, DOE clarified the entity responsible for certifying compliance to

[1] DOE may also provide for a delayed effective date if the Secretary determines this three-year period is inadequate. (42 U.S.C. 6313(f)(4)(B))

the Department for WICFs in the preamble of the certification, compliance, and enforcement final rule published on March 7, 2011 in the **Federal Register**. 76 FR 12422. Specifically, DOE discussed a certification scheme requiring the WICF component manufacturer to certify compliance to the Department. 76 FR 12442–44. Since the March 2011 final rule, DOE has received numerous additional inquiries and questions regarding this compliance scheme. Thus, the August 2011 NOPR proposed regulatory text in 10 CFR 429.53 to further clarify that only component manufacturers are required to submit certifications of compliance with the current standards (*i.e.,* those design-based standards resulting from the enactment of EISA 2007). 76 FR 48748. These clarifications are consistent with the initial approach outlined in the March 2011 final rule and are meant to help manufacturers further determine who is responsible for certifying compliance to the Department.

II. Background for the Certification Compliance Date of Metal Halide Lamp Fixtures

DOE's recent certification, compliance and enforcement rulemaking extended the compliance dates for certification of several types of commercial equipment. 76 FR 38287, 38292. Specifically, DOE extended the certification compliance date for manufacturers of metal halide lamp fixtures to October 1, 2011. Since the issuance of the final rule, additional information has come to the attention of the DOE regarding a lack of sufficient test data to support certification on the full sample required by DOE's regulations. To provide parity with similarly situated manufacturers of other types of commercial equipment, DOE proposed to extend the certification compliance date further for manufacturers of metal halide lamp fixtures, requiring submittal of a certification report no later than 1 year following publication of this final rule (*i.e.,* approximately October 2012). 76 FR 48747, 48748.

III. Discussion of Comments and Summary of Final Rule

In response to the August 2011 NOPR, DOE received 3 comments, which are discussed in detail below.

A. Walk-In Coolers and Freezers

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) did not agree with DOE's proposal to set the test procedure compliance date to be the same as the date of compliance with the standards, but stated that the manufacturers should not be responsible for compliance until after an alternate efficiency determination method (AEDM) rulemaking is complete. AHRI urged DOE to set the test procedure compliance date no sooner than 3 years from the completion of an AEDM rulemaking. (AHRI, No. 0006 at p. 2)

In response to the comment from AHRI, DOE clarifies that once the compliance date of the walk-in energy conservation standard is reached, manufacturers must use the new DOE test procedure to certify compliance with the performance-based standards. However, if use of an AEDM is allowed, manufacturers may use the AEDM to certify compliance as long as the manufacturers satisfy DOE's provisions governing the use of the AEDM. DOE intends to complete both the AEDM and performance-based standards rules in 2012. While the exact compliance date cannot be predicted at this time, DOE expects the publication of these two final rules to be on a similar schedule. As a result, consistent with AHRI's suggestion, under the rulemaking schedule currently underway, DOE anticipates that manufacturers are likely to have at least 3 years to make the transition to the new test procedure.

Regarding energy use representations, Hill Phoenix, a manufacturer of panels used in walk-in applications, stated that requiring energy representations (other than those based on R-value) to be based on the new test procedure (starting on October 12, 2011) would be unduly burdensome to manufacturers because the National Sanitation Foundation International (NSF) requires panel manufacturers to provide the panel's U-factor if the panel manufacturer is not providing refrigeration systems with the panels. Hill Phoenix recommended that DOE allow manufacturers additional time to complete the testing for purposes of representations, and recommended that the new test procedures only be used when the new standards go into effect (*i.e.,* three years after publication). (Hill Phoenix, No. 0005 at p. 1)

Under 42 U.S.C. 6314(d), 180 days after DOE has published a test procedure, no manufacturer, distributor, retailer, or private labeler may make any representation in writing or in any broadcast advertisement regarding the energy consumption of covered equipment—or the cost of energy consumed by that equipment—unless that equipment has been tested in accordance with that test procedure. See 42 U.S.C. 6314(d)(1). DOE is permitted to extend that 180-day requirement once for no more than 180 days upon receipt of a timely submitted petition (*i.e.* submitted no later than the 60th day before the expiration of the period involved) from a manufacturer, distributor, retailer, or private labeler. In this case, a timely petition should have been filed by August 12, 2011; Hill Phoenix's comments were submitted on August 30, 2011. As a result, DOE cannot treat this comment as having been filed in a timely manner in accordance with this provision.

Nevertheless, DOE carefully examined this issue. After reviewing this issue, DOE has concluded that manufacturers who have already conducted the required testing in accordance with that new (April 2011) test procedure would be able to make the required representations, including those made to NSF. NSF certification is an ongoing process and must be maintained by manufacturers producing equipment for the food industry, which represent the vast majority of manufacturers in the walk-in industry. Manufacturers have had several months since the promulgation of that final rule to initiate and complete testing necessary for making these representations. While the U-factor testing required by DOE, including long-term thermal resistance testing, may take time to perform, DOE has no statutory authority to relieve manufacturers of the representation requirement under 42 U.S.C. 6314(d). In consideration of these factors, DOE cannot extend the amount of time available to manufacturers before they must begin to use the new April 2011 test procedure for all representations of energy use or energy efficiency using the new DOE test procedure, including U-factor.

DOE encourages voluntary compliance with the new test procedure prior to the compliance date of any energy conservation performance-based standards that may be set for walk-in equipment. However, if DOE sets energy conservation standards for walk-in equipment, the new test procedure must be used once the compliance date for those standards is reached.

DOE also notes that manufacturers must still use DOE's current testing procedure in 431.304(b)(1)–(4) to certify compliance to the EISA 2007 R-value standards. All R-value representations must be determined using DOE's testing procedure and sampling plans for WICF panels.

In the test procedure final rule, DOE established the industry standard AHRI 1250–2009 as the method for testing walk-in refrigeration systems. See 76 FR 33631. AHRI recommended that the entity responsible for certifying compliance should be the party

responsible for the rating of the entire refrigeration system as prescribed by the DOE test procedure. AHRI also stated that the party responsible for rating the refrigeration system would not necessarily be the manufacturer making the individual components constituting the refrigeration system (*e.g.,* unit coolers or condensing units). AHRI requested that DOE clarify this point in the final rule. (AHRI, No. 0006 at p. 2) DOE plans to clarify which entity would be responsible for certifying compliance with any potential performance-based standard that DOE may set as part of the planned rulemaking addressing potential standards for walk-in equipment. DOE will consider AHRI's comments, along with others that are submitted, in that rulemaking proceeding.

DOE notes its adoption of provisions regarding testing for WICF panels in today's final rule. Specifically, DOE is clarifying that manufacturers are not, and will not, be required to test non-foam members and/or edge regions using the ASTM C518 test procedure prescribed in EPCA. Non-foam members and edge regions are only considered in the U-factor testing using ASTM C1363, which is part of the new DOE test procedures. Manufacturers have questioned whether the metal facers should be in place during testing. DOE does not consider the facers to be ''structural members.'' DOE believes that the measurement of the R-value of the foam with facers should be equal to a measurement of the R-value of the foam without the facers. Consistent with this approach, DOE is adopting the following clarification in today's final rule: ''Foam produced inside of a panel * * * must be tested in its final foamed state and must not include any structural members or non-foam materials other than the panel's protective skins or facers.''

Finally, DOE notes its adoption of provisions regarding testing for WICF panels in today's final rule. DOE is adopting regulatory text to clarify that the entity responsible for certifying compliance is the WICF component manufacturer. Furthermore, DOE is clarifying that only door, panel and fan motor WICF component manufacturers are required to submit certifications of compliance with the current standards (*i.e.,* those design-based standards resulting from the enactment of EISA 2007). DOE emphasizes that WICFs distributed in commerce in the United States must meet *all* of the design standards enacted in EISA 2007, irrespective of whether a certification report is required. DOE also notes that it is clarifying that the anti-sweat heater power draw should be reported in watts per square foot of door opening, which is consistent with the units used in the current EISA 2007 standards.

B. Metal Halide Lamp Ballast and Fixtures

Due to the lack of sufficient test data to support certification as further outlined above, DOE proposed to extend the certification compliance date for manufacturers of metal halide lamp fixtures and to require the submittal of an initial certification report by no later than one year following publication of the final rule. 76 FR 48747, 48748. In response, NEMA supported DOE's proposed one year extension. In addition, NEMA requested that DOE consider aligning the initial certification and annual certification reporting dates to reduce reporting burden. (NEMA, No. 0002, p. 1) DOE is adopting a 1-year extension from publication of the final rule for manufacturers to submit certification reports to DOE for all basic models distributed in commerce. Since the 1-year extension will be after the annual submission deadline for 2012, the annual requirement does not apply for that particular year. DOE notes that in the years following 2012, manufacturers will still be required to meet the annual filing deadline of September 1.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This final rule has been determined not to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov.*

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule would merely extend the compliance date of a rulemaking already promulgated. To the extent such action has any economic impact it would be positive in that it would allow regulated parties additional time to come into compliance. DOE did undertake a full regulatory flexibility analysis of the original test procedures rulemaking. That analysis considered the impacts of that rulemaking on small entities. As a result, DOE certifies that, this final rule, which would clarify the application of the test procedures, would not have a significant economic impact on a substantial number of small entities.

C. Review Under the National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review Under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects

10 CFR Part 429

Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 431

Administrative practice and procedure, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on October 13, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends parts 429 and 431 of chapter II of title 10 of the Code of Federal Regulations to read as follows:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Revise § 429.12(i)(6) to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(i) * * *

(6) Metal halide lamp ballasts and fixtures, October 22, 2012.

■ 3. Revise § 429.53(b) to read as follows:

§ 429.53 Walk-in coolers and walk-in freezers.

* * * * *

(b) *Certification reports.* (1) Except that § 429.12(b)(6) applies to the certified component, the requirements of § 429.12 are applicable to manufacturers of the components of walk-in coolers and freezers (WICFs) listed in paragraph (b)(2) of this section, and;

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) For WICF doors: The door type, R-value of the door insulation, and a declaration that the manufacturer has incorporated the applicable design requirements. In addition, for those WICFs with transparent reach-in doors and windows: The glass type of the doors and windows (*e.g.,* double-pane with heat reflective treatment, triple-pane glass with gas fill), and the power draw of the antisweat heater in watts per square foot of door opening.

(ii) For WICF panels: The R-value of the insulation (except for glazed portions of the doors or structural members)

(iii) For WICF fan motors: The motor purpose (*i.e.,* evaporator fan motor or condenser fan motor), the horsepower, and a declaration that the manufacturer has incorporated the applicable design requirements.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 4. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 5. Section 431.304 is amended by:
■ a. Redesignating paragraph (b) as paragraph (c);
■ b. Adding a new paragraph (b);
■ c. In newly redesignated paragraph (c), revising the paragraph heading; adding new introductory text prior to paragraph (c)(1); redesignating paragraphs (c)(5) through (c)(8) as paragraphs (c)(7) through (c)(10); and adding new paragraphs (c)(5) and (c)(6).

The revisions and additions read as follows:

§ 431.304 Uniform test method for the measurement of energy consumption of walk-in coolers and walk-in freezers.

* * * * *

(b) *Testing and Calculations—EISA 2007 Test Procedure.* Manufacturers shall use this paragraph (b) for the purposes of certifying compliance with the applicable energy conservation standards of the R-value of panels until January 1, 2015.

(1) The R value shall be the 1/K factor multiplied by the thickness of the panel.

(2) The K factor shall be based on ASTM C518 (incorporated by reference, see § 431.303).

(3) For calculating the R value for freezers, the K factor of the foam at 20 degrees Fahrenheit (average foam temperature) shall be used.

(4) For calculating the R value for coolers, the K factor of the foam at 55 degrees Fahrenheit (average foam temperature) shall be used.

(5) Foam shall be tested after it is produced in its final chemical form. Foam produced inside of a panel (''foam-in-place'') must be tested in its final foamed state and must not include any structural members or non-foam materials other than the panel's protective skins or facers. A test sample less than or equal to 4 inches thick must be taken from the center of the foam-in-place panels. Foam produced as board stock may be tested prior to its incorporation into a final panel.

(6) Manufacturers are not required to consider non-foam member and/or edge regions in ASTM C518 testing.

(c) *Testing and Calculations—Amended Test Procedures.* Manufacturers shall use this paragraph (c) for any representations of energy efficiency/energy use starting on October 12, 2011 and to certify compliance to the energy conservation standards of the R-value of panels on or after January 1, 2015.

* * * * *

(5) For ASTM C518 testing, foam shall be tested after it is produced in its final chemical form. Foam produced inside of a panel (''foam-in-place'') must be tested in its final foamed state and must not include any structural members or non-foam materials other than the panel's protective skins or facers. A test sample less than or equal to 4 inches thick must be taken from the center of the foam-in-place panels. Foam produced as board stock may be tested prior to its incorporation into a final panel.

(6) Manufacturers are not required to consider non-foam member and/or edge regions in ASTM C518 testing.

* * * * *

[FR Doc. 2011–27154 Filed 10–20–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 24, 162, 163, and 178

[USCBP–2010–0041; CBP Dec. 11–19]

RIN 1515–AD68

United States-OMAN Free Trade Agreement

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, interim amendments to the Customs and Border Protection (''CBP'') regulations which were published in the **Federal Register** on January 6, 2011, as CBP Dec. 11–01 to implement the preferential tariff treatment and other customs-related provisions of the United States—Oman Free Trade Agreement entered into by the United States and the Sultanate of Oman.

DATES: Final rule effective November 21, 2011.

FOR FURTHER INFORMATION CONTACT: Textile Operational Aspects: Nancy Mondich, Office of International Trade, (202) 863–6524. Other Operational Aspects: Seth Mazze, Office of

International Trade, (202) 863–6567. Legal Aspects: Elif Eroglu, Office of International Trade, (202) 325–0277.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 2006, the United States and the Sultanate of Oman (the ''Parties'') entered into the U.S.-Oman Free Trade Agreement (''OFTA'' or ''Agreement''). The provisions of the OFTA were adopted by the United States with the enactment of the United States-Oman Free Trade Agreement Implementation Act (the ''Act''), Public Law 109–283, 120 Stat. 1191 (19 U.S.C. 3805 note), on September 26, 2006. Section 206 of the Act requires that regulations be prescribed as necessary pending the President issuing a proclamation to implement the Agreement.

Following Presidential Proclamation 8332, CBP published on January 6, 2011, CBP Dec. 11–01 in the **Federal Register** (76 FR 697), setting forth interim amendments to implement the preferential tariff treatment and customs-related provisions of the OFTA. In order to provide transparency and facilitate their use, the majority of the OFTA implementing regulations set forth in CBP Dec. 11–01 were included within new subpart P in part 10 of the CBP regulations (19 CFR part 10). However, in those cases in which OFTA implementation was more appropriate in the context of an existing regulatory provision, the OFTA regulatory text was incorporated in an existing part within the CBP regulations. For a detailed description of the pertinent provisions of the Agreement and of the OFTA implementing regulations, please see CBP Dec. 11–01.

Although the interim regulatory amendments were promulgated without prior public notice and comments procedures and took effect on January 6, 2011, CBP Dec. 11–01 provided for the submission of public comments that would be considered before adopting the interim regulations as a final rule. The prescribed comment period closed on March 7, 2011.

Discussion of Comment Received in Response to CBP Dec. 11–01

One favorable response was received to the solicitation of comments on the interim rule set forth in CBP Dec. 11–01 which recommended that the government have more free trade agreements like the OFTA.

Conclusion

Accordingly, CBP believes that the interim regulations published as CBP Dec. 11–01 should be adopted as a final rule without change.

Executive Order 12866

This document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866.

Regulatory Flexibility Act

CBP Dec. 11–01 was issued as an interim rule rather than a notice of proposed rulemaking because CBP had determined that the interim regulations involve a foreign affairs function of the United States pursuant to section 553(a)(1) of the Administrative Procedure Act. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information in these regulations are under review by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0117. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number.

The collections of information in these regulations are in §§ 10.863, 10.864, 10.881, and 10.884. This information is required in connection with claims for preferential tariff treatment and for the purpose of the exercise of other rights under the OFTA and the Act and will be used by CBP to determine eligibility for a tariff preference or other rights or benefits under the OFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 0.2 hours per respondent or recordkeeper.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 24

Accounting, Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 178

Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

■ Accordingly, the interim rule amending parts 10, 24, 162, 163, and 178 of the CBP regulations (19 CFR parts 10, 24, 162, 163, and 178), which was published at 76 FR 697 on January 6, 2011, is adopted as a final rule without change.

Alan D. Bersin,

Commissioner, U.S. Customs and Border Protection.

Approved: October 18, 2011.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2011–27310 Filed 10–20–11; 8:45 am]

BILLING CODE 9111–14–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2007–0092]

RIN 0960–AG72

Amendments to Procedures for Certain Determinations and Decisions

AGENCY: Social Security Administration.

ACTION: Final Rules.

SUMMARY: We are revising the procedures for how claimants who receive fully favorable revised determinations based on prehearing case reviews or fully favorable attorney advisor decisions may seek further

review. We are also revising our procedure to provide that we will notify claimants who receive partially favorable determinations based on prehearing case reviews that an administrative law judge (ALJ) will still hold a hearing unless all parties to the hearing tell us in writing that we should dismiss the hearing request. These changes will simplify our administrative review process and free up scarce administrative resources that we can better use to reduce the hearings-level case backlog.

DATES: These final rules are effective on November 21, 2011.

FOR FURTHER INFORMATION CONTACT: Joshua Silverman, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 594–2128. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

In most cases, we decide claims for benefits using an administrative review process that consists of four levels: initial determination, reconsideration, hearing, and appeal. 20 CFR 404.900 and 416.1400. We make an initial determination at the first level. A claimant who is dissatisfied with the initial determination may request reconsideration.[1] A claimant dissatisfied with the reconsidered determination may request a hearing before an ALJ. Finally, if dissatisfied with the ALJ's decision, a claimant may request that the Appeals Council review that decision.[2] After a claimant has completed these administrative steps and received our final decision, he or she may request judicial review of the final decision in Federal district court.

We handle requests for ALJ hearings in several ways. At the hearing level, most claimants receive a decision from an ALJ.[3] An ALJ may hold a hearing and issue a fully favorable, partially favorable, or unfavorable decision. An ALJ may also issue a decision without holding an oral hearing if the claimant and any other parties waive their right to appear at a hearing or if the decision is fully favorable.

There are two other ways we may issue a favorable determination or decision without holding a hearing. A State disability determination service or an agency component may issue a fully or partially favorable revised determination under the prehearing case review process in 20 CFR 404.941 and 416.1441. In addition, an attorney advisor may issue a fully favorable decision under the attorney advisor process in 20 CFR 404.942 and 416.1442. These processes help us adjudicate cases pending at the hearing level more quickly while preserving claimants' right to a hearing before an ALJ.

Prehearing Case Review

The prehearing case review process allows us to refer a case back to the component that issued the determination under review. That component decides whether to revise its determination and issue a fully or partially favorable revised determination. We may conduct a prehearing case review if:

1. We receive additional evidence;
2. There is an indication that additional evidence is available;
3. There is a change in the law or regulations; or
4. There is an error in the file or some other indication that the prior determination may be revised.

20 CFR 404.941(b), 416.1441(b).

Our current regulations state that if we issue a fully favorable revised determination, we notify the claimant and all other parties that the ALJ will dismiss the hearing request unless a party requests that the hearing proceed. The claimant or other party must make this request in writing within 30 days after the date we mail the notice of the revised determination.

If we issue a partially favorable revised determination, we notify the claimant and all other parties that we will continue with the ALJ hearing unless the claimant and all other parties agree to dismiss the hearing request. We do not specify how the claimant and all other parties must tell us that they agree to dismiss this hearing request.

Prehearing Decisions by Attorney Advisors

Attorney advisors in our Office of Disability Adjudication and Review may conduct specific prehearing proceedings and, if appropriate, make fully favorable decisions based on the record. Attorney advisors may conduct prehearing proceedings under circumstances similar to those under which we conduct prehearing case reviews. 20 CFR 404.942(b) and 416.1442(b).

Under our current rules, if an attorney advisor issues a fully favorable decision, we wait 30 days before we dismiss the hearing request. We created the 30-day period to allow a claimant or other party time to ask us to proceed with the hearing.

Changes

Our adjudicative experience shows that claimants who receive a fully favorable determination or decision rarely ask us to continue with a hearing. In fact, claimants may be confused by a notice dismissing their request for a hearing several weeks after they received a fully favorable determination or decision on their claim. As a result, we spent administrative resources: (1) Processing the dismissals of requests for hearing because we had to wait until the 30-day period ended before we dismissed the request for a hearing; (2) answering claimants' questions; and (3) explaining what the dismissal notice meant.

Changing our procedures will both simplify the administrative review process and free scarce administrative resources that we will better use to reduce the hearings backlog.

Therefore, we are revising the way claimants can obtain further review of fully favorable and partially favorable prehearing case review determinations and fully favorable attorney advisor decisions. These changes preserve a claimant's right to have an ALJ hearing, even when we have already issued a fully favorable determination or decision.

Whenever a claimant or other party seeks further review of a favorable determination or decision, we will continue to consider the entire case record including the determination or decision. Further review of a favorable determination or decision may result in a determination or decision that is less favorable or unfavorable to a claimant.

Revised Procedures for Prehearing Case Reviews

If we issue a fully favorable revised determination in the prehearing case review process, an ALJ will dismiss the

[1] For disability claims, ten States participate in a ''prototype'' test under 20 CFR 404.906 and 416.1406. In these States, we eliminated the reconsideration step of the administrative review process. Claimants and other parties who are dissatisfied with the initial determinations on their disability cases may request a hearing before an ALJ. The ten States are: Alabama, Alaska, California (Los Angeles North and West Branches), Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania.

[2] We define the words ''determination'' and ''decision'' in 20 CFR 404.901 and 416.1401. At the initial and reconsideration levels of the administrative review process, we issue ''determinations.'' ALJs issue ''decisions,'' as may the Appeals Council when it reviews an ALJ's decision.

[3] An ALJ may also send the case to the Appeals Council with a recommended decision or dismiss a request for a hearing. 20 CFR 404.953(c), 404.957, 416.1453(d), and 416.1457.

request for a hearing soon after the reviewing component issues the fully favorable determination. The notice accompanying the ALJ's order of dismissal will advise all parties that if they disagree with the revised determination, they have 60 days from the date they receive the notice to request that the ALJ vacate the dismissal. The ALJ will extend the 60-day time limit if a party making a request shows that he or she had good cause for missing the deadline. If a party timely requests that the ALJ vacate the dismissal, the ALJ will vacate the dismissal, reinstate the request for a hearing, and offer all parties an opportunity for a hearing.

If we issue a partially favorable determination in the prehearing case review process, an ALJ will proceed to hold a hearing unless all parties to the hearing tell us in writing that they agree to dismiss the hearing request. If we receive a written statement(s) agreeing to a dismissal before an ALJ mails a notice of his or her decision, we will dismiss the request for a hearing.

We include these changes in final sections 404.941, 404.960, 416.1441, and 416.1460. In response to a public comment, we are adopting final regulatory language that differs from the language we proposed, as we discuss in more detail below.

Revised Procedures for Attorney Advisor Prehearing Decisions

If an attorney advisor issues a fully favorable decision, we will consider the decision to be a hearing-level decision, and we will not issue a notice of dismissal of the hearing request. The notice of the attorney advisor's decision will state that if a party to the hearing disagrees with the attorney advisor's decision for any reason, the party must request that an ALJ reinstate the request for a hearing within 60 days of the date he or she receives notice of the decision. The ALJ will extend the 60-day time limit if the party making the request shows that he or she had good cause for missing the deadline. If a party timely requests that the ALJ reinstate the request for a hearing, the ALJ will reinstate the request for a hearing and offer all parties to the hearing an opportunity for a hearing. We will process the fully favorable attorney advisor's decision while the hearing is pending.

We include these changes in final sections 404.942 and 416.1442. In response to a public comment, we are adopting final regulatory language that differs from the language we proposed, as we discuss in more detail below.

Other Changes

We are changing ''wholly favorable'' to ''fully favorable'' in final sections 404.941, 404.948, 416.1441, and 416.1448. We also are making additional changes for clarity in final sections 404.948, 404.960, 416.1448, and 416.1460. These minor changes will make the language in these sections consistent with other related sections but will not alter their meaning.

Finally, we are rescinding Social Security Ruling (SSR) 97–2p today in a separate notice in the **Federal Register** because we are incorporating some of the policies from SSR 97–2p and revising others in these final rules.

Public Comments

We published a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 22, 2010, and we gave the public 60 days to comment on the NPRM. 75 FR 42639. We received one comment during this period. We carefully read and considered it. It is available for public viewing at *http://www.regulations.gov*. Because the comment was long, we have summarized and paraphrased it. We have tried to summarize the commenter's views accurately and to respond to the significant issues raised by the commenter that were within the scope of these rules.

Comment: The commenter supported our proposed policy revisions, but stated that the proposed regulatory text was not easy enough to understand. The commenter asserted that the NPRM violated section 504 of the Rehabilitation Act of 1973 [4] because the proposed regulatory language was above the 12th grade reading level and some of the complex regulatory language was ''not understandable for many applicants and beneficiaries who have disabilities.'' The commenter suggested that we clarify the regulatory text by shortening certain sentences and avoiding long introductory clauses.

Response: We adopted the comment. We are working to improve the clarity of our regulations and appreciate the commenter's suggestions. In response to the commenter's suggestions, we shortened and reorganized text in final sections 404.941(d)–(e), 404.942(d), 404.960(a)–(b), 416.1441(d)–(e), 416.1442(d), and 416.1460(a)–(b).

However, we disagree with the commenter that our proposed rules would violate section 504 of the Rehabilitation Act. While section 504 and its implementing regulations require Federal agencies to communicate effectively with the public, they do not require Federal agencies to publish regulations at a specific reading level.

We are also taking steps to communicate effectively with claimants and beneficiaries through our notices and by other means. We created an Office of Open Government to improve the clarity, tone, and readability of notices to ensure that we communicate effectively with the public. Each person to whom these final rules apply will receive a notice written in accordance with our notice standards. The notice will advise him or her of our determination or decision, of the options available if he or she wishes further review of that determination or decision, and of the time limits that apply to those options.

Comment: The commenter suggested that we revise proposed 20 CFR 404.960(a) and 416.1460(a) to clarify that the Appeals Council will notify the claimant in writing whether or not it vacates a dismissal of a request for a hearing. The commenter stated that the proposed language in these sections did not discuss whether the Appeals Council would notify the claimant if it did not vacate a dismissal of a request for a hearing.

Response: We agree with the commenter that our proposed regulatory language was unclear on these processes and are adopting language in final sections 404.960(a) and 416.1460(a) that differs from the proposed language. These sections now clarify that, if the claimant files a request for review, the Appeals Council will notify the claimant about whether it granted or denied the request to vacate the dismissal. This final rule will also apply to ALJs when a claimant asks an ALJ to vacate a dismissal.

The Appeals Council may also consider whether to vacate a dismissal on its own motion- that is, without any request from a claimant- under 20 CFR 404.969 and 416.1469. We are clarifying that the Appeals Council will notify a claimant that it used its own motion review authority only if it decides to vacate a dismissal. The Appeals Council will not notify a claimant when it decides not to vacate a dismissal based on own motion review because it is not taking any action, and the claimant has not requested the review.

Comment: The commenter suggested that we be consistent in the manner we present our standard of good cause. Specifically, the commenter suggested that we define ''good cause'' in proposed 20 CFR 404.960(a) and 416.1460(a) by referencing our rules in 20 CFR 404.911 and 416.1411. The

[4] 29 U.S.C. 794.

commenter noted that we refer to the good cause definition in 20 CFR 404.911 and 416.1411 when we mention good cause in proposed 20 CFR 404.941(d) and 416.1441(d).

Response: We agree with the commenter that our proposed regulatory language could have been clearer. However, we are not adopting the comment that we revise the rules to refer to the good cause criteria in 20 CFR 404.911 and 416.1411. Under our current policy, we consider each reason a claimant gives for making a request to vacate an order of dismissal on its own merit. Generally, we will vacate the order of dismissal if the claimant shows that the premise on which the ALJ or the Appeals Council based the dismissal order was erroneous. To clarify that point and to avoid confusion about the applicability of the good cause criteria in sections 404.911 and 416.1411, we are removing the words ''good cause'' from final sections 404.960(a) and 416.1460(a). Therefore, under these final rules, if you wish to request that the ALJ or the Appeals Council vacate a dismissal of a request for a hearing, you must do so within 60 days of the date you receive notice of the dismissal, and you must state why our dismissal of the request for a hearing was erroneous. This change is consistent with our current policy and clarifies that we may vacate a dismissal of a hearing request when a claimant shows us that the dismissal order was erroneous.

Comment: The commenter asked us to revise the regulatory text about how long a claimant had to request that an ALJ reinstate a request for a hearing under proposed 20 CFR 404.941(d), 404.942(d), 416.1441(d), and 416.1442(d). We proposed that a claimant must respond to us within 60 days after receiving notice of the fully favorable determination or decision. The commenter asked that we include a date certain in our notices for any required action instead of requiring claimants to calculate when the 60 days end. The commenter suggested specific regulatory language, including that a claimant ''may add 5 days to the deadline to allow for mailing time. The notice will provide the date by which you must ask.''

Response: We did not adopt the commenter's suggested language. We state in these final rules that a claimant who wants an ALJ to reinstate a hearing request must file his or her request ''within 60 days of the date you receive notice'' of the dismissal or decision in final sections 404.941(d), 404.942(d), 416.1441(d), and 416.1442(d). We use this approach throughout our regulations. Our current rules already define ''date you receive notice'' to mean ''5 days after the date on the notice, unless you show us that you did not receive it within the 5-day period'' in 20 CFR 404.901 and 416.1401.

We did not adopt the suggested regulatory language to include a ''date certain'' by which a claimant must act based on 5 days for mailing time because our regulations acknowledge that a claimant may not receive the notice within this timeframe. In these instances, we allow the claimant to show us that he or she did not actually receive the notice within 5 days after the date on the notice.

Comment: The commenter supported our proposal to specify in proposed 20 CFR 404.941(e) and 416.1441(e) that all parties to a partially favorable determination in the prehearing case review process must make their requests in writing if they want the ALJ to dismiss the request for a hearing. The commenter suggested that we specify that requests be in writing when parties appeal fully favorable determinations and decisions in 20 CFR 404.941(d), 404.942(d), 416.1441(d), and 416.1442(d).

Response: We adopted this comment. Our prior rules in these sections required that the requests be in writing, and this is not a change in our policy.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Thus, OMB reviewed them.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they only affect individuals. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These final rules do not impose any new reporting or recordkeeping requirements and are not subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: October 12, 2011.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set forth in the preamble, we are amending title 20 of the Code of Federal Regulations part 404 subpart J and part 416 subpart N as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.941 by revising paragraphs (c), (d), and (e) to read as follows:

§ 404.941 Prehearing case review.

* * * * *

(c) *Notice of a prehearing revised determination.* If we revise the determination in a prehearing case review, we will mail a written notice of the revised determination to all parties at their last known addresses. We will state the basis for the revised determination and advise all parties of the effect of the revised determination on the request for a hearing.

(d) *Effect of a fully favorable revised determination.* If the revised determination is fully favorable to you, we will tell you in the notice that an administrative law judge will dismiss the request for a hearing. We will also tell you that you or another party to the hearing may request that the administrative law judge vacate the dismissal and reinstate the request for a hearing if you or another party to the

hearing disagrees with the revised determination for any reason. If you wish to make this request, you must do so in writing and send it to us within 60 days of the date you receive notice of the dismissal. If the request is timely, an administrative law judge will vacate the dismissal, reinstate the request for hearing, and offer you and all parties an opportunity for a hearing. The administrative law judge will extend the time limit if you show that you had good cause for missing the deadline. The administrative law judge will use the standards in § 404.911 to determine whether you had good cause.

(e) *Effect of a partially favorable revised determination.* If the revised determination is partially favorable to you, we will tell you in the notice what was not favorable. We will also tell you that an administrative law judge will hold the hearing you requested unless you and all other parties to the hearing agree in writing to dismiss the request for a hearing. An administrative law judge will dismiss the request for a hearing if we receive the written statement(s) agreeing to dismiss the request for a hearing before an administrative law judge mails a notice of his or her hearing decision.

■ 3. Amend § 404.942 by revising paragraphs (d), (e) introductory text, (e)(1), and (f)(3) to read as follows:

§ 404.942 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(d) *Notice of a decision by an attorney advisor.* If an attorney advisor issues a fully favorable decision under this section, we will mail a written notice of the decision to all parties at their last known addresses. We will state the basis for the decision and advise all parties that they may request that an administrative law judge reinstate the request for a hearing if they disagree with the decision for any reason. Any party who wants to make this request must do so in writing and send it to us within 60 days of the date he or she receives notice of the decision. The administrative law judge will extend the time limit if the requestor shows good cause for missing the deadline. The administrative law judge will use the standards in § 404.911 to determine whether there is good cause. If the request is timely, an administrative law judge will reinstate the request for a hearing and offer all parties an opportunity for a hearing.

(e) *Effect of an attorney advisor's decision.* An attorney advisor's decision under this section is binding unless—

(1) You or another party to the hearing submits a timely request that an administrative law judge reinstate the request for a hearing under paragraph (d) of this section;

* * * * *

(f) * * *

(3) Make the decision of an attorney advisor under paragraph (d) of this section subject to review by the Appeals Council if the Appeals Council decides to review the decision of the attorney advisor anytime within 60 days after the date of the decision under § 404.969.

* * * * *

■ 4. Amend § 404.948 by revising the second sentence of paragraph (a), and paragraph (b)(1)(ii), to read as follows:

§ 404.948 Deciding a case without an oral hearing before an administrative law judge.

(a) *Decision fully favorable.* * * * The notice of the decision will state that you have the right to an oral hearing and to examine the evidence on which the administrative law judge based the decision.

(b) * * *

(1) * * *

(ii) You live outside the United States, you do not inform us that you wish to appear, and there are no other parties who wish to appear.

* * * * *

■ 5. Revise § 404.960 to read as follows:

§ 404.960 Vacating a dismissal of a request for a hearing before an administrative law judge.

(a) Except as provided in paragraph (b) of this section, an administrative law judge or the Appeals Council may vacate a dismissal of a request for a hearing if you request that we vacate the dismissal. If you or another party wish to make this request, you must do so within 60 days of the date you receive notice of the dismissal, and you must state why our dismissal of your request for a hearing was erroneous. The administrative law judge or Appeals Council will inform you in writing of the action taken on your request. The Appeals Council may also vacate a dismissal of a request for a hearing on its own motion. If the Appeals Council decides to vacate a dismissal on its own motion, it will do so within 60 days of the date we mail the notice of dismissal and will inform you in writing that it vacated the dismissal.

(b) If you wish to proceed with a hearing after you received a fully favorable revised determination under the prehearing case review process in § 404.941, you must follow the procedures in § 404.941(d) to request that an administrative law judge vacate his or her order dismissing your request for a hearing.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

■ 6. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 7. Amend § 416.1441 by revising paragraphs (c), (d), and (e) to read as follows:

§ 416.1441 Prehearing case review.

* * * * *

(c) *Notice of a prehearing revised determination.* If we revise the determination in a prehearing case review, we will mail a written notice of the revised determination to all parties at their last known addresses. We will state the basis for the revised determination and advise all parties of the effect of the revised determination on the request for a hearing.

(d) *Effect of a fully favorable revised determination.* If the revised determination is fully favorable to you, we will tell you in the notice that an administrative law judge will dismiss the request for a hearing. We will also tell you that you or another party to the hearing may request that the administrative law judge vacate the dismissal and reinstate the request for a hearing if you or another party to the hearing disagrees with the revised determination for any reason. If you wish to make this request, you must do so in writing and send it to us within 60 days of the date you receive notice of the dismissal. If the request is timely, an administrative law judge will vacate the dismissal, reinstate the request for a hearing, and offer you and all parties an opportunity for a hearing. The administrative law judge will extend the time limit if you show that you had good cause for missing the deadline. The administrative law judge will use the standards in § 416.1411 to determine whether you had good cause.

(e) *Effect of a partially favorable revised determination.* If the revised determination is partially favorable to you, we will tell you in the notice what was not favorable. We will also tell you that an administrative law judge will hold the hearing you requested unless you and all other parties to the hearing agree in writing to dismiss the request for a hearing. An administrative law judge will dismiss the request for a hearing if we receive the written statement(s) agreeing to dismiss the request for a hearing before an

administrative law judge mails a notice of his or her hearing decision.

■ 8. Amend § 416.1442 by revising paragraphs (d), (e) introductory text, (e)(1), and (f)(3) to read as follows:

§ 416.1442 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(d) *Notice of a decision by an attorney advisor.* If an attorney advisor issues a fully favorable decision under this section, we will mail a written notice of the decision to all parties at their last known addresses. We will state the basis for the decision and advise all parties that they may request that an administrative law judge reinstate the request for a hearing if they disagree with the decision for any reason. Any party who wants to make this request must do so in writing and send it to us within 60 days of the date he or she receives notice of the decision. The administrative law judge will extend the time limit if the requestor shows good cause for missing the deadline. The administrative law judge will use the standards in § 416.1411 to determine whether there is good cause. If the request is timely, an administrative law judge will reinstate the request for a hearing and offer all parties an opportunity for a hearing.

(e) *Effect of an attorney advisor's decision.* An attorney advisor's decision under this section is binding unless—

(1) You or another party to the hearing submits a timely request that an administrative law judge reinstate the request for a hearing under paragraph (d) of this section;

* * * * *

(f) * * *

(3) Make the decision of an attorney advisor under paragraph (d) of this section subject to review by the Appeals Council if the Appeals Council decides to review the decision of the attorney advisor anytime within 60 days after the date of the decision under § 416.1469.

* * * * *

■ 9. Amend § 416.1448 by revising the second sentence of paragraph (a), and paragraph (b)(1)(ii), to read as follows:

§ 416.1448 Deciding a case without an oral hearing before an administrative law judge.

(a) *Decision fully favorable.* * * * The notice of the decision will state that you have the right to an oral hearing and to examine the evidence on which the administrative law judge based the decision.

(b) * * *

(1) * * *

(ii) You live outside the United States, you do not inform us that you wish to appear, and there are no other parties who wish to appear.

* * * * *

■ 10. Revise § 416.1460 to read as follows:

§ 416.1460 Vacating a dismissal of a request for a hearing before an administrative law judge.

(a) Except as provided in paragraph (b) of this section, an administrative law judge or the Appeals Council may vacate a dismissal of a request for a hearing if you request that we vacate the dismissal. If you or another party wish to make this request, you must do so within 60 days of the date you receive notice of the dismissal, and you must state why our dismissal of your request for a hearing was erroneous. The administrative law judge or Appeals Council will inform you in writing of the action taken on your request. The Appeals Council may also vacate a dismissal of a request for a hearing on its own motion. If the Appeals Council decides to vacate a dismissal on its own motion, it will do so within 60 days of the date we mail the notice of dismissal and will inform you in writing that it vacated the dismissal.

(b) If you wish to proceed with a hearing after you received a fully favorable revised determination under the prehearing case review process in § 416.1441, you must follow the procedures in § 416.1441(d) to request that an administrative law judge vacate his or her order dismissing your request for a hearing.

[FR Doc. 2011–27236 Filed 10–20–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–357]

Schedules of Controlled Substances: Temporary Placement of Three Synthetic Cathinones Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final Order.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) is issuing this final order to temporarily schedule three synthetic cathinones under the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The substances are 4-methyl-N-methylcathinone (mephedrone), 3,4-methylenedioxy-N-methylcathinone (methylone), and 3,4-methylenedioxypyrovalerone (MDPV). This action is based on a finding by the Administrator that the placement of these synthetic cathinones and their salts, isomers, and salts of isomers into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. As a result of this order, the full effect of the CSA and its implementing regulations including criminal, civil and administrative penalties, sanctions and regulatory controls of Schedule I substances will be imposed on the manufacture, distribution, possession, importation, and exportation of these synthetic cathinones.

DATES: *Effective Date:* This Final Order is effective on October 21, 2011.

FOR FURTHER INFORMATION CONTACT: Imelda L. Paredes, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone (202) 307–7165.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), which was signed into law on October 12, 1984, amended section 201 of the CSA (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA for one year without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid imminent hazard to the public safety. 21 U.S.C. 811(h); 21 CFR 1308.49. If proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling up to an additional six months. 21 U.S.C. 811(h)(2). Where the necessary findings are made, a substance may be temporarily scheduled in Schedule I if it is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no exemption or approval in effect under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for the substance. 21 U.S.C. 811(h)(1). The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of DEA. 28 CFR 0.100.

Section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)) requires the Administrator to notify the Secretary of Health and Human Services of her intention to temporarily place a substance into Schedule I of the CSA.[1]

[1] Because the Secretary of Health and Human Services has delegated to the Assistant Secretary for

Continued

The Administrator transmitted notice of her intent to place mephedrone, methylone and MDPV in Schedule I on a temporary basis to the Assistant Secretary in a letter dated June 15, 2011. The Assistant Secretary responded to this notice by letter dated July 25, 2011, and advised that based on review by the Food and Drug Administration (FDA) there are currently no investigational new drug applications (INDs) or approved new drug applications (NDAs) for MDPV, mephedrone, or methylone. The Assistant Secretary also stated that the Department of Health and Human Services has no objection to the temporary placement of MDPV, mephedrone, and methylone into Schedule I of the CSA. DEA has taken into consideration the Assistant Secretary's comments. As MDPV, mephedrone, and methylone are not currently listed in any schedule under the CSA, as no exemptions or approvals are in effect for MDPV, mephedrone, and methylone under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), and as this temporary scheduling is necessary to avoid an imminent hazard to the public safety, DEA believes that the conditions of 21 U.S.C. 811(h)(1) have been satisfied.

A notice of intent to temporarily place mephedrone, methylone, and MDPV into Schedule I of the CSA was published in the **Federal Register** on September 8, 2011 (76 FR 55616). The data in support of the notice of intent and additional data continue to support the necessary findings to place mephedrone, methylone, and MDPV temporarily into Schedule I of the CSA as necessary to avoid an imminent hazard to the public safety.[2] In making this finding, the Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are as follows: The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(c)(4)–(6). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

Mephedrone, methylone, and MDPV are not currently listed in any schedule under the CSA. The temporary placement of these three synthetic cathinones into Schedule I of the CSA is necessary in order to avoid an imminent hazard to the public safety. First, there has been a rapid and significant increase in abuse of these substances in the United States. As a result of this abuse, synthetic cathinones are banned in at least 37 states in the United States and several countries, and all five branches of the U.S. military prohibit military personnel from possessing or using synthetic cathinones. Second, law enforcement has seized synthetic cathinones and, based on self-reports to law enforcement and health care professionals, synthetic cathinones are abused for their psychoactive properties. Third, federal, state and local public health departments and poison control centers have issued reports describing public health consequences such as emergency department visits and deaths from the use of these synthetic cathinones. Based on scientific data currently available, these three substances have the potential to be extremely harmful and, therefore, pose an imminent hazard to the public safety.

Factor 4: History and Current Pattern of Abuse

Synthetic cathinones are designer drugs of the phenethylamine class which are structurally and pharmacologically similar to amphetamine, 3,4-methylenedioxymethamphetamine (MDMA), cathinone and other related substances. The addition of a beta-keto (β-keto) substituent to the phenethylamine core structure produces a group of substances that now have cathinone as the core structure. Synthetic cathinones, like amphetamine, cathinone, methcathinone, and methamphetamine, are central nervous system (CNS) stimulants.

The synthetic cathinones mephedrone, methylone, and MDPV have recently emerged on the United States' illicit drug market and are being perceived as being 'legal' alternatives to cocaine, methamphetamine, and MDMA. Although synthetic cathinones are new to the United States' illicit drug market, they have been popular drugs of abuse in Europe since 2007. MDPV is a derivative of pyrovalerone, which is a psychoactive drug that was used to treat chronic lethargy and fatigue. Research in anti-depressant and anti-parkinson agents resulted in the development and patenting of methylone. Methylone, however, has not been approved for these purposes. There are no currently accepted medical uses in treatment in the United States for mephedrone, methylone, or MDPV.

Mephedrone, methylone, and MDPV are falsely marketed as ''research chemicals,'' ''plant food,'' or ''bath salts.'' They are sold at smoke shops, head shops, convenience stores, adult book stores, and gas stations. They can also be purchased on the Internet and mailed using the U.S. Postal Service or international mail services. The packages of products containing these synthetic cathinones usually have the warning ''not for human consumption,'' most likely in an effort to circumvent statutory restrictions for these substances. Despite disclaimers that the products are not intended for human consumption, retailers promote that routine urinalysis drug tests will not typically detect the presence of these synthetic cathinones. However, analytical methods for the detection of mephedrone, methylone, MDPV, and other synthetic cathinones have recently been developed for these substances.

Evidence indicates that mephedrone, methylone, and MDPV are being abused for their psychoactive properties. Drug surveys found that these and other synthetic cathinones are being used as recreational drugs and are used as alternatives to illicit stimulants like MDMA and cocaine. Accordingly, mephedrone, methylone, and MDPV have been identified in human urine samples that were obtained for routine drug screenings, they have been detected in samples from drivers suspected of driving under the influence, and they have been detected by drug courts during mandatory periodic drug screens. They have also been identified in biological specimens from individuals (some exhibiting symptoms of ''extreme agitation'' or ''excited delirium'') who have been arrested for possession of a controlled substance, child endangerment, or homicide. They have been detected in samples from decedents whose causes of death were reported as drug-induced toxicity, multiple drug toxicity, or other causes (*e.g.,* blunt force trauma from a vehicular collision or suicide).

Based on studies in the scientific literature, the marketing of products that contain mephedrone, methylone, and MDPV is geared towards teens and young adults. Accordingly, reports indicate that the main users of synthetic cathinones are young male adults. These substances are also used by mid-to-late adolescents and older adults. Many of these abusers of synthetic cathinones have a previous history of drug abuse.

Health of the Department of Health and Human Services the authority to make domestic drug scheduling recommendations, for purposes of this Final Order, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.''

[2] See ''Background, Data and Analysis of Synthetic Cathinones: Mephedrone (4–MMC), Methylone (MDMC) and 3,4-Methylenedioxypyrovalerone (MDPV)'' found at *http://www.regulations.gov*.

According to drug surveys, the reported average amount of synthetic cathinones used per dose ranged from approximately 25 to 250 milligrams and the average amount used per session (i.e., repeated administration and binging) ranged from approximately 25 milligrams to 5 grams depending on the substance consumed, duration of intake, and route of administration. The most common routes of administration of these substances are nasal insufflation by snorting the powder and oral ingestion by swallowing capsules or tablets. Other reported methods of administration include injection, rectal administration, and ''bombing'' (wrapping a dose of powder in a paper wrap and swallowing). Synthetic cathinones have also been reported to be used in binges. Reasons cited for binging include to prolong the duration of effects, to satisfy a ''craving,'' or to satisfy a strong urge to re-dose.

According to information found in drug surveys, clinical case reports, and law enforcement reports, users have reported using products containing mephedrone, methylone, and MDPV with other synthetic cathinones (e.g., butylone, fluoromethcathinone, 4–MEC, etc.), pharmaceutical agents (e.g., lidocaine, caffeine, benzocaine, etc.), or other recreational substances (e.g., amphetamine, MDMA, cocaine, gamma-butyrolactone (GBL), kratom, N,N-benzylpiperazine (BZP), and 1-(3-trifluoromethylphenyl)-piperazine (TFMPP)). Chemical analyses of seized and purchased synthetic cathinone products indicate that some products contain multiple substances. Furthermore, investigative toxicology reports of drug screens in which more than one substance was detected indicate that users have ingested products composed of drug combinations (e.g., a tablet composed of MDPV and BZP) or multiple drug products (e.g., a MDPV powder product and a MDMA tablet).

Factor 5: Scope, Duration and Significance of Abuse

The popularity of synthetic cathinones as recreational drugs has increased since they first appeared on the United States' illicit drug market. According to forensic laboratory reports, the first appearance of these synthetic cathinones in the United States occurred in 2009. In 2009, NFLIS registered 15 exhibits from 8 states containing these three synthetic cathinones. In 2010, there were 574 reports from 29 states related to these substances registered in NFLIS, and in 2011 (January to August) there were 995.[3]

Based on reports to DEA from law enforcement and public health officials, synthetic cathinones are becoming increasingly prevalent and abused throughout the United States. At one United States point of entry, the U.S. Customs and Border Protection (CBP) has encountered at least 127 shipments containing primarily mephedrone, methylone, and MDPV, as well as other synthetic cathinones like 4–MEC, butylone, fluoromethcathinone, and dimethylcathinone. Most of these shipments originated in China or India and were being shipped to destinations throughout the United States such as Arizona, Alaska, Hawaii, Kansas, Louisiana, Oklahoma, Oregon, Pennsylvania, Missouri, Virginia, Washington, and West Virginia. The American Association of Poison Control Centers (AAPCC), a non-profit, national organization that represents the poison control centers of the United States, reported that in 2010, poison control centers took 303 calls about synthetic cathinones. However, in just the first eight months of 2011, poison control centers have already received 4,720 calls relating to these products. These calls were received in poison control centers representing at least 47 states and the District of Columbia. Individual state poison control centers have also reported an increase in the number of calls regarding ''bath salts'' from 2009 to 2011.

Concerns over the abuse of these and other synthetic cathinones have prompted many states to control these substances. As of September 15, 2011, at least 37 states have emergency scheduled or enacted legislation placing regulatory controls on some or many of the synthetic cathinones. These states include Alabama, Arkansas, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming. Several countries including all members of the European Union have also placed controls on the possession and/or sale of one or more of these substances. Moreover, the use of synthetic cathinones by members of the U.S. Armed Forces is prohibited.

[3] Analyzed on September 15, 2011.

Factor 6: What, if Any, Risk There Is to the Public Health

The risks to the public health associated with the abuse of mephedrone, methylone, and MDPV relate to acute and long term public health and safety problems. These synthetic cathinones have become a serious drug abuse threat as there have been reports of emergency room admissions and deaths associated with the abuse of these substances.

Clinical case reports indicate that these synthetic cathinones produce a number of stimulant-like adverse effects such as palpitation, seizure, vomiting, sweating, headache, discoloration of the skin, hypertension, and hyper-reflexia. Adverse effects associated with consumption of these drugs as reported by abusers include nose-bleeds, bruxism (teeth grinding), paranoia, hot flashes, dilated pupils, blurred vision, dry mouth/thirst, palpitations, muscular tension in the jaw and limbs, headache, agitation, anxiety, tremor, and fever or sweating. Consequently, numerous individuals have presented at emergency departments in response to exposure incidents and several cases of acute toxicity have been reported due to the ingestion of mephedrone, methylone, or MDPV. In addition, case reports have shown that the abuse of synthetic cathinones can lead to psychological dependence like that reported for other stimulant drugs.

According to clinical case reports, investigative toxicological reports, and autopsy reports, mephedrone, methylone, and MDPV have been implicated in drug induced overdose deaths. In at least three reported deaths, one of these synthetic cathinones was ruled as the cause of death. Other deaths involved individuals under the influence of these synthetic cathinones who acted violently and unpredictably in causing harm to themselves or others. There have also been reports in the scientific literature of deaths caused by individuals who were driving under the influence of these synthetic cathinones.

A number of synthetic cathinones and their products, as identified by CBP and reported in the scientific literature, appear to originate from foreign sources. The manufacturers and retailers who make and sell these products do not fully disclose the product ingredients including the active ingredients or the health risks and potential hazards associated with these products. This poses significant risk to abusers who may not know what they are purchasing or the risk associated with the use of those products.

Based on the above data, the continued uncontrolled manufacture, distribution, importation, exportation, and abuse of mephedrone, methylone, and MDPV pose an imminent hazard to the public safety. DEA is not aware of any recognized therapeutic uses of these synthetic cathinones in the United States.

DEA has considered the three criteria for placing a substance into Schedule I of the CSA (21 U.S.C. 812), and finds that the data available and reviewed for mephedrone, methylone, and MDPV indicate that these synthetic cathinones each have a high potential for abuse, no currently accepted medical use in treatment in the United States, and lack accepted safety for use under medical supervision.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Administrator has considered the available data and the three factors required to support a determination to temporarily schedule three synthetic cathinones (4-methyl-N-methylcathinone, 3,4-methylenedioxy-N-methylcathinone, and 3,4-methylenedioxypyrovalerone) in Schedule I of the CSA and finds that placement of these synthetic cathinones and their salts, isomers, and salts of isomers into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

Regulatory Requirements

With the issuance of this final order, mephedrone, methylone, and MDPV become subject to the regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, possession, importation and exportation of a Schedule I controlled substance under the CSA.

1. Registration. Any person who manufactures, distributes, dispenses, imports, exports, or possesses mephedrone, methylone, or MDPV or who engages in research or conducts instructional activities with respect to mephedrone, methylone, or MDPV, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with 21 U.S.C. 823 and 958. Any person who is currently engaged in any of the above activities and is not registered with DEA must submit an application for registration and may not continue their activities until DEA has approved that application. Retail sales of Schedule I controlled substances to the general public are not allowed under the Controlled Substances Act.

2. Security. Mephedrone, methylone, and MDPV are subject to Schedule I security requirements. Accordingly, appropriately registered DEA registrants must manufacture, distribute and store these substances in accordance with 1301.71; 1301.72(a), (c), and (d); 1301.73; 1301.74; 1301.75(a) and (c); and 1301.76 of Title 21 of the Code of Federal Regulations as of October 21, 2011.

3. Labeling and packaging. All labeling and packaging requirements for controlled substances set forth in Part 1302 of Title 21 of the Code of Federal Regulations shall apply to commercial containers of mephedrone, methylone, and MDPV. Current DEA registrants shall have thirty (30) calendar days from the effective date of this Final Order to be in compliance with all labeling and packaging requirements.

4. Quotas. Quotas for mephedrone, methylone, and MDPV will be established based on registrations granted and quota applications received pursuant to Part 1303 of Title 21 of the Code of Federal Regulations.

5. Inventory. Every DEA registrant who possesses any quantity of mephedrone, methylone, or MDPV is required to keep inventory of all stocks of these substances on hand pursuant to 1304.03, 1304.04, and 1304.11 of Title 21 of the Code of Federal Regulations. Every current DEA registrant who desires registration in Schedule I for mephedrone, methylone, or MDPV shall conduct an inventory of all stocks of these substances. Current DEA registrants shall have thirty (30) calendar days from the effective date of this Final Order to be in compliance with all inventory requirements.

6. Records. All registrants who handle mephedrone, methylone, or MDPV are required to keep records pursuant to 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23 of Title 21 of the Code of Federal Regulations. Current DEA registrants shall have thirty (30) calendar days from the effective date of this Final Order to be in compliance with all recordkeeping requirements.

7. Reports. All registrants are required to submit reports in accordance with 1304.33 of Title 21 of the Code of Federal Regulations. Registrants who manufacture or distribute mephedrone, methylone, or MDPV are required to comply with these reporting requirements and shall do so as of October 21, 2011.

8. Order Forms. All registrants involved in the distribution of mephedrone, methylone, or MDPV must comply with order form requirements of Part 1305 of Title 21 of the Code of Federal Regulations as of October 21, 2011.

9. Importation and Exportation. All importation and exportation of mephedrone, methylone, or MDPV must be conducted by appropriately registered DEA registrants in compliance with Part 1312 of Title 21 of the Code of Federal Regulations on or after October 21, 2011.

10. Criminal Liability. The manufacture, distribution, dispensation, or possession with the intent to conduct these activities: Possession, importation, or exportation of mephedrone, methylone, or MDPV not authorized by, or in violation of the CSA or the Controlled Substances Import and Export Act occurring as of October 21, 2011 is unlawful.

Pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act) (5 U.S.C. 801–808), DEA has submitted a copy of this Final Order to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of the DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby orders that 21 CFR Part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Section 1308.11 is amended by adding new paragraphs (g)(6), (7) and (8) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(6) 4-methyl-N-methylcathinone—1248

(Other names: mephedrone)

(7) 3,4-methylenedioxy-N-methylcathinone—7540

(Other names: methylone)

(8) 3,4-methylenedioxypyrovalerone—7535

(Other names: MDPV)

* * * * *

Dated: October 14, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–27282 Filed 10–20–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0268]

RIN 1625–AA09

Drawbridge Operation Regulation; Passaic River, Harrison, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the operation of the Amtrak's Dock Bridge across the Passaic River, mile 5.0, at Harrison, New Jersey. The owner of the bridge has requested relief from crewing the bridge at all times because the bridge has received few requests to open during past years. It is expected that an advance notice requirement for bridge openings will provide relief to the bridge owner while continuing to meet the reasonable needs of navigation.

DATES: This rule is effective November 21, 2011.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0268 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0268 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. John W. McDonald, Project Officer, First Coast Guard District Bridge Branch, 617–223–8364, *john.w.mcdonald@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 24, 2011, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations Passaic River in the **Federal Register** (76 FR 37039). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

The Amtrak Dock Bridge, mile 5.0, across the Passaic River at Harrison, New Jersey, has a vertical clearance in the closed position of 24 feet at mean high water and 29 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.739(e).

The existing drawbridge operation regulations require the draw to open on signal; except that, from 7:20 a.m. to 9:20 a.m. and 4:30 p.m. to 6:50 p.m., Monday through Friday, except Federal holidays, the draw need not be opened. At all other times, an opening may be delayed no more than ten minutes, unless the draw tender and the vessel operator, communicating by radio-telephone, agree to a longer delay.

The Coast Guard received a request from the National Railroad Passenger Corporation (Amtrak), the owner of the bridge, for relief from crewing the bridge at all times, because the bridge has received only eight requests to open during the past three years.

Amtrak requested that a twenty four hour advance notice be required for all bridge openings, except during the existing morning and afternoon closed periods.

As a result of the fact that the bridge has received only eight requests to open during the past three years, the Coast Guard believes it is reasonable for the bridge owner to require a twenty four hour advance notice for bridge openings and that doing so would continue to meet the reasonable needs of navigation.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking. As a result, no changes have been made to this final rule.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

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

We expect the economic impact of this proposed rule to be minimal. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons:

The bridge has only received eight requests to open during the past three years. The bridge openings can still be obtained at any time, except the morning and afternoon closed periods, by providing at least a twenty four hour advance notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This final rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit the bridge.

This final rule would not have a significant economic impact on a substantial number of small entities for the following reasons:

The bridge only received eight requests to open during the past three years. The bridge openings can still be obtained at any time, except during the Monday through Friday closed periods, by providing a twenty four hour advance notice.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.739, revise paragraph (e) to read as follows:

§ 117.739 Passaic River.

* * * * *

(e) The draw of the Amtrak Dock Bridge, mile 5.0, at Harrison, shall open on signal after at least a twenty-four hour advance notice is given by calling the number posted at the bridge; except that, from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m., Monday through Friday, except Federal holidays, the draw need not be opened for the passage of vessel traffic. At all other times, a bridge opening may be delayed no more than ten minutes for the passage of rail traffic, unless the draw tender and the vessel operator agree to a longer delay.

* * * * *

Dated: September 16, 2011.

Daniel A. Neptun,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2011–26549 Filed 10–20–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0536]

RIN 1625–AA11

Regulated Navigation Area; Chelsea Street Bridge Construction, Chelsea, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule; clarification of comment period.

SUMMARY: The Coast Guard is clarifying that the public comment period on its July 19, 2011, temporary interim rule remains open for the duration of the rule's effective period. The rule established a Regulated Navigation Area (RNA) on the navigable waters of the Chelsea River under and surrounding the Chelsea Street Bridge (CSB) that crosses the Chelsea River between East Boston and Chelsea, Massachusetts.

DATES: Comments on the temporary interim rule published July 19, 2011, at 76 FR 42545 may be submitted through the effective period of the temporary interim rule, which ends May 31, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0536 using any one of the following methods:

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0536 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0536 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Mark Cutter of the Waterways Management Division, U.S. Coast Guard Sector Boston; telephone 617–223–4000, e-mail *Mark.E.Cutter@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

As this interim rule will be in effect before the end of the comment period, the Coast Guard will evaluate and revise this rule as necessary to address significant public comments.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0536), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0536'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0536'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting in connection with the public comment period for this interim rule. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**. Although they were not held specifically to solicit public comments on this interim rule, and were not announced in the **Federal Register**, the Coast Guard has held or participated in multiple locally announced informal waterway user meetings where waterway closures and restrictions were discussed, and we anticipate holding one or more additional informal meetings, with opportunity for public questions or comments, during the bridge construction. We will provide written summaries of any such meetings in the docket.

Discussion

We are issuing this notice to clarify that the public comment period for this temporary interim rule remains open for as long as the rule is in effect: Through May 31, 2012. Although the Regulatory Information portion of the rule's preamble, 76 FR 42545 at 42546 (Jul. 19, 2011) said we would accept public comments through September 19, 2011, it was not our intention to limit the

public comment period in that way and the **DATES** section of the preamble indicated no such deadline. This notice is published under the authority of the Ports and Waterways Safety Act, 33 U.S.C. 1231, and Department of Homeland Security Delegation No. 0170.1.

Dated: September 27, 2011.

J. B. McPherson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2011–27126 Filed 10–20–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0834]

RIN 1625–AA00

Safety Zone; The Florida Orchestra Pops in the Park Fireworks Display, Tampa Bay, St. Petersburg, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Tampa Bay in the vicinity of Spa Beach in St. Petersburg, Florida during The Florida Orchestra Pops in the Park Fireworks Display on Saturday, October 22, 2011. The safety zone is necessary to protect the public from the hazards associated with launching fireworks over navigable waters of the United States. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port St. Petersburg or a designated representative.

DATES: This rule is effective from 8 p.m. until 10 p.m. on October 22, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0834 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0834 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Marine Science Technician Second Class Chad R. Griffiths, Sector St. Petersburg Prevention Department, Coast Guard; telephone 813–228–2191, e-mail *D07-SMB-Tampa-WWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information regarding the fireworks display with sufficient time to publish an NPRM and to receive public comments prior to the fireworks display. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the fireworks display.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Basis and Purpose

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

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

Discussion of Rule

On Saturday, October 22, 2011, The Florida Orchestra Pops in the Park Fireworks Display is scheduled to take place in St. Petersburg, Florida. The fireworks will be launched from Spa Beach. The fireworks will explode over Tampa Bay. The fireworks display is scheduled to commence at approximately 9 p.m.

The safety zone encompasses certain waters of Tampa Bay in the vicinity of Spa Beach in St. Petersburg, Florida. The safety zone will be enforced from 8 p.m. until 10 p.m. on October 22, 2011. The safety zone will be enforced beginning one hour prior to the scheduled commencement of the fireworks display to ensure the safety zone is clear of persons and vessels. The safety zone will cease being enforced approximately one hour after the scheduled conclusion of the fireworks display to account for possible delays.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port St. Petersburg or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port St. Petersburg by telephone at 727–824–7524, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

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

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will be enforced for only two hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain

within the safety zone without authorization from the Captain of the Port St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port St. Petersburg or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Tampa Bay encompassed within the safety zone from 8 p.m. until 10 p.m. on October 22, 2011. For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone that will be enforced for two hours. An environmental analysis checklist

and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a temporary § 165.T07–0834 to read as follows:

§ 165.T07–0834 Safety Zone; The Florida Orchestra Pops in the Park Fireworks Display, Tampa Bay, St. Petersburg, FL.

(a) *Regulated Area.* The following regulated area is a safety zone: All waters of Tampa Bay within a 120 yard radius of position 27°46′30″ N, 82°37′38″ W. All coordinates are North American Datum 1983.

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

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port St. Petersburg by telephone at 727–824–7524, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

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

(d) *Effective Date.* This rule is effective from 8 p.m. until 10 p.m. on October 22, 2011.

Dated: September 28, 2011.

S. L. Dickinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 2011–27258 Filed 10–20–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0861]

RIN 1625–AA00

Safety Zone; 2011 Head of the South Regatta, Savannah River, Augusta, GA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Savannah River in Augusta, Georgia during the 2011 Head of the South Regatta, which will consist of a series of rowing races. The 2011 Head of the South Regatta is scheduled to take place on Friday, November 11, 2011 and Saturday, November 12, 2011. The temporary safety zone is necessary for the safety of race participants, participant vessels, spectators, and the general public during the event. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Savannah or a designated representative.

DATES: This rule is effective from 6 a.m. on November 11, 2011 through 6 p.m. on November 12, 2011. This rule will be enforced daily from 6 a.m. until 6 p.m. on November 11, 2011 and November 12, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0861 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0861 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Marine Science Technician First Class William N. Franklin, Marine Safety Unit Savannah, Coast Guard; telephone 912–652–4353, e-mail *William.N.Franklin@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notice of the 2011 Head of the South Regatta in sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the race participants, participant vessels, spectators, and the general public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the reasons discussed in the preceding paragraph, a 30-day notice period would be impractical and contrary to the public interest.

Basis and Purpose

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

The purpose of the rule is to protect race participants, participant vessels, spectators, and the general public from the hazards associated with the event.

Discussion of Rule

On November 11 and 12, 2011, Augusta Rowing Club is hosting the 2011 Head of the South Regatta, a series of rowing races on the Savannah River in Augusta, Georgia. The races will start in the vicinity of Hammond Ferry Landing and finish in the vicinity of the Highway 520 Bridge.

The safety zone encompasses certain waters of the Savannah River in Augusta, Georgia. The safety zone will be enforced daily from 6 a.m. until 6 p.m. on November 11, 2011 and November 12, 2011. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Savannah or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port Savannah by telephone at 912–652–4353, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Savannah or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

Executive Orders 13563, Regulatory Planning and Review, and 12866, Improving Regulation and Regulatory Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for a total of 24 hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Savannah or a designated representative, they may operate in the surrounding area during the enforcement periods; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone during the enforcement periods if authorized by the Captain of the Port Savannah or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Savannah River encompassed within the safety zone from 6 a.m. until 6 p.m. on November 11, 2011 and November 12, 2011. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not

an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone that will be enforced for a total of 24 hours. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a temporary § 165.T07–0861 to read as follows:

§ 165.T07–0861 Safety Zone; 2011 Head of the South Regatta, Savannah River, Augusta, GA.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of the Savannah River in Augusta, Georgia encompassed within an imaginary line connecting the following points: starting at Point 1 in position 33°29′39.64″ N, 81°59′25.40″ W; thence southeast to Point 2 in position 33°27′43.34″ N, 81°55′30.90″ W; thence southwest to Point 3 in position 33°27′35.80″ N, 81°55′33.42″ W; thence northwest to Point 4 in position 33°29′39.72″ N, 81°59′30.48″ W; thence east back to origin. All coordinates are North American Datum 1983.

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

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Savannah or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Savannah by telephone at 912–652–4353, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Savannah or a designated representative.

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

(d) *Effective Date and Enforcement Periods.* This rule is effective from 6 a.m. on November 11, 2011 through 6 p.m. on November 12, 2011. This rule will be enforced daily from 6 a.m. until 6 p.m. on November 11, 2011 and November 12, 2011.

Dated: October 5, 2011.

J. B. Loring,

Commander, U.S. Coast Guard, Captain of the Port Savannah.

[FR Doc. 2011–27259 Filed 10–20–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2008–0558; FRL–9482–1]

RIN 2060–AP17

Regulation of Fuel and Fuel Additives: Alternative Test Method for Olefins in Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a rule to allow refiners and laboratories to use an alternative test method for olefin content in gasoline. This final rule will provide flexibility to the regulated community by allowing an additional test method for compliance measurement while maintaining environmental benefits achieved from our fuels programs.

DATES: This rule is effective November 21, 2011 without further notice. The incorporation by reference listed in this rule was approved by the Director of the Federal Register as of November 21, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0558. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA Headquarters Library, Mail Code: 2822T, EPA West Building, 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 holidays. The telephone number for the Public Reading Room is (202) 566–1742, and the facsimile number for the Air Docket is (202) 566–9744.

FOR FURTHER INFORMATION CONTACT: Joe Sopata, Chemist, Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (6406J), Washington, DC 20460; *telephone number:* (202) 343–9034; *fax number:* (202) 343–2801; *e-mail address: sopata.joe@epa.gov.*

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline.

I. General Information
A. Does this action apply to me?
II. Rule Change
A. Alternative Test Method for Olefins in Gasoline
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act of 1995 (UMRA)
E. Executive Order 13123: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice and Minority Populations and Low-Income Populations
K. Congressional Review Act
IV. Statutory Provisions and Legal Authority

I. General Information

A. Does this action apply to me?

Regulated categories and entities potentially affected by this final action include those involved with the production, importation, distribution, sale and storage of gasoline motor fuel.

The table below is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is now aware could be potentially regulated by this proposed action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this proposed action, one should carefully examine the existing regulations in 40 CFR part 80. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Category	NAICSs codes [a]	SIC codes [b]	Examples of potentially regulated parties
Industry	324110	2911	Petroleum refiners.
Industry	54138	8734	Testing Laboratories.
Industry	422710, 422720	5171, 5172	Gasoline Marketers and Distributors.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

II. Rule Change

A. Alternative Test Method for Olefins in Gasoline

Refiners, importers and oxygenate blenders producing gasoline are required to test Reformulated Gasoline (RFG), and conventional gasoline (CG) for several fuel parameters including olefins. The test method for determining olefin content is specified at 40 CFR 80.46(b).

On January 31, 2011, EPA proposed to allow ASTM D6550–05 (SFC) as an alternative to the designated test method, ASTM D1319–03 $^{\varepsilon 1}$ (FIA), for measuring olefin content of gasoline, provided the results are correlated to ASTM D1319–03 $^{\varepsilon 1}$ using a site-specific correlation of FIA (volume percent) versus SFC (weight percent). The Agency also proposed that correlation be completed on a site-specific basis.[1] As discussed in the proposal, the gasoline fuel set used to develop the correlation should span the range of olefin properties representative of that refinery's or importer's gasoline production. We also explained this gasoline fuel set would be analyzed by the test facility's laboratory using both ASTM D1319–03 $^{\varepsilon 1}$ (also known as FIA, or the designated test method) and ASTM D6550–05. A resulting correlation equation would then be developed in terms of ASTM D1319–03 $^{\varepsilon 1}$ in volume percent and ASTM D6550–05 in weight percent. Thus, the applicable range of the resulting correlation from a facility's site specific correlation would be consistent with that specific facility's olefin content range.

In response to this proposed rule, EPA received five comments from the American Petroleum Institute (API), BP America Incorporated (BP), the National Petroleum and Refiners Association (NPRA), Western States Petroleum Association (WSPA), and Shell Oil Products U.S. (SOPUS). All comments were in support of the proposal. API, NPRA, SOPUS and WSPA also provided additional comments. These additional comments have been summarized and our responses to them are in the Response to Comments Document that has been placed in the docket for this rulemaking (Docket ID Number EPA–HQ–OAR–2008–0558).

The EPA is finalizing a rule to allow ASTM D6550–05, as an alternative test method to measure the olefin content of gasoline, provided its test results are correlated to ASTM D1319–03 $^{\varepsilon 1}$ on a site specific basis.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This final rule is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

[1] 76 FR 5319, January 31, 2011.

B. Paperwork Reduction Act

This final rule does not impose any new information collection burden. However, the Office of Management and Budget (OMB), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* has approved the information collection requirements contained in the final RFG and anti-dumping rulemaking and has assigned OMB control number 2060–0277. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final rule does not impose a regulatory burden on anyone, including small businesses. Instead, this final rule will have a positive impact by the allowance of ASTM D 6550–05 which will provide additional flexibility to the regulated community, including small businesses, in meeting olefins in gasoline testing requirements. We have therefore concluded that today's final rule will relieve regulatory burden for all effected small entities.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments to have meaningful and timely input in the development of EPA regulatory rules with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The allowance of ASTM D 6550–05 will provide additional flexibility to the regulated community in meeting olefins in gasoline testing requirements. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The allowance of ASTM D 6550–05 will provide additional flexibility to the regulated community in meeting olefins in gasoline testing requirements. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). This action applies to gasoline refiners, blenders and importers that supply gasoline. The allowance of ASTM D6500–05 will provide additional flexibility to the regulated community in meeting olefins in gasoline testing requirements. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risk

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211(66 FR 18355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

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) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs

EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule involves a technical standard. EPA is adopting an ASTM standard as described in Unit II.A of the **SUPPLEMENTARY INFORMATION** section of this document. The technical standard included in today's rule is a standard developed by ASTM, a voluntary consensus standards body, and thus raises no issues under the NTTAA. The ASTM standard in today's action may be obtained from ASTM International at 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959, 610–832–9585 (phone), 610–832–9555 (fax), or *service@astm.org* (e-mail); or through the ASTM Web site (*http://www.astm.org*).

J. Executive Order 12898: Federal Actions To Address Environmental Justice and Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The allowance of ASTM D6500–05 will provide additional flexibility to the regulated community in meeting olefins in gasoline testing requirements. This final rule amendment does not relax control measures on sources regulated by the rule and therefore will not cause emission increases from these sources.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 21, 2011.

IV. Statutory Provisions and Legal Authority

Statutory authority for today's final rule comes from sections 211(c) and 211(k) of the CAA (42 U.S.C. 7545(c) and (k)). Section 211(c) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and CG and requires EPA to promulgate regulations establishing these requirements. Additional support for the fuels controls in today's final rule comes from sections 114(a) and 301(a) of the CAA.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Diesel, Imports, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: October 13, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to reads as follows:

Authority: 42 U.S.C. 7414, 7521(l), 7545 and 7601(a).

Subpart D—[Amended]

■ 2. Section 80.46 is amended by adding paragraphs (b)(2) and (h)(1)(iii) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(b) * * *

(2)(i) Any refiner or importer may determine olefin content using ASTM standard method ASTM D6550 (incorporated by reference, see paragraph (h) of this section) for purposes of meeting any testing requirement involving olefin content; provided that

(ii) The refiner or importer test result is correlated with the method specified in paragraph (b)(1) of this section on a site-specific basis, in order to achieve an unbiased prediction of the result in volume percent, for the method specified in paragraph (b)(1) of this section.

* * * * *

(h) * * *

(1) * * *

(iii) ASTM standard method D6550–05 (''ASTM D6550''), Standard Test Method for Determination of Olefin Content of Gasolines by Supercritical-Fluid Chromatography, approved November 1, 2005.

* * * * *

[FR Doc. 2011–27219 Filed 10–20–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA–HQ–OPPT–2009–0112; FRL–8885–5]

RIN 2070–AJ86

Testing of Certain High Production Volume Chemicals; Third Group of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating this final rule under section 4(a)(1)(B) of the Toxic Substances Control Act (TSCA) to require manufacturers, importers, and processors to conduct testing to obtain screening level data for health and environmental effects and chemical fate for 15 high production volume (HPV) chemical substances listed in this final rule. This test data is needed in order to help EPA to determine whether these 15 HPV chemical substances pose a risk to human health and/or environmental safety. Based on comments received by EPA on the proposed rule for this final rule, EPA has determined that only 15 of the 29 HPV chemical substances proposed for testing meet the criteria for testing at this time.

DATES: This final rule is effective November 21, 2011.

The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of November 21, 2011.

For purposes of judicial review, this final rule shall be promulgated at 1 p.m. eastern daylight/standard time on November 7, 2011.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2009–0112. All documents in the docket are listed on the regulations.gov Web site. Although listed in the index, some information is not publicly available; *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pollution Prevention and Toxics (OPPT) Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC), Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

Submission of Information: See Unit V.E.3. of the **SUPPLEMENTARY INFORMATION** for additional instructions for submission of information (*e.g.,* letters-of-intent-to-test, exemption requests, study plans, final study reports).

Submission of information containing CBI and/or non-CBI material may be submitted by one of the following methods:

- *Mail:* Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, *Attn:* 40 CFR 799.5089; Docket ID Number EPA–HQ–OPPT–2009–0112.
- *Hand delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. E6428 ((202) 564–8930), Environmental Protection Agency, 1201 Constitution Ave., NW., Washington, DC 20004, *Attn:* 40 CFR 799.5089; Docket ID Number EPA–HQ–OPPT–2009–0112.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Paul Campanella or John Schaeffer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone numbers:* (202) 564–8091 or (202) 564–8173; *e-mail addresses: campanella.paul@epa.gov* or *schaeffer.john@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; *telephone number:* (202) 554–1404; *e-mail address: TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) or process any of the chemical substances that are listed in § 799.5089(j) of the regulatory text. Any use of the term ''manufacture'' in this final rule will encompass ''import,'' unless otherwise stated. In addition, as described in Unit VI., any person who exports, or intends to export, any of the chemical substances included in this final rule will be subject to the export notification requirements in 40 CFR part 707, subpart D. Potentially affected entities may include, but are not limited to:

- Manufacturers (defined by statute to include importers) of one or more of the 15 HPV chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.
- Processors of one or more of the 15 HPV chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit V.E. and consult § 799.5089(b) of the regulatory text. If you have any questions regarding the applicability of this action to a particular entity, consult either of the technical persons listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What action is the agency taking?

EPA is promulgating this final rule under TSCA section 4(a)(1)(B) (15 U.S.C. 2603(a)(1)(B)) that requires manufacturers and processors of 15 HPV chemical substances to conduct testing for environmental fate (including 5 tests for physical/chemical properties and biodegradation), ecotoxicity (in fish, *Daphnia,* and algae), acute toxicity, genetic toxicity (gene mutations and chromosomal aberrations), repeat dose toxicity, and developmental and reproductive toxicity. The chemical substances are HPV chemicals (*i.e.,* chemical substances with a production/import volume equal to or greater than 1 million pounds (lb) per year). A detailed discussion regarding efforts to enhance the availability of screening level hazard and environmental fate information about HPV chemical substances can be found in a **Federal Register** notice which published on December 26, 2000 (Ref. 1).

In the proposed rule for this final rule, published in the **Federal Register** issue of February 25, 2010, EPA proposed Screening Information Data Set (SIDS) testing for 29 HPV chemical substances (Ref. 2). EPA received comments on the proposed rule. In consideration of those comments, EPA changed some testing requirements for certain HPV chemical substances and is not including certain other HPV chemical substances in this final rule, as explained in Unit III. On the basis that adequate data are available for certain proposed testing endpoints, EPA reduced the number of tests required for two chemical substances; for another chemical substance, EPA dropped all testing requirements and is not including that chemical substance in this final rule. In addition, EPA is not including 12 of the proposed chemical substances in this final rule because data provided to EPA after the proposed rule was published indicate that these chemical substances are no longer HPV, no longer have substantial human exposure, or no longer have substantial environmental release. Furthermore, EPA is deferring final action for one chemical substance, as explained in Unit VIII. This final rule requires testing for 15 of the 29 HPV chemical substances originally proposed for testing in 2010.

This action follows earlier testing actions for certain HPV chemical substances (see the proposed and final rules entitled: ''Testing of Certain High Production Volume Chemicals; Proposed Rule'' (Ref. 3); ''Testing of Certain High Production Volume Chemicals; Final Rule'' (Ref. 4);

''Testing of Certain High Production Volume Chemicals; Second Group of Chemicals; Proposed Rule'' (Ref. 5); and ''Testing of Certain High Production Volume Chemicals; Second Group of Chemicals; Final Rule'' (Ref. 6)).

EPA also intends to propose testing for additional HPV chemical substances in a proposed rule scheduled for publication in 2011.

B. What is the Agency's authority for taking this action?

This final rule is being promulgated under TSCA section 4(a) (15 U.S.C. 2603(a)), which directs EPA to require the development of data relevant to assessing whether activities associated with chemical substances and mixtures present an unreasonable risk of injury to health or the environment, when appropriate findings are made. This is the policy of the United States, which is articulated in TSCA section 2(b)(1) (15 U.S.C. 2603(b)(1)), which states:

> * * * adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture [which is defined by statute to include import] and those who process such chemical substances and mixtures[.]

To implement this policy, EPA is promulgating this final rule under TSCA section 4(a)(1)(B) (15 U.S.C. 2603(a)(1)(B)). Section 4(a) of TSCA mandates EPA require by rule that manufacturers and/or processors of chemical substances and mixtures conduct testing, if the EPA Administrator finds that:

> (B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,
>
> (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data [.]

If EPA makes these findings for a chemical substance or mixture, the EPA Administrator shall require by rule that testing be conducted on that chemical substance or mixture to develop data about health or environmental effects for which there is an insufficiency of data and experience, and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of the chemical substance or mixture, or any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment (TSCA section 4(a)(1)).

Once the EPA Administrator has made a finding under TSCA section 4(a)(1)(A) or TSCA section 4(a)(1)(B), EPA may require any type of health or environmental effects testing necessary to address unanswered questions about the effects of the chemical substance or mixture that are relevant to whether the manufacture, distribution in commerce, processing, use, or disposal of the chemical substance or mixture, or any combination of such activities, presents an unreasonable risk of injury to health or the environment. EPA need not limit the scope of testing required to the factual basis for the TSCA section 4(a)(1)(A)(i) or TSCA section 4(a)(1)(B)(i) findings. This approach is explained in more detail in EPA's TSCA section 4(a)(1)(B) Final Statement of Policy published in the **Federal Register** issue of May 14, 1993 (B Policy) (Ref. 7, p. 28738).

In this final rule, EPA is using its broad TSCA section 4(a) authority to obtain data necessary to support the development of preliminary or ''screening level'' hazard and risk characterizations for 15 HPV chemical substances specified in Table 2 in § 799.5089(j) of the regulatory text. Following consideration of the public comments on the proposed rule (Ref. 2), EPA is making the following findings for the 15 HPV chemical substances under TSCA section 4(a)(1)(B): They are produced in substantial quantities; there is or may be substantial human exposure to them; existing data are insufficient to determine or predict their health and environmental effects; and testing is necessary to develop such data.

C. Why is EPA taking this action?

In April 1998, EPA initiated a national effort to make available to the public certain basic information about the environmental fate and potential health and environmental hazards associated with the most widespread chemical substances in commerce. Mechanisms to collect or, where necessary, develop needed data on U.S. HPV chemical substances include the HPV Challenge Program, certain international efforts (the Organization for Economic Cooperation and Development (OECD) HPV SIDS Program, the International Council of Chemical Associations (ICCA) HPV Initiative), and TSCA section 4 test rules. HPV chemical substances are manufactured or imported in amounts equal to or greater than 1 million lb per year and were first identified for the HPV Challenge Program through data reported under the 1990 Inventory Update Reporting (IUR) rule. The HPV Challenge Program is a voluntary testing program created by the United States to ensure that a baseline set of data on approximately 2,800 HPV chemical substances would be made available to EPA and the public. The SIDS data set sought by the HPV Challenge Program was developed by OECD, of which the United States is a member. The SIDS provides an internationally agreed-upon set of test data for screening HPV chemical substances for human and environmental hazards, and assists the Agency and others in making an informed, preliminary judgment about the hazards of HPV chemical substances.

The HPV Challenge Program was designed to make maximum use of scientifically adequate existing test data and to avoid unnecessary and duplicative testing of U.S. HPV chemical substances. Therefore, EPA continues to participate in the voluntary international efforts, complementary to the HPV Challenge Program, that OECD is coordinating to secure basic hazard information on HPV chemical substances in use worldwide, including some of those on the 1990 U.S. HPV chemical substances list (Ref. 8). This includes agreements to sponsor a U.S. HPV chemical substance under either the OECD HPV SIDS Program (Ref. 9), including sponsorship by OECD member countries beyond the United States, or the international HPV Initiative that is being organized by ICCA (Ref. 10).

As EPA stated in the first TSCA section 4 HPV test rule, U.S. data needs that remained unmet in the HPV Challenge Program or through international efforts could be addressed through TSCA section 4 rulemakings, such as the final rule promulgated by EPA on March 16, 2006 (Ref. 4) and the final rule promulgated by EPA on January 7, 2011 (Ref. 6). This is the third TSCA section 4 HPV test rule; it addresses unmet data needs for 15 HPV chemical substances.

EPA intends to make the information collected under this final rule available to the public, other Federal agencies, and any other interested parties on its Web site (*http://www.epa.gov/chemrtk*) and in the docket for this final rule identified under **ADDRESSES**. As appropriate, this information will be used to ensure a scientifically sound basis for risk assessments and risk management actions.

D. Why is EPA focusing on HPV chemical substances and SIDS testing?

This final rule pertains to HPV chemical substances, which EPA has determined account for 95% of total chemical production in the United States (Ref. 11, p. 32296). Based on 1990 IUR reports, EPA found that only 7% of non-polymeric organic HPV chemical substances had a full set of publicly available and internationally recognized basic screening test data for health and environmental effects (Ref. 12). Of the over 2,800 U.S. HPV chemical substances, 43% had no publicly available basic hazard data. For the remaining chemical substances, limited amounts of the data were available. This lack of available hazard data compromises EPA's and others' ability to determine whether these HPV chemical substances pose risks to human health or the environment, as well as the public's ability to know about the hazards of chemical substances that may be found in their environment, their homes, their workplaces, and the products they buy.

SIDS testing evaluates the following six testing endpoints (Ref. 9):

- Acute toxicity.
- Repeat dose toxicity.
- Developmental and reproductive toxicity.
- Genetic toxicity (gene mutations and chromosomal aberrations).
- Ecotoxicity (studies in fish, *Daphnia,* and algae).
- Environmental fate (including physical/chemical properties (melting point, boiling point, vapor pressure, *n*-octanol/water partition coefficient, and water solubility), photolysis, hydrolysis, transport/distribution, and biodegradation).

Data on the six SIDS endpoints provide a consistent minimum set of information that can help to assess the relative risks of chemical substances and whether additional testing or assessment is necessary.

E. How will the data developed under this final rule be used?

EPA will use the data obtained from this final rule to support development of preliminary hazard and risk assessments for the 15 HPV chemical substances subject to this final rule. The data will also be used by EPA to set priorities for further testing that may produce hazard information which may be needed by EPA, other Federal agencies, the public, industry, and others, to support adequate risk assessments. EPA uses data from TSCA section 4 test rules to support such actions as the risk management decisions and activities under TSCA, development of water quality criteria, Toxics Release Inventory (TRI) listings, and reduction of workplace exposures.

As appropriate, this information will be used to ensure a scientifically sound basis for risk assessments and risk management actions. As such, this effort will serve to further the Agency's goal of identifying and controlling human and environmental risks as well as providing greater knowledge and protection to the public.

In addition, a key goal of the HPV Challenge Program was making basic health and environmental effects data for HPV chemical substances available to the public as part of EPA's ''Right to Know'' Initiative. A basic premise of the HPV Challenge Program was that the public has a right to know about the hazards associated with chemical substances in their environment. Everyone—including industry, environmental protection groups, animal welfare organizations, government groups, and the general public—can use the data provided through the HPV Challenge Program, and also data collected on HPV chemical substances through other means, including TSCA section 4 testing, to make informed decisions related to the human and the environmental hazards of chemical substances that they encounter in their daily lives.

III. Response to Public Comments

EPA received a number of comments, which are available in the docket, in response to the proposed rule (Ref. 2). A summary of those comments and EPA's response to each comment are presented in the document entitled ''Response to public comments regarding testing of certain high production volume chemicals'' (Response to Public Comments) (Ref. 13). The comments on the proposed rule were submitted by the American Coke and Coal Chemicals Institute; Dover Chemical Corporation; the Society of Chemical Manufacturers and Affiliates on behalf of Bimax, Inc. and Rhodia, Inc.; Eastman Chemical Company; Nease Corporation; the International Imaging Industry Association; Special Materials Company; BASF Corporation; the American Chemistry Council; Sasol North America, Inc.; the Chlorinated Paraffins Industry Association; INVISTA S.à.r.l.; Greenwich Chemical Consulting, Inc., on behalf of Brenntag North America, Inc.; Kowa American Corporation, Miami Chemical, Inc., and Univar U.S.A., Inc.; GE Water and Process Technologies; and Special Materials Company. Comments were also submitted by People for the Ethical Treatment of Animals (PETA); the Physicians Committee for Responsible Medicine; the Alternatives Research Development Foundation; and the American Anti-Vivisection Society. EPA also received comments from a private citizen. In response to these comments, EPA made the following changes to the regulatory text in this final rule:

1. EPA is no longer requiring testing for the following 13 chemical substances:

- Benzene, 1,2-dimethyl-3-nitro- (Chemical Abstract Service Registry Number (CASRN) 83–41–0).
- 3-Pentanone (CASRN 96–22–0).
- 1-Tetracosanol (CASRN 506–51–4).
- 1-Hexacosanol (CASRN 506–52–5).
- 2-Propenoic acid, 2-carboxyethyl ester (CASRN 24615–84–7).
- Methanesulfonamide, *N*-[2-[(4-amino-3-methylphenyl)ethylamino]ethyl]-, sulfate (2:3) (CASRN 25646–71–3).
- Solvent naphtha (coal) (CASRN 65996–79–4).
- Tar oils, coal (CASRN 65996–82–9).
- Tar, coal, high temperature (CASRN 65996–89–6).
- Distillates (coal tar) (CASRN 65996–92–1).
- Pitch, coal tar-petroleum (CASRN 68187–57–5).
- 1,4-Benzenedicarboxylic acid, 1,4-dimethyl ester, manuf. of, by-products from (CASRN 68988–22–7).
- Extract residues (coal), tar oil alk., naphthalene distn. residues (CASRN 73665–18–6).

These changes are further discussed in Unit VII.A. and in the ''Response to Public Comments'' document (Ref. 13).

2. *N*-octanol/water partition coefficient, log 10 basis (log K_{ow}); and reproductive/developmental toxicity testing are not required for benzene, 1-chloro-4-(trifluoromethyl)- (CASRN 98–56–6). The aquatic toxicity testing requirement for this chemical substance has also been reduced. These changes are further discussed in Unit VII.B. and in the ''Response to Public Comments'' document (Ref. 13).

3. Water solubility, ready biodegradation, aquatic toxicity, acute mammalian toxicity, combined repeated-dose/reproductive/developmental toxicity, and *in vitro* mutagenicity tests are not required for benzenesulfonic acid, dimethyl (CASRN 25321–41–9). These changes are further discussed in Unit VII.B. and in the ''Response to Public Comments'' document (Ref. 13).

IV. Findings

A. What is the basis for EPA's final rule to test these chemical substances?

As described in Unit II.B., in order to promulgate a rule under TSCA section 4(a) requiring the testing of chemical substances or mixtures, EPA must make certain findings of either risk (TSCA section 4(a)(1)(A)(i)) or production combined with either chemical release or human exposure (TSCA section 4(a)(1)(B)(i)), in addition to findings (discussed in this unit) regarding the sufficiency of existing data (TSCA section 4(a)(l)(A)(ii) or TSCA section 4(a)(1)(B)(ii)) and the need for testing (TSCA section 4(a)(1)(A)(iii) or TSCA section 4(a)(1)(B)(iii)). EPA is requiring testing of the chemical substances included in this final rule based on its findings under TSCA section 4(a)(1)(B)(i) relating to ''substantial production'' and ''substantial human exposure,'' as well as findings under TSCA section 4(a)(1)(B)(ii) and (iii) relating to sufficient data and the need for testing. The chemical substances included in this final rule are listed in Table 2 in § 799.5089(j) of the regulatory text, along with their CASRNs.

EPA generally considers ''substantial production'' and ''substantial exposure'' of a chemical substance or mixture under TSCA section 4(a)(1)(B)(i) to be aggregate production (including import) volume equaling or exceeding 1 million lb per year of that chemical substance or mixture, and exposure of 1,000 workers or more, or 10,000 consumers or more, or 100,000 members of the general population or more to a chemical substance or mixture. See EPA's B Policy (Ref. 7) for further discussion on how EPA generally evaluates chemical substances or mixtures under TSCA section 4(a)(1)(B)(i).

EPA finds that, under TSCA section 4(a)(1)(B)(i), each of the 15 HPV chemical substances included in this final rule is produced in substantial quantities and that there is or may be substantial human exposure to each chemical substance (Ref. 14). In addition, under TSCA section 4(a)(1)(B)(ii), EPA finds that there are insufficient data and experience to reasonably determine or predict the effects of the manufacture, processing, or use of these chemical substances, or of any combination of such activities, on human health or the environment. EPA also finds that testing the 15 HPV chemical substances identified in this final rule is necessary to develop such data (TSCA section 4(a)(1)(B)(iii)) (see Unit IV.F.). EPA has not identified any additional factors as discussed in the B Policy (Ref. 7) to cause the Agency to use decisionmaking criteria other than the general thresholds described in the B Policy with respect to the chemical substances included in this final rule.

The chemical substances included in this final rule are listed in § 799.5089(j) of the regulatory text along with their CASRNs. For a chemical-by-chemical summary of each of the findings, see Table 1 of this unit. Table 1 of this unit summarizes EPA's findings with respect to worker and consumer exposure, and includes the production volume, number of workers and broad use categories reported under IUR and Preliminary Assessment Information Reporting (PAIR) rules, and from the National Occupational Exposure Survey (NOES). For more details, see the discussion which follows the table and also the Exposure Findings Supporting Information document (Ref. 14).

TABLE 1—EXPOSURE BASED FINDINGS

CASRN	2006 IUR production (million lb)	2006 IUR substantial human exposure met (≥ 1,000 workers)	NOES (number of workers)	2006 IUR or PAIR commercial/consumer use	Meet exposure based criteria for commercial workers	Meet exposure based criteria for consumers
98–09–9	1 to <10			X	X	X
98–56–6	10 to <50			X	X	X
111–44–4	1 to <10			X	X	X
127–68–4	1 to <10		9,386		X	
515–40–2	1 to <10			X	X	X
2494–89–5	1 to <10			X	X	X
5026–74–4	1 to <10	X			X	
22527–63–5	1 to <10			X	X	X
25321–41–9	1 to <10		2,843		X	
52556–42–0	1 to <10	X		X	X	X
68082–78–0	1 to <10		41,153		X	
68442–60–4	1 to <10			X	X	X
68610–90–2	1 to <10			X		X
70693–50–4	1 to <10			X	X	X
72162–15–3	1 to <10		64,227		X	

Note: CASRN—Chemical Abstract Service Registry Number, IUR—Inventory Update Reporting, PAIR—Preliminary Assessment Information Reporting, NOES—National Occupational Exposure Survey.

B. Are these chemical substances produced and/or imported in substantial quantities?

EPA finds that each of the chemical substances included in this final rule is produced or imported in an amount equal to or greater than 1 million lb per year (Ref. 14); this finding is based on information gathered pursuant to the 2006 IUR submissions (see 2006 CFR edition for 40 CFR part 710), which is the most recently available compilation of TSCA Chemical Substance Inventory data. EPA believes that these annual production and/or importation volumes are ''substantial'' as that term is used with reference to production in TSCA section 4(a)(1)(B)(i) (see Ref. 7, p. 28746). A discussion of EPA's ''substantial production'' finding for each chemical substance included in this final rule is contained in a separate document (Ref. 14).

C. Are a substantial number of workers exposed to these chemical substances?

EPA finds that the manufacture, processing, and use of 14 of the 15 HPV chemical substances included in this action results or may result in exposure of a substantial number of workers to the chemical substances. These chemical substances are used in a wide variety of industrial applications which result in potential exposures to workers, as described in the exposure support

document for this final rule (Ref. 14). (*Note:* For the single chemical substance for which EPA has not found substantial worker exposure, EPA finds that there is substantial consumer exposure; see Table 1 and Ref. 14.)

This finding is based, in large part, on information submitted in accordance with the 2006 IUR submissions (see 2006 CFR edition for 40 CFR part 710) and the 2006 PAIR (Ref. 15). For chemical substances whose total production volume (manufactured and imported) exceeded 300,000 lb at a site during calendar year 2005, manufacturers and importers were required to report the number of potentially exposed workers during industrial processing and use to the extent the information was readily obtainable. In addition, submitters were required to provide information regarding the commercial and consumer uses of the chemical substance.

In accordance with the Agency's B Policy (Ref. 7), EPA believes, as a general matter, that an exposure of 1,000 workers or more to a chemical substance is ''substantial'' as that term is used with reference to ''human exposure'' in TSCA section 4(a)(1)(B)(i) (Ref. 7). EPA is not aware of any facts in this case that warrant departure from that policy and finds that there is or may be substantial human exposure (workers) to 14 of these 15 HPV chemical substances.

Besides the 2006 IUR and 2006 PAIR data, EPA also reviewed NOES data developed by the National Institute for Occupational Safety and Health (NIOSH). NOES was a nationwide data gathering project conducted by NIOSH, which was designed to develop national estimates for the number of workers potentially exposed to various chemical, physical, and biological agents and describe the distribution of these potential exposures. Begun in 1980 and completed in 1983, the survey involved a walk-through investigation by trained surveyors of 4,490 facilities in 523 different types of industries. Surveyors recorded potential exposures when a chemical agent was likely to enter or contact the worker's body for a minimum duration. These potential exposures could be observed or inferred. Information from these representative facilities was extrapolated to generate national estimates of potentially exposed workers for more than 10,000 different chemical substances (Refs. 16–18). For 4 of the 15 HPV chemical substances, the NOES data also supports EPA's finding that 1,000 or more workers are exposed to these chemical substances.

EPA also compared production volumes from the 1986 IUR data to the production volumes for the 2006 IUR data. For the 15 HPV chemical substances in this final rule, there was no decrease in production volume from 1986 to 2006 (Ref. 14). For the chemical substances for which EPA has NOES data, the 2006 IUR production volume data are consistent with NOES results, as the production volumes for these seven chemical substances either stayed the same or increased since 1986, thereby indicating that the usage of these chemical substances is no less than when NOES data were gathered, and, by inference (without contradictory data) that worker exposure is also likely to have stayed the same or increased.

EPA carefully considered the industrial and commercial processing and use information reported for each of these 15 HPV chemical substances in 2006 IUR and PAIR submissions. Commercial uses are defined as, ''The use of a chemical substance or mixture in a commercial enterprise providing saleable goods or services (*e.g.,* dry cleaning establishment, painting contractor)'' (see 2006 edition of the CFR for 40 CFR 710.43). Detailed information from the 2006 IUR submissions can be found in: ''Testing of Certain High Production Volume Chemicals-3 (Exposure Findings Supporting Information)'' (Ref. 14). Based on the nature of the reported IUR uses, EPA considers that chemical substances with reported commercial uses may result in potential exposure to 1,000 workers or more. The total number of workers reported under the 2006 IUR data is the sum of information on industrial workers plus commercial use workers.

D. Are a substantial number of consumers exposed to these chemical substances?

Based on 2006 IUR data, EPA finds that the uses of 9 of the 15 HPV chemical substances included in this action result or may result in exposure to a substantial number of consumers (Ref. 14). EPA reviewed the consumer use information reported for the 2006 IUR data and carefully considered the nature of those uses. Upon completion of the review, EPA concluded that the reported consumer uses for these chemical substances may result in at least 10,000 potentially exposed consumers, thus meeting the exposure based finding for consumers.

In addition to findings made based on the 2006 IUR data, EPA has also made consumer exposure-based findings for one additional chemical substance based on the National Library of Medicine (NLM) Household Products Database (HPD) (see Ref. 13). The chemical substances reported in the HPD are present in multiple household products including hobby/craft products, personal care products, home cleaning products, home maintenance products, and automotive products. The HPD provides information on the chemical ingredients and their percentage in specific brands of household products. Information in the HPD is from a variety of publicly available sources including brand-specific labels and Material Safety Data Sheets, when available from manufacturers and manufacturers' Web sites.

EPA finds that consumers' use of the products identified in the HPD may expose a substantial number of consumers (*i.e.,* 10,000 or more) to the chemical substances in those products. EPA believes that an exposure of 10,000 or more consumers to a chemical substance is ''substantial'' as that term is used with reference to ''human exposure'' in TSCA section 4(a)(1)(B)(i) (Ref. 7). Therefore, EPA finds that there is or may be substantial human exposure (consumers) to 10 of these 15 HPV chemical substances.

A discussion of EPA's ''substantial exposure'' finding for consumers is contained in a separate document (Ref. 14).

E. Does sufficient data exist for these chemical substances?

EPA has determined that for the 15 HPV chemical substances for which testing is required under this final rule, there are either no data available on SIDS testing endpoints or these data are insufficient to reasonably determine or predict the effects on human health or the environment that may result from exposures during the manufacturing, processing, distribution in commerce, use, or disposal of the subject chemical substances.

The finding of insufficient data is based on the results of searches for data on SIDS endpoints by EPA, including available data as summarized on its High Production Volume Information System (HPVIS) (Refs. 1, 19, and 20). This finding is also based on the results of EPA's review of studies/data identified by commenters in response to the proposed rule or identified by EPA after the publication of the proposed rule to this final rule. The studies and data submitted or identified subsequent to the proposed rule were found to be sufficient for some proposed tests of certain chemical substances and those tests are not required for those chemical substances in this final rule (see Unit VII.).

EPA encouraged the submission of existing data on SIDS testing endpoints relevant to characterizing the hazard of those chemical substances for which testing was proposed. All such submitted information was carefully evaluated by EPA in the development of the final testing requirements in this final rule. However, if persons required to test under this final rule become aware of additional relevant and scientifically adequate existing data (including structure-activity relationships (SAR) information or a scientifically defensible category approach) and submit this information to EPA before testing is initiated, the Agency will consider such data to determine if they satisfy the testing requirement and will take appropriate necessary action to ensure that the testing in this final rule is no longer required. Persons may submit such information as a requested modification to the testing requirements under 40 CFR 790.55 at any time at least 60 days before the reporting deadline for the test in question.

F. Is testing necessary for these chemical substances?

As discussed in Unit II.D., data on SIDS testing endpoints, including acute toxicity, repeat dose toxicity, developmental and reproductive toxicity, genetic toxicity (gene mutations and chromosomal aberrations), ecotoxicity (tests in fish, *Daphnia,* and algae), and environmental fate (five tests for physical/chemical properties [melting point, boiling point, vapor pressure, *n*-octanol/water partition coefficient, and water solubility] and biodegradation), are necessary to ascertain the health and environmental effects of the 15 HPV chemical substances in this final rule. EPA knows of no other means to generate the SIDS data other than the testing described in this final rule, and therefore believes that conducting the SIDS testing identified for the 15 HPV chemical substances is necessary to provide data relevant to a determination of whether the manufacture, processing, and use of the chemical substances does or does not present an unreasonable risk of injury to human health and the environment. EPA also believes it is important to make these data available to satisfy the ''Right-to-Know'' principles included in the HPV Challenge Program goals.

V. Final Rule

A. What testing is required by this final rule?

EPA is requiring specific testing and reporting requirements for the chemical substances specified in § 799.5089(j) of the regulatory text. The testing requirements for each chemical are denoted by alphanumeric symbols in Table 2 in § 799.5089(j) of the regulatory text. Table 3 in § 799.5089(j) of the regulatory text provides the key to identify the tests denoted by the alphanumeric symbols and also lists special conditions that might apply when conducting some of those tests. Test methods listed in Table 3 in § 799.5089(j) of the regulatory text are grouped according to the endpoint that they address. The endpoints and test standards required under this final rule are listed in this unit. Also discussed in this unit are the special conditions which EPA has identified and is requiring for several of the required test standards.

1. *Physical/Chemical Properties*—a. Melting Point: ASTM International (ASTM) E 324–99 (capillary tube) (Ref. 21) (or, for substances liquid at room temperature, Freezing Point: OECD102 (melting point/melting range) (Ref. 22)).

b. *Boiling Point:* ASTM E 1719–05 (ebulliometry) (Ref. 23).

c. *Vapor Pressure:* ASTM E 1782–08 (thermal analysis) (Ref. 24).

d. *n-Octanol/Water Partition Coefficient:* Method A (40 CFR 799.6755—shake flask).

e. Method B (ASTM E 1147–92 (Reapproved 2005)—liquid chromatography) (Ref. 25).

f. Method C (40 CFR 799.6756—generator column).

g. *Water Solubility:* Method A (ASTM E 1148–02 (Reapproved 2008)—shake flask) (Ref. 26).

h. Method B (40 CFR 799.6784—shake flask).

i. Method C (40 CFR 799.6784—column elution).

j. Method D (40 CFR 799.6786—generator column).

EPA is requiring, for those chemical substances for which melting points determinations are needed, that melting points be determined according to the method ASTM E 324–99. Though ASTM has withdrawn this method, ASTM still makes the method available for informational purposes and it can still be purchased from ASTM at the address listed in § 799.5089(h) of the regulatory text. ASTM has explained that ASTM E 324–99 was withdrawn because:

> The standard utilizes old, well-developed technology; it is highly unlikely that any additional [changes] and/or modifications will ever be pursued by the E15 [committee]. The time and effort needed to maintain these documents detract from the time available to develop new standards which use modern technology. (Ref. 27)

EPA concludes, therefore, that ASTM's withdrawal of ASTM E 324–99 does not have negative implications on the validity of the method.

However, where the chemical substance is a liquid at room temperature a measured freezing point would meet the obligation to report the melting point. However, ASTM E 324–99 (capillary tube) does not specifically include instructions for determining freezing point. Therefore, EPA is instead requiring OECD 102 (melting point/melting range), which includes guidance for determining freezing point for substances that are liquid at room temperature.

ASTM has updated and revised its test method for vapor pressure (ASTM E 1782–08—thermal analysis) since the proposed rule was published. Some material related to alternative test methods and some unnecessary descriptive material was omitted in the revision, but the test method itself is unchanged. The updated and revised method (ASTM E 1782–08—thermal analysis) is the required test method for the vapor pressure endpoint in this final rule. Note: ASTM issues its test methods under a fixed designation (*e.g.,* E 1719): ''the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (e) indicates an editorial change since the last revision or reapproval'' (Ref. 23).

In addition, ASTM has updated its test method for Measurement of Aqueous Solubility (ASTM E 1148–02). The test method was reapproved in 2008. There was a minor change in ''Referenced Documents,'' but the test method itself is unchanged. When required, the updated method (ASTM E 1148–02 (Reapproved 2008)) is listed as the required test method for the ''Water Solubility'' endpoint in this final rule (Ref. 26).

For the log K_{ow} and water solubility endpoints, EPA is requiring that certain ''special conditions'' be considered by test sponsors in determining the appropriate test method that would be used from among those included for these endpoints in Table 3 in § 799.5089(j) of the regulatory text.

For the log K_{ow} endpoint, EPA is requiring that an appropriate selection be made from among three alternative

methods for measuring the chemical substance's log K_{ow}. Prior to determining the appropriate standard to use to measure the *n*-octanol/water partition coefficient, EPA is recommending that the log K_{ow} be quantitatively estimated. EPA recommends that the method described in ''Atom/Fragment Contribution Method for Estimating Octanol-Water Partition Coefficients'' (Ref. 28) be used in making such estimation. EPA is requiring that test sponsors must submit with the final study report the underlying rationale for the test standard selected for this endpoint. EPA is requiring this approach in recognition of the fact that, depending on the chemical substance's log $K_{ow,}$ one or more test methods may provide adequate information for determining the log $K_{ow,}$ but that in some instances one particular test method may be more appropriate. In general, EPA believes that the more hydrophobic a subject chemical substance is the more suitable Method B (ASTM E 1147–92 (Reapproved 2005)), and especially Method C (40 CFR 799.6756—generator column), and the less suitable Method A (40 CFR 799.6755—shake flask), become. The required test methodologies have been developed to meet a wide variety of needs and, as such, are silent on experimental conditions related to pH. Therefore, EPA highly recommends that all required *n*-octanol/water partition coefficient tests be conducted at pH 7 to ensure environmental relevance. The required test standards and log K_{ow} ranges that would determine which tests must be conducted for this endpoint are shown in Table 2 of this unit.

TABLE 2—TEST REQUIREMENTS FOR THE PHYSICAL/CHEMICAL PROPERTIES

Testing category	Test requirements and references	Special conditions
Physical/chemical properties	*n*-Octanol/water partition coefficient (log 10 basis) or log K_{ow}: Select from those listed in this column—see Special Conditions in the adjacent column. Method A: 40 CFR 799.6755 (shake flask) Method B: ASTM E 1147–92 (Reapproved 2005) (liquid chromatography) Method C: 40 CFR 799.6756 (generator column)	*n*-Octanol/water partition coefficient (log 10 basis) or log K_{ow}: Which method is required, if any, is determined by the test substance's estimated log K_{ow} as follows: log K_{ow} < 0: no testing required. log K_{ow} range 0–1: Method A or B. log K_{ow} range > 1–4: Method A, B, or C. log K_{ow} range > 4–6: Method B or C. log K_{ow} > 6: Method C. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted at pH 7.

Note: ASTM—ASTM International.

For the ''Water Solubility'' endpoint, EPA is requiring that the appropriate selection be made from among four alternative methods for measuring that endpoint. The test method used would be determined by first quantitatively estimating the test substance's water solubility. One recommended method for estimating water solubility is described in, ''Improved Method for Estimating Water Solubility from Octanol/Water Partition Coefficient'' (Ref. 29). EPA is also requiring that test sponsors submit in the final study report the underlying rationale for the test standard selected for this endpoint. EPA also highly recommends that all required water solubility tests be conducted starting at pH 7 to ensure environmental relevance. Table 3 of this unit shows the estimated water solubility ranges that EPA is requiring for use in this final rule to select the appropriate test standard.

TABLE 3—TEST REQUIREMENTS FOR THE WATER SOLUBILITY ENDPOINT

Testing category	Test requirements and references	Special conditions
Physical/chemical properties	Water solubility: The appropriate method to use, if any, to test for water solubility would be selected from those listed in this column—see Special Conditions in the adjacent column. Method A: ASTM E 1148–02 (Reapproved 2008) (shake flask) Method B: 40 CFR 799.6784 (shake flask) Method C: 40 CFR 799.6784 (column elution) Method D: 40 CFR 799.6786 (generator column)..	Water solubility: Which method is required would be determined by the test substance's estimated water solubility. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted starting at pH 7. > 5,000 mg/L: Method A or B. > 10 mg/L–5,000 mg/L: Method A, B, C, or D. > 0.001 mg/L–10 mg/L: Method C or D. ≤ 0.001 mg/L: No testing required.

Note: ASTM—ASTM International, mg/L—milligram/liter.

2. *Environmental Fate and Pathways*—a. Ready Biodegradation: Method A: ASTM E 1720–01 (Reapproved 2008) (sealed vessel CO_2 production test) (Ref. 30).

b. *Method B:* International Organization for Standardization (ISO)

14593:1999(E) (CO_2 headspace test) (Ref. 31).

c. *Method C:* ISO 7827:1994(E) (method by analysis of dissolved organic carbon (DOC)) (Ref. 32).

d. *Method D:* ISO 9408:1999(E) (determination of oxygen demand in a closed respirometer) (Ref. 33).

e. *Method E:* ISO 9439:1999(E) (carbon dioxide evolution test) (Ref. 34).

f. *Method F:* ISO 10707:1994(E) (closed bottle test) (Ref. 35).

g. *Method G:* ISO 10708:1997(E) (two-phase closed bottle test) (Ref. 36).

ASTM has updated its test method for Determining Ready, Ultimate, Biodegradability of Organic Chemicals in a Sealed Vessel CO_2 Production Test (ASTM E 1720–01). The test method was reapproved in 2008. There were minor changes, including the deletion of mention of specific apparatus brands in the ''Apparatus'' section; however the test method itself is unchanged. When required, the reapproved method (ASTM E 1720–01 (Reapproved 2008)) is listed as the required test method for the ''Ready Biodegradation'' endpoint in this final rule (Ref. 30).

For the ''Ready Biodegradation'' endpoint, EPA is requiring that the appropriate selection be made from among seven alternative methods for measuring the test substance's ready biodegradability. For most test substances, EPA considers Method A (ASTM E 1720–01 (Reapproved 2008)) and Method B (ISO 14593:1999(E)) to be generally applicable, cost effective, and widely accepted internationally. However, the test method used will depend on the physical and chemical properties of the test substance, including its water solubility. An additional document, ISO 10634:1995(E) (Ref. 37), provides guidance for selection of the appropriate test method for a given test substance considering the test substance's physical and chemical properties. EPA is also requiring that test sponsors submit in the final study report the underlying rationale for the test standard selected for this endpoint.

3. *Aquatic Toxicity*—a. *Test Group 1:*

i. Acute toxicity to fish (ASTM E 729–96 (Reapproved 2007)) (Ref. 38).

ii. Acute toxicity to *Daphnia* (ASTM E 729–96 (Reapproved 2007)) (Ref. 38).

iii. Toxicity to plants (algae) (ASTM E 1218–04 $^{\varepsilon 1}$) (Ref. 39).

b. *Test Group 2:*

i. Chronic toxicity to *Daphnia* (ASTM E 1193–97 (Reapproved 2004)) (Ref. 40).

ii. Toxicity to plants (algae) (ASTM E 1218–04 $^{\varepsilon 1}$) (Ref. 39).

ASTM has updated ASTM E 729–96 (Reapproved 2002), its test method for Conducting Acute Toxicity Tests on Test Materials with Fishes, Macroinvertebrates, and Amphibians. ASTM reapproved this test method in 2007. There were minor changes (for example, reference to the ASTM Web site in place of the ''Annual Book of ASTM Standards,'' minor changes in references and dates, titles of ASTM documents changed to correspond to new titles, *etc.*) but the test method itself is unchanged. The updated method (ASTM E 729–96 (Reapproved 2007)) is listed as the required test method for the ''Aquatic Toxicity'' endpoints in this final rule (Ref. 38).

For the ''Aquatic Toxicity'' endpoint, the OECD HPV SIDS Program recognizes that, for certain chemical substances, acute toxicity studies are of limited value in assessing the chemical substances' aquatic toxicity. This issue arises when considering chemical substances with high log K_{ow} values. In such cases, toxicity is unlikely to be observed over the duration of acute toxicity studies because of reduced uptake and the extended amount of time required for such chemical substances to reach steady state or toxic concentrations in the test organism. For such situations, the OECD HPV SIDS Program recommends use of chronic toxicity testing in *Daphnia* in place of acute toxicity testing in fish and *Daphnia.*

EPA is requiring that the aquatic toxicity testing requirement be determined based on the test substance's measured log K_{ow} as determined by using the approach outlined in Unit V.A.1., in the discussion of ''*n*-Octanol/Water Coefficient,'' and in Table 3 in § 799.5089(j) of the regulatory text. For test substances determined to have a log K_{ow} of less than 4.2, one or more of the following tests (described as ''Test Group 1'' in Table 3 in § 799.5089(j) of the regulatory text) are required: Acute toxicity to fish (ASTM E 729–96 (Reapproved 2007)), Acute toxicity to *Daphnia* (ASTM E 729–96 (Reapproved 2007)), and Toxicity to plants (algae) (ASTM E 1218–04 $^{\varepsilon 1}$).

For test substances determined to have a log K_{ow} that is greater than or equal to 4.2, one or both of the following tests (described as ''Test Group 2'' in Table 3 in § 799.5089(j) of the regulatory text) are required: Chronic toxicity to *Daphnia* (ASTM E 1193–97 (Reapproved 2004)) and/or Toxicity to plants (algae) (ASTM E 1218–04 $^{\varepsilon 1}$). As outlined in Table 3 in § 799.5089(j) of the regulatory text, depending on the testing required in Test Group 1, the Test Group 2 chronic *Daphnia* test may substitute for either or both the acute fish toxicity test and the acute *Daphnia* test.

For the purposes of this final rule, EPA's use of a log K_{ow} equal to or greater than 4.2 is consistent with the approach taken in the Agency's final policy statement under TSCA section 5, ''Category for Persistent, Bioaccumulative, and Toxic New Chemical Substances'' (Ref. 41). Using SAR, a log K_{ow} of 4.2 corresponds with a fish bioconcentration factor (BCF) of about 1,000 (Refs. 29, 42, and 43). A chemical substance with a fish BCF value of 1,000 or more is characterized as having a tendency to accumulate in living organisms relative to the concentration of the chemical substance in the surrounding environment (Ref. 43). EPA has also used a measured BCF that is equal to or greater than 1,000 or, in the absence of bioconcentration data, a log P [same as log K_{ow}] value equal to or greater than 4.3 to help define the potential of a new chemical substance to cause significant adverse environmental effects (Ref. 44). EPA considers the difference between the log K_{ow} of 4.3 cited in the 1989 **Federal Register** document (Ref. 46) and the log K_{ow} value of 4.2 cited in this final TSCA section 4 test rule to be negligible.

EPA recognizes that in some circumstances, acute aquatic toxicity testing (Test Group 1) may be relevant for certain chemical substances having a log K_{ow} equal to or greater than 4.2. Chemical substances that are dispersible in water (*e.g.,* surfactants, detergents, aliphatic amines, and cationic dyes) may have log K_{ow} values greater than 4.2 and may still be acutely toxic to aquatic organisms. For any chemical substance listed in Table 3 in § 799.5089(j) of the regulatory text for which a test sponsor believes that an alternative to the log K_{ow} threshold of 4.2 is appropriate, the test sponsor may request a modification of the test standard in this final rule as described in 40 CFR 790.55. Based upon the supporting rationale provided by the test sponsor, EPA may allow an alternative threshold or method to be used for determining whether acute or chronic aquatic toxicity testing must be performed for a specific substance.

4. *Mammalian Toxicity—Acute*—a. Acute Inhalation Toxicity (rat): Method A (40 CFR 799.9130).

b. Acute Oral Toxicity (rat): Method B (ASTM E 1163–98 (Reapproved 2002) (Ref. 45) or 40 CFR 799.9110(d)(1)(i)(A)).

For the ''Mammalian Toxicity—Acute'' endpoint, EPA is requiring that certain ''special conditions,'' such as the chemical substance's physical/chemical properties or physical state, be considered in determining the appropriate test method from among

those included for this endpoint in Table 3 in § 799.5089(j) of the regulatory text. The OECD HPV SIDS Program recognizes that, for most chemical substances, the oral route of administration will suffice for this endpoint. However, consistent with the approach taken under the HPV Challenge Program, EPA is requiring that, for test substances that are gases at room temperature (25 °C), the acute mammalian toxicity study be conducted using inhalation as the exposure route (described as Method A (40 CFR 799.9130) in Table 3 in § 799.5089(j) of the regulatory text). In the case of a potentially explosive test substance, care must be taken to avoid the generation of explosive concentrations. For all other chemical substances (*i.e.,* those that are either liquids or solids at room temperature), EPA is requiring that acute toxicity testing be conducted via oral administration using an ''Up/Down'' test method (described as Method B (ASTM E 1163–98 (Reapproved 2002) or 40 CFR 799.9110(d)(1)(i)(A)) in Table 3 in § 799.5089(j) of the regulatory text). Consistent with the HPV Challenge Program, EPA is allowing the use of the Neutral Red Uptake (NRU) basal cytotoxicity assay to select the starting dose for the acute oral toxicity test. This test is included as a special condition in Table 3 in § 799.5089(j) of the regulatory text. The National Institutes of Environmental Health Sciences (NIEHS) provides guidance on how to use the NRU assay to estimate a starting dose for an acute oral toxicity test (Ref. 46). Recent versions of the standardized protocols for the NRU assay are available at the NIEHS/Interagency Coordination Committee on the Validation of Alternative Methods Web site (Refs. 47–49).

5. *Mammalian Toxicity—Genotoxicity*—a. Gene Mutations: Bacterial Reverse Mutation Test (*in vitro*): 40 CFR 799.9510.

b. *Chromosomal Damage: In Vitro* Mammalian Chromosome Aberration Test (40 CFR 799.9537), or the *In Vivo* Mammalian Bone Marrow Chromosomal Aberration Test (rodents: Mouse (preferred species), rat, or Chinese hamster) (40 CFR 799.9538), or the *In Vivo* Mammalian Erythrocyte Micronucleus Test (sampled in bone marrow) (rodents: Mouse (preferred species), rat, or Chinese hamster) (40 CFR 799.9539).

Persons required to conduct testing for chromosomal damage are encouraged to use *in vitro* genetic toxicity testing (*i.e.,* the Mammalian Chromosome Aberration Test) to generate the needed genetic toxicity screening data, unless known chemical properties preclude its use. These could include, for example, physical chemical properties or chemical class characteristics. A test sponsor who uses one of the *in vivo* methods instead of the *in vitro* method to address this endpoint would be required to submit to EPA in the final study report a rationale for conducting that alternate test.

6. *Mammalian Toxicity—Repeated Dose/Reproduction/Developmental*—a. Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9365.

b. *Reproduction/Developmental Toxicity Screening Test:* 40 CFR 799.9355.

c. *Repeated Dose 28-Day Oral Toxicity Study:* 40 CFR 799.9305.

For the ''Mammalian Toxicity—Repeated Dose/Reproduction/Developmental'' endpoint, EPA recommends the use of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9365) as the test of choice. EPA recognizes, however, that there may be reasons to test a particular chemical substance using both the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9355) and the Repeated Dose 28-Day Oral Toxicity Study (40 CFR 799.9305) instead of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9365). With regard to such cases, EPA is requiring that a test sponsor who uses the combination of the Reproduction/Developmental Toxicity Screening Test and the Repeated Dose 28-Day Oral Toxicity Study in place of the Combined Repeated Dose Toxicity Study with Reproduction/Developmental Toxicity Screen submit to EPA in the final study report a rationale for conducting these alternate tests.

In the proposed rule (Ref. 2) to this final rule, EPA stated that certain of the chemical substances for which mammalian toxicity—repeated dose/reproduction/developmental toxicity testing is required may be used solely as ''closed system intermediates'' (*e.g.,* stored in controlled on-site facilities; or with controlled transport, *i.e.,* to a limited number of locations within the same company or second parties which use the chemical in a controlled way as an intermediate with a well-known technology). A chemical substance that is intended to undergo a further deliberate reaction to produce another industrial substance is considered an intermediate. Intermediates which are contained in closed systems and therefore have a limited potential for exposure may be eligible for a reduced testing battery. In these situations, such chemical substances may be eligible for a reduced testing battery that substitutes a developmental toxicity study for the SIDS requirement to address repeated dose, reproduction, and developmental toxicity. EPA requested that commenters who believe their chemical substance is used solely as a closed system intermediate submit appropriate information along with their comments which substantiate this belief, but EPA did not receive any comments from potential test sponsors that their chemical substance was a closed system intermediate.

B. When will the testing imposed by this final rule begin?

This final rule is effective 30 days after its publication in the **Federal Register**. Once it is effective, the required testing must be initiated in time to allow the required final report to be submitted within 13 months of the effective date of this final rule (see § 799.5089(i) of the regulatory text).

C. How must the studies required under this final rule be conducted?

Persons required to comply with this final rule must conduct the necessary testing in accordance with the testing requirements listed in Tables 2 and 3 in § 799.5089(j) of the regulatory text, the reporting requirements described in § 799.5089(i) of the regulatory text, and with Good Laboratory Practice Standards (GLPS) at 40 CFR part 792.

D. What form of test substances will be tested under this final rule?

EPA is specifying two distinct approaches for identifying the specific chemical substances that would be tested under this final rule, the application of which would depend on whether the chemical substance is considered to be a ''Class 1'' or a ''Class 2'' chemical substance. First introduced when EPA compiled the TSCA Chemical Substance Inventory, the term Class 1 chemical substance refers to a chemical substance having a chemical composition that consists of a single-chemical species (not including impurities) that can be represented by a specific, complete structure diagram. By contrast, a Class 2 chemical substance has a composition that cannot be represented by a specific, complete chemical structure diagram, because such a chemical substance generally contains two or more different chemical species (not including impurities). A ''Class 2'' designation most frequently represents a group of chemical

substances that have similar combinations of different chemical species and/or that were prepared from similar feedstocks using similar production methods. By contrast, Class 1 chemical substances generally represent a much narrower group of chemical substances for which the only variables are their impurities. Table 2 in § 799.5089(j) of the regulatory text identifies the listed chemical substances as either Class 1 or Class 2 chemical substances.

The ''Class 1'' chemical substances listed in Table 2 in § 799.5089(j) of the regulatory text (*i.e.,* 11 of the 15 HPV chemical substances included in this final rule) must be tested at a purity of at least 99%. In instances in which the test sponsor(s) believes that a 99% level of purity is unattainable for a given chemical substance, the sponsor may request a modification under the procedures described in 40 CFR 790.55.

For the ''Class 2'' chemical substances listed in Table 2 in § 799.5089(j) of the regulatory text (*i.e.,* 4 of the 15 HPV chemical substances included in this final rule), EPA is requiring that the chemical substance tested be any representative form of the chemical substance.

In requiring a different approach for identifying the chemical substance to be tested with regard to Class 2 chemical substances, EPA recognizes two characteristics which further distinguish Class 1 from Class 2 chemical substances. First, unlike Class 1 chemical substances, knowledge of the composition of commercial Class 2 chemical substances can vary in quality and specificity from substance to substance.

The composition of the chemical species which comprise a Class 2 chemical substance may be:

- Well-characterized in terms of molecular formulae, structural diagrams, and compositional percentages of all species present (for example, methyl phenol);
- Less well-characterized, for example, characterized only by molecular formulae, non-specific structural diagrams, and/or by incomplete or unknown compositional percentages of the species present (for example, C_{12}–C_{14} tert-alkyl amines); or
- Poorly characterized because all that is known is the identity of only some of the chemical species present and their percentages of composition, or of only the feedstocks and method of manufacture used to manufacture the substance (for example, nut shell liquor of cashew).

Secondly, the composition of some Class 2 chemical substances may vary from one manufacturer to another, or, for a single manufacturer, from production run to production run, because of small variations in feedstocks, manufacturing methods, or other production variables.

EPA believes that, for purposes of this final rule, the testing of any representative form of a subject Class 2 chemical substance would provide the data necessary to support the development of preliminary or screening level hazard and risk characterizations for the subject Class 2 chemical substance. However, EPA encourages the selection of representative forms of test substances that meet industry or consensus standards, where they exist. In accordance with TSCA GLPS at 40 CFR part 792, the final study report would be required to include test substance identification information, including name, CASRN, strength, purity, and composition, or other appropriate characteristics (see 40 CFR 792.185).

E. Am I required to test under this final rule?

1. *Am I subject to this final rule?* You are subject to this final rule and may be required to test if you manufacture (including import) or process, or intend to manufacture or process, one or more chemical substances listed in this final rule during the time period described in Unit V.E.2. However, if you do not know or cannot reasonably ascertain that you manufacture or process a chemical substance listed in this final rule (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you are not subject to this final rule for that listed chemical substance (See § 799.5089(b)(2) of the regulatory text).

2. *When will my manufacture or processing (or my intent to do so) cause me to be subject to this final rule?* You are subject to this final rule if you manufacture or process, or intend to manufacture or process, a chemical substance listed in Table 2 in § 799.5089(j) of the regulatory text at any time from the effective date of this final rule to the end of the test cost reimbursement period.

3. *Will I be required to test if I am subject to this final rule?* It depends on the nature of your activities. All persons who are subject to this final rule, which, unless otherwise noted in the regulatory text, incorporates EPA's generic procedures applicable to TSCA section 4(a) test rules (contained within 40 CFR part 790), fall into one of two groups, designated here as Tier 1 and Tier 2.

Persons in Tier 1 must initially comply with this final rule. To comply, they must either:

- Submit to EPA letters-of-intent-to-conduct-testing, conduct this testing, and submit the test data to EPA, or
- Apply to and obtain from EPA exemptions from testing.

See 40 CFR 790.5 (''Submission of information'') and 40 CFR 790.45 (''Submission of letter-of-intent-to-conduct-testing or exemption application'') for details. (Note: In addition to the identifying information specified in § 790.5, EPA also requests that the docket ID number EPA–HQ–OPPT–2009–0112 be included on the submission). For all submissions under this part, six copies must be provided to EPA. All submissions for this final rule, except those containing CBI, will be entered into the docket under ''Supporting and Related Material.'' Addresses of the OPPT Document Control Office, where this information should be sent, are found in this final rule under ''*Submission of Information.''*

Persons in Tier 2:

- Do not have to initially comply with this final rule.
- Are not required to take any action unless EPA notifies them to the contrary (because, for example, no person in Tier 1 had submitted a letter-of-intent-to-conduct-testing), as described in Unit V.E.3.f.

a. *Who is in Tier 1 and Tier 2*? Table 4 of this unit describes who is in Tier 1 and Tier 2.

TABLE 4—PERSONS SUBJECT TO THIS FINAL RULE: TIER 1 AND TIER 2

Tier 1 (persons initially required to comply)	Tier 2 (persons not initially required to comply)
Persons who manufacture (as defined at TSCA section 3(7)), or intend to manufacture, a test rule substance, and who are not listed under Tier 2.	A. Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture a test rule substance solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring chemical substance (as defined at 40 CFR 710.4(b)); —As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kgs (1,100 lb) annually (as described at 40 CFR 790.42(a)(4)); or —In small quantities solely for research and development (as described at 40 CFR 790.42(a)(5)). B. Persons who process (as defined at TSCA section 3(10)) or intend to process a test rule substance (see 40 CFR 790.42(a)(2)).

Note: kgs—kilograms, TSCA—Toxic Substances Control Act.

Under 40 CFR 790.2, EPA may establish procedures for specific test rules that differ from the generic procedures governing TSCA section 4(a) test rules in 40 CFR part 790. For purposes of this final rule, EPA has established certain requirements that differ from those under 40 CFR part 790.

In this final rule, EPA has reconfigured the tiers in 40 CFR 790.42. The Agency took administrative burden and complexity into account in determining who was to be in Tier 1 in this final rule.

Tier 1 includes: Chemical manufacturers who, in the experience of the Agency, have traditionally conducted testing or participated in testing consortia under previous TSCA section 4(a) test rules.

Tier 2 includes:

- Processors, manufacturers of less than 500 kilograms (kgs) (1,100 lb) per year (small-volume manufacturers).
- Manufacturers of small quantities for research and development (R&D).
- Byproduct manufacturers.
- Impurity manufacturers.
- Manufacturers of naturally occurring substances.
- Manufacturers of non-isolated intermediates.
- Manufacturers of components of Class 2 chemical substances.

Byproduct manufacturers, impurity manufacturers, manufacturers of naturally occurring chemical substances, manufacturers of non-isolated intermediates, and manufacturers of components of Class 2 chemical substances historically have not participated in testing or contributed to reimbursement of those persons who have conducted testing. EPA is not aware of any circumstances in which test rule Tier 1 entities have sought reimbursement from Tier 2 entities either through private agreements or by soliciting the involvement of the Agency under the reimbursement regulations at 40 CFR part 791.

EPA understands that for some manufacturers the marginal transaction costs involved in negotiating and administering testing arrangements may raise the expense and burden of testing to a level that is disproportional to the additional benefits of including these persons in Tier 1. Therefore, EPA does not believe that the likelihood of the persons included in Tier 2 actually conducting the testing is sufficiently high to justify burdening these persons with Tier 1 requirements (*e.g.,* submitting requests for exemptions). Nevertheless, these persons, along with all other persons in Tier 2, would be subject to reimbursement obligations to persons who actually conduct the testing, as described in Unit V.E.4.

b. *Subdivision of Tier 2 entities.* In this final rule the Agency has further subdivided which persons in Tier 2 would be required to perform testing, if needed.

i. *Tier 2A.* Tier 2 manufacturers; *i.e.,* those who manufacture, or intend to manufacture, a test rule chemical substance solely as one or more of the following: A byproduct, an impurity, a naturally occurring substance, a non-isolated intermediate, a component of a Class 2 chemical substance, in amounts less than 1,100 lb annually, or in small quantities solely for R&D.

ii. *Tier 2B.* Tier 2 processors; *i.e.,* those who process, or intend to process, a test rule chemical substance (in any form). The terms ''process'' and ''processor'' are defined by TSCA section 3(10) and TSCA section 3(11), respectively.

If the Agency needs testing from persons in Tier 2, EPA would seek testing from persons in Tier 2A before proceeding to persons in Tier 2B. It is appropriate to call upon manufacturers before processors because the Agency believes that testing costs are traditionally passed by manufacturers along to processors, enabling them to share in the costs of testing (Ref. 50). In addition, ''[t]here are [typically] so many processors [of a given test rule chemical substance] that it would be difficult to include them all in the technical decisions about the tests and in the financial decisions about how to allocate the costs'' (Ref. 51).

c. *When is it appropriate for a person required to comply with this final rule to apply for an exemption rather than to submit a letter-of-intent-to-conduct-testing?* You may apply for an exemption if you believe that the required testing will be performed by another person (or a consortium of persons formed under TSCA section 4(b)(3)(A)). Procedures relating to exemptions are in 40 CFR 790.80 through 790.99, and § 799.5089(c)(2), (c)(5), (c)(7), and (c)(11) of the regulatory text. In this final rule, EPA will not require the submission of equivalence data (*i.e.,* data demonstrating that the chemical substance is equivalent to the chemical substance actually being tested) as a condition for approval of your exemption. Therefore, 40 CFR 790.82(e)(1) and 790.85 do not apply to this final rule.

d. *What will happen if I submit an exemption application?* EPA believes that requiring the collection of duplicative data is unnecessarily burdensome. As a result, if EPA has

received a letter-of-intent-to-test from another source or has received (or expects to receive) the test data that would be required under this final rule, the Agency would conditionally approve your exemption application under 40 CFR 790.87.

The Agency would terminate conditional exemptions if a problem occurs with the initiation, conduct, or completion of the required testing, or with the submission of the required data to EPA. EPA may then require you to submit a notice of intent to test or an exemption application. See 40 CFR 790.93 and § 799.5089(c)(8) of the regulatory text for details on submitting this notice. In addition, the Agency will terminate a conditional exemption if no letter-of-intent-to-test has been received from persons required to comply with this final rule. See, *e.g.,* § 799.5089(c)(6) of the regulatory text. Note that persons who obtain exemptions or receive them automatically would nonetheless be subject to providing reimbursement to persons who do actually conduct the testing, as described in Unit V.E.4.

e. *What are my obligations if I am in Tier 2?* If you are in Tier 2, you are subject to this final rule and you are responsible for providing reimbursement to persons in Tier 1, as described in Unit V.E.4. You are considered to have an automatic conditional exemption. You do not need to submit a letter-of-intent-to-test or an exemption application unless you are notified by EPA that you are required to do so.

The Agency may require you to submit a notice-of-intent-to-test or an exemption application if no manufacturer in Tier 1 has notified EPA of its intent to conduct testing and EPA has published a **Federal Register** document directing persons in Tier 2 to make the required submissions (see § 799.5089(c)(4), (c)(5), (c)(6), and (c)(7) of the regulatory text), or if a problem occurs with the initiation, conduct, or completion of the required testing, or with the submission of the required data to EPA (see 40 CFR 790.93 and § 799.5089(c)(10) of the regulatory text).

f. *What will happen if no one submits a letter-of-intent-to-conduct-testing?* If no one in Tier 1 submits a letter-of-intent-to-test within 30 days of the effective date of this final rule, EPA will notify in a separate **Federal Register** document persons in Tier 2A first, and then persons in Tier 2B of their obligation to submit a letter-of-intent-to-test, or an exemption application (see § 799.5089(c)(4) and (6) of the regulatory text). Persons in Tier 2A will have 30 days from the date the document published in the **Federal Register** to submit the required notice or exemption application. If no one in Tier 2A makes the required notification, EPA will follow the same procedure to notify persons in Tier 2B.

In the event that EPA does not receive a letter-of-intent for one or more of the tests required for any of the chemical substances in this final rule within 30 days after the publication of a **Federal Register** document notifying persons in Tier 2B of the obligation to submit a letter-of-intent-to-conduct-testing or to apply for an exemption from testing, EPA will notify all manufacturers and processors of the chemical substance of this fact by certified letter or by publishing a **Federal Register** document specifying the test(s) for which no letter-of-intent has been submitted. This letter or **Federal Register** document will additionally notify all manufacturers and processors that all exemption applications concerning the test(s) have been denied, and will give them an opportunity to take corrective action. If no one has notified EPA of its intent to conduct the required testing of the chemical substance within 30 days after receipt of the certified letter or publication of the **Federal Register** document, all manufacturers and processors subject to this final rule with respect to that chemical substance who are not already in violation of this final rule would be in violation of this final rule and would be subject to potential enforcement actions by EPA.

4. *What are the reimbursement procedures?* In the past, persons subject to test rules have independently worked out among themselves their respective financial contributions to those persons who have actually conducted the testing. However, if persons are unable to agree privately on reimbursement, they may take advantage of EPA's reimbursement procedures at 40 CFR part 791, promulgated under the authority of TSCA section 4(c). These procedures include: The opportunity for a hearing with the American Arbitration Association; publication by EPA of a document in the **Federal Register** concerning the request for a hearing; and the appointment of a hearing officer to propose an order for fair and equitable reimbursement. The hearing officer may base his or her proposed order on the production volume formula set out at 40 CFR 791.48, but is not obligated to do so. Under this final rule, amounts manufactured as impurities would be included in production volume (40 CFR 791.48(b)), subject to the discretion of the hearing officer (40 CFR 791.40(a)). The hearing officer's proposed order may become the Agency's final order, which is reviewable in Federal court (40 CFR 791.60).

F. What are the reporting requirements under this final rule?

Study plans must be submitted for each test for each chemical substance 90 days after the effective date of this final rule, unless an extension is granted in writing pursuant to 40 CFR 790.55. See 40 CFR 790.50 (submission of study plans) for what information the study plan must contain. A final report must be submitted for each test for each chemical substance 13 months after the effective date of this final rule; *i.e.,* by the deadline indicated in § 799.5089(i) of the regulatory text. Addresses of the OPPT Document Control Office, where this information should be sent, are found in this final rule under ''*Submission of Information.*''

EPA also requests that a robust summary of the final report for each specific test be submitted in addition to and at the same time as the final report. The term ''robust summary'' is used to describe the technical information necessary to adequately describe an experiment or study and includes the objectives, methods, results, and conclusions of the full study report which can be either an experiment or in some cases an estimation or prediction method. Guidance for the compilation of robust summaries is described in a document entitled ''Draft Guidance on Developing Robust Summaries'' (Ref. 19). Persons who submit a robust summary are also encouraged to submit it electronically via HPVIS to allow for its ready incorporation into HPVIS. Directions for electronic submission of robust summary information into HPVIS are provided at *https://iaspub.epa.gov/oppthpv/metadata.html.* This link will direct you to the ''HPVIS Quick Start and User's Guide.''

G. What would I need to do if I cannot complete the testing required by this final rule?

A company that submits a letter-of-intent-to-test under this final rule and that subsequently anticipates difficulties in completing the testing by the deadline set forth in the final rule may submit a modification request to the Agency, pursuant to 40 CFR 790.55. EPA will determine whether modification of the test schedule is appropriate, and may first seek public comment on the modification.

H. Will there be sufficient test facilities and personnel to undertake the testing required under this final rule?

EPA's most recent analysis of laboratory capacity (Ref. 52) indicates

that available test facilities and personnel would adequately accommodate the testing specified in this final rule.

I. Might EPA seek further testing of the chemical substances in this final rule?

If EPA determines that it needs additional data regarding any of the chemical substances included in this final rule, the Agency would seek further health and/or environmental effects testing for these chemical substances. Should the Agency decide to seek such additional testing via a test rule, EPA would initiate a separate action for that purpose.

VI. Export Notification

Any person who exports, or intends to export, one of the chemical substances contained in this final rule in any form (*e.g.,* as byproducts, impurities, components of Class 2 chemical substances, *etc.*) is subject to the export notification requirements in TSCA section 12(b)(1) and 40 CFR part 707, subpart D. Export notification is generally not required for articles, as provided by 40 CFR 707.60(b). Section 12(b) of TSCA states, in part, that any person who exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under TSCA section 4 must notify the EPA Administrator of such export or intent to export. The EPA Administrator in turn will notify the government of the importing country of EPA's regulatory action with respect to the chemical substance.

VII. Decision Not To Require Testing for Certain Chemical Substances

A. TSCA Section 4(a)(1)(B)(i) Finding Not Made

Based on comments received on the proposed rule and findings, the information before EPA at this point does not provide a basis to make the findings of substantial production, release to the environment in substantial quantities, and/or substantial human exposure for 12 of the chemical substances included in the proposed rule. Comments indicated that 11 of the chemical substances were not or are no longer produced or imported in amounts equal to or greater than 1 million lb per year. Comments also indicated that the proposed finding of ''enters or can be reasonably anticipated to enter the environment in substantial quantities'' cannot be made for an additional chemical substance. Because the data provided show manufacture, human exposure, and/or environmental release are below the B Policy thresholds (discussed in Unit IV.A.) under TSCA section 4(a)(1)(B)(i), and because EPA has not identified any additional factors as discussed in the B Policy (Ref. 7) to cause the Agency to use decisionmaking criteria other than the general thresholds described in the B Policy for these chemical substances, EPA is not including these chemical substances in this final rule. In the event new Chemical Data Reporting (CDR) data or other data provide new or additional support for the TSCA section 4(a)(1)(B)(i) finding for any of these chemical substances, EPA will take appropriate steps to proceed with a test rule for the chemical substance(s).

Based on public comment, EPA no longer has the basis to find that six chemical substances are produced or imported in amounts equal to or greater than 1 million pounds per year. Therefore, these six chemical substances are no longer included in this final rule: Benzene, 1,2-dimethyl-3-nitro- (CASRN 83–41–0); 1-tetracosanol (CASRN 506–51–4); 1-hexacosanol (CASRN 506–52–5); 2-propenoic acid, 2-carboxyethyl ester (CASRN 24615–84–7); methanesulfonamide, *N*-[2-[(4-amino-3-methylphenyl)ethylamino]ethyl]-, sulfate (2:3) (CASRN 25646–71–3); and tar, coal, high-temp. (CASRN 65996–89–6).

Based on public comment, EPA no longer has the basis to find for an additional six chemical substances that they have substantial human exposure or substantial environmental release and so are also not included in this final rule. These chemical substances are: Solvent naphtha (coal) (CASRN 65996–79–4); tar oils, coal (CASRN 65996–82–9); distillates (coal tar) (CASRN 65996–92–1); pitch, coal tar-petroleum (CASRN 68187–57–5); 1,4-benzenedicarboxylic acid, 1,4-dimethyl ester, manuf. of, by-products from (CARN 68988–22–7); and extract residues (coal), tar oil alk., naphthalene distn. residues (CASRN 73665–18–6).

B. TSCA Section 4(a)(1)(B)(ii) Finding Not Made

For certain testing endpoints for certain chemical substances listed in the proposed rule, EPA is not making the TSCA section 4(a)(1)(B)(ii) finding that ''* * * there are insufficient data and experience to reasonably determine or predict the effects of the manufacture, processing, or use of these chemical substances, or of any combination of such activities, on human health or the environment * * *'' and is not finalizing the proposed testing. Table 2 in § 799.5089(j) of the regulatory text, which lists the chemical substances and testing requirements, has been revised to reflect this. For one chemical substance no testing is required; for two others, a more limited set of testing is being required than was originally proposed. Further discussion follows in Units VII.B.1.–3.

1. *Mutagenicity endpoints and screening reproduction/developmental toxicity of 3-pentanone (CASRN 96–22–0).* As discussed in Unit E.2. of the ''Response to Public Comments'' document (Ref. 13), EPA reviewed additional data, including studies submitted by PETA (PETA submitted these data on behalf of themselves and other Animal Welfare Organizations (AWOs)) for 3-pentanone (CASRN 96–22–0). After reviewing these data, EPA finds existing studies are adequate to evaluate mutagenicity and reproduction/developmental toxicity and is not finalizing the proposed testing for mutagenicity and reproduction/developmental toxicity. Therefore, 3-pentanone is not included in this final rule.

2. *Log K_{ow}, ready biodegradation, aquatic toxicity, and screening reproduction/developmental toxicity of benzene, 1-chloro-4-(trifluoromethyl)-(CASRN 98–56–6).* As discussed in Unit E.3. of the ''Response to Public Comments'' document (Ref. 13), EPA reviewed additional data, including studies submitted by the Greenwich Chemical Consulting, Inc. (GCC) for benzene, 1-chloro-4-(trifluoromethyl)-. After reviewing these data, EPA finds existing studies are adequate to evaluate log K_{ow} and screening reproduction/developmental toxicity and is not finalizing the proposed testing for these endpoints. In addition, EPA has reviewed the biodegradation studies and aquatic toxicity studies. EPA considers the biodegradation studies to be inadequate, so that test is required. While EPA considers the acute fish and invertebrate testing to no longer be necessary, EPA is still requiring an algal toxicity study.

3. *Physical/chemical properties, ready biodegradation, aquatic toxicity, acute mammalian toxicity, combined repeated-dose/screening reproduction/developmental toxicity, and mutagenicity endpoints of benzenesulfonic acid, dimethyl (CASRN 25321–41–9).* As discussed in Unit E.7. of the ''Response to Public Comments'' document (Ref. 13), EPA reviewed additional data, including studies submitted by Nease Corporation providing data for several analogue chemical substances for benzenesulfonic acid, dimethyl. EPA finds these data acceptable to fulfill all of the proposed testing endpoints with

the exception of these three physical/chemical (p-chem) properties: Boiling point, vapor pressure and log K_{ow}.

VIII. Decision to Defer Final Action for Chloroalkanes

EPA is deferring final action for chlorinated paraffins: Alkanes, chloro (CASRN 61788–76–9). In addition to the proposed test rule (Ref. 2), EPA published an Action Plan for Short-Chain Chlorinated Paraffins (SCCPs) and Other Chlorinated Paraffins (Ref. 53). There is currently an unresolved issue regarding whether all the production previously reported to the Agency under CASRN 61788–76–9 should in fact be covered by that listing. Pending resolution of this issue, EPA will defer making a final decision regarding test rule requirements for CASRN 61788–76–9, and will reevaluate the testing needs for CASRN 61788–76–9 based on future CDR reports.

IX. Economic Impacts

EPA has prepared an economic assessment entitled ''Economic Impact Analysis for the Final Section 4 Test Rule for High Production Volume Chemicals; Third Group of Chemicals'' (Ref. 53), a copy of which has been placed in the docket for this final rule. This economic assessment evaluates the potential for significant economic impacts as a result of the testing required by this final rule. The analysis covers 15 HPV chemical substances. The total cost of providing test data on the 15 HPV chemical substances that were evaluated in this economic analysis is estimated to be $5.13 million (Ref. 54).

While legally subject to this final rule, processors of a subject chemical substance would be required to comply with the requirements of this final rule only if they are directed to do so by EPA as described in § 799.5089(c)(5) and (c)(6) of the regulatory text. EPA would only require processors to test if no person in Tier 1 has submitted a notice of its intent to conduct testing, or if, under 40 CFR 790.93, a problem occurs with the initiation, conduct, or completion of the required testing or the submission of the required data to EPA. Because EPA has identified at least one manufacturer in Tier 1 for each subject chemical substance, the Agency assumes that, for each chemical substance in this final rule, at least one such person will submit a letter-of-intent to conduct the required testing and that person will conduct such testing and will submit the test data to EPA. Because EPA does not expect that processors will need to comply with this final rule, the economic assessment does not address processors.

To evaluate the potential for an adverse economic impact of testing on manufacturers of the chemical substances in this final rule, EPA employed a screening approach that estimated the impact of testing requirements as a percentage of each chemical substance's sale price. This measure compares annual revenues from the sale of a chemical substance to the annualized compliance cost for that chemical substance to assess the percentage of testing costs that can be accommodated by the revenue stream generated by that chemical substance over a number of years. Compliance costs include costs of testing and administering the testing, as well as reporting costs. Annualized compliance costs divide testing expenditures into an equivalent, constant yearly expenditure over a longer period of time. To calculate the percent price impact, testing costs (including laboratory and administrative expenditures) are annualized over 15 years using a 7% discount rate. Annualized testing costs are then divided by the estimated annual revenue of the chemical substance to derive the cost-to-sales ratio.

EPA estimates the total annualized compliance cost of testing for the 15 HPV chemical substances evaluated in the economic analysis to be $0.56 million under the average cost scenario. In addition, the TSCA section 12(b) export notification requirements (included in the total and annualized cost estimates) that would be triggered by this final rule are expected to have a negligible impact on exporters. The estimated cost of the TSCA section 12(b) export notification requirements, which, under this final rule, would be required for the first export to a particular country of a chemical substance subject to this final rule, is estimated to range from $27.49 per notice to $86.99 per notice (Ref. 54). The Agency's estimated total costs of testing (including both laboratory and administrative costs), annualized testing cost, and public reporting burden hours for this final rule are presented in the economic assessment.

Under a least cost scenario, 7 out of the 15 HPV chemical substances (47%) would have a price impact at less than the 1% level. Similarly, 5 out of the 15 HPV chemical substances (33%) would be impacted at less than the 1% level under an average cost scenario. Thus, the potential for adverse economic impact due to this final rule is low for at least 33% of the chemical substances in this final rule. Approximately 10 chemical substances (67%) of the 15 HPV chemical substances for which price data are available would have a price impact at a level greater than or equal to 1% under the average cost scenario.

EPA believes that the testing of the chemical substances in this final rule presents a low potential for adverse economic impact for a reasonable number of the chemical substances. Because the subject chemical substances have relatively large production volumes, the annualized costs of testing, expressed as a percentage of annual revenue, are very small for nearly half of the chemical substances. There are, however, some chemical substances for which the price impact is expected to exceed 1% of the revenue from that chemical substance. The potential for adverse economic impact is expected to be higher for these chemical substances. In these cases, companies may choose to use revenue sources other than the profits from the individual chemical substances to pay for testing. Smaller businesses are less likely to have additional revenue sources to cover the compliance costs in this situation. Therefore, the Agency also compared the costs of compliance to company sales for small businesses. In that analysis, EPA found that the costs of testing requirements in this final rule for chemical substances produced by a specific company exceed 1% of company revenues for only one of the affected companies.

EPA does not provide quantitative estimates of the benefits from these tests. Ideally, a discussion of benefits would focus on the additional benefits to be gained from new information relative to information that already exists. Such an approach could examine the value of new information provided as a result of this final rule where such information has not been publicly available. Because of constraints on information on the value of information, EPA's evaluation of benefits is qualitative and does not address incremental benefits. EPA believes, however, that the net benefits of the new information are positive.

X. Materials in the Docket

As indicated under **ADDRESSES**, a docket was established for this final rule under docket ID number EPA–HQ–OPPT–2009–0112. The following is a listing of the documents that have been placed in the docket for this final rule. The docket includes information considered by EPA in developing this final rule, including the documents listed in this unit, which are physically located in the docket. In addition,

interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not physically located in the docket, consult either of the technical persons listed under **FOR FURTHER INFORMATION CONTACT**. The docket is available for review as specified under **ADDRESSES**.

1. EPA. Data Collection and Development on High Production Volume (HPV) Chemicals. Notice. **Federal Register** (65 FR 81686, December 26, 2000) (FRL–6754–6).
2. EPA. Testing of Certain High Production Volume Chemicals; Third Group of Chemicals. Proposed Rule. **Federal Register** (75 FR 8575, February 25, 2010) (FRL–8805–8).
3. EPA. Testing of Certain High Production Volume Chemicals. Proposed Rule. **Federal Register** (65 FR 81658, December 26, 2000) (FRL–6758–4).
4. EPA. Testing of Certain High Production Volume Chemicals. Final Rule. **Federal Register** (71 FR 13708, March 16, 2006) (FRL–7335–2).
5. EPA. Testing of Certain High Production Volume Chemicals; Second Group of Chemicals. Proposed Rule. **Federal Register** (73 FR 43314, July 24, 2008) (FRL–8373–9).
6. EPA. Testing of Certain High Production Volume Chemicals; Second Group of Chemicals. Final Rule. **Federal Register** (76 FR 1067, January 7, 2011) (FRL–8846–9).
7. EPA. TSCA Section 4(a)(1)(B) Final Statement of Policy; Criteria for Evaluating Substantial Production, Substantial Release, Substantial or Significant Human Exposure. Notice. **Federal Register** (58 FR 28736, May 14, 1993).
8. EPA, OPPT. HPV Challenge Program Chemical List. Available online at: *http://www.epa./oppt/chemrtk/pubs/update/hpvchmlt.htm.*
9. OECD Secretariat. OECD Programme on the Co-Operative Investigation of High Production Volume Chemicals. *Manual for the Assessment of Chemicals.* Paris, France. September 2004. Available online at: *http://www.oecd.org/document/7/0,2340,en_2649_34379_1947463_1_1_1_1,00.htm.*
10. ICCA. ICCA HPV Working List of Chemicals. October 2005. Available online at: *http://www.icca-chem.org/Home/ICCA-initiatives/High-production-volume-chemicals-initiative-HPV.*
11. EPA. TSCA Section 4(a)(1)(B) Proposed Statement of Policy. Notice. **Federal Register** (56 FR 32294, July 15, 1991).
12. EPA, OPPT. Chemical Hazard Data Availability Study: What Do We Really Know About the Safety of High Production Volume Chemicals? April 1998. Available online at: *http://www.epa.gov/chemrtk/pubs/general/hazchem.htm.*
13. EPA, OPPT, Chemical Information and Testing Branch (CITB). Response to public comments regarding testing of certain high production volume chemicals. August 2010.
14. EPA, OPPT, Economics, Exposure and Technology Division (EETD). Testing of Certain High Production Volume Chemicals-3 (Exposure Findings Supporting Information). March 2011.
15. EPA. Preliminary Assessment Information Reporting; Addition of Certain Chemicals. Final Rule and Technical Corrections. **Federal Register** (71 FR 47122, August 16, 2006) (FRL–7764–9).
16. Department of Health and Human Services (DHHS), Centers for Disease Control (CDC), NIOSH. National occupational exposure survey field guidelines. Vol. I. Seta, J.A.; Sundin, D.S.; and Pedersen, D.H., eds. Cincinnati, OH. DHHS (NIOSH) Publication No. 88–106. 1988. Available online at: *http://www.cdc.gov/niosh/88–106.html.*
17. DHHS, CDC, NIOSH. National occupational exposure survey analysis of management interview responses. Vol. III. Pedersen, D.H. and Sieber, W.K., eds. Cincinnati, OH. DHHS (NIOSH) Publication No. 89–103. 1989. Available online at: *http://www.cdc.gov/niosh/89-103.html.*
18. DHHS, CDC, NIOSH. National occupational exposure survey sampling methodology. Vol. II. Sieber, W.K., ed. Cincinnati, OH. DHHS (NIOSH) Publication No. 89–102. 1989. Available online at: *http://www.cdc.gov/niosh/89-102.html.*
19. EPA, OPPT. Draft Guidance on Developing Robust Summaries. October 22, 1999. Available online at: *http://www.epa.gov/chemrtk/pubs/general/robsumgd.htm.*
20. EPA, OPPT. High Production Volume Chemical Data Information System (HPVIS). Data from HVPIS on eighteen HPV chemicals. May 2008.
21. ASTM International. Standard Test Method for Relative Initial and Final Melting Points and the Melting Range of Organic Chemicals. ASTM E 324–99. 1999.
22. OECD. Guideline for the Testing of Chemicals: Melting Point/Melting Range. OECD 102. July 27, 1995.
23. ASTM International. Standard Test Method for Vapor Pressure of Liquids by Ebulliometry. ASTM E 1719–05. 2005.
24. ASTM International. Standard Test Method for Determining Vapor Pressure by Thermal Analysis. ASTM E 1782–08. 2008.
25. ASTM International. Standard Test Method for Partition Coefficient (*N*-Octanol/Water) Estimation by Liquid Chromatography. ASTM E 1147–92 (Reapproved 2005).
26. ASTM International. Standard Test Method for Measurements of Aqueous Solubility. ASTM E 1148–02 (Reapproved 2008).
27. ASTM International. Question about ASTM E 324. E-mail from Diane Rehiel, ASTM, to Greg Schweer, CITB, Chemical Control Division, OPPT, EPA. September 15, 2004.
28. Meylan, W.M. and Howard, P.H. Atom/Fragment Contribution Method for Estimating Octanol-Water Partition Coefficients. *Journal of Pharmaceutical Sciences.* 84(1):83–92. 1995.
29. Meylan, W.M.; Howard, P.H.; and Boethling, R.S. Improved Method for Estimating Water Solubility from Octanol/Water Partition Coefficient. *Environmental Toxicology and Chemistry.* 15(2):100–106. 1996.
30. ASTM International. Standard Test Method for Determining Ready, Ultimate, Biodegradability of Organic Chemicals in a Sealed Vessel CO_2 Production Test. ASTM E 1720–01 (Reapproved 2008).
31. International Organization for Standardization (ISO). Water Quality—Evaluation of Ultimate Aerobic Biodegradability of Organic Compounds in Aqueous Medium—Method by Analysis of Inorganic Carbon in Sealed Vessels (CO_2 Headspace Test). ISO 14593:1999(E).
32. ISO. Water Quality—Evaluation in an Aqueous Medium of the ''Ultimate'' Aerobic Biodegradability of Organic Compounds—Method by Analysis of Dissolved Organic Carbon (DOC). ISO 7827:1994(E).
33. ISO. Water Quality—Evaluation of Ultimate Aerobic Biodegradability of Organic Compounds in Aqueous Medium by Determination of Oxygen Demand in a Closed Respirometer. ISO 9408:1999(E).
34. ISO. Water Quality—Evaluation of Ultimate Aerobic Biodegradability of Organic Compounds in Aqueous Medium—Carbon Dioxide Evolution Test. ISO 9439:1999(E).
35. ISO. Water Quality—Evaluation in an Aqueous Medium of the ''Ultimate'' Aerobic Biodegradability of Organic Compounds—Method by Analysis of Biochemical Oxygen Demand (Closed Bottle Test). ISO 10707:1994(E).
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XI. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final rule is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, because it does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in section 3(f)(4) of the Executive Order. Accordingly, EPA did not submit this final rule to OMB for review under Executive Order 12866.

EPA has prepared an economic analysis of this action, which is contained in a document entitled ''Economic Impact Analysis for the Final Section 4 Test Rule for High Production Volume Chemicals; Third Group of Chemicals'' (Ref. 54). A copy of the economic analysis is available in the docket for this final rule and is summarized in Unit IX.

B. Paperwork Reduction Act

This final rule does not impose any new or amended paperwork collection requirements that would require additional review and/or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The information collection requirements contained in TSCA section 4 test rules have already been approved by OMB under PRA, and have been assigned OMB control number 2070–0033 (EPA ICR No. 1139). In the context of developing a new test rule, the Agency must determine whether the total annual burden covered by the approved ICR needs to be amended to accommodate the burden associated with the new test rule. If so the Agency must submit an Information Correction Worksheet (ICW) to OMB and obtain OMB approval of an increase in the total approved annual burden in the approved EPA ICR No. 0795. The Agency's estimated burden for this final rule is provided in the economic analysis (Ref. 54).

The information collection activities related to export notification under TSCA section 12(b)(1) are already approved under OMB control number 2070–0030 (EPA ICR No. 0795). This final rule does not impose any new requirements or changes to the export notification requirements, and is not expected to result in any substantive changes in the burden estimates for EPA ICR No. 0795 that would require additional review and/or approval by OMB. Under PRA, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and included on the related collection instrument. The standard chemical testing program involves the submission of letters-of-intent-to-test (or exemption applications), study plans, semi-annual progress reports, test results, and some administrative costs. For this final rule, EPA estimates the public reporting burden for all 15 HPV chemical substances is 25,226 hours, with an estimated burden per chemical substance of 1,682 hours (Ref. 54). The estimated burden of the information collection activities related to export notification is estimated to average 1 burden hour for each chemical substance/country combination for an initial notification and 0.5 hours for each subsequent notification (Ref. 54). In estimating the total burden hours approved for the information collection activities related to export notification, the Agency has included sufficient burden hours to accommodate any export notifications that may be required by the Agency's issuance of final test rules for chemical substances. As such, EPA does not expect to need to request an increase in the total burden hours approved by OMB for export notifications.

As defined by PRA and 5 CFR 1320.3(b), ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining

information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* after considering the potential economic impacts on small entities, the Agency hereby certifies that this final rule will not have a significant adverse economic impact on a substantial number of small entities. The factual basis for this determination is presented in the small entity impact analysis prepared as part of the economic analysis for this final rule (Ref. 54), which is summarized in Unit IX., and a copy of which is available in the docket for this final rule. The following is a brief summary of the factual basis for this certification.

Under RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this final rule on small entities, small entity is defined in accordance with RFA 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.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Based on the industry profile that EPA prepared as part of the economic analysis for this final rule (Ref. 54), EPA has determined that this final rule is not expected to impact any small not-for-profit organizations or small governmental jurisdictions. As such, the Agency's analysis presents only the estimated potential impacts on small business.

Two factors are examined in EPA's small entity impact analysis (Ref. 54) in order to characterize the potential small entity impacts of this final rule on small business:

- The size of the adverse economic impact (measured as the ratio of the cost to sales or revenue).
- The total number of small entities that experience the adverse economic impact.

Section 601(3) of RFA establishes as the default definition of ''small business'' the definition used in section 3 of the Small Business Act, 15 U.S.C. 632, under which SBA establishes small business size standards (13 CFR 121.201). For this final rule, EPA has analyzed the potential small business impacts using the size standards established under this default definition. The SBA size standards, which are primarily intended to determine whether a business entity is eligible for government programs and preferences reserved for small businesses (13 CFR 121.101), ''seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation.'' (13 CFR 121.102(b)). See section 632(a)(1) of the Small Business Act. In analyzing potential impacts, RFA recognizes that it may be appropriate at times to use an alternate definition of small business. As such, section 601(3) of RFA provides that an agency may establish a different definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment. Even though the Agency has used the default SBA definition of small business to conduct its analysis of potential small business impacts for this final rule, EPA does not believe that the SBA size standards are generally the best size standards to use in assessing potential small entity impacts with regard to TSCA section 4(a) test rules.

The SBA size standard is generally based on the number of employees an entity in a particular industrial sector may have. For example, in the chemical manufacturing industrial sector (*i.e.,* NAICS code 325 and NAICS code 324110), approximately 98% of the firms would be classified as small businesses under the default SBA definition. The SBA size standard for 75% of this industry sector is 500 employees, and the size standard for 23% of this industry sector is 750, 1,000, or 1,500 employees. When assessing the potential impacts of test rules on chemical manufacturers, EPA believes that a standard based on total annual sales may provide a more appropriate means to judge the ability of a chemical manufacturing firm to support chemical testing without significant costs or burdens.

EPA is currently determining what level of annual sales would provide the most appropriate size cutoff with regard to various segments of the chemical industry usually impacted by TSCA section 4(a) test rules, but has not yet reached a determination. As stated previously, therefore, the factual basis for the RFA determination for this final rule is based on an analysis using the default SBA size standards. Although EPA is not currently proposing to establish an alternate definition for use in the analysis conducted for this final rule, the analysis for this final rule also presents the results of calculations using a standard based on total annual sales (40 CFR 704.3).

The SBA has developed 6 digit NAICS code-specific size standards based on employment thresholds. These size standards range from 500 to 1,500 employees for the various 6 digit NAICS codes that are potentially impacted (Ref. 54). For a conservative estimate of the number of small businesses affected by this final rule, the Agency chose an employment threshold of less than 1,500 employees for all businesses regardless of the NAIC-specific threshold to determine small business status.

For each manufacturer of the 15 HPV chemical substances covered by this final rule, the parent company (ultimate corporate entity (UCE)) was identified and sales and employment data were obtained for companies where data was publicly available. The search determined that there were 31 affected UCEs. Sales and employment data could be found for 30 of these UCEs (97%).

Parent company sales data were collected to identify companies that qualified as a ''small business'' for purposes of RFA analysis. Based on the SBA size standard applied (1,500 employees or less), 13 companies (38%) were identified as small.

The potential significance of this final rule's impact on small businesses was analyzed by examining the number of small entities that experienced different levels of costs as a percentage of their sales. Small businesses were placed in the following categories on the basis of cost-to-sales ratios: Less than 1%, greater than 1%, and greater than 3%. This analysis was conducted under both a least and average cost scenario.

Of the 13 small businesses included in the analysis, 1 company (8%) had cost-to-sales ratios of greater than 1% under both the least and average cost scenarios. For the single business where sales and employment data were unavailable, EPA conducted an analysis to evaluate the potential impact on this company using the median sales value sales of all other small businesses equal to $24.3 million. The costs for the company were estimated to be well below 1% of this sales level. Given these results, the Agency has determined that there is not a significant economic impact on a substantial number of small entities as a result of this final rule.

The estimated cost of the TSCA section 12(b)(1) export notification, which, as a result of this final rule, would be required for the first export to a particular country of a chemical substance subject to this final rule, is estimated to be $86.99 for the first time that an exporter must comply with TSCA section 12(b)(1) export notification requirements, and $27.49 for each subsequent export notification submitted by that exporter (Refs. 54–56). EPA has concluded that the costs of TSCA section 12(b)(1) export notification would have a negligible impact on exporters of the chemical substances in this final rule, regardless of the size of the exporter.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. It is estimated that the total aggregate costs of this final rule, which are summarized in Unit IX., would be $5.08 million. The total annualized costs of this final rule are estimated to be $1.81 million. In addition, since EPA does not have any information to indicate that any State, local, or Tribal government manufactures or processes the chemical substances covered by this action such that this final rule would apply directly to State, local, or Tribal governments, EPA has determined that this final rule would not significantly or uniquely affect small governments. Accordingly, this final rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Executive Order 13132

Under Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), EPA has determined that this final rule does not have ''federalism implications'' because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. This final rule establishes testing and recordkeeping requirements that apply to manufacturers (including importers) and processors of certain chemical substances. Because EPA has no information to indicate that any State or local government manufactures or processes the chemical substances covered by this action, this final rule does not apply directly to States and localities and will not affect State and local governments. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175

Under Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), EPA has determined that this final rule does not have Tribal implications because it will not have any effect on Tribal governments, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in the Order. As indicated previously, EPA has no information to indicate that any Tribal government manufactures or processes the chemical substances covered by this action. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045

This final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not establish an environmental standard intended to mitigate health or safety risks, will not have an annual effect on the economy of $100 million or more, nor does it otherwise have a disproportionate effect on children. This final rule establishes testing and recordkeeping requirements that apply to manufacturers (including importers) and processors of certain chemical substances, and that will result in the development of data about those chemical substances that can subsequently be used to assist the Agency and others in determining whether the chemical substances in this final rule present potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks.

H. Executive Order 13211

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), because it is unlikely to have any significant adverse effect on the supply, distribution, or use of energy.

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, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule involves technical standards that require the use of particular test methods. When the Agency makes findings under TSCA section 4(a), EPA is required by TSCA section 4(b) to include specific standards or test methods that are to be used for the development of the data required in the test rules issued under TSCA section 4. For some of the testing that is required by this final rule, EPA is requiring the use of voluntary consensus standards issued by ASTM and ISO, and a OECD guideline, which evaluate the same type of toxicity as the TSCA and OECD test methods, where applicable. Copies of the 17 ASTM and ISO standards and 1 OECD guideline, referenced in § 799.5089(h) of the regulatory text, have been placed in the docket for this final rule and may also be obtained by contacting the organizations that produced these materials. The addresses for these organizations are listed in the regulatory text of § 799.5089(h). EPA received the required approval from the Director of the Federal Register for the incorporation by reference of the ASTM and ISO standards and OECD guideline used in this final rule in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

EPA is not aware of any potentially applicable voluntary consensus standards which evaluate partition coefficient (*n*-octanol/water) generator column, water solubility (column elution and generator column), acute inhalation toxicity, bacterial reverse mutations, *in vivo* mammalian bone marrow chromosomal aberrations, combined repeated dose with reproductive/developmental toxicity screen, repeated dose 28-day oral toxicity screen, or the reproductive developmental toxicity screen which could be considered in lieu of TSCA test methods, 40 CFR 799.6756, 799.6784, 799.6786, 799.9130, 799.9510, 799.9538, 799.9365, 799.9305, and 799.9355.

J. Executive Order 12898

This final rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities that require special consideration by the Agency under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994). The Agency believes that the information collected under this final rule will assist EPA and others in determining the potential hazards and risks associated with the chemical substances covered by this final rule. Although not directly impacting environmental justice-related concerns, this information will better enable the Agency to better protect human health and the environment, including in low-income and minority communities.

XII. 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 the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Incorporation by reference, Laboratories, Reporting and recordkeeping requirements.

Dated: October 13, 2011.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is amended as follows:

PART 799—[AMENDED]

■ 3. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

■ 4. Add new § 799.5089 to subpart D to read as follows:

§ 799.5089 Chemical testing requirements for third group of high production volume chemicals (HPV3).

(a) *What substances will be tested under this section?* Table 2 in paragraph (j) of this section identifies the chemical substances that must be tested under this section. For the chemical substances identified as ''Class 1'' chemical substances in Table 2 in paragraph (j) of this section, the purity of each chemical substance must be 99% or greater, unless otherwise specified in this section. For the chemical substances identified as ''Class 2'' chemical substances in Table 2 in paragraph (j), a representative form of each chemical substance must be tested. The representative form selected for a given Class 2 chemical substance should meet industry or consensus standards where they exist.

(b) *Am I subject to this section?* (1) If you manufacture (including import) or intend to manufacture, or process or intend to process, any chemical substance listed in Table 2 in paragraph (j) of this section at any time from November 21, 2011 to the end of the test data reimbursement period as defined in 40 CFR 791.3(h), you are subject to this section with respect to that chemical substance.

(2) If you do not know or cannot reasonably ascertain that you manufacture or process a chemical substance listed in Table 2 in paragraph (j) of this section during the time period described in paragraph (b)(1) of this section (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you are not subject to this section with respect to that chemical substance.

(c) *If I am subject to this section, when must I comply with it?* (1)(i) Persons subject to this section are divided into two groups, as set forth in Table 1 of this paragraph: Tier 1 (persons initially required to comply) and Tier 2 (persons not initially required to comply). If you are subject to this section, you must determine if you fall within Tier 1 or Tier 2, based on Table 1 of this paragraph.

TABLE 1—PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2

Persons initially required to comply with this section (Tier 1)	Persons not initially required to comply with this section (Tier 2)
Persons not otherwise specified in column 2 of this table that manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section.	A. Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); — As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring substance (as defined at 40 CFR 710.4(b)); —As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kg (1,100 lb) annually (as described at 40 CFR 790.42(a)(4)); or —For research and development (as described at 40 CFR 790.42(a)(5)). B. Persons who process (as defined at TSCA section 3(10)) or intend to process a chemical substance included in this section (see 40 CFR 790.42(a)(2)).

Note: kgs—kilograms, TSCA—Toxic Substances Control Act.

(ii) Table 1 of paragraph (c)(1)(i) of this section expands the list of persons in Tier 2, that is those persons specified in 40 CFR 790.42(a)(2), (a)(4), and (a)(5), who, while legally subject to this section, must comply with the requirements of this section only if directed to do so by EPA under the circumstances set forth in paragraphs (c)(4), (c)(5), (c)(6), (c)(7), and (c)(10) of this section.

(2) If you are in Tier 1 with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, you

must, for each test required under this section for that chemical substance, either submit to EPA a letter-of-intent-to-test or apply to EPA for an exemption from testing. The letter-of-intent-to-test or the exemption application must be received by EPA no later than December 20, 2011.

(3) If you are in Tier 2 with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, you are considered to have an automatic conditional exemption and you will be required to comply with this section with regard to that chemical substance only if directed to do so by EPA under paragraphs (c)(5), (c)(7), or (c)(10) of this section.

(4) If no person in Tier 1 has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in Table 2 in paragraph (j) of this section on or before December 20, 2011, EPA will publish a **Federal Register** document that would specify the test(s) and the chemical substance(s) for which no letter-of-intent has been submitted and notify manufacturers in Tier 2A of their obligation to submit a letter-of-intent-to-test or to apply for an exemption from testing.

(5) If you are in Tier 2A (as specified in Table 1 in paragraph (c) of this section) with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, and if you manufacture, or intend to manufacture, this chemical substance as of November 21, 2011, or within 30 days after publication of the **Federal Register** document described in paragraph (c)(4) of this section, you must, for each test specified for that chemical substance in the document described in paragraph (c)(4) of this section, either submit to EPA a letter-of-intent-to-test or apply to EPA for an exemption from testing. The letter-of-intent-to-test or the exemption application must be received by EPA no later than 30 days after publication of the document described in paragraph (c)(4) of this section.

(6) If no manufacturer in Tier 1 or Tier 2A has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in Table 2 in paragraph (j) of this section within 30 days after the publication of the **Federal Register** document described in paragraph (c)(4) of this section, EPA will publish another **Federal Register** document that would specify the test(s) and the chemical substance(s) for which no letter-of-intent has been submitted, and notify processors in Tier 2B of their obligation to submit a letter-of-intent-to-test or to apply for an exemption from testing.

(7) If you are in Tier 2B (as specified in Table 1 in paragraph (c) of this section) with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, and if you process, or intend to process, this chemical substance as of November 21, 2011, or within 30 days after publication of the **Federal Register** document described in paragraph (c)(6) of this section, you must, for each test specified for that chemical substance in the document described in paragraph (c)(6) of this section, either submit to EPA a letter-of-intent-to-test or apply to EPA for an exemption from testing. The letter-of-intent-to-test or the exemption application must be received by EPA no later than 30 days after publication of the document described in paragraph (c)(6) of this section.

(8) If no manufacturer or processor has notified EPA of its intent to conduct one or more of the tests required by this section for any of the chemical substances listed in Table 2 in paragraph (j) of this section within 30 days after the publication of the **Federal Register** document described in paragraph (c)(6) of this section, EPA will notify all manufacturers and processors of those chemical substances of this fact by certified letter or by publishing a **Federal Register** document specifying the test(s) for which no letter-of-intent has been submitted. This letter or **Federal Register** document will additionally notify all manufacturers and processors that all exemption applications concerning the test(s) have been denied, and will give the manufacturers and processors of the chemical substance(s) an opportunity to take corrective action.

(9) If no manufacturer or processor has notified EPA of its intent to conduct one or more of the tests required by this section for any of the chemical substances listed in Table 2 in paragraph (j) of this section within 30 days after receipt of the certified letter or publication of the **Federal Register** document described in paragraph (c)(8) of this section, all manufacturers and processors subject to this section with respect to that chemical substance who are not already in violation of this section will be in violation of this section.

(10) If a problem occurs with the initiation, conduct, or completion of the required testing or the submission of the required data with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, under the procedures in 40 CFR 790.93 and 790.97, EPA may initiate termination proceedings for all testing exemptions with respect to that chemical substance and may notify persons in Tier 1 and Tier 2 that they are required to submit letters-of-intent-to-test or exemption applications within a specified period of time.

(11) If you are required to comply with this section, but your manufacture or processing of, or intent to manufacture or process, a chemical substance listed in Table 2 in paragraph (j) of this section begins after the applicable compliance date referred to in paragraphs (c)(2), (c)(5), or (c)(6) of this section, you must either submit a letter-of- intent-to-test or apply to EPA for an exemption. The letter-of-intent-to-test or the exemption application must be received by EPA no later than the day you begin manufacture or processing.

(d) *What must I do to comply with this section?* (1) To comply with this section you must either submit to EPA a letter-of-intent-to-test, or apply to and obtain from EPA an exemption from testing.

(2) For each test with respect to which you submit to EPA a letter-of-intent-to-test, you must submit a study plan and conduct the testing specified in paragraph (h) of this section and submit the test data to EPA.

(3) You must also comply with the procedures governing test rule requirements in 40 CFR part 790 (except for those requirements listed in this paragraph as not applicable to this section), including the submission of letters-of-intent-to-test or exemption applications, submission of study plans, the conduct of testing, and the submission of data; 40 CFR part 792—Good Laboratory Practice Standards; and this section. The following provisions of 40 CFR part 790 do not apply to this section: Paragraphs (a), (d), (e), and (f) of § 790.45; § 790.48; paragraphs (a)(2) and (b) of § 790.80; paragraph (e)(1) of § 790.82; and § 790.85.

(e) *If I do not comply with this section, when will I be considered in violation of it?* You will be considered in violation of this section as of 1 day after the date by which you are required to comply with this section.

(f) *How are EPA's data reimbursement procedures affected for purposes of this section?* If persons subject to this section are unable to agree on the amount or method of reimbursement for test data development for one or more chemical substances included in this section, any person may request a hearing as described in 40 CFR part 791. In the determination of fair reimbursement shares under this section, if the hearing officer chooses to use a formula based on production volume, the total production volume amount will include

amounts of a chemical substance produced as an impurity.

(g) *Who must comply with the export notification requirements?* Any person who exports, or intends to export, a chemical substance listed in Table 2 in paragraph (j) of this section is subject to 40 CFR part 707, subpart D.

(h) *How must I conduct my testing?* (1) The tests that are required for each chemical substance are indicated in Table 2 in paragraph (j) of this section. The test methods that must be followed are provided in Table 3 in paragraph (j) of this section. You must proceed in accordance with these test methods as required according to Table 3 in paragraph (j) of this section, or as appropriate if more than one alternative is allowed according to Table 3 in paragraph (j) of this section. Included in Table 3 in paragraph (j) of this section are the following 18 test methods which are incorporated by reference:

(i) Standard Test Method for Relative Initial and Final Melting Points and the Melting Range of Organic Chemicals, ASTM E 324–99, approved September 10, 1999.

(ii) Standard Test Method for Partition Coefficient (*N*-Octanol/Water) Estimation by Liquid Chromatography, ASTM E 1147–92 (Reapproved 2005), approved August 1, 2005.

(iii) Standard Guide for Conducting Acute Toxicity Tests on Test Materials with Fishes, Macroinvertebrates, and Amphibians, ASTM E 729–96 (Reapproved 2007), approved October 1, 2007.

(iv) Standard Test Method for Measurements of Aqueous Solubility, ASTM E 1148–02 (Reapproved 2008), approved February 1, 2008.

(v) Standard Test Method for Estimating Acute Oral Toxicity in Rats, ASTM E 1163–98 (Reapproved 2002), approved October 10, 2002.

(vi) Standard Guide for Conducting *Daphnia magna* Life-Cycle Toxicity Tests, ASTM E 1193–97 (Reapproved 2004), approved April 1, 2004.

(vii) Standard Guide for Conducting Static Toxicity Tests with Microalgae, ASTM E 1218–04^{e1}, approved April 1, 2004.

(viii) Standard Test Method for Vapor Pressure of Liquids by Ebulliometry, ASTM E 1719–05, approved March 1, 2005.

(ix) Standard Test Method for Determining Ready, Ultimate, Biodegradability of Organic Chemicals in a Sealed Vessel CO_2 Production Test. ASTM E 1720–01 (Reapproved 2008), approved February 1, 2008.

(x) Standard Test Method for Determining Vapor Pressure by Thermal Analysis, ASTM E 1782–08, approved March 1, 2008.

(xi) Water Quality—Evaluation of Ultimate Aerobic Biodegradability of Organic Compounds in Aqueous Medium—Method by Analysis of Inorganic Carbon in Sealed Vessels (CO_2 Headspace Test). First Edition, March 15, 1999. ISO 14593:1999(E).

(xii) Water Quality—Evaluation in an Aqueous Medium of the ''Ultimate'' Aerobic Biodegradability of Organic Compounds—Method by Analysis of Dissolved Organic Carbon (DOC). Second Edition, September 15, 1994. ISO 7827:1994(E).

(xiii) Water Quality—Evaluation of Ultimate Aerobic Biodegradability of Organic Compounds in Aqueous Medium by Determination of Oxygen Demand in a Closed Respirometer. Second Edition, August 1, 1999. ISO 9408:1999(E).

(xiv) Water Quality—Evaluation of Ultimate Aerobic Biodegradability of Organic Compounds in Aqueous Medium—Carbon Dioxide Evolution Test. Second Edition, March 1, 1999. ISO 9439:1999(E).

(xv) Water Quality—Evaluation in an Aqueous Medium of The ''Ultimate'' Aerobic Biodegradability of Organic Compounds—Method by Analysis of Biochemical Oxygen Demand (Closed Bottle Test). First Edition, October 15, 1994. ISO 10707:1994(E).

(xvi) Water Quality—Evaluation in an Aqueous Medium of the Ultimate Aerobic Biodegradability of Organic Compounds—Determination of Biochemical Oxygen Demand in a Two-Phase Closed Bottle Test. First Edition, February 1, 1997. ISO 10708:1997(E).

(xvii) Water Quality—Guidance for the Preparation and Treatment of Poorly Water-Soluble Organic Compounds for the Subsequent Evaluation of Their Biodegradability in an Aqueous Medium. First Edition, August 15, 1995. ISO 10634:1995(E).

(xviii) Guideline for the Testing of Chemicals: Melting Point/Melting Range. OECD 102. July 27, 1995.

(2) The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the ASTM standards from ASTM International, 100 Bar Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959, *telephone number:* (610) 832–9585, *Web address: http://www.astm.org;* copies of the ISO standards from the International Organization for Standardization, 1, ch. de la Voie-Creuse, CP 56, CH–1211 Geneve 20, Switzerland, telephone number: +41–22–749–01–11, *Web address: http://www.iso.org;* and copies of the OECD guideline from the Organization for Economic Cooperation and Development, 2, rue André Pascal, 75775 Paris Cedex 16, France, telephone number: +33–1–45–24–82–00, *Web address: http://www.oecd.org.* You may inspect each standard and guideline at the EPA Docket Center (EPA/DC), Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. The materials are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(i) *Reporting requirements.* A study plan for each specific test for each subject chemical substance must be received by EPA by February 20, 2012 unless an extension is granted in writing pursuant to 40 CFR 790.55. A final report for each specific test for each subject chemical substance must be received by EPA by December 21, 2012 unless an extension is granted in writing pursuant to 40 CFR 790.55. EPA is also requesting that a robust summary of the final report for each specific test be submitted in addition to, and at the same time as, the final report. The term ''robust summary'' is used to describe the technical information necessary to adequately describe an experiment or study and includes the objectives, methods, results, and conclusions of the full study report which can be either an experiment or in some cases an estimation or prediction method. Guidance for the compilation of robust summaries is described in a document entitled ''Draft Guidance on Developing Robust Summaries'' which is available online at *http://www.epa.gov/chemrtk/pubs/general/robsumgd.htm.*

(j) *Designation of specific chemical substances and testing requirements.* The chemical substances identified by chemical name, Chemical Abstract Service Registry Number (CASRN), and class in Table 2 of this paragraph must be tested in accordance with the requirements designated in Tables 2 and 3 of this paragraph, and the requirements described in 40 CFR Part 792—Good Laboratory Practice Standards:

TABLE 2—CHEMICAL SUBSTANCES AND TESTING REQUIREMENTS

CASRN	Chemical name	Class	Required tests (see Table 3 of this section)
98–09–9	Benzenesulfonyl chloride	1	C2, E1, E2, F1
98–56–6	Benzene, 1-chloro-4-(trifluoromethyl)-	1	B, C6

TABLE 2—CHEMICAL SUBSTANCES AND TESTING REQUIREMENTS—Continued

CASRN	Chemical name	Class	Required tests (see Table 3 of this section)
111–44–4	Ethane, 1,1′-oxybis[2-chloro-	1	C6, F1
127–68–4	Benzenesulfonic acid, 3-nitro-, sodium salt (1:1)	1	A3, F2
515–40–2	Benzene, (2-chloro-1,1-dimethylethyl)-	1	A1, A3, A4, A5, B, C1, D, E1, E2, F1
2494–89–5	Ethanol, 2-[(4-aminophenyl)sulfonyl]-, 1-(hydrogen sulfate)	1	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
5026–74–4	2-Oxiranemethanamine, N-[4-(2-oxiranylmethoxy)phenyl]-N-(2-oxiranylmethyl)-	1	A1, A2, A3, A4, A5, B, C2, F1
22527–63–5	Propanoic acid, 2-methyl-, 3-(benzoyloxy)-2,2,4-trimethylpentyl ester	1	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
25321–41–9	Benzenesulfonic acid, dimethyl-	1	A2, A3, A4
52556–42–0	1-Propanesulfonic acid, 2-hydroxy-3-(2-propen-1-yloxy)-, sodium salt (1:1).	1	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
68082–78–0	Lard, oil, Me esters	2	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
68442–60–4	Acetaldehyde, reaction products with formaldehyde, by-products from	2	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
68610–90–2	2-Butenedioic acid (2E)-, di-C8-18-alkyl esters	2	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
70693–50–4	Phenol, 2,4-bis(1-methyl-1-phenylethyl)-6-[2-(2-nitrophenyl)diazenyl]-	1	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
72162–15–3	1-Decene, sulfurized	2	A2, A3, A4, A5, B, C1, D, E1, E2, F1

TABLE 3—KEY TO THE TEST REQUIREMENTS DENOTED BY ALPHANUMERIC SYMBOLS IN TABLE 2 OF THIS PARAGRAPH

[**Note:** The ASTM and ISO test methods and the OECD guideline required in this paragraph are incorporated by reference; see paragraph (h) of this section]

Testing category	Test symbol	Test requirements and references	Special conditions
Physical/chemical properties.	A	1. Melting Point: ASTM International (ASTM) E 324–99 (capillary tube), if a Freezing Point: Organization for Economic Cooperation and Development (OECD) 102 (melting point/melting range). 2. Boiling Point: ASTM E 1719–05 (ebulliometry). 3. Vapor Pressure: ASTM E 1782–08 (thermal analysis). 4. *n*-Octanol/Water Partition Coefficient (log 10 basis) or log K_{ow}: (See Special Conditions for the log K_{ow} test requirement and select the appropriate method to use, if any, from those listed in this column.) Method A: 40 CFR 799.6755 (shake flask). Method B: ASTM E 1147–92 (Reapproved 2005) (liquid chromatography). Method C: 40 CFR 799.6756 (generator column). 5. Water Solubility: (See Special Conditions for the water solubility test requirement and select the appropriate method to use, if any, from those listed in this column.) Method A: ASTM E 1148–02 (Reapproved 2008) (shake flask). Method B: 40 CFR 799.6784 (shake flask). Method C: 40 CFR 799.6784 (column elution). Method D: 40 CFR 799.6786 (generator column).	*n*-Octanol/water Partition Coefficient (log 10 basis) or log K_{ow}: Which method is required, if any, is determined by the test substance's estimated[i] log K_{ow} as follows: log K_{ow} < 0: no testing required. log K_{ow} range 0–1: Method A or B. log K_{ow} range > 1–4: Method A, B, or C. log K_{ow} range > 4–6: Method B or C. log K_{ow} > 6: Method C. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted at pH 7. Water Solubility: Which method is required, if any, is determined by the test substance's estimated[ii] water solubility. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted starting at pH 7. > 5,000 milligram/Liter (mg/L): Method A or B. > 10 mg/L–5,000 mg/L: Method A, B, C, or D. > 0.001 mg/L–10 mg/L: Method C or D. ≤ 0.001 mg/L: No testing required.

TABLE 3—KEY TO THE TEST REQUIREMENTS DENOTED BY ALPHANUMERIC SYMBOLS IN TABLE 2 OF THIS PARAGRAPH—Continued

[**Note:** The ASTM and ISO test methods and the OECD guideline required in this paragraph are incorporated by reference; see paragraph (h) of this section]

Testing category	Test symbol	Test requirements and references	Special conditions
Environmental fate and pathways—ready biodegradation.	B	For B, consult International Organization for Standardization (ISO) 10634:1995(E) for guidance, and choose one of the methods listed in this column: 1. ASTM E 1720–01 (Reapproved 2008) (sealed vessel CO_2 production test) OR 2. ISO 14593:1999(E) (CO_2 headspace test) OR 3. ISO 7827:1994(E) (analysis of DOC) OR 4. ISO 9408:1999(E) (determination of oxygen demand in a closed respirometer) OR 5. ISO 9439:1999(E) (CO_2 evolution test) OR 6. ISO 10707:1994(E) (closed bottle test) OR 7. ISO 10708:1997(E) (two-phase closed bottle test).	Which method is required, if any, is determined by the test substance's physical and chemical properties, including its water solubility. ISO 10634:1995(E) provides guidance for selection of an appropriate test method for a given test substance. Test sponsors must provide in the final study report the underlying rationale for the method selected.
Aquatic toxicity	C1	For C1, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—See Special Conditions. *Test Group 1 for C1:* 1. Acute Toxicity to Fish: ASTM E 729–96 (Reapproved 2007). 2. Acute Toxicity to *Daphnia:* ASTM E 729–96 (Reapproved 2007). 3. Toxicity to Plants (Algae): ASTM E 1218–04$^{\varepsilon 1}$. *Test Group 2 for C1:* 1. Chronic Toxicity to *Daphnia:* ASTM E 1193–97 (Reapproved 2004). 2. Toxicity to Plants (Algae): ASTM E 1218–04$^{\varepsilon 1}$.	The following are the special conditions for C1, C2, C3, C4, C5, and C7 testing; there are no special conditions for C6. Which test group is required is determined by the test substance's measured log K_{ow} as obtained under Test Category A, or using an existing measured log K_{ow}.[iii] If log $K_{ow} < 4.2$: Test Group 1 is required. If log $K_{ow} \geq 4.2$: Test Group 2 is required.
	C2	For C2, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—See Special Conditions. *Test Group 1 for C2:* 1. Acute Toxicity to *Daphnia:* ASTM E 729–96 (Reapproved 2007). 2. Toxicity to Plants (Algae): ASTM E 1218–04$^{\varepsilon 1}$. *Test Group 2 for C2:* 1. Chronic Toxicity to *Daphnia:* ASTM E 1193–97 (Reapproved 2004). 2. Toxicity to Plants (Algae): ASTM E 1218–04$^{\varepsilon 1}$.	
	C3	For C3, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—See Special Conditions. *Test Group 1 for C3:* 1. Acute Toxicity to Fish: ASTM E 729–96 (Reapproved 2007). 2. Toxicity to Plants (Algae): ASTM E 1218–04$^{\varepsilon 1}$. *Test Group 2 for C3:* 1. Chronic Toxicity to *Daphnia:* ASTM E 1193–97 (Reapproved 2004). 2. Toxicity to Plants (Algae): ASTM E 1218–04$^{\varepsilon 1}$.	
		For C4, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—See Special Conditions. *Test Group 1 for C4:* 1. Acute Toxicity to Fish: ASTM E 729–96 (Reapproved 2007). 2. Acute Toxicity to *Daphnia:* ASTM E 729–96 (Reapproved 2007). *Test Group 2 for C4:* Chronic Toxicity to *Daphnia:* ASTM E 1193–97 (Reapproved 2004).	

TABLE 3—KEY TO THE TEST REQUIREMENTS DENOTED BY ALPHANUMERIC SYMBOLS IN TABLE 2 OF THIS PARAGRAPH—Continued

[**Note:** The ASTM and ISO test methods and the OECD guideline required in this paragraph are incorporated by reference; see paragraph (h) of this section]

Testing category	Test symbol	Test requirements and references	Special conditions
	C5	For C5, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—See Special Conditions. *Test Group 1 for C5:* Acute Toxicity to *Daphnia:* ASTM E 729–96 (Reapproved 2007). *Test Group 2 for C5:* Chronic Toxicity to *Daphnia:* ASTM E 1193–97 (Reapproved 2004).	
	C6	Toxicity to Plants (Algae): ASTM E 1218–04$^{\varepsilon 1}$.	
	C7	For C7, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—See Special Conditions. *Test Group 1 for C7:* Acute Toxicity to Fish: ASTM E 729–96 (Reapproved 2007). *Test Group 2 for C7:* Chronic Toxicity to *Daphnia:* ASTM E 1193–97 (Reapproved 2004).	
Mammalian toxicity—acute	D	See special conditions for this test requirement and select the method that must be used from those listed in this column. *Method A:* Acute Inhalation Toxicity (rat): 40 CFR 799.9130 *Method B:* EITHER: 1. Acute (Up/Down) Oral Toxicity (rat): ASTM E 1163–98 (Reapproved 2002) OR 2. Acute (Up/Down) Oral Toxicity (rat): 40 CFR 799.9110(d)(1)(i)(A).	Which testing method is required is determined by the test substance's physical state at room temperature (25 °C). For those test substances that are gases at room temperature, Method A is required; otherwise, use either of the two methods listed under Method B. In Method B, 40 CFR 799.9110(d)(1)(i)(A) refers to the OECD 425 Up/Down Procedure.[iv] Estimating starting dose for Method B: Data from the neutral red uptake basal cytotoxicity assay[v] using normal human keratinocytes or mouse BALB/c 3T3 cells may be used to estimate the starting dose.
Mammalian toxicity—genotoxicity.	E1	Bacterial Reverse Mutation Test *(in vitro):* 40 CFR 799.9510.	None.
	E2	Conduct any one of the following three tests for chromosomal damage: *In vitro* Mammalian Chromosome Aberration Test: 40 CFR 799.9537. OR Mammalian Bone Marrow Chromosomal Aberration Test (*in vivo* in rodents: mouse (preferred species), rat, or Chinese hamster): 40 CFR 799.9538 OR Mammalian Erythrocyte Micronucleus Test [sampled in bone marrow] (*in vivo* in rodents: Mouse (preferred species), rat, or Chinese hamster): 40 CFR 799.9539.	Persons required to conduct testing for chromosomal damage are encouraged to use the *in vitro* Mammalian Chromosome Aberration Test (40 CFR 799.9537) to generate the needed data unless known chemical properties (*e.g.,* physical/chemical properties, chemical class characteristics) preclude its use. A subject person who uses one of the *in vivo* methods instead of the *in vitro* method to address a chromosomal damage test requirement must submit to EPA a rationale for conducting that alternate test in the final study report.
Mammalian toxicity—repeated dose/reproduction/developmental.	F1	Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9365 OR Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9355 AND Repeated Dose 28-Day Oral Toxicity Study in rodents: 40 CFR 799.9305.	Where F1 is required, EPA recommends use of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9365). However, there may be valid reasons to test a particular chemical using both 40 CFR 799.9355 and 40 CFR 799.9305 to fill Mammalian Toxicity—Repeated Dose/Reproduction/Developmental data needs. A subject person who uses the combination of 40 CFR 799.9355 and 40 CFR 799.9305 in place of 40 CFR 799.9365 must submit to EPA a rationale for conducting these alternate tests in the final study reports. Where F2 or F3 is required, no rationale for conducting the required test need be provided in the final study report.
	F2	Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9355.	

TABLE 3—KEY TO THE TEST REQUIREMENTS DENOTED BY ALPHANUMERIC SYMBOLS IN TABLE 2 OF THIS PARAGRAPH—Continued

[**Note:** The ASTM and ISO test methods and the OECD guideline required in this paragraph are incorporated by reference; see paragraph (h) of this section]

Testing category	Test symbol	Test requirements and references	Special conditions
	F3	Repeated Dose 28-Day Oral Toxicity Study in rodents: 40 CFR 799.9305.	

[i] EPA recommends, but does not require, that log K_{ow} be quantitatively estimated prior to initiating this study. One method, among many similar methods, for estimating log K_{ow} is described in the article entitled ''Atom/Fragment Contribution Method for Estimating Octanol-Water Partition Coefficients'' by W.M. Meylan and P.H. Howard in the *Journal of Pharmaceutical Sciences.* 84(1):83–92. 1995. This reference is available in docket ID number EPA–HQ–OPPT–2009–0112 at the EPA Docket Center (EPA/DC), Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

[ii] EPA recommends, but does not require, that water solubility be quantitatively estimated prior to initiating this study. One method, among many similar methods, for estimating water solubility is described in the article entitled ''Improved Method for Estimating Water Solubility From Octanol/Water Partition Coefficient'' by W.M. Meylan, P.H. Howard, and R.S. Boethling in *Environmental Toxicology and Chemistry.* 15(2):100–106. 1996. This reference is available in docket ID number EPA–HQ–OPPT–2009–0112 at the EPA Docket Center (EPA/DC), Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

[iii] Chemical substances that are dispersible in water may have log K_{ow} values greater than 4.2 and may still be acutely toxic to aquatic organisms. Test sponsors who wish to conduct Test Group 1 studies on such chemical substances may request a modification to the test standard as described in 40 CFR 790.55. Based upon the supporting rationale provided by the test sponsor, EPA may allow an alternative threshold or method be used for determining whether acute or chronic aquatic toxicity testing be performed for a specific chemical substance.

[iv] The OECD 425 Up/Down Procedure, revised by OECD in December 2001, is available in docket ID number EPA–HQ–OPPT–2007–0531 at the EPA Docket Center (EPA/DC), Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

[v] The neutral red uptake basal cytotoxicity assay, which may be used to estimate the starting dose for the mammalian toxicity-acute endpoint, is available in docket ID number EPA–HQ–OPPT–2009–0112 at the EPA Docket Center (EPA/DC), Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

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Proposed Rules

Federal Register
Vol. 76, No. 204
Friday, October 21, 2011

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 999

[Doc. No. AMS–FV–09–0064; FV09–999–1 PR]

Specialty Crops; Import Regulations; Proposed Pistachio Import Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the establishment of a minimum quality regulation for lots of pistachios imported into the United States. The regulation would specify maximum aflatoxin tolerance levels as well as mandatory aflatoxin testing and certification requirements. The proposed import quality requirements would be the same as or comparable to those in effect for the domestically produced commodity. Under this proposal, aflatoxin levels in imported pistachios could not exceed 15 parts per billion (ppb), as certified by aflatoxin inspection certificates issued by an accredited laboratory. This action is intended to assure consumers that all pistachios offered for sale in the United States meet the same aflatoxin standards, thus promoting high quality product in the market place and fostering consumer satisfaction. This rule also announces the Agricultural Marketing Service's (AMS) intention to request approval by the Office of Management and Budget (OMB) of a new information collection requirement, including two new forms that would be completed by either laboratories or pistachio importers.

DATES: Comments must be received by December 20, 2011. Pursuant to the Paperwork Reduction Act, comments on the forms and information collection burden must be received by December 20, 2011.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Fax:* (202) 720–8938; or *Internet: http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours, or can be viewed at *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Laurel May or Kathleen Finn, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Laurel.May@ams.usda.gov* or *Kathy.Finn@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May at the above mentioned address.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' which provides that whenever the grade, size, quality, or maturity of certain specified commodities, including pistachios, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodities. To ensure that these requirements are met, the Act also authorizes the Department of Agriculture (USDA) to perform inspections and related functions such as commodity sampling, and to issue inspection certificates for such imported commodities.

USDA is issuing this rule in conformance with Executive Order 12866.

There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This proposed rule would add a new § 999.600 under 7 CFR part 999—Specialty Crops; Import Regulations, and would establish quality requirements for maximum aflatoxin tolerance levels and mandatory testing and certification requirements for pistachios offered for importation into the United States. The proposed quality requirements for imported pistachios are the same as or comparable to those established for pistachios grown in California, Arizona, and New Mexico under Marketing Agreement and Order No. 983 (7 CFR part 983) (order), both as amended.

This proposed rule would also revise § 999.500, which currently specifies safeguard procedures for the importation of walnuts and dates that are exempt from § 8e regulations. This section would be revised to include safeguard procedures for the importation of pistachios intended for exempted purposes.

The order prohibits the shipping of pistachios for domestic human consumption that do not meet the quality requirements for aflatoxin levels in the nuts. Such quality requirements specify that aflatoxin levels may not exceed the maximum tolerance of 15 ppb. Pistachios that fail to meet these requirements must be reworked and retested, or disposed of as specified in the order. These regulations were designed to ensure that only high quality pistachios containing low levels of aflatoxin are shipped, thus promoting high quality product in the market place and fostering consumer satisfaction.

The order, which was established for California pistachios in 2004, was recently amended to include the states of Arizona and New Mexico. Pistachios grown in California, Arizona, and New Mexico represent over 99 percent of the U.S. domestic production, and 98 percent of the domestic consumption. Thus, almost all domestically produced pistachios are regulated under Marketing Order No. 983. There is no

other Federal marketing order in effect for pistachios produced in the United States.

According to USDA's Foreign Agricultural Service (FAS), Iran is typically the world's largest pistachio producer, followed by the U.S. and Turkey, although Syria's production has increased in recent years. During the three most recent crop years (September through August) for which complete data is available, 2007–08 through 2009–10, the production averages in millions of pounds (inshell basis) for Iran, the U.S., Turkey, and Syria were approximately 386, 350, 120, and 141, respectively.

Historically, the bulk of U.S. pistachio imports have come from Turkey and Iran, although Iranian imports have been prohibited since July 2010. The remainder comes from other countries, including Italy, China, Switzerland, France, Australia, Hong Kong, and Israel. Imported pistachios may be inshell or shelled. According to FAS, the U.S. imported an average of approximately 1.7 million pounds of pistachios (inshell basis) annually during the three crop years from 2007–08 through 2009–10. Average U.S. consumption of pistachios during that same period was approximately 100 million pounds (inshell basis) annually. Imports, therefore, represent approximately two percent of U.S. pistachio consumption.

Proposed Requirements

Definitions

The proposed regulations would include definitions of terms used in the import regulation. Such terms are the same as or comparable to those defined in the marketing order for domestic pistachios as established at 69 FR 17844 (April 5, 2004) and amended at 74 FR 56532 (November 2, 2009).

Under the proposed regulations, ''pistachio'' would mean the nut of the pistachio tree, *Pistachia vera,* whether inshell or shelled. ''Importer'' would be defined as a person who imports pistachios into the United States. ''Aflatoxin'' would be defined as a mycotoxin that can be found in nuts, dried fruits, and grains. ''Aflatoxin inspection certificate'' would mean a certificate issued by a USDA or USDA-accredited laboratory. ''USDA laboratory'' and ''USDA-accredited laboratory'' would be defined as laboratories authorized to test imported pistachios for aflatoxin content. ''Inspector'' would mean any inspector authorized by USDA to draw and prepare pistachio samples for testing. ''Lot'' would mean any quantity of pistachios submitted for testing. Other terms useful in the administration of the import regulation would also be defined.

Maximum Aflatoxin Tolerance

The presence or absence of aflatoxin is considered a quality characteristic in pistachios [1] because concerns about aflatoxin contamination can impact consumers' perception of the quality of pistachios, and therefore negatively impact demand. According to research provided by the industry, poor quality pistachios impact demand and the potential growth of demand for pistachios.[2] Moreover, any market disturbances related to aflatoxin in pistachios, regardless of the origin of those pistachios, could have a detrimental effect on the pistachio industry.[3]

The proposed regulations would establish a maximum aflatoxin tolerance level of 15 ppb for lots of pistachios imported into the U.S. for human consumption. As required under section 8e of the Act, this is the same level currently prescribed for domestic pistachios regulated under the order. Establishing a 15 ppb limit for aflatoxin in all pistachios marketed for human consumption in the United States is expected to bolster overall consumer confidence in pistachio quality and strengthen the demand for pistachios. Comparatively, the international Codex Alimentarius Commission's (Codex) maximum aflatoxin tolerance for pistachios is 10 ppb. The domestic pistachio industry believes that 15 ppb is appropriate to ensure the quality of pistachios sold in U.S. markets,[4] Research also supports the 15 ppb tolerance.[5] Additionally, a 15 ppb tolerance for aflatoxin in domestic and imported pistachios is consistent with existing regulations for all domestic and imported peanuts marketed in the United States, for which USDA has established a 15 ppb aflatoxin tolerance.[6]

Aflatoxin Sampling and Testing Procedures

The proposed regulations provide for aflatoxin sampling procedures based on lot size. Such sampling procedures are the same as or comparable to those established for domestic shipments, and mirror the sampling procedures prescribed for pistachio shipments to the European Union. At the discretion of the importer, pistachio lots arriving at a U.S. port of entry would be warehoused near the port or shipped inland to a pistachio handling facility to await aflatoxin sampling and testing. Importers would be responsible for any transportation or storage fees incurred. Depending on the size of the lot, a specified number of incremental samples would be pulled and combined to form a lot sample. The lot sample would then be divided into smaller test samples, depending upon the size of the lot to be tested. The required weight of lot samples and test samples differs between inshell pistachios and shelled kernels because of the additional weight of the shells for inshell pistachios. The drawing and dividing of all samples must be conducted by or under the supervision of a Federal or Federal-State inspector.

Following the drawing and dividing of samples, each sample would be properly identified and submitted to a USDA or USDA-accredited laboratory for analysis. Test samples would be prepared and analyzed using High Pressure Liquid Chromatography (HPLC) or the Vicam Method (Aflatest). The aflatoxin level would be calculated on a kernel weight basis.

For lots of up to 4,400 lbs, one test sample would be analyzed. If the sample has an aflatoxin level at or below 15 ppb, the lot could be certified as negative for aflatoxin on the aflatoxin inspection certificate, which would be completed by the laboratory. If the aflatoxin level is greater than 15 ppb, the lot fails, and the laboratory would fill out a failed lot notification report for submission to the importer, the U.S. Customs and Border Protection (Customs), and USDA.

For lots of more than 4,400 lbs, two test samples would be prepared. If the first sample has an aflatoxin level at or below 10 ppb, the lot could be certified as negative for aflatoxin on the aflatoxin inspection certificate. Analysis of the other test sample would be unnecessary.

[1] Gibbons, Jeff; 2002. Testimony in *Pistachios Grown in California; Hearing on Proposed Marketing Agreement and Order No. 983.* Pages 326–359.

[2] Sumner, Daniel A; 2002. Testimony in *Pistachios Grown in California; Hearing on Proposed Marketing Agreement and Order No. 983.* 2002. Pages 698–735 and 747–820.

[3] Reinecke, Karen; 2002. Testimony in *Pistachios Grown in California; Hearing on Proposed Marketing Agreement and Order No. 983.* Pages 152–183.

[4] Gibbons, Jeff; 2002. Testimony in *Pistachios Grown in California; Hearing on Proposed Marketing Agreement and Order No. 983.* 2002. Pages 326–359.

[5] Eaton, David L.; Jennifer E. Hobden; and Bruce J. Kelman. 2002. *Aflatoxin in Pistachios: Establishing a Regulatory Action Level in Support of a Proposed Federal Marketing Order.* 11 pages.

[6] 7 CFR part 996—Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States.

If the aflatoxin level of the first test sample is above 20 ppb, the lot fails, and the laboratory would fill out a failed lot notification report for submission to the importer, Customs, and USDA. If the aflatoxin level of the first test sample is higher than 10 ppb and at or below 20 ppb, the importer could elect to test the second sample or rework the lot and resubmit it for testing. If the importer chooses to proceed with testing the second sample, the results from testing both samples would be averaged. If the average results are at or below 15 ppb, the lot may be certified negative for aflatoxin. If the average results are higher than 15 ppb, the lot fails and the accredited lab would submit a failed lot notification report to the importer, Customs, and USDA. If the importer chooses to rework the lot after the first sample is analyzed, the lot would again be subject to sampling and testing as if it were a new lot.

If an aflatoxin inspection certificate is issued certifying that a lot is negative for aflatoxin at any stage of the sequential testing (meaning that the lot's aflatoxin content is below the maximum threshold), the certification would state that the lot meets the § 8e import aflatoxin requirements. The certification would expire after 12 months.

Upon notification of any failed lot, the importer would work with Customs to determine the appropriate disposition of the pistachios. Pistachios that fail to meet the aflatoxin requirements would be required to be sold for non-human consumption, exported to another destination with a higher aflatoxin tolerance, or disposed of under the supervision of Customs, and the Federal or Federal-State Inspection Programs could be called upon to verify disposals. Any costs associated with certifying a disposal would be paid by the importer.

Rework Procedures

Although reworking and retesting of a failed lot would not be required, importers could opt to take those steps, which would provide them with an opportunity to secure a return for their imported product while maintaining the integrity of the aflatoxin requirements. The alternative would be to dispose of the lot through proper channels as described above. The rework procedures described below are the same as or comparable to those required for domestic pistachios under the order.

Inshell pistachios. Rework procedures for inshell pistachios failing to meet aflatoxin requirements would require importers to remove 100 percent of the failing lot from its bulk or retail packaging. These pistachios would be required to pass through the sorting stages of the handling process in order to remove those nuts having the characteristics most susceptible to harboring aflatoxin. After reworking the lot, the importer would report the weight of the total accepted and rejected product to Customs and USDA on a rework and failed lot disposition report, and the acceptable portion of the reworked lot would be resampled and tested for aflatoxin. In the case of a reworked lot, the lot sample size and the test sample size would be doubled from that specified in the initial testing. If, after having been reworked, the lot fails aflatoxin testing for a second time, the lot could be shelled and the kernels reworked, sampled, and tested in the manner required for an original lot of pistachio kernels. If the importer decides not to pursue further reworking of the failed lot, those pistachios would be prohibited from entering the stream of commerce for domestic human consumption. The lot must be exported, sold for domestic non-human consumption purposes, or disposed of as described above. The importer would report the lot's final disposition to Customs and USDA on a rework and failed lot disposition report.

Shelled pistachios. Rework procedures proposed for pistachio kernels failing to test negative for aflatoxin would also require a reprocessing of 100 percent of the volume of the failing lot. As with inshell pistachios, after reworking, the total weight of the accepted product and the total weight of the rejected product would be reported by the importer to Customs and USDA on the rework and failed lot disposition report. The reworked lot of kernels would be resampled and retested for aflatoxin content as previously described.

Comingling

Importers could comingle certified lots with other certified lots of pistachios. However, to maintain the integrity of certified lots, the comingling of certified and uncertified lots of pistachios would cause the loss of certification for the comingled lots.

Exemptions

Section 983.70 of the marketing order provides that domestic handlers may handle pistachios free of the regulatory and assessment provisions of the order if such pistachios are handled in quantities not exceeding 5,000 dried pounds during any production year. The purpose of this provision is to provide an exemption from the requirements of the order for small quantities of pistachios such as those that are grown for home or personal use. Further, this exemption is applied on a production year basis. Accordingly, under the proposed import regulation, a comparable 5,000-pound exemption would apply to all shipments of pistachios imported for human consumption. Also, substandard pistachios imported for use in non-human consumption outlets would not be subject to the proposed aflatoxin regulations.

Compliance

Any importer who violates any provision of the proposed import regulations would be subject to a forfeiture in the amount prescribed in section 608a(5) of the Act (7 U.S.C. 601–674), or, upon conviction, penalties in the amounts prescribed in section 608c(14) of the Act, or to both forfeiture and penalty. False representation to any agency of the United States on any matter within its jurisdiction, knowing it to be false, is a violation of 18 U.S.C. 1001, which provides for a fine or imprisonment or both.

Safeguards

Safeguard procedures in the form of importer and receiver reporting requirements would be used to ensure that substandard pistachios imported for purposes other than human consumption would be used only in authorized outlets exempt from the proposed aflatoxin regulations. The safeguard procedures would be comparable to those currently specified for the importation of other exempted commodities. Under the proposed regulations, importers and receivers of pistachios for other than human consumption purposes would be required to complete and submit to USDA an Importer's Exempt Commodity Form (Form FV–6), the generic form used by importers and receivers of other exempted commodities. The information provided on Form FV–6 would be used by USDA to track pistachios marketed for exempted uses.

The provisions of this proposed rule would establish maximum aflatoxin tolerance levels and mandatory testing and certification requirements for lots of pistachios offered for importation into the United States. The proposed import quality requirements would be implemented in accordance with section 8e of the Act. These provisions are intended to ensure that pistachios imported into the United States for the purposes of domestic human consumption are of a quality comparable to those pistachios regulated under Marketing Order No.

983 and contain no more than 15 ppb of aflatoxin.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Import regulations issued under the Act are based on those established under Federal marketing orders.

Small agricultural service firms, which include importers and receivers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000.

AMS estimates that the there are approximately 50 importers and receivers who handled shipments of pistachios into the United States between 2007 and 2009. About 10 of the 50 firms are also substantially engaged in the marketing of U.S. grown pistachios, and are large firms according to the SBA definition. Most of the remaining 40 firms import a number of different food products, and most are also likely to be large firms under the SBA definition, even though they generally import only small quantities of pistachios. There are also nine USDA-accredited laboratories in California that perform aflatoxin testing for pistachios. AMS estimates that four of the nine laboratories would be considered small firms according to the SBA definition.

Turkey and Iran have historically been the source of most pistachios imported into the U.S. Turkish pistachios are imported predominantly in the shell, while Iranian pistachios are typically imported shelled. Imported pistachios also come from Italy, China, Switzerland, France, Australia, Hong Kong, and Italy. Most pistachios imported from other nations are also shelled. The proposed import regulations would establish protocols for aflatoxin analysis for both inshell and shelled pistachios.

Section 8e of the Act provides that when certain domestically produced commodities, including pistachios, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, quality, size, and maturity requirements.

This rule would establish a minimum quality requirement for lots of imported pistachios by specifying a maximum aflatoxin tolerance level as well as aflatoxin testing and certification requirements. Importers would be responsible for arranging for the required transportation, storage, sampling, testing, and certification of such pistachios prior to importation. Sampling would be conducted by the Federal or Federal-State inspection services, and aflatoxin testing and certification would be performed by USDA or USDA-accredited laboratories.

The proposed import aflatoxin testing and certification requirements are the same as or comparable to those implemented under the order regulating the handling of pistachios grown in California, Arizona, and New Mexico. Pistachios failing to meet the aflatoxin requirements on initial analysis could be reworked and retested, exported to another destination with a higher aflatoxin tolerance, or disposed of in authorized outlets under the supervision of Customs, with assistance from the inspection service if necessary, to verify proper disposal of substandard nuts. Procedures for these activities also are proposed. Lots of imported pistachios that fail aflatoxin testing could be diverted to certain non-human consumption outlets and would be subject to the safeguard provisions of § 999.500. Some reporting and recordkeeping requirements also are proposed in the pistachio import regulation. These requirements also are the same as or comparable to those implemented under the order.

The cost of testing pistachios for aflatoxin would vary, depending on such factors as the location of the port of entry and the size of the lot to be tested. For purposes of estimating an average per-pound testing expense for imported pistachios, this analysis assumes an average lot equal to one container load weighing 16,000 pounds of inshell pistachios arriving at the Port of San Francisco and being tested for aflatoxin by an accredited laboratory in Fresno, California.

In the following example computation of testing costs, there are four elements: (1) A fee (at an hourly rate) charged by the inspection fee to draw the sample, (2) overnight shipping, (3) a fee charged by the laboratory to determine the level of aflatoxin, and (4) the ''unit value'' of the quantity of pistachios drawn for the sample. The unit value used in this example computation is the average for the last 3 complete marketing years for which import data are available, 2007/08–2009/10. The unit value for the 3-year period ($1.68 per pound) is computed by dividing the average 3-year import value ($2,900,000) by the average import quantity (1,725,000 pounds). Data are from FAS.

The inspection service fee of $74 per hour is multiplied by the estimated time of 2 hours to draw a sample, for a cost of $148. The overnight shipping cost and laboratory fee are estimated at $200 and $100, respectively.

The next step in the example computation is value of pistachios drawn for the sample. Under the new proposed section 996.600, in section (d) Sampling, the weight of a lot sample is 16 kilograms (equivalent to 35.3 pounds) for a lot weighing between 11,001 and 22,000 pounds. Multiplying 35.3 pounds times the unit value of imported pistachios ($1.68) yields a value of the tested sample of approximately $59. Assuming that aflatoxin certification of the 16,000-pound lot requires the testing of only one sample, the sum of the four cost elements would be $507, or approximately 3.2 cents per pound (approximately two percent of the unit value of imported pistachios).

It is likely that a pistachio lot arriving at the Port of San Francisco would be transported to an inland handling facility to await sampling and testing and would incur no additional storage costs. However, if the lot is stored at a Customs warehouse near the port, storage fees ranging between $100 and $500 per day could be incurred while the samples are analyzed. Analysis and certification is estimated to require between two to five days. Assuming a three day turnaround for a lot incurring $200 per day storage fees, approximately $600, or 3.75 cents per pound of pistachios could be added to the testing expense described above.

Regarding the impact of this proposed rule on affected entities, this proposal would establish an import regulation for pistachios as provided in section 8e of the Act. The proposed import regulation would require importers to arrange for the testing and certification of all imports of pistachios for human consumption prior to importation. There would be some increased costs to importers associated with the testing and certification of imported product. However, it is expected that consumer satisfaction, and therefore demand, would be increased by regulating imports and domestic product uniformly. The additional costs are expected to be offset by the benefits of supplying the U.S. marketplace with only high quality pistachios. As

mentioned above, the proposed import regulations are the same as or comparable to those established for U.S. domestic pistachio shipments. The domestic industry recently adopted aflatoxin sampling and testing procedures that align with the Codex Alimentarius Commission's (Codex) sampling plan (75 FR 43045; July 23, 2010). The Codex sampling plan is used by the European Commission as its regulation for the importation of tree nuts into the European Union. Thus, the proposed import regulations are comparable to those widely recognized by international pistachio markets.

Industry information suggests that when aflatoxin levels in imported lots of pistachios exceed the FDA maximum tolerance of 20 ppb, the levels are generally significantly higher than 20 ppb. Very few lots test between 15 ppb and 20 ppb. It is anticipated that most imported lots will test below the proposed 15 ppb tolerance. Thus, establishing a maximum aflatoxin tolerance of 15 ppb for imported pistachios is not expected to have a significant impact on trade.

The alternative to this action is to continue to allow pistachios to be imported without having to meet aflatoxin requirements the same as or comparable to those established for domestic pistachios. However, the import regulations are necessary to ensure that imported and domestic pistachios for human consumption in the United States are of uniformly high quality. Further, the Act requires that import regulations be issued whenever marketing order regulations are established for pistachios. Therefore, this alternative is not appropriate.

The additional reporting and recordkeeping requirements that would be imposed under this proposed rule are discussed in more detail below. Reports and forms required under the pistachio import regulation will be periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Additionally, except for the applicable domestic regulations, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

Interested persons are invited to comment on this initial regulatory flexibility analysis and submit information on the regulatory and informational impacts this proposed action would likely have on small businesses. A 60-day period for comments is provided. All written comments received within the comment period will be considered before a final determination is made on this matter.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that AMS is requesting OMB approval of a new information collection under OMB No. 0581–NEW. Upon approval of this new information collection by OMB, a request will be made to merge this collection with the forms currently approved for use under OMB No. 0581–0215, Pistachios Grown in California, Arizona, and New Mexico.

Title: Pistachios Imported Into the United States.

OMB Number: 0581–New.

Type of Request: New information collection.

Abstract: The information collection requirements contained in this request are necessary in the administration of proposed regulations for pistachios imported into the United States. Such regulations are authorized under Section 8e of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), which requires that whenever the Secretary of Agriculture issues grade, size, quality, or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued.

The proposed rule would establish mandatory aflatoxin testing and certification requirements for pistachios offered for importation into the United States. These requirements would be the same as or comparable to those established under Marketing Order No. 983 regulating the handling of pistachios grown in California, Arizona, and New Mexico.

Under the proposed regulation, laboratories that perform chemical analysis of aflatoxin content for imported pistachios would be required to report any lots that fail aflatoxin testing. The *Imported Pistachios—Failed Lot Notification Report* (FV–249) would be completed by the laboratory and submitted to the importer, Customs, and USDA within 10 days of the failed test. This report would contain information about the failed lot, including its identity and the aflatoxin level determined during analysis of the lot.

Under the proposed regulations, importers would be required to report the disposition of any failed lots, including those that are reworked to meet the aflatoxin requirements, on the *Imported Pistachios—Rework and Failed Lot Disposition Report* (FV–251). This report would contain information about the quantity of nuts that were accepted and rejected during rework, and would be used to report the disposition of any pistachios failing aflatoxin testing. Importers would be required to complete and submit the form to Customs and USDA within 10 days of reworking the lot.

USDA and Customs would use the two reports described above to track pistachio lots being offered for importation into the United States and follow up on the disposition of failing lots to ensure that pistachios with aflatoxin levels exceeding the maximum tolerance of 15 ppb are not shipped to domestic human consumption markets.

Safeguard procedures in the form of importer and receiver reporting requirements would be used to ensure that shipments of pistachios exempt from the import regulations are disposed of only in authorized exempt outlets. Under the proposed import regulations, importers of exempt imported pistachios would be required to complete and submit, prior to importation, an Importer's Exempt Commodity Form (FV–6). Form FV–6 would be used for tracking pistachios marketed for exempted uses that do not meet requirements for human consumption. Form FV–6 is an electronic form available through AMS, is used by importers of other commodities to report imports of exempted products, and is already approved by OMB through December 31, 2011 (OMB Control Number 0581–0167—Specified Commodities Imported into the United States Exempt From Import Regulations). Importers and receivers register as users of the electronic form and then are granted access to the reporting system. Receivers use the same system to certify that the commodity has been received and that

it will be utilized for authorized exempt purposes.

The two new forms require the minimum amount of information necessary to effectively carry out the requirements of the Act, and their use is necessary to fulfill the intent of the Act and to administer section 8e compliance activities. These reports and the safeguard procedures outlined above are the same as or comparable to the reports and procedures currently required by other domestic marketing orders and import regulations.

The information collected on these forms is used primarily by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff. AMS is the primary user of the information.

The proposed request for a new information collection under the pistachio import regulations is as follows:

Imported Pistachios—Failed Lot Notification—Form FV–New

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 12 minutes per response.

Respondents: USDA and USDA-accredited Laboratories.

Estimated Number of Respondents: 7.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 5.6 hours.

Imported Pistachios—Rework and Failed Lot Disposition Report—Form FV–New

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 12 minutes per response.

Respondents: Importers of pistachios failing aflatoxin testing.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 6.0 hours.

Comments are invited on: (1) 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) 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) 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 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 should reference OMB No. 0581–NEW and the pistachio import regulations, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

List of Subjects in 7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth above, 7 CFR Part 999 is proposed to be amended as follows:

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR Part 999 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Amend § 999.500 by revising the section heading and paragraphs (a) and (d) to read as follows:

§ 999.500 Safeguard procedures for walnuts, certain dates, and pistachios exempt from grade, size, quality, and maturity requirements.

(a) Each person who imports or receives any of the commodities listed in paragraphs (a)(1) through (3) of this section shall file an ''Importer's Exempt Commodity Form'' (FV–6) with the Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, and shall provide a printed copy of the completed Form FV–6 to the U.S. Customs and Border Protection Regional Director or District Director, as applicable, at the port at which the customs entry is filed. A printed copy shall accompany the lot to the exempt outlet specified on the form. Any lot of any commodity offered for inspection or aflatoxin testing and, all or a portion thereof, subsequently imported as exempt under this provision shall also be reported on an ''Importer's Exempt Commodity Form.'' Such form, accompanied by a copy of the applicable inspection certificate, shall be provided to the Marketing Order and Agreement Division. The applicable commodities are:

(1) Dates which are donated to needy persons, prisoners or Native Americans on reservations;

(2) Walnuts which are: Green walnuts (so immature that they cannot be used for drying and sale as dried walnuts); walnuts used in non-competitive outlets such as use by charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufacture; or

(3) Substandard pistachios which are for non-human consumption purposes.

* * * * *

(d) All FV–6 forms and other correspondence regarding entry of 8e commodities must be submitted online, mailed or faxed to the Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone (202) 720–4607; or Fax (202) 720–5698. FV–6 forms submitted by FAX must be followed by a mailed, original copy of the FV–6.

3. Add § 999.600 to read as follows:

§ 999.600 Regulation governing the importation of pistachios.

(a) *Definitions.* (1) *Aflatoxin* is one of a group of mycotoxins produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus.* Aflatoxins are naturally occurring compounds produced by molds, which can be spread in improperly processed and stored nuts, dried fruits, and grains.

(2) *Aflatoxin inspection certificate* means a certificate issued by a USDA or USDA-accredited laboratory.

(3) *Certified lots of pistachios* are those for which aflatoxin inspection certificates have been issued.

(4) *Customs* means the U.S. Customs and Border Protection.

(5) *Importation of pistachios* means the release of pistachios from the custody of U.S. Customs and Border Protection.

(6) *Importer* means a person who engages in the importation of pistachios into the United States.

(7) *Inshell pistachios* means pistachios that have shells that have not been removed.

(8) *Inspection Service* means the Federal Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, or the Federal-State Inspection Programs.

(9) *Inspector* means any inspector authorized by USDA to draw and prepare pistachio samples.

(10) *Lot* means any quantity of pistachios that is submitted for testing purposes under this part.

(11) *Person* means an individual, partnership, limited-liability corporation, corporation, trust, association, or any other business unit.

(12) *Pistachio* means the nut of the pistachio tree, *Pistachia vera,* whether inshell or shelled.

(13) *Secretary* means the Secretary of Agriculture of the United States or any

officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his/her stead.

(14) *Shelled pistachios* means pistachio kernels, or portions of kernels, after the pistachio shells have been removed.

(15) *Substandard pistachios* means pistachios, inshell or shelled, that do not comply with the aflatoxin regulations of this section.

(16) *USDA* means the United States Department of Agriculture, including any officer, employee, service, program, or branch of the Department of Agriculture, or any other person acting as the Secretary's agent or representative in connection with any provisions of this section.

(17) *USDA laboratory* means laboratories of the Science and Technology Programs, Agricultural Marketing Service, USDA, that perform chemical analyses of pistachios for aflatoxin content.

(18) *USDA-accredited laboratory* means a laboratory that has been approved or accredited by the U.S. Department of Agriculture to perform chemical analyses of pistachios for aflatoxin content.

(b) *Importation requirements.* The importation of any lot of pistachios for human consumption is prohibited unless it meets the requirements contained in this section, which are determined to be the same as or comparable to those imposed upon domestic pistachios handled pursuant to Order No. 983, as amended (part 983 of this chapter).

(c) *Maximum aflatoxin tolerance.* No importer shall ship for domestic human consumption lots of pistachios that exceed an aflatoxin level of 15 ppb. Compliance with the aflatoxin requirements of this section shall be determined upon the basis of sampling by a USDA-authorized inspector and testing by a USDA or USDA-accredited laboratory. All shipments must be covered by an aflatoxin inspection certificate issued by the laboratory. Testing and certification must be completed prior to the importation of pistachios.

(d) *Sampling.* (1) Prior to, or upon, arrival of a pistachio lot at a port of entry, the importer shall provide a copy of the Customs entry documentation for the pistachio lot or lots to the Inspection Service office that will draw and prepare samples of the pistachio shipment. More than one lot may be listed on one entry document. The documentation shall include: The Customs entry number; the container number(s) or other identification of the lot(s); the weight of the pistachios in each lot being imported, the location where the lot will be made available for sampling; and a contact name or telephone number at the testing location. The Inspection Service shall sign, stamp, and return the entry document to the importer. The importer shall provide a copy of the relevant entry documentation and such other identifying information as may be requested for each pistachio lot to the inspector at the time samples are drawn and prepared.

(2) All sampling for aflatoxin testing shall be performed by USDA-authorized inspectors in accordance with USDA rules and regulations governing the inspection and certification of fresh fruits, vegetables, and other products (7 CFR part 51). The cost of each such sampling and related certification shall be borne by the applicant. Whenever pistachios are offered for sampling and testing, the applicant shall furnish any labor and pay any costs incurred for storing, moving, and opening containers as may be necessary for proper sampling and testing. The applicant should make advance arrangements with the Inspection Service to avoid delay in scheduling sampling. Importers may make arrangements for required sampling by contacting the Inspection Service office closest to where the pistachios will be made available for sampling. For questions regarding inspection services, a list of Federal or Federal-State Inspection Program offices, or for further assistance, importers may contact: Fresh Products Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 1536–S, Washington, DC, 20250; *Telephone:* (202) 720–5870; *Fax:* (202) 720–0393.

(3) Lot samples shall be drawn from each lot of pistachios designated for aflatoxin testing, and individual test samples shall be prepared by, or under the supervision of, an inspector. Each sample shall be drawn and prepared in accordance with the sample size requirements outlined in Tables 1 and 2 below. The gross weight of the inshell lot and test samples for aflatoxin testing and the minimum number of incremental samples required are shown in Table 1. The gross weight of the kernel lot and test samples for aflatoxin testing and the minimum number of incremental samples required is shown in Table 2. If more than one test sample is necessary, the test samples shall be designated by the inspector as Test Sample #1 and Test Sample #2. Each sample shall be placed in a suitable container, with the lot number clearly identified, and the importer shall submit it, along with a copy of the customs entry documentation, to a USDA or USDA-accredited laboratory. The importer shall assume all costs for shipping samples to the laboratory.

TABLE 1—INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Minimum number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	2.0	2.0
221–440	15	3.0	3.0
441–1,100	20	4.0	4.0
1,101–2,200	30	6.0	6.0
2,201–4,400	40	8.0	8.0
4,401–11,000	60	12.0	6.0
11,001–22,000	80	16.0	8.0
22,001–150,000	100	20.0	10.0

TABLE 2—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Minimum number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	1.0	1.0
221–440	15	1.5	1.5
441–1,100	20	2.0	2.0
1,101–2,200	30	3.0	3.0
2,201–4,400	40	4.0	4.0
4,401–11,000	60	6.0	3.0
11,001–22,000	80	8.0	4.0
22,001–150,000	100	10.0	5.0

(e) *Aflatoxin testing.* Importers may make arrangements for required chemical analysis for aflatoxin content at the nearest USDA or USDA-accredited laboratory. For further information concerning chemical analysis and a list of laboratories authorized to conduct such analysis contact: Science and Technology Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0270, Washington, DC 20250–0270; *Telephone:* (202) 720–5231; *Fax:* (202) 720–6496.

(1) Aflatoxin test samples shall be received and logged by a USDA or USDA-accredited laboratory, and each test sample shall be prepared and analyzed using High Pressure Liquid Chromatography (HPLC) or the Vicam Method (Aflatest). The aflatoxin level shall be calculated on a kernel weight basis.

(2) Lots that require a single test sample will be certified as ''negative'' on the aflatoxin inspection certificate if the sample has an aflatoxin level at or below 15 ppb. If the aflatoxin level is above 15 ppb, the lot fails and the laboratory shall fill out an *Imported Pistachios—Failed Lot Notification* report (Form FV–249) as described in paragraph (h)(1) of this section.

(3) Lots that require two test samples will be certified as ''negative'' on the aflatoxin inspection certificate if Test Sample #1 has an aflatoxin level at or below 10 ppb. If the aflatoxin level of Test Sample #1 is above 20 ppb, the lot fails and the laboratory shall fill out an *Imported Pistachios—Failed Lot Notification* report (Form FV–249). If the aflatoxin level of Test Sample #1 is above 10 ppb and at or below 20 ppb, the laboratory may, at the importer's discretion, analyze Test Sample #2 and average the test results of Test Samples #1 and #2. Alternately, the importer may elect to withdraw the lot from testing, rework the lot, and resubmit it for testing after reworking. If the importer directs the laboratory to proceed with the analysis of Test Sample #2, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged result of Test Samples #1 and #2 is at or below 15 ppb. If the average aflatoxin level of Test Samples #1 and #2 is above 15 ppb, the lot fails and the laboratory shall fill out an *Imported Pistachios—Failed Lot Notification* report (Form FV–249).

(4) If an importer does not elect to use Test Sample #2 for certification purposes, the importer may request that the laboratory return the sample to the importer.

(f) *Certification.* Each lot of pistachios sampled and tested in accordance with paragraphs (d) and (e) of this section shall be covered by an aflatoxin inspection certificate completed by the laboratory. The certification expires for the lot or remainder of the lot after 12 months. Each such certificate shall set forth the following:

(1) The date and place of sampling and testing.

(2) The name of the applicant.

(3) The Customs entry number pertaining to the lot or shipment covered by the certificate.

(4) The quantity and identifying marks of the lot tested.

(5) The aflatoxin level of the lot, stated on a kernel weight basis.

(6) The statement, if applicable: ''Meets U.S. import requirements under section 8e of the AMA Act of 1937.''

(7) If the lot fails to meet the import requirements, a statement to that effect and the reasons therefore.

(g) *Failed lots/rework procedure.* Any lot or portion thereof that fails to meet the import requirements prior to or after reconditioning may be exported, sold for non-human consumption, or disposed of under the supervision of Customs and, if necessary for verification purposes, the Federal or Federal-State Inspection Programs, with the costs of certifying the disposal of such lot paid by the importer.

(1) *Inshell rework procedure for aflatoxin.* If inshell rework is selected as a remedy to meet the aflatoxin requirements of this part, then 100 percent of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic, or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed, the total weight of the accepted product and the total weight of the rejected product shall be reported by the importer to Customs and USDA on an *Imported Pistachios—Rework and Failed Lot Disposition* report (Form FV–251) as described in paragraph (h)(2) of this section. The reworked lot shall be sampled and tested for aflatoxin as specified in paragraphs (d) and (e) of this section, except that the lot sample size and the test sample size shall be doubled. If, after the lot has been reworked and tested, it fails the aflatoxin test for a second time, the lot may be shelled and the kernels reworked, sampled, and tested in the manner specified for an original lot of kernels, or the failed lot may be exported, used for non-human consumption, or otherwise disposed of.

(2) *Kernel rework procedure for aflatoxin.* If pistachio kernel rework is selected as a remedy to meet the aflatoxin requirements of this part, then 100 percent of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic, or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed the total weight of the accepted product and the total weight of the rejected product shall be reported to Customs and USDA on an *Imported Pistachios—Rework and Failed Lot Disposition* report (Form FV–251). The reworked lot shall be sampled and tested for aflatoxin

as specified in paragraphs (d) and (e) of this section.

(3) *Failed lot reporting.* If a lot fails to meet the aflatoxin requirements of this part, the testing laboratory shall complete an *Imported Pistachios—Failed Lot Notification* report (Form FV–249) as described in paragraph (h)(1) of this section, and shall submit it to Customs, the importer, and USDA within 10 working days of the test failure. This form must be completed and submitted each time a lot fails aflatoxin testing.

(h) *Reports and recordkeeping.* (1) *Form FV–249 Imported Pistachios—Failed Lot Notification.* Each USDA or USDA-accredited laboratory shall notify the importer; Customs; and the Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; of all lots that fail to meet the maximum aflatoxin requirements by completing this form and submitting it within 10 days of failed aflatoxin testing.

(2) *Form FV–251 Imported Pistachios—Rework and Failed Lot Disposition.* Each importer who reworks a failing lot of pistachios shall complete this report and shall forward it to Customs and the Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, no later than 10 days after the rework is completed. If rework is not selected as a remedy, the importer shall complete and submit this form within 10 days of alternate disposition of the lot.

(i) *Exemptions.* Any importer may import pistachios free of the requirements of this section if such importer imports a quantity not exceeding a total of 5,000 dried pounds between September 1 and August 31 of each year. Substandard pistachios imported for use in non-human consumption outlets shall be subject to the safeguard provisions contained in § 999.500.

(j) *Reconditioning prior to importation.* Nothing contained in this section shall be deemed to preclude reconditioning pistachios prior to importation, in order that such pistachios may be made eligible to meet the applicable aflatoxin regulations prescribed in paragraphs (c) through (f) of this section.

(k) *Comingling.* Certified lots of pistachios may be comingled with other certified lots, but the comingling of certified lots and uncertified lots shall cause the loss of certification for the comingled lots.

(l) *Retesting.* Whenever USDA has reason to believe that imported pistachios may have been damaged or deteriorated while in storage, USDA may reject the then effective inspection certificate and may require the owner of the pistachios to have them retested to establish whether or not such pistachios may be shipped for human consumption.

(m) *Compliance.* Any person who violates any provision of this section shall be subject to a forfeiture in the amount prescribed in section 8a(5) of the Agricultural Marketing Agreement Act of 1937, as amended; 7 U.S.C. 601–674), or, upon conviction, a penalty in the amount prescribed in section 8c(14) of the said Act, or to both such forfeiture and penalty. False representation to any agency of the United States on any matter within its jurisdiction, knowing it to be false, is a violation of 18 U.S.C. 1001, which provides for a fine or imprisonments or both.

(n) *Other import requirements.* The provisions of this section do not supersede any restrictions or prohibitions on pistachios under the Federal Plant Quarantine Act of 1912, or any other applicable laws or regulations of city, county, State, or Federal Agencies including the Federal Food, Drug and Cosmetic Act.

Dated: October 14, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–27285 Filed 10–20–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1139; Directorate Identifier 2011–CE–021–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for SOCATA Model TBM 700 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A TBM 700 operator reported a case of inverted installation of aileron control cables in the wing. The shortest cable was found installed instead of the longest one on wing tip side, with left hand (LH) threaded end in upper section. This wrong installation could have been caused by mistaken maintenance data.

This condition, if not detected and corrected, could lead to restricted movement of the aileron, resulting in reduced control of the aeroplane, particularly when operating under adverse flight conditions on landing and during avoidance manoeuvres.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 5, 2011.

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

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

For service information identified in this proposed AD, contact SOCATA—Direction des Services—65921 Tarbes Cedex 9—France; telephone +33 (0) 62 41 7300, fax +33 (0) 62 41 76 54, or for North America: SOCATA NORTH AMERICA, 7501 South Airport Road, North Perry Airport (HWO), Pembroke Pines, Florida 33023; *telephone:* (954) 893–1400; *fax:* (954) 964–4141; *e-mail: mysocata@socata.daher.com; Internet*: *http://mysocata.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090; *e-mail: albert.mercado@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1139; Directorate Identifier 2011–CE–021–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2011–0101, dated May 25, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A TBM 700 operator reported a case of inverted installation of aileron control cables in the wing. The shortest cable was found installed instead of the longest one on wing tip side, with left hand (LH) threaded end in upper section. This wrong installation could have been caused by mistaken maintenance data.
>
> This condition, if not detected and corrected, could lead to restricted movement of the aileron, resulting in reduced control of the aeroplane, particularly when operating under adverse flight conditions on landing and during avoidance manoeuvres.
>
> For the reasons described above, this AD requires an inspection to verify the correct installation of the aileron control cables and, in case of discrepancies, proper re-installation of the cables in accordance with the approved design configuration.

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

Even with potentially reduced aileron deflection, Socata's analysis shows that the airplane is still capable of achieving its published cross wind landing limits.

Relevant Service Information

DAHER–SOCATA has issued Mandatory Service Bulletin SB 70–191–27, dated April 2011; SOCATA TBM 700 Model Maintenance Manual Temporary Revision No. TR040.27, dated April 2011; and SOCATA TBM 850 Maintenance Manual Temporary Revision No. TR015.27, dated April 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 404 products of U.S. registry. We also estimate that it would take about .5 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 the proposed AD on U.S. operators to be $17,170, or $43 per product.

In addition, we estimate that any necessary follow-on actions would take about 16 work-hours and require parts costing $0, for a cost of $1,360 per product. We have no way of determining the number of products that may need these actions.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

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:

SOCATA: Docket No. FAA–2011–1139; Directorate Identifier 2011–CE–021–AD.

Comments Due Date

(a) We must receive comments by December 5, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to SOCATA Model TBM 700 airplanes, serial numbers (SN) 1 through 572, 574, and 576, certificated in any category.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A TBM 700 operator reported a case of inverted installation of aileron control cables in the wing. The shortest cable was found installed instead of the longest one on wing tip side, with left hand (LH) threaded end in upper section. This wrong installation could have been caused by mistaken maintenance data.

This condition, if not detected and corrected, could lead to restricted movement of the aileron, resulting in reduced control of the aeroplane, particularly when operating under adverse flight conditions on landing and during avoidance manoeuvres.

For the reasons described above, this AD requires an inspection to verify the correct installation of the aileron control cables and, in case of discrepancies, proper re-installation of the cables in accordance with the approved design configuration.

Even with potentially reduced aileron deflection, Socata's analysis shows that the airplane is still capable of achieving its published cross wind landing limits.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within 12 months after the effective date of this AD or within 100 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first, inspect the aileron control cables in left and right wings for proper installation following the accomplishment instructions of DAHER–SOCATA Mandatory Service Bulletin SB 70–191–27, dated April 2011.

(2) If during the inspection required by paragraph (f)(1) of this AD you find the cables are improperly installed, before further flight, remove the cables and correctly re-install the cables following the accomplishment instructions of DAHER–SOCATA Mandatory Service Bulletin SB 70–191–27, dated April 2011.

(3) After the effective date of this AD, after each removal of the aileron control cables, you must re-install using the maintenance manual temporary revisions below:

(i) *For S/N 1 through 433:* SOCATA TBM 700 Model Maintenance Manual Temporary Revision No. TR040.27, dated April 2011.

(ii) *For S/N 434 through 572, 574 and 576:* SOCATA TBM 850 Maintenance Manual Temporary Revision No. TR015.27, dated April 2011.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The compliance time of the MCAI is 12 months after the effective day of the AD. This differs from the service bulletin of 12 months or 100 hours TIS, whichever occurs first. To assure that the unsafe condition is addressed on all airplanes in a timely manner, the FAA is using the compliance time from the service bulletin.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090; *e-mail: albert.mercado@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2011–0101, dated May 25, 2011; DAHER–SOCATA Mandatory Service Bulletin SB 70–191–27, dated April 2011; SOCATA TBM 700 Model Maintenance Manual Temporary Revision No. TR040.27, dated April 2011; and SOCATA TBM 850 Maintenance Manual Temporary Revision No. TR015.27, dated April 2011, for related information. For service information related to this AD, contact SOCATA—Direction des Services—65921 Tarbes Cedex 9—France; telephone +33 (0) 62 41 7300, fax +33 (0) 62 41 76 54, or for North America: SOCATA NORTH AMERICA, 7501 South Airport Road, North Perry Airport (HWO), Pembroke Pines, Florida 33023; *telephone:* (954) 893–1400; *fax:* (954) 964–4141; *e-mail: mysocata@socata.daher.com; Internet: http://mysocata.com*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on October 14, 2011.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27264 Filed 10–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1155; Directorate Identifier 2011–CE–032–AD]

RIN 2120–AA64

Airworthiness Directives; Schempp-Hirth Flugzeugbau GmbH Gliders

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Schempp-Hirth Flugzeugbau GmbH Model Discus 2cT gliders. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify

and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> It has been reported that small cracks on engine pylons, in the area of the lower engine support, were not detected through the ''standard'' inspection required by the daily inspection instructions. The cracks were discovered only after having significantly grown.
>
> This condition, if not detected and corrected, could lead to an engine pylon failure and consequent damage to the aeroplane or injury to people on the ground.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 5, 2011.

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

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

For service information identified in this proposed AD, contact: Schempp-Hirth Flugzeugbau GmbH, Krebenstrasse 25, D–73230 Kirchheim/Teck, Germany; *phone:* +49 7021 7298–0; fax +49 7021 7298–199; *Internet: http://www.schempp-hirth.com; e-mail: info@schempp-hirth.com.*

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4165; *fax:* (816) 329–4090; *e-mail: jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1155; Directorate Identifier 2011–CE–032–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2011–0146, dated August 3, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It has been reported that small cracks on engine pylons, in the area of the lower engine support, were not detected through the ''standard'' inspection required by the daily inspection instructions. The cracks were discovered only after having significantly grown.
>
> This condition, if not detected and corrected, could lead to an engine pylon failure and consequent damage to the aeroplane or injury to people on the ground.
>
> For the reasons described above, this AD requires to replace the daily inspections pages of the Aircraft Flight Manual (AFM) that are describing the engine pylon inspection instructions, to inspect the affected engine pylon area in accordance with those instructions, and the replacement with a newly designed engine pylon in case of findings.

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

Relevant Service Information

Schempp-Hirth Flugzeugbau GmbH has issued Schempp-Hirth Flugzeugbau GmbH Technical Note No. 863–14, dated July 18, 2006; and Schempp-Hirth Flugzeugbau GmbH Technical Note No. 863–20, Revision 1, dated July 27, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We have proposed additional actions in this AD from those in the MCAI to provide for additional inspections. We believe that in addition to the daily pilot inspections of the engine pylon, that an initial and annual repetitive inspection be accomplished by a properly certificated aircraft mechanic. We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 3 products of U.S. registry. 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.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $255, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 8 work-hours and require parts costing $1,697, for a cost of $2,377 per product. We have no way of

determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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); and

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

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

List of Subjects in 14 CFR Part 39

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

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:

Schempp-Hirth Flugzeugbau: Docket No. FAA–2011–1155; Directorate Identifier 2011–CE–032–AD.

Comments Due Date

(a) We must receive comments by December 5, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Schempp-Hirth Flugzeugbau Discus 2cT gliders, serial numbers 1 through 35, certificated in any category, except those on which a engine pylon, part number (P/N) M03RT841, is installed.

Subject

(d) Air Transport Association of America (ATA) Code 54: Nacelles/Pylons.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been reported that small cracks on engine pylons, in the area of the lower engine support, were not detected through the ''standard'' inspection required by the daily inspection instructions. The cracks were discovered only after having significantly grown.

This condition, if not detected and corrected, could lead to an engine pylon failure and consequent damage to the aeroplane or injury to people on the ground.

For the reasons described above, this AD requires to replace the daily inspections pages of the Aircraft Flight Manual (AFM) that are describing the engine pylon inspection instructions, to inspect the affected engine pylon area in accordance with those instructions, and the replacement with a newly designed engine pylon in case of findings.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within 30 days after the effective date of this AD, replace the daily inspection pages of the airplane flight manual following Schempp-Hirth Flugzeugbau GmbH Technical Note No. 863–20 Revision 1, dated July 27, 2011. The actions required by this paragraph may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 (a)(1)–(4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439. All other actions in this AD must be done by a properly certificated aircraft mechanic.

(2) Before further flight after doing the action in paragraph (f)(1) of this AD and repetitively thereafter at intervals not to exceed every 12 months, inspect the engine pylon for damage or cracks, following the daily inspection instructions as amended by Schempp-Hirth Flugzeugbau GmbH Technical Note No. 863–20 Revision 1, dated July 27, 2011.

(3) If during the daily inspections in the instructions amended by Schempp-Hirth Flugzeugbau GmbH Technical Note No. 863–20 Revision 1, dated July 27, 2011 in paragraph (f)(1) of this AD or the inspections required in paragraph (f)(2) of this AD, any damage or crack is found on the engine pylon, before further flight, replace the engine pylon with an engine pylon part number M03RT841 following Schempp-Hirth Flugzeugbau GmbH Technical Note No. 863–14, dated July 18, 2006.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: In addition to the daily pilot inspections of the engine pylon required by the foreign authority, the FAA also requires an initial and annual repetitive inspection by a properly certificated aircraft mechanic.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4165; *fax:* (816) 329–4090; *e-mail: jim.rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments

concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to MCAI EASA AD No.: 2011–0146, dated August 3, 2011; Schempp-Hirth Flugzeugbau GmbH Technical Note No. 863–14, dated July 18, 2006; and Schempp-Hirth Flugzeugbau GmbH Technical Note No. 864–20 Revision 1, dated July 27, 2011, for related information. For service information related to this AD, contact Schempp-Hirth Flugzeugbau GmbH, Krebenstrasse 25, D–73230 Kirchheim/Teck, Germany; *phone:* +49 7021 7298–0; fax +49 7021 7298–199; *Internet: http://www.schempp-hirth.com; e-mail: info@schempp-hirth.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on October 17, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27267 Filed 10–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–354]

Schedules of Controlled Substances: Placement of Ezogabine Into Schedule V

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) proposes placing the substance ezogabine, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into Schedule V of the Controlled Substances Act (CSA). This proposed action is pursuant to the CSA which requires that such actions be made on the record after opportunity for a hearing through formal rulemaking.

DATES: DEA will permit interested persons to file written comments on this proposal pursuant to 21 CFR 1308.43(g). Electronic comments must be submitted and written comments must be postmarked on or before November 21, 2011. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

Interested persons, defined as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811),'' [1] may file a request for hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and 1316.47. Requests for hearing, notices of appearance, and waivers of participation must be received on or before November 21, 2011.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–354'' on all electronic and written correspondence. DEA encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document and supplemental information to this proposed rule are also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/OD, 8701 Morrissette Drive, Springfield, VA 22152. All requests for hearing must be sent to Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, VA 22152.

FOR FURTHER INFORMATION CONTACT: Rhea D. Moore, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone (202) 307–7165.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the ''For Further Information'' paragraph.

Request for Hearing, Notice of Appearance at or Waiver of Participation in Hearing

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557) and 21 CFR 1308.41. Pursuant to 21 CFR 1308.44(a)–(c), requests for hearing, notices of appearance, and waivers of participation may be submitted only by interested persons, defined as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811).'' Such requests or notices must conform to the requirements of 21 CFR 1308.44(a) or (b) and 1316.47 or 1316.48, as applicable. A request or notice should state, with particularity, the interest of the person in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any waiver must conform to the requirements of 21 CFR 1308.44(c), including a written statement regarding the interested

[1] 21 CFR 1300.01.

person's position on the matters of fact and law involved in any hearing.

Please note that pursuant to 21 U.S.C. 811(a), the purpose and subject matter of the hearing is restricted to ''(A) find[ing] that such drug or other substance has a potential for abuse, and (B) mak[ing] with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed * * *'' Requests for hearing, notices of appearance at the hearing, and waivers of participation in the hearing should be submitted to DEA using the address information provided above.

Legal Authority

Under the CSA, controlled substances are classified in one of five schedules based upon their potential for abuse, their currently accepted medical use, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances by statute are found at 21 U.S.C. 812(c) and the current list of scheduled substances are published at 21 CFR part 1308.

Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, ''add to such a schedule or transfer between such schedules any drug or other substance if he (A) finds that such drug or other substance has a potential for abuse, and (B) makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed * * *'' Pursuant to 28 CFR 0.100(b), the Attorney General has delegated this scheduling authority to the Administrator of DEA.

The CSA provides that scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary of HHS, or (3) on the petition of any interested party. 21 U.S.C. 811(a). This proposed action is based on a recommendation from the Assistant Secretary for Health of the Department of Health and Human Services (HHS) and on an evaluation of all other relevant data by DEA. If finalized, this action would impose the regulatory controls and criminal sanctions of Schedule V on the manufacture, distribution, dispensing, importation, and exportation of ezogabine and products containing ezogabine.

Background

Ezogabine, known chemically as N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester, is a new chemical substance with central nervous system depressant properties and is classified as a sedative-hypnotic. Pharmacological studies indicate that ezogabine primarily acts as a ligand at ion-gated channels in the brain to enhance potassium currents mediated by neuronal KCNQ (Kv7) channels. Additionally, ezogabine indirectly enhances the gamma-aminobutyric acid (GABA) mediated neurotransmission. On June 10, 2011, the Food and Drug Administration (FDA) approved a New Drug Application (NDA) for ezogabine as an adjunct treatment of partial onset seizures, to be marketed under the trade name Potiga.®[2]

Proposed Determination to Schedule Ezogabine

Pursuant to 21 U.S.C. 811(a), proceedings to add a drug or substance to those controlled under the CSA may be initiated by request of the Secretary of HHS. On January 12, 2011, HHS provided DEA with a scientific and medical evaluation document prepared by FDA entitled ''Basis for the Recommendation for Control of Ezogabine in Schedule V of the Controlled Substances Act.'' Pursuant to 21 U.S.C. 811(b), this document contained an eight-factor analysis of the abuse potential of ezogabine as a new drug, along with HHS' recommendation to control ezogabine under Schedule V of the CSA.

In response, DEA conducted an eight-factor analysis of ezogabine's abuse potential pursuant to 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in the scheduling decision. Please note that both the DEA and HHS analyses are available in their entirety under ''Supporting and Related Material'' of the public docket for this rule at *www.regulations.gov* under docket number DEA–354.

1. *The Drug's Actual or Relative Potential for Abuse:* Ezogabine is a new chemical substance that has not been marketed in the U.S. or in any other country. As such, there is no information available which details actual abuse of ezogabine. However, the legislative history of the CSA offers another methodology for assessing a drug or substance's potential for abuse:

> The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.[3]

Ezogabine acts as a ligand at ion-gated channels in the brain, similar to the Schedule V substances pregabalin and lacosamide, and, like those drugs, ezogabine is indicated for the treatment of epileptic conditions in humans. There is strong evidence, described below, that ezogabine produces behavioral effects in humans and in animals that are similar to those produced by pregabalin and lacosamide.

Phase 1 clinical studies indicate that the rate of euphoria-related adverse events (AEs) resulting from administration of ezogabine was 6–9%. This is similar to the AE rates for administration of pregabalin (10%) and lacosamide (>7%), while Phase 2/3 clinical studies indicated similar AE rates between ezogabine (<1%) and lacosamide (<2%). Animal studies involving administration of ezogabine to animals produced a sedative behavioral profile similar to that produced from administration of pregabalin and lacosamide, including decreased locomotion, decreased muscle tone, and an increase in ataxia. Further, in abuse potential studies conducted with sedative-hypnotic abusers, ezogabine, pregabalin, and lacosamide, when compared to placebos, are similar in their ability to produce statistically significant increases in subjective responses including ''Drug Liking,'' ''Euphoria,'' ''Overall Drug Liking,'' ''Good Drug Effects,'' and ''High.''

Because of the similarities between ezogabine, pregabalin, and lacosamide, it is very likely that ezogabine will have an abuse potential similar to those Schedule V substances. Currently there is a lack of evidence regarding the diversion, illicit manufacturing or deliberate misuse of ezogabine due to its commercial unavailability in any country, but since ezogabine is not readily synthesized from available substances, any diversion would be from legitimate channels. The above referenced studies, which include demonstration of the significant euphoric effects produced by ezogabine in humans, predict that there will be significant use of ezogabine contrary to or without medical advice.

2. *Scientific Evidence of the Drug's Pharmacological Effects, If Known:*

[2] *http://www.accessdata.fda.gov/drugsatfda_docs/nda/2011/022345Orig1s000TOC.cfm*; as of July 21, 2011.

[3] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970); 1970 U.S.C.C.A.N. 4566, 4601.

Ezogabine acts to enhance potassium currents mediated by neuronal KCNQ (Kv7) channels with a secondary action through the augmentation of GABA-mediated neurotransmission without direct GABA receptor stimulation. In individuals with histories of recreational sedative-hypnotic abuse, ezogabine (300 and 600 mg orally) produced increased ratings on the primary positive subjective scales [VAS-Drug-liking, VAS-Overall Drug Liking, ARCI–MBG (Euphoria), VAS-Take Drug Again] for peak responses (Emax for the first eight hours after drug administration) that were significantly different from the placebo. This effect is similar to that produced by alprazolam (1.5 and 3.0 mg orally; Schedule IV). On secondary positive subjective scales [VAS-High, VAS-Good Effects, ARCI-Amphetamine (Activation)] for peak responses, both ezogabine and alprazolam produced significant increases compared to the placebo, while there were no differences between ezogabine and alprazolam on those measures.

In human abuse potential studies, ezogabine (300 and 600 mg), upon oral administration, increased ratings on negative and sedating subjective measures [VAS-Bad Effects, ARCI–LSD (dysphoria) and ARCI–PCAG (sedation)] compared to the placebo, but these increases were lower than those produced by 1.5 and 3.0 mg alprazolam. These data for ezogabine are similar to those produced by lacosamide. A 900 mg dose of ezogabine produced VAS-Drug Liking and VAS-Good Effects that were higher than those produced by the two lower doses of ezogabine and either dose of alprazolam. However, the changes in VAS-Bad Effects and ARCI–LSD (dysphoria) following 900 mg ezogabine were less than or similar to those produced by lower doses of ezogabine and either dose of alprazolam. The adverse events following 900 mg ezogabine are similar to those described in the NDA for the human abuse potential study conducted with lacosamide. These included euphoria, somnolence, visual disturbances, and altered auditory perception.

In human abuse potential studies, ezogabine, similar to pregabalin and lacosamide, also produced ratings on each of the positive subjective responses that were statistically similar to those produced by Schedule IV benzodiazepines (alprazolam or diazepam). Although this appears to suggest that these drugs have an abuse potential similar to that of Schedule IV substances, the other data from human abuse potential studies, the adverse effect profile data from safety and efficacy studies, and the data from the preclinical animal behavioral studies demonstrate that ezogabine has abuse potential less than that of Schedule IV drugs but similar to that of Schedule V drugs.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* The chemical name of ezogabine is N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester. It is an achiral molecule with a molecular formula of $C_{16}H_{18}FN_3O_2$ and a molecular weight of 303.3 g/mol. Ezogabine is a non-hygroscopic white to slightly colored powder with a melting point of 140–143ºC. It is soluble in 0.9% saline, methanol, chloroform, but only sparingly soluble in ethanol and 0.1N HCL.

Ezogabine in humans has a T_{max} (time required for ezogabine to reach maximum plasma concentration) ranging from 1–4 hours following both acute and multiple dosing, and, without the involvement of cytochrome P450, undergoes an extensive and almost exclusively phase 2 metabolic biotransformation. Ezogabine is predominantly metabolized by N-glucuronidation, resulting in the formation of two distinct N-glucuronides of the unchanged parent drug and to a lesser extent by N-acetylation to form N-acetyl-retigabine, the major bioactive metabolite of ezogabine. The half-life of both ezogabine and N-acetyl-retigabine is approximately eight hours and the C_{max} (maximum plasma concentration) of both components is dose proportional after both acute and multiple dosing, suggesting a lack of accumulation with repeated administration.

4. *Its History and Current Pattern of Abuse:* As stated in the summary of Factor 1, information on ezogabine's history and current pattern of abuse is unavailable as it has not been marketed in any country. As such, evaluation of abuse potential for ezogabine derives from positive indicators in clinical studies which are believed to be predictive of drug abuse and which are discussed in Factors 1 and 2 above.

5. *The Scope, Duration, and Significance of Abuse:* Because ezogabine has not been marketed in any country, information on the scope, duration, and significance of abuse of ezogabine is unavailable. However, epidemiological data on pregabalin, a Schedule V drug with an abuse potential similar to that of ezogabine, is available from the Drug Abuse Warning Network (DAWN) database.

The ''abuse frequency ratio,'' calculated as the ratio of nonmedical use related annual emergency department visits (as reported in DAWN) to the total number of annual prescriptions for pregabalin is less than that for the Schedule IV drug, alprazolam. Further, because ezogabine has abuse-related human and animal data in its NDA similar to data generated for pregabalin, ezogabine is likely to have an abuse potential similar to pregabalin. The ''abuse frequency ratios'' for pregabalin range from 29 to 47, while those for alprazolam are approximately three to six times higher, ranging from 160 to 235. Thus, pregabalin was placed into Schedule V based both on abuse-related human and animal data submitted in its NDA and by epidemiological data which justified placement relative to drugs in Schedule IV. Given that ezogabine has abuse-related human and animal data in its NDA similar to the data generated by pregabalin, it is likely that ezogabine will have an abuse potential similar to this Schedule V drug.

6. *What, if any, Risk There is to the Public Health:* The data indicates that ezogabine may present a serious safety risk to the public health, and the predicted level of risk is similar to that observed with pregabalin and lacosamide but less than that produced by Schedule IV benzodiazepines. In Phase 1 clinical safety studies, the overall adverse event profile following ezogabine administration was similar to those from pregabalin and lacosamide and includes not only euphoria, but also somnolence, and feeling or thinking abnormally. Further, the human abuse potential study showed that the majority of subjects receiving the 900 mg dose of ezogabine experienced multiple adverse events such as euphoria, somnolence, visual disturbance, amnesia, hypo-aesthesia, paranoia, fear, confusion and hallucination. Although the 900 mg dose is three times greater than the recommended therapeutic dose, individuals who abuse drugs typically do so at supra-therapeutic doses.

7. *Its Psychic or Physiological Dependence Liability:* Ezogabine may produce limited psychic or physiological dependence liability following extended administration. Since there are no studies detailing abrupt discontinuation of ezogabine, there are minimal adequate data to evaluate the ability of ezogabine to induce withdrawal symptoms that are indicative of physical dependence. Many of the adverse events reported from the discontinuation of ezogabine were also reported prior to its discontinuation, including dizziness,

somnolence, and a state of confusion. By comparison, abrupt or rapid discontinuation of pregabalin in human studies resulted in patient-reported symptoms of nausea, headache or diarrhea, which are suggestive of physical dependence, while abrupt termination of lacosamide produced no signs or symptoms of withdrawal in diabetic neuropathic pain patients.

Unlike ezogabine and pregabalin, the withdrawal syndrome following discontinuation of Schedule IV substances such as alprazolam can range from mild dysphoria and insomnia to a major syndrome including abdominal pain, muscle cramps, vomiting, sweating, tremors and convulsions. These are similar in character to those associated with other sedative-hypnotics.

The study of ezogabine abuse potential in humans with histories of recreational abuse of sedative-hypnotics found that ezogabine produces euphoria (18–33%) in these individuals. Additionally, ezogabine produced euphoria (8.5%) in Phase 1 studies in healthy individuals. These euphoria-related adverse events following administration of ezogabine are suggestive of its ability to produce psychic dependence, and the adverse events appear to be less severe and occur less frequently than Schedule IV drugs (diazepam and alprazolam) and are more similar to those of Schedule V drugs, pregabalin and lacosamide.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:* Ezogabine is not an immediate precursor of any controlled substance.

Conclusion: Based on consideration of the scientific and medical evaluation and accompanying recommendation of HHS, and based on DEA's consideration of its own eight-factor analysis, DEA finds that these facts and all relevant data constitute substantial evidence of potential for abuse of ezogabine. As such, DEA hereby proposes to schedule ezogabine as a controlled substance under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as Schedules I, II, III, IV, and V. The statute outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of HHS and review of all available data, the Administrator of DEA, pursuant to 21 U.S.C. 812(b)(5), finds that:

(1) Ezogabine has a low potential for abuse relative to the drugs or other substances in Schedule IV. The overall abuse potential of ezogabine is comparable to the Schedule V substances such as pregabalin and lacosamide;

(2) Ezogabine has a currently accepted medical use in treatment in the United States. Ezogabine was approved for marketing by FDA as an adjunct treatment of partial onset seizures; and

(3) Abuse of ezogabine may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule IV.

Based on these findings, the Administrator of DEA concludes that ezogabine, including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, warrants control in Schedule V of the CSA (21 U.S.C. 812(b)(5)).

Requirements for Handling Ezogabine

If this rule is finalized as proposed, ezogabine would be subject to the CSA and the Controlled Substances Import and Export Act (CSIEA) regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule V controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with ezogabine, or who desires to manufacture, distribute, dispense, import, export, engage in research or conduct instructional activities with ezogabine, would need to be registered to conduct such activities pursuant to 21 U.S.C. 822 and in accordance with 21 CFR part 1301.

Security. Ezogabine would be subject to Schedules III–V security requirements and would need to be manufactured, distributed, and stored pursuant to 21 U.S.C. 823 and in accordance with 21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77.

Labeling and Packaging. All labels and labeling for commercial containers of ezogabine which are distributed on or after finalization of this rule would need to be in accordance with 21 CFR 1302.03–1302.07, pursuant to 21 U.S.C. 825.

Inventory. Every registrant required to keep records and who possesses any quantity of ezogabine would be required to keep an inventory of all stocks of ezogabine on hand pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Every registrant who desires registration in Schedule V for ezogabine would be required to conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants would be required to keep records pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, 1304.06, 1304.21, 1304.22, and 1304.23.

Prescriptions. Ezogabine or products containing ezogabine would be required to be distributed or dispensed pursuant to 21 U.S.C. 829 and in accordance with 21 CFR 1306.03–1306.06, 1306.08, 1306.21, and 1306.23–1306.27.

Importation and Exportation. All importation and exportation of ezogabine would need to be done in accordance with 21 CFR part 1312, pursuant to 21 U.S.C. 952, 953, 957, and 958.

Criminal Liability. Any activity with ezogabine not authorized by, or in violation of, Subchapter I Part D and Subchapter II of the CSA or the CSIEA occurring on or after finalization of this proposed rule would be unlawful.

Regulatory Analyses

Executive Orders 12866 and 13563

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures done ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget pursuant to Section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132

This proposed rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 13175

This proposed rule will not have Tribal implications and will not impose substantial direct compliance costs on Indian Tribal governments.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is proposed to be amended to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.15 is amended by redesignating paragraphs (e)(1) and (2) as paragraphs (e)(2) and (3), and adding a new paragraph (e)(1) to read as follows:

§ 1308.15 Schedule V.

* * * * *

(e) * * *

(1) Ezogabine—2779

* * * * *

Dated: October 14, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–27253 Filed 10–20–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

[BOP–1155–P]

RIN 1120–AB55

Classification and Program Review

AGENCY: Bureau of Prisons, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to revise its regulations on classification and program review to ensure that classification and program review procedures adequately address inmate needs. This proposed rule also adds a new type of review, the ''progress review.'' A progress review will be an abbreviated program review meant to focus on an inmate's programming activities. This shortened version of the more thorough program review will facilitate more efficiently-used staff and inmate time, in that it will primarily focus on any new or changed aspects of an inmate's initial classification and participation in recommended programs. Inmates who have 36 months or more until their projected release date will receive alternating program and progress reviews at least once every 180 calendar days, a practice that will allow the Bureau to more efficiently utilize staff time and resources. The process will also allow staff to devote more time and resources to the reviews of inmates who are closer to their release dates, enabling the Bureau to better fulfill its mission to prepare inmates for eventual release into communities within the United States.

DATES: Comments due by December 20, 2011.

ADDRESSES: Comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may also comment via the Internet to BOP at *BOPRULES@BOP.GOV* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and are made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, *etc.*) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the ''For Further Information Contact'' paragraph.

Proposed Rule

In this document, we propose to revise the regulations which set forth the classification and program review rules and to add a new level of review: progress reviews.

Section 524.10 Purpose

In this proposed section, we explain that the purpose of this subpart is to explain the Bureau's process for classifying newly committed inmates, conducting program reviews, and conducting progress reviews. We have only revised the introductory paragraph of this section, to add the concept of progress reviews (which will be explained below). The three types of reviews listed here will be conducted for all inmates except: (1) Pretrial inmates, who are covered in 28 CFR part 551; and (2) inmates committed for study and observation.

Pretrial inmate reviews are not described in this subpart because they are specifically covered in 28 CFR 551.107. According to that regulation, pretrial inmates are scheduled for an initial review by the unit team within 21 calendar days of the inmate's arrival at the institution, and later reviews are conducted at least once every 90 days.

Inmates committed for study and observation do not receive the reviews described because they do not receive program or work assignments while in this status. Such inmates are typically committed to the Bureau to determine competency to stand trial or for other mental health or medical assessments, and are inappropriate for assignment to work or other Bureau programs.

Section 524.11 Types of Reviews

We propose adding this new section to provide descriptions of each type of review that is covered in this subpart.

This section explains that the purpose of an initial classification is to develop a program plan for the inmate during his/her incarceration. The plan will ordinarily include work and programming activities to help the inmate develop skills to transition into prison life and to ultimately make a successful transition back into the community.

A program review consists of a thorough review of the inmate's initial classification and of the inmate's participation in recommended programs, and it facilitates recommendation of new programs based on skills the inmate has gained during incarceration.

A progress review, which will be the new type of review added by this rule revision, is an abbreviated program review to focus on an inmate's programming activities. This shortened version of the more thorough program review will facilitate more efficiently-used staff and inmate time, in that it will primarily focus on any new or changed aspects of an inmate's initial classification and participation in recommended programs.

Section 524.12 Process for Reviews

This proposed section describes the process for all three types of reviews. An inmate will be notified at least 48 hours before his/her scheduled appearance before the unit team for initial classification, program reviews, or progress reviews. An inmate may submit a written waiver of the 48-hour notice requirement to the unit team. These concepts have not been significantly changed from the current regulations.

This section also reiterates the current regulation provisions in § 524.11 to the effect that if the inmate refuses to appear at a review, the inmate may be subject to disciplinary action. However, the proposed rule also adds a new requirement for staff that is a protection of the inmate's interests: Staff must document on the appropriate review report the inmate's refusal and, if known, the reasons for refusal, and give a copy of this report to the inmate. Receiving such a written report of the staff's understanding of the inmate's refusal will preserve that information for any subsequent disciplinary action that may occur.

This section also contains a chart which describes when each type of review will be conducted. The requirement for an initial classification to be conducted, ordinarily within 28 days for inmates who are newly committed, has not changed. Also unchanged is the requirement for a program review to be conducted at least once every 90 calendar days when an inmate is within twelve months of the projected release date.

The chart also explains that inmates who have 36 months or more until their projected release date will receive alternating program and progress reviews at least once every 180 calendar days. This replaces the previous requirement that only program reviews be conducted every 180 calendar days, although inmates who have less than 36 months and more than twelve months left until their projected release date will continue to receive program reviews every 180 calendar days.

The proposed rule will thus create a new process whereby inmates who are far from their projected release date (36 months or more) will receive progress reviews instead of program reviews approximately once a year.

As of January 29, 2011, the Bureau had 177,780 sentenced inmates in custody. Of these, 83,039 had 36 months or more left before their projected release dates. Therefore, approximately 46.7% of all sentenced inmates in Bureau custody require program reviews twice a year under the current rule but would only require an annual program review and an annual progress review under the proposed new rule. The Bureau estimates that progress reviews will take half the amount of time that is required for full program reviews, meaning that each switch from a program review to a progress review will save approximately 15 minutes. Given the approximate number of inmates who would receive progress reviews instead of program reviews under the proposed rule, the Bureau would save approximately 20,760 hours of staff time over the course of a year.

The inmates affected by the rule change will still continue to receive program reviews, but instead of receiving a full program review twice a year, they will receive the full program review once a year, as well as a progress review six months later. This practice will reduce the burden on staff time and increase the efficiency and efficacy of the inmate review process. The process will also allow staff to devote more time and resources to the reviews of inmates who are closer to their release dates, enabling the Bureau to better fulfill its mission to prepare inmates for eventual release into communities within the United States.

The rule also states that inmates subject to an order of removal/deportation/exclusion will receive less frequent program reviews. The small class of inmates that are under such an order tend to require less directed guidance and evaluation of their participation in BOP programs. However, if such inmates require guidance, they may request it from institution staff or Unit Team.

Current § 524.11(c) describes Program Review Reports. We delete this language, as the process for program and progress reviews is covered in revised §§ 524.11 and 524.12.

Finally, this section makes no substantive change to the language of the current regulation indicating that each sentenced inmate who is physically and mentally able to maintain a work/program assignment is assigned to a program at the time of initial classification. This section states that the inmate may choose not to participate, unless the program is a work assignment or is required by Bureau policy, by court order, or by statute, but that refusal to participate may result in disciplinary action.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, *Regulatory Planning and Review,* section 1(b), ''Principles of Regulation.'' The Director, Bureau of Prisons, has determined that this proposed rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this proposed rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This proposed regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under EO 13132, we determine that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this proposed regulation and, by approving it, certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of

the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996.

This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 524

Classification of inmates.

Thomas R. Kane,

Acting Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C 301 and 28 U.S.C. 509, 510, and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96, we propose to amend 28 CFR part 524 as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

1. Revise the authority citation for 28 CFR Part 524 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4046, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510.

2. Revise subpart B to read as follows:

Subpart B—Classification and Program Review of Inmates

Sec.

524.10 Purpose.
524.11 Types of reviews.
524.12 Process for reviews.

Subpart B—Classification and Program Review

§ 524.10 Purpose.

The purpose of this subpart is to explain the Bureau of Prisons' (Bureau) process for classifying newly committed inmates, conducting program reviews, and conducting progress reviews. This process applies to all inmates except:

(a) Pretrial inmates, covered in 28 CFR Part 551; and

(b) Inmates committed for study and observation.

§ 524.11 Types of reviews.

(a) *Initial classification.* The purpose of an initial classification is to develop a program plan for the inmate during his/her incarceration. The plan will ordinarily include work and programming activities to help the inmate develop skills to transition into prison life and to ultimately make a successful transition back into the community.

(b) *Program reviews.* A program review consists of a thorough review of the inmate's initial classification and of his/her participation in recommended programs, and it facilitates recommendation of new programs based on skills or interests the inmate has gained during incarceration.

(c) *Progress reviews.* A progress review is an abbreviated program review that focuses on an inmate's progress with his/her programming activities.

§ 524.12 Process for reviews.

(a) *Inmate appearance before unit team:*

(1) *Notification before review.* An inmate will be notified at least 48 hours before his/her scheduled appearance before the unit team for initial classification, program reviews, or progress reviews.

(2) *Waiver of notification.* An inmate may submit a written waiver of the 48-hour notice requirement to the unit team.

(3) *Refusal to appear.* If the inmate refuses to appear at an initial classification, a program review, or a progress review, staff must document the inmate's refusal and, if known, the reasons for refusal, on the appropriate review report and must give a copy of this report to the inmate. Failure to attend initial classification and program reviews may result in disciplinary action.

(b) *When reviews are conducted:*

Inmates who . . .	Will receive . . .	Timeframe
Are newly committed, following a sentencing or violation of supervision.	an initial classification	ordinarily within 28 calendar days of arrival at the institution designated for service of sentence.
Have 36 months or more left until their projected release date.	an alternating program review and progress review.	at least once every 180 calendar days.
Have less than 36 but more than 12 months left until their projected release date.	a program review	at least once every 180 calendar days.
Are within 12 months of their projected release date *and* subject to an order of removal/deportation/exclusion.	a program review	at least once every 180 calendar days until their release.
Are within 12 months of their projected release date.	a program review	at least once every 90 calendar days.

(c) *Program participation:* Each sentenced inmate who is physically and mentally able to maintain a work/program assignment will be given a work/program assignment at initial classification. The inmate may choose not to participate in the program, unless it is a work assignment or is required by Bureau policy, by court order, or by statute. If the program is a work assignment or is required by Bureau policy, by court order, or by statute, then an inmate's refusal to participate may result in disciplinary action.

[FR Doc. 2011–27179 Filed 10–20–11; 8:45 am]

BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 122

[EPA–HQ–OW–2011–0188; FRL–9481–7]

RIN 2040–AF22

National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA co-proposes two options for obtaining basic information from CAFOs to support EPA in meeting its water quality protection responsibilities under the Clean Water Act (CWA). The purpose of this co-proposal is to improve and restore water quality by collecting facility-specific information that would improve EPA's ability to effectively implement the NPDES program and to ensure that CAFOs are complying with the requirements of the CWA. Under one co-proposed option, EPA would use the authority of CWA section 308 to obtain certain identifying information from all CAFOs. Under the other option, EPA could use the authority of CWA section 308 to obtain this information from CAFOs that fall within areas that have been identified as having water quality concerns likely associated with CAFOs (focus watersheds). However, EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to obtain identifying information about CAFOs by working with partners at the Federal, state, and local level before determining whether an information collection request is necessary. This information would allow EPA to achieve more efficiently and effectively the water quality protection goals and objectives of the CWA. EPA also requests comment on three alternative approaches to gather information about CAFOs, which could be used to achieve the objectives of this proposed action in protecting water quality.

DATES: Comments on this proposed action must be received on or before December 20, 2011. EPA plans to hold two Webinars in November, 2011 to provide an overview of, and answer questions about, the proposed rule requirements.

ADDRESSES: *Comments:* Submit your comments, identified by Docket ID No. EPA–HQ–OW–2011–0188, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2011–0188.
- *Fax:* (202) 566–9744.
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 28221T, Attention Docket ID No. EPA–HQ–OW–2011–0188, 1200 Pennsylvania Ave., NW., Washington, DC 20460. 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 (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2011–0188. Such deliveries are accepted only during the Docket Center'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–OW–2011–0188. EPA's policy is that all comments received will be included in the public docket without change and could be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail 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 because of technical difficulties and cannot contact you for clarification, EPA might not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Webinar: EPA plans to hold two Webinars in November, 2011 to provide an overview of, and answer questions about, the proposed rule requirements. Information about how to register and access the Webinar can be found on EPA's Web site at *http://cfpub.epa.gov/npdes/afo/aforule.cfm* no later than October 24, 2011.

FOR FURTHER INFORMATION CONTACT: For additional information contact, Becky Mitschele, Water Permits Division, Office of Wastewater Management (4203M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–6418; fax number (202) 564–6384; e-mail address: *mitschele.becky@epa.gov.*

SUPPLEMENTARY INFORMATION:

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- A. Does this action apply to me?
- B. What should I consider as I prepare my comments for EPA?
- C. Under what legal authority is this rule proposed?

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- B. Environmental and Human Health Impacts of CAFOs
- C. United States Government Accountability Office Report
- D. United States Office of Management and Budget Report
- E. Litigation Regarding the 2008 Revised NPDES Permit Regulation and Effluent Limitations Guidelines for CAFOs in Response to the Waterkeeper Decision

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B. CWA Section 308 Data Collection and EPA's Approach Toward Collecting Facility-Specific Information From CAFOs Through Rulemaking
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3. Who would be required to submit the information?
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5. How would EPA geographically define a focus watershed?
6. How would EPA inform CAFOs of their responsibility if they were required to respond to an information request?
7. When would CAFOs in a focus watershed be required to submit the information to EPA?
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E. Failure To Provide the Information as Required by This Proposed Action
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2. Alternative Mechanisms for Promoting Environmental Stewardship and Compliance
3. Require Authorized States to Submit CAFO Information From Their CAFO Regulatory Programs and Only Collect Information From CAFOs if a State Does Not Report
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A. Benefits and Costs Overview
B. Administrative Burden Impacts
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

This proposed rulemaking would apply to concentrated animal feeding operations (CAFOs) as defined in the National Pollutant Discharge Elimination System (NPDES) regulations at 40 CFR 122.23(b)(2), pursuant to section 502(14) of the Clean Water Act (''CWA''). An animal feeding operation (AFO) is a CAFO if it meets the regulatory definition of a Large or Medium CAFO (40 CFR 122.23 (b)(4) or (6)) or has been designated as a CAFO (40 CFR 122.23 (c)) by the NPDES permitting authority or by EPA. The following table provides the size thresholds for Large, Medium and Small CAFOs in each animal sector.

TABLE 1—SUMMARY OF CAFO SIZE THRESHOLDS FOR ALL SECTORS

Sector	Large	Medium [1]	Small [2]
Cattle or cow/calf pairs	1,000 or more	300–999	Less than 300.
Mature diary cattle	700 or more	200–699	Less than 200.
Veal calves	1,000 or more	300–999	Less than 300.
Swine (weighing over 55 pounds)	2,500 or more	750–2,499	Less than 750.
Swine (weighing less than 55 pounds)	10,000 or more	3,000–9,999	Less than 3,000.
Horses	500 or more	150–499	Less than 150.
Sheep or lambs	10,000 or more	3,000–9,999	Less than 3,000.
Turkeys	55,000 or more	16,500–54,999	Less than 16,500.
Laying hens or broilers (liquid manure handling system).	30,000 or more	9,000–29,999	Less than 9,000.
Chickens other than laying hens (other than a liquid manure handling system).	125,000 or more	37,500–124,999	Less than 37,500.
Laying hens (other than a liquid manure handling system).	82,000 or more	25,000–81,999	Less than 25,000.
Ducks (other than a liquid manure handling system).	30,000 or more	10,000–29,999	Less than 10,000.
Ducks (liquid manure handling system)	5,000 or more	1,500–4,999	Less than 1,500.

Notes:
[1] May be designated or must meet one of the following two criteria to be defined as a medium CAFO: (A) Discharges pollutants through a man-made device; or (B) directly discharges pollutants into waters of the United States which pass over, across, or through the facility or otherwise come into direct contact with the confined animals. 40 CFR 122.23(b)(6).
[2] Not a CAFO by regulatory definition, but may be designated as a CAFO on a case-by-case basis. 40 CFR 122.23(b)(9).

That table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed rulemaking. The table lists the types of entities that EPA is currently aware of that could be regulated by this action. Other types of entities not listed in the table could also be CAFOs. The owners or operators of AFOs that have not been designated and that do not confine the required number of animals to meet the definition of a Large or Medium CAFO are not required to submit information.

To determine whether your operation is a CAFO, you should carefully examine the applicability criteria in 40 CFR 122.23. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for EPA?

1. 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—The agency might ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or 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 for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

2. Submitting Comments to EPA

Direct your comments to Docket ID No. EPA–HQ–OW–2011–0188. EPA's policy is that all comments received will be included in the public docket without change and could be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail 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 because of technical difficulties and cannot contact you for clarification, EPA might not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

3. Submitting Confidential Business Information

Do not submit CBI information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part of or all the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Under what legal authority is this proposed action issued?

Today's proposed rulemaking is issued under the authority of sections 301, 304, 305, 308, 309, 402, 501, and 504 of the CWA, 33 U.S.C. 1311, 1314, 1315, 1318, 1319, 1342, and 1361.

II. Background

A. The Clean Water Act

Congress passed the Federal Water Pollution Control Act Amendments of 1972, (''Clean Water Act'' or ''CWA'') to ''restore and maintain the chemical, physical, and biological integrity of the nation's waters'' 33 U.S.C. 1251(a). Section 301(a) of the CWA prohibits the ''discharge of any pollutant by any person'' except in compliance with the Act. 33 U.S.C. 1311(a). Among the core provisions, the CWA establishes the National Pollutant Discharge Elimination System (NPDES) permit program to authorize and regulate the discharge of pollutants from point sources to waters of the United States. 33 U.S.C. 1342. Section 502(14) of the CWA includes the term ''CAFO'' in the definition of ''point source;'' specifically, the term ''point source'' is defined as ''any discernible, confined and discrete conveyance, including but not limited to any * * * concentrated animal feeding operation * * * from which pollutants are or may be discharged * * *'' 33 U.S.C. 1362(14). Section 501 authorizes the Administrator to promulgate rules to carry out the Administrator's functions under the CWA. EPA has issued comprehensive regulations that implement the NPDES program at 40 CFR parts 122–124.

Section 308 of the CWA authorizes EPA to collect information from the ''owner or operator of any point source'' for the following purpose:

> To carry out the objectives of [the CWA], *including but not limited* to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under [the CWA]; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under [§ 308 of the CWA]; or (4) carrying out [sections 305, 311, 402, 404 (relating to state permit programs), 405 and 504 of the CWA]. * * * 33 U.S.C. 1318(a).

Section 308(a)(3)(A) of the Act provides that, in furtherance of the stated objectives, EPA may require owners or operators of point sources to establish and maintain records; make reports; install, use, and maintain monitoring equipment; sample effluent; and provide such other information as EPA may reasonably require to carry out the objectives of the Act. 33 U.S.C. 1318(a). Section 309 of the CWA authorizes EPA to assess penalties for violations of section 308 of the CWA. 33 U.S.C. 1319.

B. Environmental and Human Health Impacts of CAFOs

Despite more than 35 years of regulating CAFOs, reports of water quality impacts from large animal feeding operations persist. At the time of the 2003 CAFO rulemaking, the Agency received estimates from USDA indicating that livestock operations where animals are confined produce more than 300 million tons of manure annually. 68 FR 7180. On the basis of that figure, EPA estimated that animals raised in confinement generate more than three times the amount of raw waste than the amount of waste that is generated by humans in the United States. *Id.* For the 2003 CAFO rulemaking, EPA estimated that CAFOs collectively produce 60 percent of all manure generated by farms that confine animals. *Id.*

Pollutants from manure, litter, and process wastewater can affect human health and the environment. Whether from poultry, cattle, or swine, the manure, litter and process wastewater contains substantial amounts of nutrients (nitrogen, phosphorus, and

potassium), pathogens, heavy metals, and smaller amounts of other elements and pharmaceuticals. This manure, litter, and process wastewater commonly is applied to crops associated with CAFO operations or transferred off site. Where over-applied or applied before precipitation events, excess nutrients can flow off of agricultural fields, causing harmful aquatic plant growth, commonly referred to as ''algal blooms,'' which can cause fish kills and contribute to ''dead zones.'' In addition, algal blooms often release toxins that are harmful to human health.

To improve the Agency's ability to estimate ecological and human risk for chemical and microbial contaminants that enter water resources, EPA is continuing research to evaluate the effect of CAFOs on surface and ground water quality. Effective control of pathogens originating in livestock manure or poultry litter could improve human and ecosystem health through reductions in waterborne disease organisms and chemicals. More than 40 diseases found in manure can be transferred to humans, including causative agents for Salmonellosis, Tuberculosis, Leptospirosis, infantile diarrheal disease, Q-Fever, Trichinosis, and Giardiasis. Exposure to waterborne pathogen contaminants can result from both recreational use of affected surface water (accidental ingestion of contaminated water and dermal contact during swimming) and from ingestion of drinking water derived from either contaminated surface water or groundwater. JoAnn Burkholder, *et al.,* Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality, 115 *Env't Health Perspectives* 310 (2007).

Heavy metals such as arsenic, cadmium, iron, lead, manganese, and nickel are commonly found in CAFO manure, litter, and process wastewater. Some heavy metals, such as copper and zinc, are essential nutrients for animal growth—especially for cattle, swine and poultry. However, farm animals excrete excess heavy metals in their manure, which in turn is spread as fertilizer, causing potential runoff problems. *U.S. EPA, Risk Assessment Evaluation for Concentrated Animal Feeding Operations,* EPA–600–R–04–042 (2004); and U.S. EPA, *Development Document for the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operation,* EPA–821–R–032–001 (2002). EPA reported approximately 80 to 90 percent of the copper, zinc, and arsenic consumed is excreted. Possible adverse effects reported in the literature include the risk of phytotoxicity, groundwater contamination and deposition in river sediment that may eventually release to pollute the water. *U.S. EPA, Risk Assessment Evaluation for Concentrated Animal Feeding Operations,* EPA–600–R–04–042 (2004), pp. 43–46. Repeated application of manure above agronomic rates could result in exceedances of the cumulative metal loading rates established in EPA regulations at 40 CFR part 503, thereby potentially impacting human health and the environment. *U.S. EPA, Preliminary Data Summary Feedlots Point Source Category Study,* EPA–821–R–99–002 (1999), pp. 26–27. The health hazards that may result from chronic exposure to heavy metals at certain concentrations can include kidney problems from cadmium, Public Health Statement Cadmium (CAS #7440–43–9), available at *http://www.atsdr.cdc.gov/PHS/PHS.asp?id=46&tid=15;* nervous system disorders, and neurodevelopmental problems (IQ deficits) from lead, *Lead and Compounds (inorganic)* (CASRN 7439–92–1), available at *http://www.epa.gov/iris/subst/0277.htm;* and cardiovascular effects, diabetes, respiratory effects, nervous system problems, and reproductive effects and cancers from multiple tissues from arsenic, NRC *Arsenic in Drinking Water,* National Academy Press (2001), available at *http://www.nap.edu/openbook/0309076293/html/R1.html.*

To promote growth and to control the spread of disease, antibiotics, growth hormones and other pharmaceutical agents are often added to feed rations or water, directly injected into animals, or administered via ear implants or tags. The annual amount of antimicrobial drugs sold and distributed in 2009 for use in food animals was 13.3 million kilograms or 28.8 million pounds. *U.S. Food and Drug Administration, 2009 Summary Report on Antimicrobials Sold or Distributed for Use in Food-producing Animals* (2010). This was a significant increase in the annual use from 8.8 million kilograms or approximately 18 million pounds reported in 1995. *U.S. Congress, Office of Technology Assessment, Impacts of Antibiotic-Resistant Bacteria,* OTA–H–629 (1995).

Most antibiotics are not metabolized completely and are excreted from the treated animal shortly after medication. As much as 80–90 percent of some administered antibiotics occur as parent compounds in animal wastes. *Scott Bradford et al., Reuse of Concentrated Animal Feeding Operation Wastewater on Agricultural Lands,* 37 *J. Env't Quality* 97 (2008). Synthetic steroid hormones are extensively used as growth promoters for cattle in the United States. *Id.* Steroid hormones are of particular concern because there is laboratory evidence that very low concentrations of these chemicals can adversely affect the reproduction of fish and other aquatic species. *Id.* The dosing of livestock animals with antimicrobial agents for growth promotion and prophylaxis may promote antimicrobial resistance in pathogens, increasing the severity of disease and limiting treatment options for sickened individuals. *U.S. EPA, Detecting and Mitigating the Environmental Impact of Fecal Pathogens Originating from Confined Animal Feeding Operations: Review,* EPA600–R–06–021 (2005).

In the most recent National Water Quality Inventory, 29 states specifically identified animal feeding operations as contributing to water quality impairment. *U.S. EPA, National Water Quality Inventory: Report to Congress*—2004 Reporting Cycle, January 2009. EPA–841–R–08–001. The findings of this report are corroborated by numerous reports and studies conducted by government and independent researchers that identify the animal livestock industry as an important contributor of surface water pollution. For example, the GAO found in its 2008 Report to Congressional Requesters that since 2002, 68 studies had been completed that examined air and water quality issues associated with animal feeding operations. Fifteen of those have directly linked air and water pollutants from animal waste to specific health or environmental impacts. GAO–08–944 (2008). For further discussion of this Report, see the section *United States Government Accountability Office Report* of this preamble.

Water quality impacts from CAFOs may be due, in part, to inadequate compliance with existing regulations or to limitations in CAFO permitting programs. EPA believes that basic information about CAFOs would assist the Agency in addressing those problems. Complete and accurate information allows governments, regulated communities, interest groups and the public to make more informed decisions regarding ways to protect the environment.

C. United States Government Accountability Office Report

In September 2008, the United States Government Accountability Office (GAO) issued a report to congressional requesters, recommending that EPA ''should complete the Agency's effort to develop a national inventory of

permitted CAFOs and incorporate appropriate internal controls to ensure the quality of the data.'' *U.S. Gov't Accountability Office, Concentrated Animal Feeding Operations—EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality*, GAO–08–944 5 (2008), page 48. EPA officials stated that ''EPA does not have data on the number and location of CAFOs nationwide and the amount of discharges from these operations. Without this information and data on how pollutant concentrations vary by type of operation, it is difficult to estimate the actual discharges occurring and to assess the extent to which CAFOs may be contributing to water pollution.'', *Id.* page 31. The report also stated that ''despite its long-term regulation of CAFOs, * * * EPA has neither the information it needs to assess the extent to which CAFOs may be contributing to water pollution, nor the information it needs to ensure compliance with the Clean Water Act.'' *Id.* page 48.

The GAO report contains a review of EPA's data on permitted CAFOs, and the GAO determined that data obtained from state agencies ''are inconsistent and inaccurate and do not provide EPA with the reliable data it needs to identify and inspect permitted CAFOs nationwide.'' *Id.* page 17. EPA had received its data from EPA Regional offices and from the states relating to permits issued to CAFOs between 2003 and 2008. GAO interviewed officials in 47 states to determine the accuracy and reliability of the data EPA collected. On the basis of that information, GAO determined that EPA's data was not reliable and could not be used to identify trends in permitted CAFOs over the five-year period. In addition to reviewing EPA's data on CAFOs, the GAO also reviewed data from other Federal agencies. GAO concluded that no Federal agency currently collects accurate and consistent data on the number, size, and location of CAFOs as defined by the CAFO regulations. *Id.* page 4. EPA responded to the draft GAO report stating that the Agency would develop a comprehensive national inventory of CAFOs. *Id.* page 76.

D. United States Office of Management and Budget Report

More recently, the Office of Management and Budget (OMB) issued a report to Congress that describes the value of data collection efforts that minimize burden on reporting entities and have practical utility. In this report, OMB identifies the benefits and costs of Federal regulations and unfunded mandates on states, local and tribal entities. *U.S. Office of Management and Budget, 2011 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (2001). This report stressed the importance of ensuring that regulations are ''evidence-based and data-driven and hence based on the best available work in both science and social science.'' *Id.* page 5. Specifically, the report briefly outlines steps and best practices that are consistent with OMB's recent recommendations for ''flexible, empirically informed approaches; increased openness about costs and benefits; and the use of disclosure as a regulatory tool.'' *Id.* page 5. EPA believes that today's co-proposed rulemaking would be consistent with OMB's recommendations by promoting transparency and providing a comprehensive body of data that would serve as a basis for sound decision-making about EPA's CAFO program.

E. Litigation Regarding the 2008 Revised NPDES Permit Regulation and Effluent Limitations Guidelines for CAFOs in Response to the Waterkeeper Decision

EPA's regulation of discharges from CAFOs dates to the 1970s. EPA initially issued national effluent limitations guidelines and standards (ELGs) for feedlots, on February 14, 1974 and NPDES CAFO regulations on March 18, 1976. 39 FR 5704; 41 FR 11458. In February 2003, EPA issued revised CWA permitting requirements, ELGs and new source performance standards for CAFOs. 68 FR 7176. The 2003 CAFO rule required the owners or operators of all CAFOs to seek coverage under an NPDES permit, unless they demonstrated no potential to discharge. With implementation of the 2003 rule, EPA and state permitting authorities would have obtained information about the universe of CAFOs. However, both environmental groups and industry challenged the 2003 final rule, and in February 2005, the U.S. Court of Appeals for the Second Circuit issued its decision in *Waterkeeper Alliance et al.* v. *EPA,* 399 F.3d 486 (2d Cir. 2005). Among other things, the court held that EPA does not have authority under the CWA to require CAFOs that have only a potential to discharge to obtain NPDES permits.

In 2008, EPA issued revised regulations in response to the *Waterkeeper* decision. Among other changes, the revised regulations required only those CAFOs that discharge or propose to discharge to obtain an NPDES permit. Subsequently, environmental groups and industry filed petitions for review of the 2008 rule, which were consolidated in the U.S. Court of Appeals for the Fifth Circuit. EPA signed a settlement agreement with the environmental petitioners in which EPA committed to propose a rule, pursuant to CWA section 308, that would require CAFOs to provide certain information to EPA. The settlement agreement provides the context and timeline for this proposed rulemaking.

The settlement agreement commits EPA to propose, by October 14, 2011, a rule under section 308 of the CWA, 33 U.S.C. 1318, to require all owners or operators of CAFOs, whether or not they have NPDES permits, to submit certain information to EPA. EPA agreed to propose a rule requiring CAFOs to submit the information listed below; or, if EPA decides not to include one of the items in the proposal, EPA would identify the item(s), explain why EPA chose not to propose requiring that information and request comment on the excluded items. EPA committed to take final action on the rule by July 13, 2012. The settlement agreement does not commit EPA to the substance of any final action. The settlement agreement expressly states that nothing in the agreement shall be construed to limit or modify the discretion accorded EPA by the CWA or by general principals of administrative law. Nor does the CWA require EPA to collect the information proposed in today's notice.

The items listed in the settlement agreement to be addressed in the proposal include the following:

1. Name and address of the owner and operator;
2. If contract operation, name and address of the integrator;
3. Location (longitude and latitude) of the operation;
4. Type of facility;
5. Number and type(s) of animals;
6. Type and capacity of manure storage;
7. Quantity of manure, process wastewater, and litter generated annually by the CAFO;
8. Whether the CAFO land-applies;
9. Available acreage for land application;
10. If the CAFO land-applies, whether it implements a nutrient management plan for land application;
11. If the CAFO land-applies, whether it employs nutrient management practices and keeps records on site consistent with 40 CFR 122.23(e);
12. If the CAFO does not land apply, alternative uses of manure, litter and/or wastewater;
13. Whether the CAFO transfers manure off site, and if so, quantity transferred to recipient(s) of transferred manure; and

14. Whether the CAFO has applied for an NPDES permit

On March 15, 2011, the Fifth Circuit Court of Appeals vacated the requirement in EPA's 2008 CAFO rule that CAFOs that ''propose'' to discharge obtain NPDES permits and held that CAFOs are not liable under the CWA for failing to apply for NPDES permits. *Nat'l Pork Producers Council (NPPC)* v. *EPA,* 635 F.3d 738 (5th Cir. 2011) (herein referred to as *NPCC*). The Fifth Circuit held that there must be an ''actual discharge to trigger the CWA requirement to obtain a permit.'' *NPPC,* 635 F.3d at 751. EPA's authority to collect information under section 308 from ''point sources'' is broader than EPA's authority to require and enforce a requirement to apply for an NPDES permit, as interpreted by *NPPC.* In particular, EPA is authorized under section 308 to collect information from any point source, and point sources are defined to include ''any discernible, confined and discrete conveyance, including * * * any * * * concentrated animal feeding operation * * * from which pollutants are or may be discharged.'' 33 U.S.C. 1362(14). Today's proposed rulemaking is therefore not affected by this ruling of the Fifth Circuit Court of Appeals.

In vacating the requirement that CAFOs that propose to discharge apply for an NPDES permit (the ''duty to apply'' provision), the court held that ''there must be an actual discharge into navigable waters to trigger the CWA's requirements and the EPA's authority. Accordingly, EPA's authority is limited to the regulation of CAFOs that discharge.'' *NPPC,* 635 F.3d at 751. The court's holding that EPA may regulate only those CAFOs that discharge is limited to the specific type of regulation at issue before the court: the duty to apply for a permit. Today's notice proposes options for gathering basic information from CAFOs; it does not require them to obtain permits.

EPA proposes to gather information from CAFOs pursuant to its authority in CWA section 308 to collect information. This information-gathering authority is broader than EPA's authority to require permit coverage, which was at issue in *NPPC.* Section 308 authorizes information collection from ''point sources,'' which includes CAFOs that discharge or may discharge. 33 U.S.C 1318(a); 1362(14) (the term ''point source'' is defined as ''any discernible, confined, and discrete conveyance, including * * * any * * * concentrated animal feeding operation * * * from which pollutants are or may be discharged * * *''). The plain language of section 308 expressly authorizes information collection for a list of purposes including assistance in developing, implementing, and enforcing effluent limitations or standards, such as the prohibition against discharging without a permit. 33 U.S.C. 1318(a). The information EPA proposes to collect is limited to basic information about CAFOs and would enable EPA, states, and others to determine the number of CAFOs in the United States and where they are located and would assist EPA in developing, implementing, and enforcing the requirements of the Act.

III. This Proposed Action

A. Proposed Action Overview and Objectives

The purpose of this co-proposal is to improve and restore water quality by collecting facility-specific information that would improve EPA's ability to effectively implement the NPDES program and to ensure that CAFOs are complying with the requirements of the CWA, including the requirement to obtain an NPDES permit if they discharge pollutants to waters of the U.S. Section 402 of the CWA authorizes EPA to regulate all point source discharges through the NPDES permitting program. The NPDES program regulates discharges from such industries as manufacturing and processing plants (*e.g.,* textile mills, pulp and paper mills), municipal wastewater treatment plants, construction sites and CAFOs. Unlike many other point source industries, EPA does not have facility-specific information for all CAFOs in the United States. Facility location and basic operational characteristics that relate to how and why a facility may discharge is essential information needed to carry out NPDES programmatic functions, which include the following:

- Evaluating NPDES program effectiveness;
- Identifying and permitting CAFOs that discharge;
- Conducting education and outreach to promote best management practices;
- Determining potential sources of water quality impairments and taking steps to address those impairments;
- Estimating CAFO pollutant loadings—by facility, by watershed, or some other geographical area; and
- Targeting resources for compliance assistance or enforcement.

The six categories listed above represent key activities necessary to ensure that CAFOs are meeting their obligations under the CWA regarding protection of water quality from CAFO discharges and can be carried out most efficiently and effectively when EPA and states have access to facility contacts and other basic information about CAFOs. This information could be used to better protect public health and welfare of communities near CAFOs, including environmental justice for minority, indigenous or low-income communities.

In today's proposed rulemaking, EPA co-proposes two options by which the Agency may achieve today's rule objectives: Option 1 (*Section C.)* would apply to all CAFOs; Option 2 (Section D) would identify focus watersheds where CAFO discharges may be causing water quality concerns and EPA could use its section 308 authority to obtain information from CAFOs in these areas. However, EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether requiring CAFOs to provide the information is necessary. Both of these options propose revisions to the NPDES regulations, which would allow EPA to obtain necessary information from CAFOs, including their contact information, location of the CAFO's production area, NPDES permitting status, number, and type of animals, and number of acres available for land application. *Section F. Alternative Approaches to Achieve Rule Objectives* discusses alternative approaches to a regulatory information request for CAFOs that may achieve similar outcomes (*i.e.,* ensuring that CAFOs are complying with their obligations under the CWA).

B. CWA Section 308 Data Collection and EPA's Approach Toward Collecting Facility-Specific Information From CAFOs Through Rulemaking

The proposed rulemaking utilizes EPA's authority under section 308 of the CWA, which authorizes EPA to collect information from point sources when necessary to carry out the objectives of the CWA. Since the 1970s, EPA routinely has used its authority under section 308 of the Act to collect information from large groups of point sources when developing and reviewing ELGs. An ELG survey typically will request industrial sources to provide information such as the type and amount of pollutants discharged, technologies available to treat waste streams, the performance capability of these technologies, and financial data. EPA uses this information to determine the appropriate control requirements and to assess the economic feasibility of such additional controls. As an

example, when reviewing the ELGs applicable to the steam electric industry, EPA determined that the data available at that time did not include all wastewater streams generated by the steam electric industry. To address this deficiency, EPA issued detailed questionnaires to the industry, which required the industry to respond to questions including contact information, facility address, pollutants in wastewater discharges, volume of discharges, and types and performance of technologies employed to treat the wastewater along with financial information. When developing ELGs for coal bed methane extractions, EPA conducted an industry survey to evaluate the volume of water produced from extraction; the management, storage, treatment and disposal options; and the environmental impacts of surface discharges. Information collection under the CWA, thus, has been a frequently used tool to develop appropriate and environmentally protective standards.

There is precedent for EPA using its section 308 authority to collect information from entities not currently required to obtain NPDES permits. Recently, EPA conducted surveys to gather information to help assess the impact of potential changes that the Agency is considering to its existing stormwater requirements. As part of this effort, EPA sent questionnaires to regulated Municipal Separate Storm Sewer System (MS4s), non-regulated MS4s, transportation MS4s, NPDES permitting authorities, and owners and operators of developed sites.

EPA can use a variety of methods to obtain data required by information collection requests under section 308. The most common method is to mail questionnaires directly to industry contacts. However, because EPA does not know the names and addresses of all CAFOs, mailing surveys to CAFOs is not possible; therefore, a rule is necessary to collect the information. The final **Federal Register** notice would contain the information collection request form (see the proposed form at the end of this preamble). Under Option 1, CAFOs would be required to respond to the request as issued in the **Federal Register** unless a state chooses to provide the information on behalf of a CAFO. Under Option 2, CAFOs in a focus watershed would be required to respond, but EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether requiring CAFOs to respond to a survey request is necessary. This request would be accomplished through a locally-applicable notice in the **Federal Register** along with other forms of local outreach. In the **Federal Register**, EPA also would include the description of the focus watershed and the reasons for its selection. To implement the rule effectively, EPA intends to conduct extensive outreach to the CAFO industry to ensure that all CAFOs know of the existence of this rule and any requirement to respond. The owners or operators of AFOs that have not been designated and that do not confine the required number of animals to meet the definition of a Large or Medium CAFO are not required to submit information under this proposed rulemaking.

The rulemaking process is an appropriate way to collect information from CAFOs because rulemaking is a transparent, equitable, and efficient method of collecting information from a large universe of entities. Moreover, allowing the states to submit the information required by this proposed action on behalf of a CAFO, included in the proposed option that would require all CAFOs to submit information, would allow states to collaborate with EPA in reducing the burden on some CAFOs to report the information to EPA. The proposed rule is a reasonable exercise of CWA section 308 authority because the information to be submitted would enable EPA to carry out and ensure compliance with the NPDES permitting program and other CWA requirements for CAFOs. *See, e.g. Natural Resources Def. Council, Inc.* v. *EPA,* 822 F.2d 104, 119 (DC Cir. 1987); *In re Simpson Paper Co. and Louisiana-Pacific Corp.,* 3 E.A.D. 541, 549 (1991).

EPA requests comment on obtaining the information through options in this co-proposed rulemaking or whether EPA should explore alternative approaches as described in the *Alternative Approaches to Achieve Rule Objectives* section of this preamble.

C. Option 1 Would Apply to All CAFOs

1. What information would EPA require as part of an information gathering survey for CAFOs and why is EPA proposing to require this information?

Proposed paragraph § 122.23(k)(2) specifies the information EPA would require respondents to provide to the Agency. Under this proposed option, EPA would require respondents to submit the following information:

(i) The legal name of the owner of the CAFO or an authorized representative, their mailing address, e-mail address (if available) and primary telephone number. An authorized representative must be an individual who is involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO;

(ii) The location of the CAFO's production area identified by the latitude and longitude or by the street address.

(iii) If the owner or operator has NPDES permit coverage as of [the effective date of final rule], the date of issuance of coverage under the NPDES permit, and the permit number. If the owner or operator has submitted an NPDES permit application or a Notice of Intent as of [the effective date of final rule] but has not received coverage, the date the owner or operator submitted the permit application or Notice of Intent;

(iv) For the previous 12-month period, identification of each animal type confined either in open confinement including partially covered area, or housed totally under roof at the CAFO for 45 days or more, and the maximum number of each animal type confined at the CAFO for 45 days or more; and

(v) Where the owner or operator land applies manure, litter, and process wastewater, the total number of acres under the control of the owner or operator available for land application.

Proposed paragraph § 122.23(k)(2)(i) would require CAFOs to provide a point of contact for the CAFO. EPA proposes to allow CAFOs to provide contact information for either the owner of the CAFO or an authorized representative. An authorized representative must be an individual who is involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO. For example, an employee who manages the CAFO or an attorney employed by the CAFO could be an appropriate authorized representative. Respondents would be required to provide complete contact information, including name, telephone number, e-mail (if available), and mailing address. Owners or authorized representatives may provide a P.O. Box in lieu of a street address in the contact information section. All individuals who qualify under 40 CFR. 122.22 can serve as a CAFO's authorized representative, including the operator of a CAFO. EPA proposes to allow qualifying individuals to serve as a CAFO's point of contact to preserve the privacy of a CAFO owner

if desired. With this information, EPA would be able to communicate directly with CAFOs when necessary. EPA seeks comment on whether an authorized representative should be permitted to sign the survey form instead of the CAFO owner or operator.

In addition to providing contact information, proposed paragraph § 122.23(k)(2)(ii) would require CAFOs to provide the location of the CAFO's production area in either latitude and longitude or by the street address of the CAFO's production area. (Note that a P.O. Box would not substitute for a street address in the location information section, since it would not identify a CAFO's location). EPA believes that knowing the location of the CAFO's production area, as specified in proposed paragraph § 122.23(k)(2)(ii), is essential for determining sources of water quality impairments and potential mitigation measures. A CAFO's proximity to waterbodies also is relevant to whether it may cause water quality impacts. Comprehensive compliance assistance and education and outreach efforts, which are facilitated by knowing facility location and contact information, are tools a regulatory program can use in partnerships with industry to proactively protect and maintain water quality.

Information related to a CAFO's permit status (proposed paragraph § 122.23(k)(2)(iii)) would indicate whether additional information is publicly available, thus avoiding duplicative efforts to seek information from NPDES permitted CAFOs. Permitting status information also would show which CAFOs are operating without NPDES permit coverage. Even where a facility is not discharging and therefore is not required to be covered by a permit, knowing about the existence of these facilities gives EPA a basis for understanding how many facilities within each sector are actually able to completely prevent discharges. This information might be transferable to other facilities in that sector that currently discharge. EPA or states would be able to provide technical assistance, extend compliance assistance, or inspect such CAFOs where appropriate.

EPA proposes (as specified in proposed paragraph § 122.23(k)(2)(iv)) to collect data on the number and type (cattle, poultry, swine, *etc.*) of animals because the scale of the operation and the types of animals confined relate to the type and volume of manure generated and related environmental considerations, and also determine applicable CWA permitting requirements. Specifically, the number and type of animals provides an indication of the quantity and characteristics of the CAFOs' manure (*i.e.,* wet or dry and possible constituents), which then informs EPA as to the possible environmental effects of that manure. EPA also proposes to collect information about the amount of land available for application (proposed paragraph § 122.23(k)(2)(v)). A CAFO's available land application area is likely to affect the amount of manure that can be land applied for agronomic purposes and the potential amount of nutrients that could flow into surrounding waters of the United States. Combining information about manure quantity and characteristics with land available for application would indicate where issues might exist regarding excess manure.

Section 308(b)(1) of the CWA requires that information collected by the Agency shall be available to the public, except upon a satisfactory showing to the Administrator that any part of the information, report, or record is confidential business information. Under existing regulations, an owner or operator may assert a claim of confidential business information (CBI) with respect to specific information submitted to EPA. 40 CFR part 2, subpart B. Under section 2.208, business information is entitled to confidential treatment if, ''the business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position.'' A claim of confidentiality must be made at the time of submission and in accordance with the requirements of 40 CFR 2.203(b). *Id.* at § 2.203(c). EPA would follow all the requirements related to information submitted with a claim of confidentiality including the required notification to the submitter and rights of appeal available before releasing any information claimed to be confidential. EPA seeks comment on whether any information required by this proposed rule could reasonably be claimed as CBI and the reasons for making this claim.

EPA requests comment on the information that CAFOs would be required to submit as specified by proposed paragraph § 122.23(k)(2). Specifically, EPA is aware that providing latitude and longitude information might raise security or privacy concerns for CAFO owner/operators, many of whom are family farmers. EPA seeks comment on alternatives to submission of the latitude and longitude that would provide general information on a facility's location but not specific coordinates. For example, the survey could request the name of the nearest waterbody to the CAFO. Local knowledge, U.S. Geological Survey topographical maps or internet programs such as Google Maps could be used by the CAFO to make this determination of the nearest waterbody to the CAFO. This would allow EPA to identify the watershed in which a CAFO is located, and to potentially model discharges from the CAFO and their impacts on water quality, but without providing specific information that could be misused to target the CAFO for inappropriate or illegal purposes. EPA also seeks comment on using other systems such as the Public Land Survey System (PLSS) (*i.e.* township, range and county information) to identify the location of a CAFO's production area. The PLSS encompasses major portions of the land area of 30 southern and western United States. EPA seeks comment on other possible alternatives as well, such as requesting a business address and county where located, or some other general locational information. Commenters suggesting such alternative should discuss the advantages and limitations of such information both for protecting the security and privacy of CAFOs, and for fulfilling the CWA purposes for which EPA needs the data (discussed above). EPA also seeks comment on how this type of location information would compare with respect to operator burden, accuracy of location identification, and usefulness of the information to identify the production area location. EPA also seeks comment on whether CAFOs would know the operation's latitude and longitude.

Related to the concern discussed above is a concern that providing specific information on the type and number of animals at a CAFO might also raise potential security issues. EPA requests comment on allowing CAFOs to report numbers of animals confined in ranges, rather than providing specific numbers. One option would be to use ranges corresponding to the definitions of large, medium and small CAFOs. EPA also requests comment on collecting the information as specific numbers, but making it available to the public only as ranges.

Additionally, EPA requests comment on the most appropriate 12-month span of time for a CAFO to determine the number of animals at the CAFO (*i.e.* fiscal year or calendar year, or the previous 12 months prior to completing the survey).

EPA seeks comment on whether CAFOs would understand the questions asked and on the technical appropriateness of the questions. The

proposed survey form that EPA would use to collect the information is included as an appendix to this preamble.

The settlement agreement with the environmental petitioners specifies that EPA would release the information collected pursuant to this rule to the public, except where it is entitled to protection as confidential business information. This is required by section 308 of the CWA. However, neither the settlement agreement nor section 308 specify the venue or format in which the information is to be released. EPA is aware of both security and privacy concerns, referenced above, regarding the potential public release of the information to be collected by this rule. EPA requests comment on any such concerns, on appropriate ways to address those concerns (consistent with section 308), and on appropriate formats or venues to make it available to the public. EPA also requests comment on whether the requirement to make any information collected pursuant to section 308 available to the public (except confidential business information) should factor into its determination about what information, if any, to collect from CAFOs.

2. What information would EPA not require as part of the collection request survey for CAFOs?

In the settlement agreement with the environmental petitioners, arising out of litigation over the 2008 CAFO rule, EPA agreed to propose a rule that would require CAFOs to submit information on 14 items of information; or, if EPA decided not to include one of the items from the settlement agreement in the proposed rule, EPA would identify the item(s), explain why EPA chose not to propose requiring that information and request comment on the excluded items.

This proposed rulemaking requests information on only some of those 14 items because the Agency believes it can effectively obtain site-specific answers for the remaining questions directly from states, other Federal agencies, specific CAFOs, or other sources, when necessary. EPA also is striving to balance the need for information with the burden associated with providing the information to EPA.

EPA seeks comment on its proposal not to collect the following items specified in the settlement agreement:

- Name and address of owner/operator (if the name and address of an authorized representative is provided instead of the name and address of an owner or operator of the CAFO);
- The survey would allow the CAFO's a choice in providing location data of the production area either by the longitude and latitude or the street address of the production area, instead of requiring both;
- If contract operation, name and address of the integrator;
- Type and capacity of manure storage;
- Quantity of manure, process wastewater, and litter generated annually by the CAFO;
- If the CAFO land-applies, whether it implements a nutrient management plan for land application;
- If the CAFO land-applies, whether it employs nutrient management practices and keeps records on site consistent with 40 CFR 122.23(e);
- If the CAFO does not land apply, alternative uses of manure, litter and/or wastewater; and
- Whether the CAFO transfers manure off site, and if so, quantity transferred to recipient(s) of transferred manure.

3. Who would be required to submit the information?

Under this option, proposed paragraph § 122.23(k)(1) would require all owners or operators of CAFOs to submit the information specified in proposed paragraph 40 CFR 122.23(k)(2). However, an exception is provided by proposed paragraph § 122.23(k)(5), that would allow states with an authorized NPDES program to provide the information proposed to be collected to EPA for CAFOs in the state. The option for a state to submit the information specified by proposed paragraph § 122.23(k)(2) is voluntary. This proposed option would allow states to submit the information because states may have collected all of the information required to be submitted by this proposed rule. A state may have obtained this information through permit applications, annual reports, inspection documentation, or other means and may keep records of this information in a form that is readily transferable to EPA. EPA does not have a preference regarding whether individual CAFOs submit the information or whether states submit it for them. EPA expects that states that do not possess the CAFO information requested would not choose to participate. In other words, EPA does not anticipate that states would submit the data, if it would require them to undertake additional efforts to collect this information from CAFOs. Proposed paragraph § 122.23(k)(2) provides flexibility to states by allowing each state to determine if it can easily submit the information to EPA given the state's resources.

Under proposed paragraph § 122.23(k)(5), in order to submit the information on behalf of its CAFOs, a state would only be allowed to provide information on behalf of a CAFO if it submits all items of information as specified by proposed paragraph § 122.23(k)(2). States that choose to submit this information would be required to use the Agency's information management system to ensure reporting consistency among states choosing to provide the information to EPA. CAFOs for which a state submits all of the required information would be referred to as ''listed'' CAFOs. States may submit information for CAFOs with NPDES permit coverage or CAFOs without NPDES permit coverage, such as CAFOs with state permits only.

In the case of states for which EPA is the NPDES permit authority and where the NDPES CAFO general or individual permits have been updated in accordance with the 2008 CAFO rule, EPA would provide the information as if it were the state. EPA issues updated NPDES CAFO permits in the states of Idaho, New Mexico, Oklahoma, New Hampshire, and Massachusetts.

The voluntary state submission option does not preclude any CAFO that wishes to do so from submitting the information required by the proposed rule even where a state previously submitted the information for that CAFO. The next section of this preamble, *When would states that choose to submit the information be allowed to provide the information to EPA and when would CAFOs be required to submit the information to EPA?,* identifies the time frames for submitting the information to EPA that would be required by proposed paragraph § 122.23(k)(2).

Under this proposed option, EPA seeks comment on whether to allow the state submission option as proposed by paragraph § 122.23(k)(5), or whether all CAFOs should be individually required to submit information to EPA. Specifically, EPA solicits comment from CAFO owners or operators as to their willingness to have the state permitting agency submit operation information to EPA on their behalf. EPA also solicits comment from states on the availability of the information as specified by proposed paragraph § 122.23(k)(2); whether states plan to provide all the required information on behalf of CAFOs; and alternatively, if given the opportunity, whether states would provide partial information on behalf of CAFOs. EPA also solicits comments on whether NPDES authorized states

should be required to provide the information for their permitted CAFOs.

4. When would states that choose to submit the information be allowed to provide the information to EPA and when would CAFOs be required to submit the information to EPA?

Following the release of the Agency's information management system and the availability of the proposed survey form, the proposed rule would allow an owner or operator of a CAFO or states to submit the information to EPA any time during their respective reporting periods. EPA proposes the following submission deadlines:

- *Required Reporting Period for States Who Chose to Report:* As specified by proposed paragraph § 122.23(k)(5)(iii), states that choose to submit information would be required to submit the information in proposed paragraph § 122.23(k)(2) [within 90 days from the effective date of the rule].
- *Notification Period:* [Within 60 days after the end of the state reporting period], EPA plans to make publicly available a list of all CAFOs by name, permit number, if applicable, and state (''listed CAFOs'').
- *CAFO Reporting Period:* CAFOs that do not appear on the CAFO list would be required to submit the information on an individual facility basis to EPA within [90 days after the end of the notification period]. CAFOs that appear on the CAFO list may choose to review the information submitted by the state and override the state's submission by submitting its own information, but CAFOs must do so within [90 days after the end of the notification period].

Table 2 summarizes the timeframes for submitting the information as specified in proposed paragraph § 122.23(k)(2) to EPA.

TABLE 2—PROPOSED TIMELINES FOR SUBMITTING THE INFORMATION REQUIRED AS SPECIFIED BY PROPOSED PARAGRAPH § 122.23(k)(2)

Entity	Timeframe
States that choose to report	Must submit information within 90 days of the effective date of the rule.
EPA	Makes publicly available within 60 days of the end of the state reporting period a list of CAFOs for which the states have submitted data.
CAFOs not appearing on the CAFO list	Must submit information within 90 days of the end of the notification period.
CAFOs on the CAFO list that prefer to provide information themselves	May submit information within 90 days of the end of the notification period.

EPA requests comment on allowing 180 days rather than 90 days for states to submit information to EPA on behalf of CAFOs. This would allow additional time for unpermitted CAFOs wishing to be covered by NPDES permits to apply for permit coverage (*e.g.,* submit an NOI in the case of a general permit) such that states could submit the information for them.

To maintain an updated inventory, EPA proposes that CAFOs without NPDES permits submit the information specified by proposed paragraph § 122.23(k)(2) or update previously submitted information every ten years. EPA proposes a ten-year resubmission period for unpermitted CAFOs because the Agency does not expect the information to change significantly within this ten-year period. Specifically, proposed paragraph § 122.23(k)(4)(iii) would require CAFOs without NPDES permit coverage to submit or update the required information between [January 1 and June 1, 2022] and every tenth year thereafter between those dates. Operations that have NPDES permit coverage or obtain permits before the 2022 resubmission date, or that become CAFOs after [July 2012]—either newly defined, designated, or a new source—and obtain NPDES permit coverage would not be required to submit or update the required information. For example, a CAFO that does not have an NPDES permit as of [July 2012] but obtains NPDES permit coverage before January 1, 2022, would not be required to re-submit the information that today's rulemaking proposes to collect.

Under this proposed option, CAFOs with NPDES permits would not need to update their information every ten years because EPA believes it would be able to maintain an updated inventory for permitted CAFOs from their annual reports and permit applications when renewing permit coverage. EPA invites comments on the schedule for when states and CAFOs would be required to submit the information to EPA. EPA also seeks comment on the requirement for CAFOs without NPDES permit coverage to resubmit the information as specified in proposed paragraph § 122.23(k)(2) every ten years.

5. How would CAFOs submit the information to EPA?

Proposed paragraph § 122.23(k)(3) would require owners and operators of CAFOs to use an official survey form provided by EPA to submit, either electronically or by certified mail, the required information to EPA. EPA would not mail surveys to individual CAFOs to request information, as the locations of many CAFO operations are unknown. Rather, the survey form would be available on EPA's Web site or by requesting a hard copy from EPA Headquarters from the EPA contact information provided in the final rule. EPA would conduct extensive outreach with the regulated community, industry groups, environmental groups and states in its effort to notify all stakeholders about the requirements of the rule and how to submit the required information.

Proposed paragraph § 122.23(k)(3) would require the owner or operator of a CAFO to submit the survey form electronically using the Agency's information management system available on EPA's Web site. The Agency's Web-based information management system would be the most effective, inexpensive way to submit the information. The Web-based information management system would leverage components of the Central Data Exchange (CDX) on the Environmental Information Exchange Network. CDX provides a single and centralized point of access for states and CAFO owners or operators to submit information electronically to EPA. CDX is supported by the Cross-Media Electronic Reporting Regulation (CROMERR), which provides the legal framework for electronic reporting under EPA's regulations. CROMERR requires any entity that submits electronic documents directly to EPA to use CDX or an alternative system designated by the Administrator. CDX would ensure the legal dependability of electronically submitted documents and provide a secure environment for data exchange

that would also protect personally identifiable information (PII).

The supporting CAFO information management system would leverage Agency standards and enterprise technologies to perform logic checks on the data entered to ensure quality assurance and quality control. Logic checks would reduce the reporting errors and limit the time involved in investigating, checking and correcting submission errors at all levels. While not required, the CAFO owner or operator would be able to print a copy of the information submitted through the Agency's information management system to maintain on site or at a nearby location.

EPA proposes an option to waive the electronic submission requirement if the information management system is otherwise unavailable or the use of the Agency's information management system would cause undue burden or expense over the use of a paper survey form. A CAFO owner or operator would be allowed to request a waiver from this electronic reporting requirement at the time of submission and would not need to obtain approval from EPA before submitting a hard copy of the form. If submitting a hard copy of the survey form, the CAFO owner or operator would be required to check the electronic submission waiver box and explain why electronic submission causes an undue burden on page 1 of the proposed survey form. EPA requests comment on whether it should allow CAFOs to submit a hard copy of the form without requesting a waiver.

CAFOs completing a hard copy of the survey form would submit the information in proposed paragraph § 122.23(k)(2) to EPA via certified mail. The official paper survey form is attached as an appendix to this preamble. There are two ways that a CAFO owner or operator who cannot submit the information electronically would be able to access the official paper survey form and instruction sheet, which are included as Attachment A of this preamble. First, the owner or operator would be able to request a form and instructions from EPA. A form may be requested from EPA Headquarters from the EPA contact information provided in the final rule. Alternatively, the owner or operator would be able to download the form and instructions, which would be available at *http://www.epa.gov/npdes/afo/.* After receiving the official form, the CAFO owner or operator would complete and return the survey form to EPA using certified mail postmarked by the appropriate deadline specified by proposed paragraph § 122.23(k)(4).

EPA plans to coordinate with states, tribal governments, and interested stakeholders to notify CAFOs about the proposed official survey form and the availability of the Agency's information management system. EPA seeks comment on the data submission approach in proposed paragraph § 122.23(k)(3). EPA also seeks comment on the most effective ways to notify CAFOs, when the rule is finalized, that they must submit the information required as specified by proposed paragraph § 122.23(k)(2).

6. How would states submit the Information to EPA?

Only states with an authorized NPDES program would have the option to submit the information on behalf of CAFOs within their states. EPA requests comment on this limitation. In states where EPA is the permitting authority for CAFOs, EPA would submit the information. To participate in the voluntary submission option provided by proposed paragraph § 122.23(k)(5), states would electronically submit the information required by proposed paragraph § 122.23(k)(2) using the Agency's information management system. The electronic submission process for states is similar to the electronic submission process for CAFOs. The electronic submission process would entail submitting information via the information management system through CDX. Proposed paragraph § 122.23(k)(5)(ii) would limit states to providing only current data, including data obtain from the state's most recent application process or from a CAFO's most recent annual report. Because states choose whether to submit information on behalf of CAFOs, EPA anticipates that a state would submit the information only when electronic submission is not overly burdensome.

To clearly identify which CAFOs would not need to submit the information to EPA during the CAFO reporting period, EPA proposes to make available on the Agency's Web site (*http://www.epa.gov/npdes/*) a final list of CAFOs for which the states have submitted information on behalf of a CAFO. The CAFOs would be listed by name, location and permit number for NPDES permitted CAFOs, and by name and location for unpermitted CAFOs. EPA would also make available the information provided by the states for each CAFO [within 60 days after the end of the 90-day state submission timeframe]. As explained in the section, *When would states that choose to submit the information be allowed to provide the information to EPA and when would CAFOs be required to submit the information to EPA?,* of this preamble, CAFOs that do not appear on the CAFO list would be required to submit the information [within 90 days of the list and responses being published]. CAFOs on the CAFO list would not be required to submit the information; however, they would be able review and change any information provided by a state.

States would be required to provide the electronic data files in an Extensible Markup Language (XML) format that is prescribed by EPA and compatible with Agency standards in support of regulatory data and information flows by the deadline specified in proposed paragraph § 122.23(k)(5)(iii). If states already store CAFO information within their respective databases, states would need to map their CAFO database elements to the prescribed XML CAFO schema for data exchange. States that do not store CAFO information electronically or maintain records in hardcopy would need to manually populate the CAFO survey using the Web-based submission form, thus using the same submission process as an individual CAFO owner or operator.

In contrast to implementing and enforcing the existing CAFO regulations in 40 CFR part 122, which is a required program element for authorized states, EPA emphasizes that the state submission option would be voluntary. This proposed option would not require that states divert resources from regulatory implementation and enforcement efforts to submit the information required by proposed paragraph § 122.23(k)(2) to EPA. EPA anticipates that states that choose to report on behalf of their state's CAFOs would already possess this information and therefore, would not need to undertake additional efforts to collect this information from CAFOs. EPA assumes the states that choose to provide the information to EPA would be the states for which this task would not be overly burdensome. This proposed option does not express a preference as to whether states or CAFOs submit the information. EPA plans to coordinate with states to help them prepare to submit the information if the state chooses to provide the information to EPA. EPA seeks comment on the proposed data collection approach regarding the way in which states would submit the information to EPA on behalf of CAFOs, and on whether NPDES authorized states should be required to submit the information on behalf of permitted CAFOs.

D. Option 2 Would Apply to CAFOs in a Focus Watershed

EPA also proposes an option that would first identify focus watersheds with water quality problems likely attributable to CAFOs, and then potentially identify CAFOs in a focus watershed to respond to a survey request. EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether an information collection request is necessary. This proposed rulemaking option would allow EPA to list the criteria used to define the focus watersheds, specify the methods to determine the geographic scope of the focus watersheds, survey groups of CAFOs in the selected focus watersheds if the necessary information was not available from other sources, and define the amount of time required for outreach so that CAFOs in these focus watersheds know if and when they are required to respond to a survey request.

Under this proposed option, EPA would focus on collecting information regarding CAFOs in focus watersheds where there are water quality concerns likely associated with CAFOs. EPA would use existing data sources to determine which geographic areas would be identified as a focus watershed for collecting information about CAFOs and to attempt to obtain the necessary data before using its 308 authority to collect it directly from CAFOs.

EPA could use existing data sources to identify areas of water quality concern that correspond with locations of CAFOs. For example, modeling estimates could be used to identify watersheds at an appropriate Hydrologic Unit Codes (HUCs) level with high nitrogen and phosphorus loadings likely originating from agricultural sources. Publicly available data could also be used to identify watersheds with high concentrations of CAFOs. Data from these sources could be further complemented by numerous other existing data from EPA, states, universities, research centers and other sources. EPA would collaborate with states, other Federal agencies, and interested stakeholders to identify other available sources of data pertaining to CAFOs and water quality, including but not limited to watershed characteristics, sources of water quality impairments, pollutant loadings from agriculture, CAFO locations, characteristics of CAFO operations, and CAFO manure management practices when selecting focus watersheds. EPA would make its methodology for identifying focus watersheds and the results of its assessments available to the public.

EPA, other Federal, state, and local agencies, and interested stakeholders could also use the collected information to target their outreach to CAFO owners and operators, target technical and financial assistance that helps CAFOs apply the most effective manure management practices, and implement monitoring and assessments of the effects of these practices. Leveraging stakeholder resources and more precisely focusing on areas of concern could yield strong results in a shorter period.

Identifying focus watersheds could produce additional benefits in addressing water quality impairments. In focus watersheds, Federal and state agencies could partner with industry groups and non-governmental organizations to increase outreach and education to CAFO owners and operators. Additionally, this option could assist EPA and other Federal and state agencies in working with agricultural producers in the focus watershed to develop and implement a coordinated program of manure management practices needed to attain water quality goals, including state water quality standards. EPA could also evaluate results from existing or future water quality monitoring and modeling and provide these results to the public periodically. Such education and outreach efforts could promote the implementation of best management practices. Interested stakeholders could use information collected by this proposed option to target delivery of its technical and financial assistance including conservation systems tailored to the water quality needs and resource profile of each livestock producer.

With this proposed rulemaking option, EPA would collect the information specified in proposed paragraph § 122.23(k)(3) only from CAFOs located in identified focus watersheds. EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether an information collection request is necessary. EPA seeks comment on this proposed option that would require CAFOs in focus watersheds to report the information specified in proposed paragraph § 122.23(k)(4) if it were not otherwise available.

1. How would EPA identify a focus watershed?

EPA would identify focus watersheds based on water quality concerns associated with CAFOs, including but not limited to nutrients (nitrogen and phosphorus), pathogens (bacteria, viruses, protozoa), total suspended solids (turbidity), and organic enrichment (low dissolved oxygen). EPA also recognizes that there is a variety of sources, including sewage treatment plants, and industrial discharges that are sources of nutrients and sediment related to water quality impairments. However, for purposes of this survey, this proposed option would require that a focus watershed be one associated with water quality concerns likely to be associated with CAFOs or land application of manure.

Under section 303(d) of the CWA, states are required to assess their waters and list as impaired those that do not meet water quality standards. The 303(d) impairment listings would be one source to consult in identifying a focus watershed based on water quality concerns. EPA's ATTAINS database, which includes listings of impaired waters reported to EPA by states, pursuant to CWA section 303(d), is available to help identify impacted watersheds.

However, relying on impaired waterbody information is limited because many waterbodies have not been assessed or the impairment cause has not been identified. Additionally, in these impaired waterbodies some states have not established water quality standards for all of the pollutants in these impaired waterbodies that might be associated with CAFO discharges. In particular, many states have not set standards for nutrients, which are a key indicator for animal agriculture's impact on water quality. To address this limitation, EPA also could use other data indicating water quality concerns relating to CAFOs, such as nutrient monitoring data from state or Federal agencies. EPA solicits comment on what sources of data could be used to determine where waterbodies are likely to be impacted due to CAFOs.

EPA also could rely on existing partnerships to identify waterbodies with impacts associated with CAFOs. For example, a March, 2011 memorandum reaffirmed EPA's commitment to partnering with states and collaborating with stakeholders to make greater progress in accelerating the reduction of nitrogen and phosphorus loadings to the nation's waters. In addition, some states are working on strategies for reducing nitrogen and

phosphorus pollution. U.S. EPA Memorandum, Working Effectively in Partnership with States to Address Phosphorus and Nitrogen Pollution Through Use of a Framework for State Nutrient Reductions (2011), available at *http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/memo_nitrogen_framework.pdf.* The information collected by today's proposed rulemaking could assist states as they identify areas with water quality concerns by providing data for their strategy development and implementation. EPA requests comments on sources of information that could be used to identify watersheds with a likelihood of water quality impacts associated with CAFOs.

In addition to being areas where water quality issues of concern are likely to exist due to CAFOs, a focus watershed would be identified based on one or more of the additional following proposed criteria:

a. High priority watershed due to other factors such as vulnerable ecosystems, drinking water source supply, watersheds with high recreational value, or outstanding natural resources waters (Tier 3 waters);

b. Vulnerable soil types;

c. High density of animal agriculture; and/or

d. Other relevant information (such as an area with minority, indigenous, or low-income populations).

EPA solicits comment on whether minimum standards for selection of a focus watershed should be adopted and what such standards might be. EPA also solicits comment on whether the results of a focus watershed assessment, including decisions to focus or not to focus on an area, should be made available to the public. EPA also solicits comment on how frequently EPA should review and/or revise its identification of focus watersheds.

2. Considerations When Determining Whether a Focus Watershed Meets the Criteria for Water Quality Protection

a. High Priority Watershed Due to Other Factors (Such as Vulnerable Ecosystems, Drinking Water Supply Source, Watersheds With High Recreational Value or Outstanding National Resource Waters (Tier 3 Waters))

EPA could identify focus watersheds where waters require a greater degree of protection than other waters of the United States. These include waters with excellent water quality, including high quality waters, where water quality conditions must be maintained and protected in accordance with 40 CFR 131.12(a)(2) and outstanding national resource waters, where the waters have exceptional recreational, environmental or economic significance and must be protected in accordance with 40 CFR 131.12(a)(3). Areas near drinking water sources may also be areas identified for survey requests. EPA and its partners would work with CAFOs located within these watersheds in order to promote improved nutrient management practices and to ensure that the applicable CWA requirements are met. EPA would review state and tribal water quality standard data to locate these watersheds. EPA seeks comment on high priority watershed due to other factors as a criterion to identify a focus watershed.

b. Vulnerable Soil Types

Vulnerable soil types include soils with high nutrient levels. High nutrient soils in a watershed indicate that there may be more nutrients being land applied than being utilized by the crops. For example, there is an increased risk of phosphorus runoff in areas where phosphorus soil test levels are high, particularly in areas that are close to surface waters or have steep slopes. To evaluate and determine which watersheds have soils with high nutrient levels, EPA could review reports on nutrient levels such as the Mid-Atlantic Watershed Program's report of phosphorus; reports prepared for Congress, such as *Animal Waste Management and the Environment: Background for Current Issues and Animal Waste Pollution in America: An Emerging National Problem.* U.S. Congressional Research Service, CRS–98–451 (1998) available as of September 2011 at *http://www.cnie.org/nle/CRSreports/Agriculture/ag-48.cfm*; Tom Harkin, *Animal Waste Pollution in America: An Emerging National Problem,* Report Compiled by the Minority Staff of the United States Senate Committee on Agriculture, Nutrition, & Forestry for Senator Tom Harkin (Dec. 1997). Data compiled by state conservation districts and data from land grant universities that evaluate the nutrient levels of soils also could be sources of information to support identifying a focus watershed because of high nutrient levels in the soil. In addition to soil nutrient level, estimating areas where manure production is more than the surrounding crop lands can utilize may also be an indicator to focus information collection requests. For example, where the amount of manure generated greatly exceeds the capacity of available land for agronomic application of manure, it is more likely that CAFOs will apply manure in excess of crop nutrient requirements or experience issues associated with inadequate storage capacity. EPA seeks comment on vulnerable soil types as a criterion to identify a focus watershed.

c. High Density of Animal Agriculture

EPA could target outreach and information collection efforts to those geographic regions where Ag Census data, which is publicly available aggregate data, shows a high density of animals or reports a high number of operations that meet the CAFO animal size thresholds as specified by paragraph 40 CFR 122.23(b). EPA could review the aggregate data from the Ag Census to determine counties, geographic regions or sub-regions that have a high density of CAFOs. This type of census data is accessible to both EPA and the public through USDA's existing on-line report generating function and other sources. EPA seeks comment on using high densities of CAFOs as a criterion to identify a focus watershed.

d. Other Relevant Information

EPA anticipates cases in which a need to collect information from CAFOs could arise because of factors other than the three criteria described above. For example, CAFOs often are located in minority, low-income, and indigenous communities that are or may be disproportionately impacted by environmental pollution. Supporting this statement is a report from The Lawyers' Committee for Civil Rights Under Law stated that ''there are 19 times more CAFOs in North Carolina's poorest communities than in wealthier communities and five times more in nonwhite neighborhoods than in white neighborhoods.'' (Daria E Neal *et al. Now is the Time: Environmental Injustice in the U.S. and Recommendations for Eliminating Disparities*, page 56 (2010) available as of July 2011 at *http://www.lawyerscommittee.org/admin/site/documents/files/Final-Environmental-Justice-Report-6–9–10.pdf).* Working with CAFOs in those communities to address water quality problems would help fulfill the Agency's environmental justice goals. EPA seeks comment on the factors listed above and seeks suggestions of other factors the Agency could use as a criteria to identify a focus watershed. EPA would consider other factors suggested for inclusion in taking final action on this proposal.

3. How would EPA identify CAFOs from which additional information is needed?

After establishing an area with a water quality impairment or water quality concerns likely associated with CAFOs, or otherwise identified as a focus watershed based on the factors identified above, EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether an information collection request is necessary. However, where EPA was unable to obtain the necessary basic information from such sources, EPA would require CAFOs in the focus watershed to provide the necessary information. EPA requests comment on alternative sources of information that could be used to gather the necessary information.

4. What information would EPA require as part of an information gathering survey for CAFOs in a focus watershed?

Under this proposed option, EPA would seek to collect the same information as under the proposed option for using section 308 to collect information from all CAFOs, outlined in section III.(C)(2). Specifically, EPA might require CAFOs in a focus watershed to submit the following information as specified by proposed paragraph § 122.23(k)(4), if the information were not available from other sources:

(i) The legal name of the owner of the CAFO or an authorized representative,[1] their mailing address, e-mail address (if available) and primary telephone number;

(ii) The location of the CAFO's production area identified by the latitude and longitude or by the street address;

(iii) If the owner or operator has NPDES permit coverage as of [the effective date of final rule], the date of issuance of coverage under the NPDES permit, and the permit number. If the owner or operator has submitted an NPDES permit application or a Notice of Intent as of [the effective date of final rule] but has not received coverage, the date the owner or operator submitted the permit application or Notice of Intent;

(iv) For the previous 12-month period, identification of each animal type confined either in open confinement including partially covered area, or housed totally under roof at the CAFO for 45 days or more, and the maximum number of each animal type confined at the CAFO for 45 days or more; and

(v) Where the owner or operator land applies manure, litter, and process wastewater, the total number of acres under the control of the owner or operator available for land application.

Under this proposed option as well as the other proposed option, CAFOs in a targeted area would be able to assert a claim of confidential business information with respect to specific information submitted to EPA. 40 CFR part 2, subpart B. A claim of confidentiality must be made at the time of submission and in accordance with the requirements of 40 CFR 2.203(b). For further discussion of CBI, see section, *What information would EPA require as part of an information gathering survey for CAFOs and why is EPA proposing to require this information?,* of this preamble.

5. How would EPA geographically define a focus watershed?

If EPA did ultimately need to use section 308 to focus on CAFOs in a specific geographic area, that area must be defined in some way so that CAFOs would know if their operation is located within the area, and thus, would be required to respond to the survey request. EPA proposes to define the targeted areas geographically by either Zip Codes, counties, HUC codes, or watersheds. EPA solicits comment on the most effective way to define a focus watershed so that CAFOs would know of their need to respond to EPA.

6. How would EPA inform CAFOs of their responsibility if they were required to respond to an information request?

Where certain areas or groups of CAFOs are required to respond to an information collection request, EPA would conduct a variety of informational outreach efforts. First, EPA would publish in the **Federal Register** a notice describing the boundaries of the targeted area(s) and the information submission requirements for CAFOs within those areas at least [30] days before the beginning of any information submission period. EPA would also conduct extensive outreach with the regulated community and interested stakeholders to notify CAFOs in the focus watershed of their responsibility to provide information. EPA would work with the state and local authorities in providing this outreach. For example, EPA might hold public meetings in the area, place notices in newspapers, and use other available local media. EPA notes that the owners or operators of AFOs that have not been designated and that do not confine the required number of animals to meet the definition of a Large or Medium CAFO would not be required to submit information as specified in proposed paragraph § 122.23(k)(4) to EPA.

Under proposed paragraph § 122.23(k)(3), EPA would conduct outreach to CAFOs in the targeted area for at least [30 days] prior to the start of any reporting period to notify operations that they are required to report the information specified in proposed paragraph § 122.23(k)(4) to EPA. EPA seeks comment on ways to inform and reach CAFOs in targeted areas if they are required to provide information. EPA also seeks comment on the timeframe provided for outreach to CAFOs in targeted areas.

7. When would CAFOs in a focus watershed be required to submit the information to EPA?

If EPA needed to use 308 authority to collect information from CAFOs, after the end of EPA's outreach period for CAFOs in the targeted area, CAFOs would have [90 days] to submit the information to EPA. EPA would identify the specific deadline for submitting the information during EPA's outreach period as well as by publishing the deadline in the **Federal Register** notice, which is required at least [30] days before the beginning of any information submission period.

EPA seeks comment on the amount of time a CAFO in a targeted area would need to submit the information to EPA.

8. How would CAFOs in a focus watershed submit information to EPA?

If EPA needed to use 308 authority to collect information from CAFOs, CAFOs in focus watersheds would submit the information in the same manner as specified in proposed option 1 for collecting information from all CAFOs. Specifically, proposed paragraph § 122.23(k)(5) would require the owner or operator of a CAFO to submit the official survey form electronically using the Agency's information management system available on EPA's Web site. EPA proposes to waive the electronic submission requirement if the information management system is otherwise unavailable or the use of the Agency's information management system would cause undue burden or expense over the use of a paper survey form. See section *How would CAFOs*

[1] An authorized representative must be an individual who is involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA or the state about the CAFO.

submit the information to EPA of this preamble for a detailed discussion. EPA seeks comment on the data submission approach in proposed paragraph § 122.23(k)(5).

E. Failure To Provide the Information as Required by This Proposed Rulemaking

Under Option 1, and under Option 2 in cases where EPA used its section 308 authority to collect information from CAFOs in focus watersheds, CAFO owners or operators that failed to submit the information in accordance with the requirements specified in proposed paragraph § 122.23(k) would be in violation of the CWA. Section 309 of the CWA provides for administrative, civil and criminal penalties for violations of section 308 of the Act. 33 U.S.C. 1319. EPA assesses monetary penalties associated with civil noncompliance using a national approach as outlined by the Agency's general penalty policy. More information on the amounts and calculations of civil penalties is available at *http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/.* Additional information on criminal noncompliance, is available at *http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/.*

F. Alternative Approaches To Achieve Rule Objectives

The objective of this proposed action is to improve and protect water quality impacted by CAFOs. However, EPA recognizes that there may be other ways to achieve this objective, and the Agency solicits comment on alternative approaches to meet the objectives of this proposed rule. Such alternative approaches may require rulemaking. EPA would consider any such suggested alternative approaches in developing the final rule.

EPA describes three such alternative approaches in this section and seeks public comment on these approaches. EPA seeks public comment on alternative approaches to a data collection request for CAFOs including: (1) An approach that would obtain data from existing data sources, (2) an approach that would expand EPA's network of compliance assistance and outreach tools and (3) an approach requiring NPDES authorized states to submit the information as specified by proposed paragraph § 122.23(k)(2) to EPA, which would require rulemaking. EPA also seeks comment on other alternative approaches besides the three discussed herein that could achieve the same objectives. Any one of these three alternative approaches could be enhanced by stewardship and recognition programs, education or assistance programs or incentive based programs, carried out in coordination with other partners such as states, industry or USDA, and could result in improvements in industry practices more quickly than a data collection effort. EPA solicits comment on programs such as these that could be employed to ensure that CAFOs are implementing measures to protect water quality.

1. Use of Existing Data Sources

One alternative approach to the proposed rule would be to rely on the use of available existing sources of data on CAFOs, such as information from USDA, states, environmental organizations and other interested stakeholder groups. The discussion below describes the sources of information that currently exist, identifies some of the limitations EPA faces in using these sources and seeks comment on ways in which EPA could leverage these sources collectively to address impacts from CAFOs.

a. U.S. Department of Agriculture Data

The U.S. Department of Agriculture is a leading source of national, publicly aggregated agricultural data. Federal law prohibits USDA from disclosing or using data collected unless the information has been converted into a statistical or aggregate form that does not allow the identification of the person who supplied particular information 7 U.S.C. 2276(a); *see also* 7 U.S.C. 8791(b)(2)(A); Confidential Information Protection and Statistical Efficiency Act, 44 U.S.C. 3501(2002). Accordingly, USDA withholds any county-level data if that information would identify individual producers. In counties where no data are available, the USDA indicates where data is omitted because of disclosure limitations or because no CAFOs are in operation.

EPA currently uses the publicly available aggregate data from USDA categorized by animal size thresholds defined by the CAFO rule to refine estimates of the CAFO universe, assess animal densities by counties, and identify the number of operations in those counties. EPA also can determine from the USDA aggregate data the cumulative number of acres that are available for land application at CAFOs, as the total number of acres by county but not by facility. To obtain facility-specific data, EPA is considering ways in which the Agency could combine the publicly available, aggregated data from USDA with other data sources to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

b. State Permitting Programs

State NPDES permitting programs should have data on permitted CAFOs, which could provide answers to the proposed survey questions in today's notice. EPA estimates that approximately 8,000 CAFOs out of a total universe of 20,000 CAFOs have obtained permit coverage under the NPDES program. Authorized states have information from permit applications and annual reports for CAFOs with permit coverage. Although not all states have made this information electronically accessible, some states have online databases or maps that display CAFO data. For example, Missouri requires permit coverage for all CAFOs as well as a subset of operations with less than 1,000 animal units and displays a map of these operations in relation to waters of the state (*http://www.dnr.mo.gov/env/wpp/afo.htm*). Missouri Department of Natural Resources uses this information to link permitted operations with specific classified stream segments in order to facilitate water quality based planning, total maximum daily load (TMDL) development and reports required under section 305(b) of the CWA. Similarly, in North Carolina all animal feeding operations with a permit, whether under the NPDES program or under other state permitting programs, are listed in a spreadsheet that can be downloaded (*http://portal.ncdenr.org/web/wq/aps/afo/perm*). The spreadsheet contains information on the number of animals at the operation, type of permit issued to an operation and latitude and longitude information for 2,711 operations.

While those two states are examples of comprehensive sources of information that are electronically available, other states maintain CAFO records in paper copy, which may not be complete or readily available. In addition, information on unpermitted CAFOs generally is not available via state records. Currently, EPA provides registered users, such as states, the ability to track permit issuance, permit limits and monitoring data through the Integrated Compliance Information System (ICIS) or through the Online Tracking Information System (OTIS), which integrates ICIS data with information from other databases such as EPA's Permit Compliance System (PCS). EPA estimates that only 15 to 20 percent of CAFO permit data is stored in one of these two systems because many states use separate databases to manage and implement permitting programs. A further challenge in

aggregating state permitting data is that the information collected is not based on a national standardized reporting scheme. Reporting inconsistencies across jurisdictions would prevent EPA from compiling a consistent national summary of CAFO information. Thus, a national inventory based solely on state data would not be comprehensive.

EPA solicits comment on ways in which data from state permitting authorities could be used in conjunction with other sources of information, such as the publicly available aggregate data from USDA, to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

c. State Registration or Licensing Programs

Permitting programs administered by the state are not the sole source of state information on CAFOs. Many state agriculture departments have registration or licensing programs that collect information from livestock farms separately from environmental permitting requirements. Such sources could be used as a source of information for the unpermitted universe. However, EPA's investigation of those data sources indicates that registration or licensing programs typically provide only contact information.

Despite the limited information available from registration and licensing programs, these sources may nevertheless provide a comprehensive list of facilities in a particular sector, which EPA could use to supplement information available from a state permitting program. For example, in Arkansas, state law requires poultry operations confining 2,500 or more birds on any given day to register with the county conservation districts. Information that could be obtained from this registration list includes: Number and kind of poultry housed; location of the operation; litter management system used and its capacity; acreage controlled by the operation; litter land applied during the last year; amount and destination of litter transferred; amount of litter utilized by the producer and the type of utilization; and the name of the poultry operation's processor.

Similarly, dairy licensing programs contain site-specific information, which may be publicly available. For example, the Ohio Department of Agriculture requires milk producers of grade A and manufactured milk to obtain a license prior to operation. As part of this process, a milk producer must provide evidence of a safe water supply and submit prepared plans for the milkhouses, milking barns, stables and parlors at the operation. Ohio Department of Agriculture provides a list by county of the number of active dairy farms in the state (*http://www.agri.ohio.gov/apps/DairyFarmsReport/FarmsReportPage.aspx*). This information could be used in conjunction with the USDA's publicly available aggregate data to determine CAFO locations by county in Ohio.

EPA seeks comment on the availability of registration and licensing lists and whether information obtained from such programs could be shared with EPA. If so, such data could also be used as part of a comprehensive effort to address CAFO impact on water quality. EPA seeks input on ways in which data from these lists could be used in conjunction with other sources of information, such as USDA's publicly available aggregated data, to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

d. Satellite Imagery and Aerial Photographs

EPA, states, and academic institutions have used satellite imagery to locate and map CAFOs. For example, through a cooperative agreement with EPA, Jacksonville State University and Friends of Rural Alabama (JSU and FRA) created the American Environmental Geographic Information System (*http://www.aegis.jsu.edu/*) to assist in watershed analyses and planning. This system provides maps and environmental data for a variety of industries, including animal feeding operations, in a select number of eastern states. JSU and FRA visually scanned satellite images for structures commonly used to confine animals. Clusters of long, white buildings were identified as poultry operations or as swine operations, when an open-air pit or lagoon system was visible.

EPA also has used aerial flyovers to obtain real time aerial photography for a variety of purposes, including identifying and updating the universe of CAFOs, identifying potential illegal discharges from CAFOs to waters of the United States. and prioritizing follow-up site inspections. While resource intensive, flyovers can be used to cover specific geographic areas and/or areas with difficult terrain.

These methodologies present certain limitations as a source of data on CAFOs. While satellite imagery and aerial photographs may identify location information for some animal feeding operations, a user may not be able to determine whether structures actually contained animals, whether an operation met the regulatory definition of a CAFO or had NPDES permit coverage. Therefore, this information source is most useful when supplemented by on-the-ground efforts to confirm site-specific information. For example, location information from aerial photography or satellite images may be combined with state and county Web sites that provide tax parcel information, building histories and permit histories, so as to identify animal feeding operations that may meet the CAFO requirements for obtaining a permit. EPA solicits comment on other ways to augment information from satellite images and aerial photography location information to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

e. Reporting Requirements Under Other Programs

EPA's Assessment, TMDL Tracking and Implementation System (ATTAINS) database (*http://www.epa.gov/waters/ir*) displays water quality findings reported by the states under section 305(b) and section 303(d) of the Clean Water Act. These findings represent state decisions as to whether assessed waters are meeting their water quality standards. Assessment decisions are made by the states based primarily on monitoring targeted to areas known or suspected to be impaired and may not fully represent all conditions within a state. While not all waters are assessed, the database identifies which watersheds are impaired. The findings are updated in the database as new state Integrated Reports (305b and 303d) are received, reviewed and posted and may reflect 2010, 2008, or 2006 data from states, depending on their latest submission. EPA seeks comment on ways in which impairment information from this source can be compared to CAFO data, such as animal density or number of operations, to inform efforts to address water quality impacts from CAFOs.

Although on a separate track from this proposed rule, EPA is currently in the process of developing a rulemaking to amend reporting requirements for livestock operations on air emissions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 103 and (Emergency Planning & Community Right-to-Know Act) EPCRA section 304. This information collection effort may offer an alternative means of collecting data on livestock operations that would meet the Agency's Clean Water Act needs. As the Agency moves forward with the CERCLA/EPCRA reporting requirements

proposed rulemaking, there is an opportunity to explore how to leverage reporting to EPA from livestock operations to meet information needs under CERCLA/EPCRA and the CWA simultaneously. EPA solicits comment on ways in which this could be achieved to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

f. Other Sources of Data

Nongovernmental entities have published reports on CAFOs, such as the Food & Water Watch Report—*Factory Farm Nation: How American Turned Its Livestock Farms into Factories* and the Pew Commission report—*Putting Meat on the Table: Industrial Farm Animal Production in America.* These reports provide helpful background information and case studies. EPA currently uses the results of these studies to identify research needs but solicits comments on how such reports could enhance additional EPA efforts to reduce water quality impairments from CAFOs.

Extension agents and conservation programs also have information on CAFOs. EPA solicits comment on how the Agency could work with state cooperative extension programs, land grant universities and other conservation programs to gather information on CAFOs and to coordinate efforts to protect water quality. In general, these sources only release aggregated data and may not specifically focus on operations that meet EPA's definition of a CAFO.

In summary, through this alternative approach, EPA could combine a variety of existing data sources to determine where CAFOs are located and overlay this information with existing data on impaired waterbodies to determine where regulatory activities should be focused. While existing data sources are not consistent and are not comprehensive nationwide, the Agency seeks comment on how these sources, as well as additional sources not described herein, could be used collectively to protect water quality from CAFO discharges rather than promulgating a survey requirement for all CAFOs to provide information.

2. Alternative Mechanisms for Promoting Environmental Stewardship and Compliance

Under this alternative approach, EPA would expand its network of compliance assistance, outreach tools and partnerships with industry to assist in addressing the most significant water quality problems. Comprehensive compliance assistance and outreach efforts are tools a regulatory program can use in partnerships with industry to proactively protect and maintain water quality.

EPA recognizes that stewardship and recognition programs, education or technical assistance programs and incentive based programs, often carried out in coordination with other partners such as states, industry, or USDA, could result in improvements in industry practices more quickly than a data collection effort. Two current examples of such programs are: (1) The Ag Center, (*http://www.epa.gov/agriculture*), which provides compliance and environmental stewardship information related to animal feeding operations and partners with USDA and state land grant universities to promote environmental stewardship and improve manure and nutrient management practices; and (2) EPA's partnership with USDA's extension program, offering a wide range of compliance and environmental stewardship information for livestock operators through the Livestock and Poultry Environmental Learning Center available at *http://www.extension.org/animal_manure_management.* EPA solicits comment on how best to use alternative mechanisms such as these to ensure CAFOs are implementing measures to protect water quality. This approach would not require a rulemaking; rather it would focus on the use of activities that already are authorized under existing regulations. The success of such efforts would depend in large part on coordination with EPA's state partners and the cooperation and assistance of industry and environmental groups.

3. Require Authorized States To Submit CAFO Information From Their CAFO Regulatory Programs and Only Collect Information From CAFOs if a State Does Not Report

This alternative regulatory approach, is a variation of the proposed approach and would require NPDES authorized state regulatory agencies to submit the information proposed by paragraph § 122.23(k)(2). Many states may know the universe of CAFOs in their state to ensure proper implementation and enforcement of the CWA's permitting requirements and to protect water quality.

Although EPA recognizes that states may not have information on all CAFOs in their state, this alternative approach would require states to provide information for CAFOs for which they do have information as part of their CAFO regulatory programs. As a result, the data EPA would collect would not necessarily be comprehensive. Under this approach, EPA would only require information from CAFOs where a state failed to provide the required information to EPA.

It is likely that a number of states already have the information that would be required by proposed paragraph § 122.23(k)(2) for NPDES permitted CAFOs. Some states require CAFOs that have not sought coverage under an NPDES permit to obtain a separate state permit. For example, Maryland requires CAFOs that discharge to obtain NPDES CAFO permits and CAFOs that do not discharge to obtain state Maryland Animal Feeding Operation (MAFO) permits. Other states may have access to other data sources for CAFOs that could be used to provide the information.

Under this alternative approach, each state would be required to report the information to EPA. States would be required to submit the information within a given timeframe, and EPA would compile that information into a database. CAFOs would be required to provide whatever information a state fails to provide.

EPA seeks comment on whether authorized states should be required to provide information from their CAFO regulatory programs on behalf of the CAFOs within their boundaries. EPA also seeks comment on whether it should allow states to submit data from CAFO from sources other than a state regulatory program. EPA also seeks comment on, if it selects this alternative, whether EPA should allow or require CAFOs to review the information in the database.

IV. Impact Analysis

A. Benefits and Costs Overview

When EPA issued the revised CAFO regulations on February 12, 2003, it estimated annual pollutant reductions due to the revisions at 56 million pounds of phosphorus, 110 million pounds of nitrogen and two billion pounds of sediment. This proposed rulemaking would not alter the benefits calculated in the 2003 rule. The effect of the proposed rule would be to enable full attainment of the benefits calculated in the 2003 rule by furnishing EPA with information on the universe of CAFOs. To date, EPA estimates that approximately 58 percent of CAFOs do not have NPDES permits. The information collected under this proposal would help ensure that CAFOs that discharge have NPDES permit coverage necessary to achieve these environmental benefits.

The proposed rulemaking would not alter any permitting requirements or the

technical requirements under the Effluent Limitations Guidelines and Standards (ELGs), so CAFOs would not incur any compliance costs associated with modifications to structures or operational practices. The only cost associated with this rule to affected entities is the reporting burden to provide the required information to EPA as specified in this proposal.

B. Administrative Burden Impacts

Since there is no change in technical requirements, cost impacts to CAFOs are exclusively due to changes in the information collection burden. To determine the administrative burden for the Paperwork Reduction Act (PRA) analysis, the Agency projected the burden that CAFOs would incur because of the new requirements.

To complete this projection, the Agency started with its current estimate of the total number of CAFOs in the U.S. and then examined the administrative burden that would be incurred by these operations. It is important to note that while EPA's estimates of CAFOs are adequate for purposes of completing the impact analyses required under statute and executive order, the data are insufficiently detailed for purposes of identifying precise locations of specific CAFOs or clusters of CAFOs, understanding their operational practices and assessing their potential environmental impacts.

EPA's most recent information on the number of CAFOs in the U.S. shows that as of 2010 there were approximately 20,000 CAFOs, both permitted and unpermitted. To estimate the reporting burden faced by these CAFOs under the proposed rule requirements, EPA examined its prior PRA analyses. These analyses had assumed that CAFOs applying for NPDES permit coverage would incur a nine hour administrative burden to complete and file NPDES permit applications or notices of intent. Based on comparing the reporting items for permit applications to the reporting items in the proposed rulemaking, EPA estimated that a CAFO would need one hour to gather and submit the information on the proposed survey form to EPA as indicated in the proposed rulemaking. This burden estimate reflects both the time to understand the reporting requirements as well as time to complete the survey form electronically or by paper, when necessary.

EPA's PRA analysis combines the updated estimates of numbers of CAFOs and the estimates of the reporting burden to project that CAFO operators would collectively experience an increase in total annual administrative burden of approximately $0.2 million under the first proposed option where all CAFOs would submit their information to EPA. The costs associated with the option to collect information only from CAFOs in focus watersheds would be a subset of these costs.

Under the requirements as laid out in proposed paragraph § 122.23(k)(5) for the first proposed option, state permitting authorities would not incur any administrative burden arising out of the rulemaking since CAFOs would report their information directly to EPA. States would have the option of submitting information on their CAFOs electronically; however, EPA anticipates that the states that would choose this option are those for whom this type of batch reporting would not impose an undue burden.

This **Federal Register** notice also includes an alternative approach that would require states to provide information on CAFOs in their state. EPA costed this alternative approach separately in the proposed rule supporting analysis. Under this approach, the reporting burden would shift from CAFOs to states since states would be responsible for reporting the data proposed to be collected to EPA. To complete a cost estimate for this approach, EPA estimated a cumulative incremental cost based on an assumption that all states would submit their CAFO records as paper files to the Agency. For purposes of costing this scenario, EPA estimated that it would take states one hour to prepare and submit records for 20 facilities. This labor burden combined with photocopying costs yielded a total state respondent average incremental annual cost of $16,391. EPA solicits comment on the burden analysis regarding the requirement for states to submit CAFO information from their regulatory programs.

The documentation in the public record on the PRA analysis for this proposed rulemaking discusses more fully the assumptions used to project the associated administrative burden, including the burden faced by CAFOs that subsequently may need to update any information submitted previously.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51,735; October 4, 1993), this proposed action is a ''significant regulatory action.'' Accordingly, EPA submitted this proposed action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this proposed action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this proposed action. This analysis is summarized in Section IV of this preamble above, entitled *Impact Analysis.* A copy of the supporting analysis is available in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA was assigned EPA ICR No. 1989.08.

The proposed rule would require CAFOs to provide EPA with basic facility information. This action would provide EPA with the information on the universe of CAFOs it needs to ensure compliance with the CWA. EPA projects that the proposed rule would cause CAFO operators to experience an increase in annual administrative burden of 6,960 labor hours annually, which translates into an increased annual administrative cost of $0.2 million. The increase in administrative costs is based on projecting submission costs for all CAFOs, and is derived exclusively from the recordkeeping and reporting requirements associated with submitting the required information to EPA as detailed in the proposed rule. EPA assumed for purposes of the PRA analysis that a CAFO would incur a labor burden of one hour for filing the required information. The proposed action would not impose any new capital costs on affected entities. The burden for the initial reporting is averaged over three years for purposes of calculating burden under the PRA. EPA requests comment on its estimate of burden and costs for CAFOs to comply with the reporting requirements in the two co-proposed rule options.

Under the proposed rule, states would have the option of providing EPA with datasets on their CAFOs with existing NPDES permits. However, the effort to generate these datasets is not costed as part of the ICR since EPA assumes that the states that choose to provide the datasets to EPA would be the ones for whom this task would not be overly

burdensome, and the burden the states would incur would be in lieu of a comparable burden avoided by CAFOs that the states reported for.

Additional details on the assumptions and parameters of the PRA analysis are available in the ICR document referenced above, which is available in the docket supporting this proposed rulemaking. Burden is defined at 5 CFR 1320.3(b).

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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, EPA has established a public docket for this proposed rule, which includes the ICR, under Docket ID number EPA–HQ–OW–2011–0188. Please submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send 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 October 21, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by November 21, 2011. The final rule would 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 a Federal 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 would 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 rule on small entities, small entity is defined as: (1) A small business based on Small Business Administration (SBA) size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this proposed action would not have a significant economic impact on a substantial number of small entities. This proposed rule does not change any of the substantive requirements for CAFO operators. While it does increase the net paperwork burden faced by facilities compared to the burden imposed under the 2003 CAFO rule, these incremental costs are small compared to the existing paperwork burden faced by CAFOs and represent an increase in annualized compliance costs that is significantly less than one percent of estimated annual sales for any of the affected entities. To reach this determination, EPA examined sales figures reported in USDA's publicly available aggregated data and concluded that it is unlikely that the estimated upper-bound burden impact of one hour per CAFO would exceed one percent of the average annual sales of any of the livestock operations for whom sales figures were reported.

Additionally, this proposed rule would not affect small governments, as the permitting authorities are state or Federal agencies and the information would be submitted directly to EPA.

EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by state, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. The proposed rule also presents an alternative approach that would require states to submit information on CAFOs. EPA determined that this alternative approach, which principally would involve photocopying, would also not result in a burden above the threshold. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule would contain no regulatory requirements that might significantly or uniquely affect small governments. There are no local or tribal governments authorized to implement the NPDES permit program and the Agency is unaware of any local or tribal governments who are owners or operators of CAFOs. Thus, this rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. Since the reporting under the proposed rule would require CAFOs to submit their information directly to EPA, 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 offer states the option of submitting information on behalf of the state's CAFOs. However, the proposed rule would not require states to adopt

this option; therefore, EPA does not consider this proposed rule to have a substantial impact on states. Thus, Executive Order 13132 does not apply to this proposed action.

EPA is requesting comment on alternative approaches for gathering CAFO information. One of these approaches would require States to submit information on their CAFOs. EPA examined costs associated with this alterative and concluded based on a conservative estimate of burden impacts that the alternative would not trigger federalism concerns.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed action 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), because there are currently no tribal governments authorized for the NPDES program. In addition, EPA is not aware of any Indian tribal governments that own CAFOs that would be subject to the proposed reporting requirements. Thus, Executive Order 13175 does not apply to this action.

This proposed rulemaking could have the effect of providing increased opportunities for the tribal governments to obtain information on all CAFOs within their governmental boundaries and, as such, may facilitate their interactions with entities of possible concern.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA would also distribute information on the outcome of the rulemaking process once the rulemaking action is finalized.

EPA solicits comment on the Agency's approach to meeting its obligations under E.O. 13175 for the proposed action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19,885; 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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency 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 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed action present a disproportionate risk to children. The benefits analysis performed for the 2003 CAFO rule determined that the rule would result in certain significant benefits to children's health. (Please refer to the *Benefits Analysis* in the record for the 2003 CAFO final rule.) This proposed action does not affect the environmental benefits of the 2003 CAFO rule.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This 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. EPA has concluded that this rule is not likely to have any adverse energy effects since CAFOs in general do not figure significantly in the energy market, and the regulatory revisions finalized in this rule are not likely to change existing energy generation or consumption profiles for CAFOs.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve the use of technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

EPA has determined that the information collected by this rule could benefit minority and low-income populations by providing information on nearby CAFOs with potential effects on neighboring communities. In addition, the Agency anticipates that the information to be collected under the rulemaking would aid EPA's consideration of environmental justice concerns as the Agency moves forward with implementation of the NPDES CAFO program.

As part of EPA's continued effort to meet its obligations under E.O. 12898, the Agency has completed an analysis to identify those portions of the country where there are both large numbers of CAFOs as well as concentrations of minority and low-income populations. These regions include parts of the Carolina lowlands, central California and the Delmarva Peninsula on the Chesapeake Bay.

EPA solicits comment on the ability of the questions as proposed to support consideration of environmental justice (EJ) concerns related to future design and implementation of the NPDES CAFO program. EPA seeks comment on what other questions beyond those proposed would support EJ concerns and be valuable to EJ communities. EPA welcomes suggestions for EJ groups who could help shape the Agency's outreach to EJ communities. EPA also seeks comment on its analysis supporting E.O. 12898, which shows where large numbers of CAFOs and EJ communities co-exist. The supporting analysis is contained in the docket for the proposed rulemaking.

United States Environmental Protection Agency
Washington, DC 20460 Form Approved

OMB No. 2040-0250

EPA ICR No. 1989.08

INFORMATION GATHERING SURVEY FORM FOR CONCENTRATED ANIMAL FEEDING OPERATIONS

SUBMISSION INFORMATION

Electronic Submission Waiver

☐ I hereby acknowledge a waiver from the use of EPA's electronic information management system because the use of such system will incur undue burden or expense over my use of this paper survey form. Briefly describe the reason why use of the electronic system causes undue burden or expense.

_____.

Please check the appropriate box. Check only one checkbox.

☐ First Submission
☐ Resubmission with changes to the information supplied previously
☐ Resubmission with no change to the information supplied previously
☐ Operation no longer a concentrated animal feeding operation (CAFO)

QUESTION 1. CONTACT INFORMATION

Provide contact information by completing the table below.

OWNER/OPERATOR INFORMATION or AUTHORIZED REPRESENTATIVE INFORMATION	
Name of the Owner/Operator OR Authorized Representative	
Primary Telephone for Owner/Operator or Authorized Representative	Email Address (if available)
Mailing Address	
Street/P.O. Box	City
State	Zip Code

QUESTION 2. LOCATION INFORMATION

Please provide the location of the production area either by 1) latitude and longitude (in decimal degrees); or by the street address of the CAFO's production area.

Geographic Latitude and Longitude of the Production Area	
Latitude:	Longitude:

OR

Address of the CAFO's Production Area	
Street Address	City
State	Zip Code

QUESTION 3. NPDES PERMIT INFORMATION

Does the CAFO have a current NPDES permit?

☐ No: Proceed to *Section 4. Type and Number of Animals* .

☐ Yes: Provide NPDES permit number and the date of issuance:

NPDES Permit No./Tracking No./ID:_____

Date of issuance: Month:_____Day:_____Year:_____

☐ Pending: Provide the date that the NOI or permit application was submitted for coverage under an NPDES permit:

Month:_____Day:_____Year:_____

QUESTION 4. TYPE AND NUMBER OF ANIMALS

Use the table to indicate the maximum number of animals for each animal type held either in open confinement including partially covered or housed totally under roof at the CAFO for a total of 45 days or more in the previous 12 months. The 45 days do not have to be consecutive.

4.1.1 ANIMAL TYPE	4.1.2 MAXIMUM NUMBER OF ANIMALS
❑ Mature Dairy Cows (milked or dry)	
❑ Veal Calves	
Cattle (not dairy or veal calves) ❑ Heifers ❑ Steers ❑ Bulls ❑ Cow/calf pairs	
❑ Swine (55 lbs. or over)	
❑ Swine (under 55 lbs.)	
❑ Horses	
❑ Sheep or Lambs	
❑ Turkeys	
❑ Chickens (Broilers)	
❑ Chickens (Layers)	
❑ Ducks	
❑ Other: Please Specify	

QUESTION 5. LAND APPLICATION

Where the CAFO land applies manure, litter, or process wastewater:

a. In the previous 12-months, how many acres of land under the control of the CAFO were available for applying the CAFO's manure, litter, and/or process wastewater? (Please include land owned by the CAFO, land that is rented or leased **from others,** and any land that is owned by the CAFO that is rented or leased **to others in which the owner or authorized representative of the CAFO retains nutrient management decisions)**. _____-_____acres

SIGNATURE REQUIREMENTS

All submissions provided pursuant to this information gathering survey form must be signed and dated by a responsible party in accordance with 40 CFR 122.22 for following certification statement:

I certify under penalty of law that I am the responsible party for a concentrated animal feeding operation (CAFO), identified as [Name of CAFO]. Based on my inquiry of the person or persons directly responsible for gathering the information, I certify that the information contained in or accompanying this submission, to the best of my knowledge and belief, is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature_____ Printed Name_____
Title_____
Date_____

INSTRUCTION SHEET

GENERAL INSTRUCTIONS

Defined Terms

Terms in italics below are specifically defined in the Survey Form Definitions section of these instructions. Refer to this section for specific meaning of these terms.

Purpose of Form

Owners of concentrated animal feeding operations (CAFOs) must use this survey form to submit the information required by 40 CFR 122.23(k).

Who Must File

Owners of CAFOs are required to submit the information specified at 40 CFR 122.23(k) regardless of whether the CAFO is required to seek NPDES permit coverage. For the purposes of this survey, a CAFO means an animal feeding operation (AFO) that is defined as a Large CAFO or Medium CAFO by 40 CFR 122.23(b), or that is designated as a CAFO in accordance with 40 CFR 122.23(c). Further definitions for the purpose of this form are in the section, Survey Form Definitions. The owners of AFOs that have not been designated and that do not confine the required number of animals to meet the definition of a Large or Medium CAFO are not required to submit information.

Where to Submit

Send the completed and signed survey form to:

U.S. EPA, Office of Water, Office of Wastewater Management, Mail Code 4203M, 1200 Pennsylvania Avenue, NW., Washington, DC 20460

When to Submit

Under proposed option 1, owners of CAFOs must submit the survey form to EPA [within 90 days after EPA makes available a list of CAFOs for which a state has provided the information] and under proposed option 2, owners of CAFOs must submit the survey form by [the deadline specified in a separate Federal Register Notice]. NPDES authorized states that choose to submit the information on behalf of a CAFO would be required to submit the information to EPA [within 90 days after the effective date of the rule]. Subsequently, under proposed option 1, owners of CAFOs not authorized by an NPDES permit must resubmit the survey form between [January 1 and June 1, 2022] and every subsequent tenth year thereafter between [January 1 and June 1]. The survey form provides a checkbox that indicates such resubmissions.

Entering Responses

CAFOs must provide the information on this survey form electronically except where electronic submission would cause an undue burden or expense. Electronic submissions may be made via the Agency's information management system. Please go to *www.epa.gov/npdes/afo* for more information on how to submit.

However, EPA is making paper filing available in recognition that not everyone has internet access. If using a hardcopy of the form to submit the information, use blue or black ink only to complete a hardcopy of the survey form. Mark the electronic submission waiver box and provide a reason why the respondent is providing the information by completing and submitting a hard copy of this survey form.

Please print clearly. Mark all applicable checkboxes with an ''X''.

Changes at the operation after the owner submits this information are not required to be reported, except that CAFOs not authorized by an NPDES permit must resubmit the survey form every 10 years as specified above.

Confidential Business Information

Regulations governing the confidentiality of business information are contained in the Code of Federal Regulations (CFR) at Title 40 Part 2, Subpart B. Under sections 2.208, business information is entitled to confidential treatment if, ''the business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position. You may assert a business confidentiality claim covering part or all of the information you submit, as described in 40 CFR 2.203(b):

''(b) Method and time of asserting business confidentiality claim. A business which is submitting information to EPA may assert a business confidentiality claim covering the information by placing on or attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice complying language such as 'trade secret', 'proprietary,' or 'company confidential.' Allegedly confidential portions of otherwise nonconfidential documents should be clearly identified by the business, and may be submitted separately to facility identification and handling by EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state''

If you claim any response as CBI, you must specify the portion of the response or document for which you assert a claim of confidentiality by reference to page numbers, paragraphs, and lines, or specify the entire response or document. This information must be provided as part of the submission of the completed survey form. Note that EPA will review the information submitted and may request your cooperation in providing information to identify and justify the basis of your CBI claim. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent of, and by means of, the procedures set forth in 40 CFR Part 2, Subpart B. In general, submitted information protected by a business confidentially claim may be disclosed to other employees, officers, or authorized representatives of the United States concerned with implementing the Clean Water Act.

SURVEY FORM INSTRUCTIONS

Submission Information

Please check the appropriate box to indicate whether the CAFO is supplying information for the first time or resubmitting the survey form. A CAFO may also voluntarily update their information if the operation is no longer a CAFO.

Section 1. Contact Information

Use legal names. Provide the mailing address for the owner of the CAFO or authorized representative. The address may be a business address, a post office box, or the address of the CAFO owner or authorized representative. A county road number may indicate the operation's street address.

Section 2. Location Information

Provide location of the production area either by the latitude and longitude for the production area or by the street address of the CAFO's production area. Please provide latitude or longitude in degree decimals. For CAFOs that have multiple production areas, such as facilities under common ownership, that either adjoin each other or use a common area or system for waste disposal, the entrance to the production area for the largest portion of the CAFO should be provided.

For the purposes of this form, the entrance to the production area may be a road leading to the confinement houses or the central point of access to the operation. This information is commonly included in a nutrient management plan or, alternatively, the respondent may determine the latitude and longitude for the entrance to the production area by using interactive maps available on the internet. Latitude or longitude information can be obtained at the following websites: *http://www.satsig.net/maps/lat-long-finder.htm, http://earth.google.com/,* and *http://www.census.gov/geo/landview/*. If the units for the CAFO's latitude or longitude is in minutes/seconds, this information can be readily converted through a variety of free internet applications.

The respondent need only provide either the CAFO's latitude and longitude or the street address of the CAFO's production area.

Section 3. NPDES Permit Information

Use the appropriate checkbox to indicate whether the CAFO has a current NPDES permit. A current NPDES permit would provide coverage to the CAFO as of the date the report is submitted. If you have an NPDES permit, check the ''Yes'' box and provide the NPDES permit number and the date of issuance for NPDES permit coverage. NPDES permit coverage may have been issued to the CAFO after submitting an individual NPDES permit application or a Notice of Intent (NOI) for coverage under a general NPDES permit. CAFOs should find their NPDES permit number on the copy of the permit for an individual permit or on the written notification from the permitting authority acknowledging receipt of the NOI. States may refer to the NPDES permit number as a tracking number, operating permit number, or state identification number. For example, Maryland identifies its general NPDES permit as ''MDG01,'' whereas, Missouri's general operating permit number ''MO–G010000.''

If you do not have an NPDES permit, check the ''No'' box and go to Section 4. Type and Number of Animals. If you applied for an NPDES permit but have not received any notice of coverage, please check the ''Pending'' box and provide the date that the NOI or NPDES permit application was submitted.

Section 4. Type and Number of Animals

Use the table to indicate the maximum number of animals for each animal type held either in open confinement including partially covered or housed totally under roof held at the CAFO for a total of 45 days or more in the previous 12 months.

CAFOs with multiple production cycles should provide the maximum number of animals confined for any given production cycle. Multiple production cycles are common at poultry and swine operations. CAFOs under common ownership should report the cumulative number of animals confined for 45 days or more.

It is important to note that the 45 days do not have to be consecutive, and the 12-month period does not have to correspond to the calendar year. The 12-month does not have to correspond to the calendar year. If an animal is confined at an operation for any portion of a day, it is considered to be confined for a full day. Please see definition of an animal feeding operation of these instructions.

EXAMPLE: A calf/cow operation that has the capacity to hold 2,000 head of cattle. The facility operates year-round and never confines less than 1,000 head of cattle at any one time. The facility has both pasture and partially opened barns. The operation meets the definition of a CAFO because: 1) it confines the required animal numbers to meet the Large CAFO threshold, 2) confines the animals for more than 45 days, and 3) the confinement area does not sustain vegetation. For the last 12-month period, the cow/calf operation split its calving between fall and spring. During the fall, the operation confined 1,500 head of cattle for 45 days or more and during the spring, the operation confined 1,000 head of cattle. This operation should report in the table under calf/cow pairs and list 1,500 under the column for ''Open Confinement (include partially covered)''.

Section 5. Land Application

Provide the amount of acres available for land application. Report in whole acres, rounding up to the nearest whole number if necessary. Include land associated with the CAFO, whether in production or not. Include all land that the owner or operator owned or rented during the previous 12-month period, even if only for part of the year, and any land that is owned by or rented or leased to others in which the owner or operator of the CAFO retains nutrient management decisions. This may also include situations where a farmer releases control over the land application area, and the CAFO determines when and how much manure is applied to fields not otherwise owned, rented, or leased by the CAFO. Exclude residential or other land not used for agricultural purposes.

Section 6. Signature Requirements

A responsible official in accordance with 40 CFR 122.22 must sign the certification statement provided on the form. Print the name of the signatory. Provide the date of signature and title of the signatory.

SURVEY FORM DEFINITIONS

The definitions provided below are for the purposes of this information gathering survey form. All terms not defined below shall have their ordinary meaning, unless such terms are defined in the Clean Water Act, 33 U.S.C. § 1362, or its implementing regulations found at 40 CFR parts 122 and 412 respectively, in which case the statutory or regulatory definitions apply.

1. ''Animal feeding operation'' means a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be, stabled, confined, and fed or maintained for a total of 45 days or more in any 12-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. (40 CFR 122.23(b)(1)). Two or more AFOs under common ownership are considered to be a single AFO for purposes of determining the number of animals at an operation, if they adjoin each other, are next to, sharing property lines or if they use a common area or system for manure management or the disposal of wastes. (40 CFR 122.23(b)(2)).

2. ''Authorized representative'' means an individual who is involved with the management or representation of the CAFO. An authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO.

3. ''Concentrated animal feeding operation'' (CAFO) means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph, or that is designated as a CAFO in accordance with paragraph (c) of this section. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

4. ''Large concentrated animal feeding operation'' means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories: (i) 700 mature dairy cows, whether milked or dry; (ii) 1,000 veal calves; (iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (iv) 2,500 swine each weighing 55 pounds or more; (v) 10,000 swine each weighing less than 55 pounds; (vi) 500 horses; (vii) 10,000 sheep or lambs; (viii) 55,000 turkeys; (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system; (x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system; (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system).

5. ''Manure'' includes manure, or bedding or bedding material, hay, compost, and raw material or other materials commingled with manure that is to be land applied or set aside for disposal.

6. ''Medium concentrated animal feeding operation'' means any AFO with the type and number of animals that fall within any of the ranges listed in paragraph (b)(6)(i) of this section and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if: (i) The type and number of animals that it stables or confines falls within any of the following ranges: (A) 200 to 699 mature dairy cows, whether milked or dry; (B) 300 to 999 veal calves; (C) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (D) 750 to 2,499 swine each weighing 55 pounds or more; (E) 3,000 to 9,999 swine each weighing less than 55 pounds; (F) 150 to 499 horses; (G) 3,000 to 9,999 sheep or lambs; (H) 16,500 to 54,999 turkeys; (I) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system; (J) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; (K) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system; (L) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or (M) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and (ii) Either one of the following conditions are met: (A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or (B) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

7. ''Owner or operator'' means the property owner or any person who owns, leases, operates, controls, or supervises the operations at the CAFO. Any person who operates an AFO subject to regulation under the NPDES program may be involved with making day-to-day decisions about, or doing, such things as planting, harvesting, feeding, waste management, and/or marketing. The operator can include, but is not limited to, the owner, a member of the owner's household, a hired manager, a tenant, a renter, or a sharecropper.

8. ''NPDES Permit'' means an authorization, license, or equivalent control document issued by EPA or an ''approved State'' to implement the requirements of the CWA NPDES permitting program and implementing regulations at 40 CFR parts 122, 123, and 124.

9. ''Process wastewater'' means water directly or indirectly used in the operation of the AFO including but not limited to: spillage or overflow from animal or poultry watering systems; washing; cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproduct including, manure, litter, feed, milk, eggs, or bedding.

10. ''Producer'' means any grower, breeder, or person who otherwise raises animals for production.

11. ''Production area'' means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

12. ''Storage pond'' means an earthen impoundment used to retain manure, bedding, process wastewater (such as parlor water) and runoff liquid.

13. ''Waste'' and/or ''wastes'' means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste, including but not limited to manure, litter, and/or process wastewater, discharged into water.

Federal regulations require the certification to be signed as follows:

A. For a corporation, by a principal executive officer of at least the level of vice president.

B. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

C. For a municipality, State, Federal, or other public facility, by either a principal executive officer or ranking elected official.

Paper Reduction Act Notice

The public reporting and recordkeeping burden for this collection of information is estimated to average one hour per response. The estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Include the OMB control number in any correspondence. Do not send the completed survey form to this address.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 14, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; Executive Order 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding an entry in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* * * * *	
EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	
* * * * *	
122.23(k)	2040–0250
* * * * *	

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

3. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

4. Section 122.23 is amended by adding paragraph (k) to read as follows:

§ 122.23 Concentrated animal feeding operations (applicable to state NPDES programs, see § 1223.25)

* * * * *

Option 1 for Paragraph (k)

(k) *Information Gathering Survey for CAFOs.* (1) *All CAFOs must submit information to EPA.* The owner(s) or operator(s) of a CAFO, as defined in 40 CFR 122.23(b), must provide the information specified in paragraph (k)(2) of this section to the Administrator, except in cases where a state voluntarily fulfills this requirement on behalf of the owner(s) or operator(s) of CAFOs located within that state, according to the procedures specified in paragraph (k)(5) of this section.

(2) *Information to be submitted to the Administrator.* The owner or operator of a CAFO or a state must provide the following information to the Administrator:

(i) The legal name of the owner of the CAFO or an authorized representative, and their mailing address, e-mail address (if available) and primary telephone number. (An authorized representative must be an individual who is involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO);

(ii) The location of the CAFO's production area identified by the latitude and longitude; or by the street address;

(iii) If the owner or operator has NPDES permit coverage as of [the effective date of final rule], the date of issuance of coverage under the NPDES permit, and the permit number. If the owner or operator has submitted an NPDES permit application or a Notice of Intent as of [the effective date of final rule] but has not received coverage, the date the owner or operator submitted the NPDES permit application or Notice of Intent;

(iv) For the previous 12-month period, identification of each animal type confined either in open confinement including partially covered areas, or housed totally under roof at the CAFO for 45 days or more, and the maximum number of each animal type confined at the CAFO for 45 days or more; and

(v) Where the owner or operator land applies manure, litter and process wastewater, the total number of acres under the control of the owner or operator available for land application.

(3) *Submission process for CAFOs.* The owner or operator of a CAFO must submit the information specified in paragraph (k)(2) of this section using the survey form provided by the Administrator. The owner or operator of a CAFO must submit the survey form to the Administrator, either by certified mail, or electronically, through the Agency's electronic information management system by the deadline specified in (k)(4) of this section. If submitting the survey form by certified mail, the owner or operator of a CAFO must indicate on the survey form that an electronic submission waiver applies and provide justification as to why

electronic submission would cause an undue burden or expense.

(4) *Deadline for submissions by owners or operators of CAFOs. (i) An operation defined or designated as a CAFO as of [the effective date of the final rule], where a state did not provide the required information to EPA in accordance with paragraph (k)(5) of this section.* Where a state does not provide the information required by paragraph (k)(2) of this section in accordance with paragraph (k)(5) of this section, a CAFO must submit the information required by paragraph (k)(2) in accordance with paragraph (k)(3) [within 90 days] after EPA makes available a list of CAFOs for which a state has provided the information.

(ii) *CAFOs for which a state has provided the required information to EPA in accordance with paragraph (k)(5) of this section.* CAFOs for which a state submitted the information required by paragraph (k)(2) of this section in accordance with paragraph (k)(5) of this section, may, but are not required to, provide information to EPA [within 90 days] after EPA makes available a list of CAFOs for which a state has provided the information.

(iii) *Resubmission requirement for CAFOs not authorized by an NPDES permit.* CAFOs not authorized by an NPDES permit must submit the information specified in paragraph (k)(2) of this section or update information previously submitted, pursuant to the procedures specified by paragraph (k)(3) of this section, between January 1 and June 1 every ten years following 2012 (*e.g.,* 2022, 2032, *etc.*). The periodic submission requirement applies to all CAFOs not authorized by an NPDES permit at the time of these dates, whether or not CAFOs at one point had permit coverage at any time prior to these dates. CAFOs established after the first 2012 information submission period that do not have NPDES permits are subject to this ten-year resubmission requirement.

(5) *Elements of state voluntary submissions.* In order to fulfill the requirements of paragraphs (k)(1) and (k)(2) of this section on behalf of CAFOs, a state must:

(i) Use the Agency's electronic information management system to submit the information.

(ii) Submit information from the state's most recent application process, from a CAFO's most recent annual report, or from another current information source,

(iii) Submit the information [within 90 days after the effective date of the rule].

Option 2 for Paragraph (k)

(k) *Information Gathering Survey for CAFOs in Focus Watersheds. (1) CAFOs in focus watersheds must submit information to EPA.* The owner(s) or operator(s) of a CAFO, as defined in 40 CFR 122.23(b), located in a focus watershed as identified by EPA as provided in paragraph (k)(2) of this section, must, if so notified as provided in paragraph (k)(3), provide the information specified in paragraph (k)(4) of this section to the Administrator according to the procedures specified in paragraph (k)(5) of this section by the deadline specified in (k)(6) of this section.

(2) *How will EPA identify a focus watershed*? To identify a focus watershed, EPA shall:

(i) Determine that the area has water quality concerns associated with CAFOs, including but not limited to nutrients (nitrogen and phosphorus), pathogens (bacteria, viruses, protozoa), total suspended solids (turbidity) and organic enrichment (low dissolved oxygen), and consider one or more of the following criteria;

(A) High priority watershed due to other factors such as vulnerable ecosystems, drinking water source supplies, watersheds with high recreational value, or watersheds that are outstanding natural resource waters (Tier 3 waters);

(B) Vulnerable soil type;

(C) High density of animal agriculture; and/or

(D) Other relevant information; and

(ii) Define the geographical location and extent of the focus watershed using Zip Codes, counties, hydrologic unit codes (HUCs), or other relevant information that would define the geographical location and extent of an area.

(3) *How will EPA notify CAFOs in a focus watershed if they have an obligation to provide information?* If EPA is unable, after reasonable effort, to obtain the information in paragraph (k)(4) of this section from all CAFOs in a focus watershed, EPA will:

(i) Conduct outreach in the focus watershed regarding the need for CAFOs to submit the information specified in paragraph (k)(4) of this section for a minimum of [30] days.

(ii) Provide notice to the CAFOs of the need to submit information and the timing for such request by notice in the **Federal Register** and other appropriate means in the focus watershed.

(4) *Information to be submitted to the Administrator.* The owner or operator of a CAFO located in a focus watershed identified by EPA as provided in paragraph (k)(2) of this section must provide the following information to the Administrator, if so notified in accordance with paragraph (k)(3) of this section:

(i) The legal name of the owner of the CAFO or an authorized representative, and their mailing address, e-mail address (if available) and primary telephone number. (An authorized representative must be an individual who in involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO);

(ii) The location of the CAFO's production area identified by the latitude and longitude; or by the street address;

(iii) If the owner or operator has NPDES permit coverage as of [the effective date of final rule], the date of issuance of coverage under the NPDES permit, and the permit number. If the owner or operator has submitted an NPDES permit application or a Notice of Intent as of [the effective date of final rule] but has not received coverage, the date the owner or operator submitted the NPDES permit application or Notice of Intent;

(iv) For the previous 12-month period, identification of each animal type confined either in open confinement including partially covered areas, or housed totally under roof at the CAFO for 45 days or more, and the maximum number of each animal type confined at the CAFO for 45 days or more; and

(v) Where the owner or operator land applies manure, litter and process wastewater, the total number of acres under the control of the owner or operator available for land application.

(5) *Submission process for CAFOs in focus watersheds.* The owner or operator of a CAFO located in a final focus watershed, if so notified by EPA, must submit the information specified in paragraph (k)(4) of this section using the survey form provided by the Administrator. The owner or operator of a CAFO located in a focus watershed and so notified must submit the survey form to the Administrator, either by certified mail, or electronically, through the Agency's electronic information management system by the deadline specified in paragraph (k)(5) of this section. If submitting the survey form by certified mail, the owner or operator of a CAFO located in a focus watershed must indicate on the survey form that an electronic submission waiver applies and provide justification as to why

electronic submission would cause an undue burden or expense.

(6) *Deadline for submissions by owners or operators of CAFOs in focus watersheds.* The owner or operator of a CAFO located in a focus watershed and so notified must submit the information required by paragraph(k)(4) of this section in accordance with paragraph (k)(5) of this section [within 90 days] after EPA notifies CAFOs of such obligation in accordance with paragraph (k)(3).

[FR Doc. 2011–27189 Filed 10–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2010–0937–201118; FRL–9480–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Kentucky Portion of the Cincinnati-Hamilton 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On January 27, 2011, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division of Air Quality (DAQ), submitted a request to redesignate the Kentucky portion of the Cincinnati-Hamilton, Ohio-Kentucky-Indiana (hereafter referred to the ''Tri-state Cincinnati-Hamilton Area'') fine particulate matter ($PM_{2.5}$) nonattainment area to attainment for the 1997 Annual $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Kentucky portion of the Tri-state Cincinnati-Hamilton Area. The Tri-state Cincinnati-Hamilton Area is comprised of Boone, Campbell, and Kenton Counties in Kentucky (hereafter referred to as the ''Northern Kentucky Area'' or ''Area''); Butler, Clermont, Hamilton, and Warren Counties in Ohio; and a portion of Dearborn County in Indiana. EPA is proposing to approve the redesignation request for Boone, Campbell, and Kenton Counties, along with the related SIP revision, including the Commonwealth's plan for maintaining attainment of the $PM_{2.5}$ standard in the Northern Kentucky Area. EPA is also proposing to approve Kentucky's nitrogen oxides (NO_X) and $PM_{2.5}$ Motor Vehicle Emission Budgets (MVEBs) for 2015 and 2021 for the Northern Kentucky Area. On December 9, 2010, and January 25, 2011, respectively, Ohio and Indiana submitted requests to redesignate their portion of the Tri-state Cincinnati-Hamilton Area to attainment for the 1997 $PM_{2.5}$ NAAQS. EPA is taking action on the requests from Ohio and Indiana in an action separate from these proposed actions.

DATES: Comments must be received on or before November 21, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0937, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2010–0937, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–0937. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *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 e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Joel Huey may be reached by phone at (404) 562–9104, or via electronic mail at *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What are the actions EPA is proposing to take?

In this action, EPA is proposing to make a determination that this Area is continuing to attain the 1997 Annual $PM_{2.5}$ NAAQS [1] and to take several additional actions related to Kentucky's request to redesignate the Northern Kentucky Area which are summarized as follows and described in greater detail throughout this notice of proposed rulemaking: (1) To redesignate the Northern Kentucky Area portion of the Tri-state Cincinnati-Hamilton Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS; (2) to approve, under CAA section 172(c)(3), the emissions inventory submitted with the maintenance plan for Northern Kentucky; and (3) to approve, under section 175A of the CAA, the Northern Kentucky Area's 1997 Annual $PM_{2.5}$ NAAQS maintenance plan into the Kentucky SIP, including the associated MVEBs. In addition, and related to today's actions, EPA is also notifying the public of the status of EPA's adequacy determination for the Northern Kentucky Area MVEBs for the $PM_{2.5}$ NAAQS.

First, EPA proposes to determine that, if EPA's proposed approval of the 2008 baseline emissions inventory for the Northern Kentucky Area is finalized, the Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. In this action, EPA is proposing to approve a request to change the legal designation of Boone, Campbell, and Kenton Counties from nonattainment to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. The emissions inventory for the Northern Kentucky Area is being proposed for approval today.

Second, EPA is proposing to approve under the CAA, Kentucky's 2008 emissions inventory for the Northern Kentucky Area (under CAA section 172(c)(3)). Kentucky selected 2008 as the attainment emissions inventory year for the Northern Kentucky Area. This attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 1997 Annual $PM_{2.5}$ NAAQS.

Third, EPA is proposing to approve Kentucky's 1997 Annual $PM_{2.5}$ NAAQS maintenance plan for the Northern Kentucky Area (such approval being one of the CAA criteria for redesignation to attainment status). Since maintenance of the standard in the Northern Kentucky Area is based in large part on maintaining control of power plant emissions, promulgation of the Transport Rule, also known as the Cross State Air Pollution Rule (CSAPR),[2] was necessary to make recent reductions in power plant emissions (or equivalent reductions at other power plants) permanent and enforceable. The maintenance plan is designed to help keep the Northern Kentucky Area in attainment of the 1997 Annual $PM_{2.5}$ NAAQS through 2021. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes NO_X and $PM_{2.5}$ MVEBs for the years 2015 and 2021 for the Northern Kentucky Area. EPA is proposing to approve (into the Kentucky SIP) the 2015 and 2021 MVEBs that are included as part of Kentucky's maintenance plan for the 1997 Annual $PM_{2.5}$ NAAQS.

Further, EPA proposes to make the determination that the Tri-state Cincinnati-Hamilton Area is continuing to attain the 1997 Annual $PM_{2.5}$ NAAQS and that all other redesignation criteria have been met for the Northern Kentucky Area. The bases for EPA's determination for the Area are discussed in greater detail below.

EPA is also notifying the public of the status of EPA's adequacy process for the newly-established NO_X and $PM_{2.5}$ MVEBs for 2015 and 2021 for the Northern Kentucky Area. The adequacy comment period for the Northern Kentucky Area MVEBs began on February 14, 2011, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (*http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*). The Adequacy comment period for these MVEBs closed on March 16, 2011. No adverse comments were received during the Adequacy public comment period. Please see section VIII of this proposed rulemaking for further explanation of this process and for more details on the MVEBs.

Today's notice of proposed rulemaking is in response to Kentucky's January 27, 2011, SIP submittal, which requests redesignation of the Northern Kentucky Area portion of the Tri-state Cincinnati-Hamilton Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS and addresses the specific issues summarized above and the necessary elements for redesignation described in section 107(d)(3)(E) of the CAA.

II. What is the background for EPA's proposed actions?

Fine particle pollution can be emitted directly or formed secondarily in the atmosphere. The main precursors of $PM_{2.5}$ are sulfur dioxide (SO_2), NO_X, ammonia and volatile organic compounds (VOCs). Unless otherwise noted by the State or EPA, ammonia and VOCs are presumed to be insignificant contributors to $PM_{2.5}$ formation, whereas SO_2 and NO_X are presumed to be significant contributors to $PM_{2.5}$ formation. Sulfates are a type of secondary particle formed from SO_2 emissions of power plants and industrial facilities. Nitrates, another common type of secondary particle, are formed from NO_X emissions of power plants, automobiles, and other combustion sources.

On July 18, 1997, EPA promulgated the first air quality standards for $PM_{2.5}$. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of annual mean $PM_{2.5}$ concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 $\mu g/m^3$, based on a 3-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, at 71 FR 61144, EPA retained the annual average NAAQS at 15 $\mu g/m^3$ but revised the 24-hour NAAQS to 35 $\mu g/m^3$, based again on the 3-year average of the 98th percentile of 24-hour concentrations.[3] Under EPA regulations at 40 CFR part 50, the primary and secondary 1997 Annual $PM_{2.5}$ NAAQS are attained when the annual arithmetic mean concentration, as determined in accordance with 40

[1] On September 29, 2011, at 76 FR 60373, EPA determined that the Tri-state Cincinnati-Hamilton Area attained the 1997 $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010, and that the Area was continuing to attain the $PM_{2.5}$ standard with monitoring data that was currently available.

[2] *See* ''Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States'' (76 FR 48208, August 8, 2011).

[3] In response to legal challenges of the annual standard promulgated in 2006, the United States Court of Appeals for the District of Columbia circuit (DC Cir.) remanded this NAAQS to EPA for further consideration. *See american Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA*, 559 F.3D 512 (DC Cir. 2009). However, given that the 1997 and 2006 Annual NAAQS are essentially identical, attainment of the 1997 Annual NAAQS would also indicate attainment of the remanded 2006 Annual NAAQS.

CFR part 50, Appendix N, is less than or equal to 15.0 μg/m^3 at all relevant monitoring sites in the subject area over a 3-year period.

On January 5, 2005, at 70 FR 944, and supplemented on April 14, 2005, at 70 FR 19844, EPA designated the Tri-state Cincinnati-Hamilton Area as nonattainment for the 1997 $PM_{2.5}$ NAAQS. In that action, EPA defined the 1997 $PM_{2.5}$ Cincinnati-Hamilton Area to include Boone, Campbell, and Kenton Counties in Kentucky, Butler, Clermont, Hamilton, and Warren Counties in Ohio, and a portion of Dearborn Country containing the Lawrenceburg Township in Indiana. On November 13, 2009, at 74 FR 58688, EPA promulgated designations for the 24-hour standard established in 2006, designating the Tri-state Cincinnati-Hamilton Area as attainment for this NAAQS. That action clarified that the Tri-state Cincinnati-Hamilton Area was classified unclassifiable/attainment for the 24-hour NAAQS promulgated in 1997. EPA did not promulgate designations for the annual average NAAQS promulgated in 2006, since the NAAQS was essentially identical to the annual NAAQS promulgated in 1997. Therefore, the Tri-state Cincinnati-Hamilton Area is designated nonattainment for the annual NAAQS promulgated in 1997, and today's action only addresses this designation.

All 1997 $PM_{2.5}$ NAAQS areas were designated under subpart 1 of title I, part D, of the CAA. Subpart 1 contains the general requirements for nonattainment areas for any pollutant governed by a NAAQS and is less prescriptive than the other subparts of title I, part D. On April 25, 2007, at 72 FR 20664, EPA promulgated its $PM_{2.5}$ Implementation Rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and Tribal plans to implement the 1997 $PM_{2.5}$ NAAQS. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the NAAQS, as discussed below.

On May 12, 2005, EPA published the Clean Air Interstate Rule (CAIR), which addressed the interstate transport requirements of the CAA and required states to significantly reduce SO_2 and NO_X emissions from power plants (70 FR 25162). The associated Federal Implementation Plans (FIPs) were published on April 28, 2006 (71 FR 25328). However, on July 11, 2008, the DC Circuit Court issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety (*North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir., 2008)). EPA petitioned for rehearing, and the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs (*North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir., 2008)). The Court left CAIR in place to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaces it with a rule consistent with the Court's opinion (*id.* at 1178). The Court directed EPA to ''remedy CAIR's flaws'' consistent with its July 11, 2008, opinion but declined to impose a schedule on EPA for completing that action (*id*). As a result of these court rulings, the power plant emission reductions that resulted solely from the development, promulgation, and implementation of CAIR, and the associated contribution to air quality improvement that occurred solely as a result of CAIR in the Northern Kentucky Area could not be considered to be permanent.

On August 8, 2011, EPA published the Cross State Air Pollution Rule (CSAPR) in the **Federal Register** under the title, ''Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States'' (76 FR 48208, August 8, 2011) to address interstate transport of emissions and resulting secondary air pollutants and to replace CAIR. The CAIR emission reduction requirements limit emissions in Kentucky and states upwind of Kentucky through 2011, and the CSAPR requires similar or greater reductions in the relevant areas in 2012 and beyond. The emission reductions that the CSAPR mandates may be considered to be permanent and enforceable. In turn, the air quality improvement in the Northern Kentucky Area that has resulted from electric generating units emission reductions associated with CAIR (as well as the additional air quality improvement that would be expected to result from full implementation of the CSAPR) may also be considered to be permanent and enforceable. EPA proposes that the requirement in section 107(d)(3)(E)(iii) has now been met because the emission reduction requirements of CAIR address emissions through 2011 and EPA has now promulgated CSAPR which requires similar or greater reductions in the relevant areas in 2012 and beyond. Because the emission reduction requirements of CAIR are enforceable through the 2011 control period, and because CSAPR has now been promulgated to address the requirements previously addressed by CAIR and gets similar or greater reductions in the relevant areas in 2012 and beyond, EPA is proposing to determine that the emission reductions that led to attainment in the Northern Kentucky Area can now be considered permanent and enforceable. Therefore, EPA proposes to find that the transport requirement of CAA section 107(d)(3)(E)(iii) has been met for the Northern Kentucky Area.

The 3-year ambient air quality data for 2007–2009 indicated no violations of the 1997 $PM_{2.5}$ NAAQS for the Tri-state Cincinnati-Hamilton Area. As a result, on January 27, 2011, Kentucky requested redesignation of the Northern Kentucky Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the 1997 Annual $PM_{2.5}$ NAAQS for 2007–2009, indicating that the 1997 $PM_{2.5}$ NAAQS had been achieved for the entire Tri-state Cincinnati-Hamilton Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). From 2007 through the present, the annual $PM_{2.5}$ design values for the Tri-state Cincinnati-Hamilton Area have declined. While annual $PM_{2.5}$ concentrations are dependent on a variety of conditions, the overall downtrend in annual $PM_{2.5}$ concentrations in the Tri-state Cincinnati-Hamilton Area can be attributed to the reduction of emissions, as will be discussed in more detail in section V of this proposed rulemaking.

III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided the following criteria are met: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable

to the area under section 110 and part D of title I of the CAA.

EPA has provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (April 16, 1992, 57 FR 13498, and supplemented on April 28, 1992, 57 FR 18070) and has provided further guidance on processing redesignation requests in the following documents:

1. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''Calcagni Memorandum'');

2. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and

3. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

IV. Why is EPA proposing these actions?

On January 27, 2011, the Commonwealth of Kentucky, through DAQ, requested the redesignation of the Northern Kentucky Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. EPA's preliminary evaluation indicates that the Tri-state Cincinnati-Hamilton Area has attained the 1997 Annual $PM_{2.5}$ NAAQS and has met the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. Additionally, EPA is proposing to approve the 2008 baseline emission inventory under section 172(c)(3) because Kentucky has used methodology consistent with EPA guidance and implementing regulations to develop this inventory. EPA is also announcing the status of its adequacy determination for both the NO_X and $PM_{2.5}$ MVEBs for 2015 and 2021, which are relevant to the requested redesignation.

V. What is EPA's analysis of the request?

As stated above, in accordance with the CAA, EPA proposes in today's action to: (1) Redesignate the Northern Kentucky Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS; (2) approve the Northern Kentucky Area emissions inventory submitted with the maintenance plan; and (3) approve into the Kentucky SIP, the Northern Kentucky's 1997 Annual $PM_{2.5}$ NAAQS maintenance plan, including the associated MVEBs. These actions are based upon EPA's determination that the Tri-state Cincinnati-Hamilton Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS and that all other redesignation criteria have been met for the Northern Kentucky Area, provided EPA approves the emissions inventory submitted with the maintenance plan. The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs of this section.

As stated above, in accordance with the CAA, EPA proposes to make the determination that the Tri-state Cincinnati-Hamilton Area is continuing to attain the 1997 Annual $PM_{2.5}$ NAAQS and that all other redesignation criteria have been met for the Northern Kentucky Area. The bases for EPA's determination for the Area are discussed in greater detail below.

Criteria (1)—The Tri-state Cincinnati-Hamilton Area Has Attained the 1997 Annual $PM_{2.5}$ NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). EPA is proposing to determine that the Tri-state Cincinnati-Hamilton Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS. For $PM_{2.5}$, an area may be considered to be attaining the 1997 Annual $PM_{2.5}$ NAAQS if it meets the 1997 Annual $PM_{2.5}$ NAAQS, as determined in accordance with 40 CFR 50.13 and Appendix N of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain these NAAQS, the 3-year average of the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 $\mu g/m^3$ at all relevant monitoring sites in the subject area over a 3-year period. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

On September 29, 2011, at 76 FR 60373, EPA finalized a determination that the Tri-state Cincinnati-Hamilton Area was attaining the 1997 $PM_{2.5}$ NAAQS, and that this Area attained the 1997 $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2011. For that action EPA reviewed $PM_{2.5}$ monitoring data from monitoring stations in the Tri-state Cincinnati-Hamilton Area for the 1997 Annual $PM_{2.5}$ NAAQS for 2007–2009. The public was provided a 30-day comment period to review and provide comment to EPA on the analysis of this data. EPA did not receive any comments, adverse or otherwise, on the Agency's determination that the Area had attaining data for the period of 2007–2009, and continued to have attaining data through the finalization of EPA's proposal in September 2011. As such, EPA is not seeking additional comment in today's action regarding this data. As noted in EPA's September 29, 2011, action these data were quality-assured and recorded in AQS. The annual mean of the $PM_{2.5}$ concentrations for 2007–2010 and the 3-year average of these values (*i.e.,* design values) are summarized in Table 1.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE TRI-STATE CINCINNATI-HAMILTON AREA FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS ($\mu G/M^3$)

Location	County	Monitor ID	Annual mean concentrations				3-Year design values	
			2007	2008	2009	2010[2]	2007–2009	2008–2010[4]
John Hill	Campbell, KY	21–037–3002	14.36	11.83	11.34	11.8	12.3	11.6
Dixie	Kenton, KY	21–117–0007	14.20	11.99	11.04	*12.1	12.4	11.5
Bonita & St John	Butler, OH	39–017–0003	15.40	13.80	12.83	13.6	13.9	13.4
Nilles	Butler, OH	39–017–0016	14.94	13.75	13.08	13.5	13.8	13.4
Hook Field	Butler, OH	39–017–1004	14.62	n/a	n/a	n/a	14.6	n/a
Clermont Center	Clermont, OH	39–025–0022	14.01	11.75	11.01	12.0	12.2	11.6
Grooms	Hamilton, OH	39–061–0006	14.63	12.48	12.11	*12.7	13.1	12.4
Seymour & Vine	Hamilton, OH	39–061–0014	16.59	15.06	13.38	14.8	15.0	14.4

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE TRI-STATE CINCINNATI-HAMILTON AREA FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS (μG/M³)—Continued

Location	County	Monitor ID	Annual mean concentrations				3-Year design values	
			2007	2008	2009	2010[2]	2007–2009	2008–2010[4]
WM. Howard Taft	Hamilton, OH	39–061–0040	15.09	12.62	12.73	13.3	13.4	12.9
W. 8th	Hamilton, OH	36–061–0042	15.90	14.40	13.71	14.5	14.6	14.2
E. Kemper	Hamilton, OH	36–061–0043	14.85	13.32	n/a	n/a	14.1	n/a
Sherman	Hamilton, OH	39–061–7001	15.09	13.74	12.97	14.1	14.0	13.6
Murray	Hamilton, OH	39–016–8001	16.07	14.40	13.40	*17.6	14.6	n/a
Southeast	Warren, OH	39–165–0007	13.98	11.92	11.70	11.9	12.4	11.8

*Design value does not meet data completeness requirements due to closure or start-up of the monitoring stations.

[4]The preliminary $PM_{2.5}$ ambient air quality data for 2010 for the Tri-state Cincinnati-Hamilton Area indicates that the Area is attaining the NAAQS with all 2008–2010 design values below the NAAQS of 15.0 μg/m³.

As discussed above, the design value for an area is the highest annual mean concentration recorded at any monitor in the area for a 3-year period. Therefore, the 3-year design value (2007–2009) submitted by Kentucky for redesignation of the Tri-state Cincinnati-Hamilton Area is 15.0 μg/m³, which meets the NAAQS as described above. Several of the above monitoring sites do not meet the 75 percent completeness criteria. In these cases, operation of the monitoring sites were started or shut-down during the 2007–2010 timeframe. Additional details can be found in EPA's final clean data determination for the Tri-state Cincinnati-Hamilton Area (76 FR 60373). EPA has reviewed more recent preliminary data which indicates that the Tri-state Cincinnati-Hamilton Area continues to attain the 1997 $PM_{2.5}$ NAAQS beyond the submitted 3-year attainment period of 2007–2009. The design value for the most recent 3-year period of 2008–2010 will be certified by the time EPA takes final action on this proposed rule.[2] At that time, EPA will again ensure that current air quality data demonstrates that the Tri-state Cincinnati-Hamilton Area is continuing to meet the 1997 Annual $PM_{2.5}$ NAAQS. If the Area does not continue to attain before EPA finalizes the redesignation, EPA will not go forward with the redesignation. As discussed in more detail below, the Commonwealth of Kentucky has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

Criteria (5)—Kentucky has met all Applicable Requirements under Section 110 and part D of the CAA; and Criteria (2)—Kentucky has a fully approved SIP under section 110(k) for the Northern Kentucky Area

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Kentucky has met all applicable SIP requirements for the Northern Kentucky Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that the Kentucky SIP satisfies the criterion that it meet applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to 1997 Annual $PM_{2.5}$ nonattainment areas) in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. The Northern Kentucky Area Has Met all Applicable Requirements Under Section 110 and Part D of the CAA

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants (*e.g.,* NO_X SIP Call,[5] CAIR,[6] and the CSAPR). The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that

[5]On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP Call, Kentucky developed rules governing the control of NO_X emissions from EGUs, major non-electric generating units (EGU) industrial boilers, major cement kilns, and internal combustion engines. EPA approved Kentucky's rules as fulfilling Phase I and Phase II of the NO_X SIP Call on October 23, 2009 (74 FR 54755).

[6]On May 12, 2005 (70 FR 25162), EPA promulgated CAIR which required 28 upwind States and the District of Columbia to revise their SIPs to include control measures that would reduce emissions of SO_2 and NO_X. Various aspects of CAIR rule were petitioned in court and on December 23, 2008, the U.S. Court of Appeals for the District of Columbia Circuit remanded CAIR to EPA (*see North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir., December 2008)) which left CAIR in place to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaces it with a rule consistent with the Court's ruling. The Court directed EPA to remedy various areas of the rule that were petitioned consistent with its July 11, 2008 (*see North Carolina* v. *EPA,*531 F.3d 836 (DC Cir., July 11, 2008)), opinion, but declined to impose a schedule on EPA for completing that action. *Id.* Therefore, CAIR is currently in effect in Kentucky.

state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation. However, as discussed later in this notice, addressing pollutant transport from other states is an important part of an area's maintenance demonstration.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

EPA has not yet completed rulemaking on a submittal from Kentucky dated August 26, 2008, addressing ''infrastructure SIP'' elements required under the Clean Air Act (CAA or ''the Act'') section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS. However, these are statewide requirements that are not a consequence of the nonattainment status of the Northern Kentucky Area. EPA believes that section 110 elements not linked to an area's nonattainment status are not applicable for purposes of redesignation. See the Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996 and 62 FR 24826, May 7, 1997), the Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996), and the Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). Therefore, notwithstanding the fact that EPA has not yet completed rulemaking on Kentucky's submittal for the $PM_{2.5}$ infrastructure SIP elements of section 110(a)(2), EPA believes it has approved all SIP elements that must be approved as a prerequisite for the redesignation to attainment of the Northern Kentucky Area.

Title I, Part D requirements. EPA proposes that with approval of Kentucky's base year emissions inventory, which is part of the maintenance plan submittal, the Kentucky SIP will meet applicable SIP requirements under part D of title I of the CAA. As discussed in greater detail below, EPA believes the emissions inventory is approvable because the 2008 direct $PM_{2.5,}$ SO_2, and NO_X emissions for Kentucky were developed consistent with EPA guidance for emissions inventories and represent a comprehensive, accurate and current inventory as required by section 172(c)(3).

Part D, subpart 1 applicable SIP requirements. EPA has determined that if the approval of the base year emissions inventories, discussed in section IX of this rulemaking, is finalized, the Kentucky SIP will meet the applicable SIP requirements for the Northern Kentucky Area for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets for the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the 1997 Annual $PM_{2.5}$ NAAQS were designated under subpart 1 of the CAA. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176.

For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and in section 176. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498, April 16, 1992).

Subpart 1 Section 172 Requirements. Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. However, pursuant to 40 CFR 51.1004(c), EPA's final determination that the Tri-state Cincinnati-Hamilton Area was attaining the $PM_{2.5}$ standard suspended Kentucky's obligation to submit most of the attainment planning requirements that would otherwise apply. Specifically, the determination of attainment suspended Kentucky's obligation to submit an attainment demonstration and planning SIPs to provide for reasonable further progress (RFP), RACM, and contingency measures under section 172(c)(9).

The General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992) also discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard (General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992)).

Because attainment has been reached in the Tri-state Cincinnati Area, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the Area continues to attain the standard until redesignation. *See* also 40 CFR 51.1004(c).

The RFP plan requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because EPA has determined that the Tri-state Cincinnati-Hamilton Area, which includes the Northern Kentucky Area, has monitored attainment of the 1997 Annual $PM_{2.5}$ NAAQS. *See* General Preamble, 57 FR 13564. *See also* 40 CFR 51.1004(c). In addition, because the Tri-state Cincinnati-Hamilton Area has attained the 1997 Annual $PM_{2.5}$ NAAQS and is no longer subject to a RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual

emissions. As part of Kentucky's redesignation request for the Northern Kentucky Area, Kentucky submitted a 2008 base year emissions inventory. As discussed below in section VIII, EPA is proposing to approve the 2008 base year inventory submitted with the redesignation request as meeting the section 172(c)(3) emissions inventory requirement.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Kentucky has demonstrated that the Northern Kentucky Area will be able to maintain the NAAQS without part D NSR in effect, and therefore Kentucky need not have fully approved part D NSR programs prior to approval of the redesignation request. Nonetheless, Kentucky currently has a fully-approved part D NSR program in place. Kentucky's PSD program will become effective in the Northern Kentucky Area upon redesignation to attainment. Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes the Kentucky SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally-supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally-supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA believes it is reasonable to interpret the conformity SIP requirements[7] as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA,* 265 F.3d 426 (upholding this interpretation)(6th Cir. 2001); see also 60 FR 62748 (December 7, 1995, Tampa, Florida). Thus, the Northern Kentucky Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. The Northern Kentucky Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

If EPA issues a final approval of the base year emissions inventories, EPA will have fully approved the applicable Kentucky SIP for the Northern Kentucky Area for the 1997 Annual $PM_{2.5}$ nonattainment area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein). Following passage of the CAA of 1970, Kentucky has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various SIP elements applicable for the 1997 Annual $PM_{2.5}$ NAAQS in the Northern Kentucky Area (65 FR 37879, June 19, 2000).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. In addition, EPA believes that since the part D subpart 1 requirements did not become due prior to submission of the redesignation request, they are also not applicable requirements for purposes of redesignation. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis-East St. Louis Area to attainment of the 1-hour ozone NAAQS). With the approval of the emissions inventory, EPA will have approved all Part D subpart 1 requirements applicable for purposes of this redesignation.

Criteria (3)—The Air Quality Improvement in the Kentucky Portion of the Tri-State Cincinnati-Hamilton Area 1997 Annual $PM_{2.5}$ NAAQS Nonattainment Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal air pollution control regulations and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA believes that Kentucky has demonstrated that the observed air quality improvement in the Northern Kentucky Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state adopted measures.

Fine particulate matter, or $PM_{2.5}$, refers to airborne particles less than or equal to 2.5 micrometers in diameter. Although treated as a single pollutant, fine particles come from many different sources and are composed of many different compounds. One of the largest components of $PM_{2.5}$ is sulfate, which is formed through various chemical reactions from the precursor SO_2. The other major component of $PM_{2.5}$ is organic carbon, which originates predominantly from biogenic emission sources. Nitrate, which is formed from the precursor NO_X, is also a component of $PM_{2.5}$. Crustal materials from windblown dust and elemental carbon from combustion sources are less significant contributors to total $PM_{2.5}$.

[7] CAA Section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emission budgets that are established in control strategy SIPs and maintenance plans.

State and federal measures enacted in recent years have resulted in permanent emission reductions. Most of these emission reductions are enforceable through regulations. A few non-regulatory measures also result in emission reductions. The federal measures that have been implemented include:

Tier 2 vehicle standards. In addition to requiring NO_X controls, the Tier 2 rule reduced the allowable sulfur content of gasoline to 30 parts per million (ppm) starting in January of 2006. Most gasoline sold prior to this had a sulfur content of approximately 300 ppm.

Heavy-duty gasoline and diesel highway vehicle standards. The second phase of the standards and testing procedures, which began in 2007, reduces particulate matter (PM) and NO_X from heavy-duty highway engines and also reduces highway diesel fuel sulfur content to 15 ppm. The total program is expected to achieve a 90 and 95 percent reduction in PM and NO_X emissions from heavy-duty highway engines, respectively.

Nonroad spark-ignition engines and recreational engines standards. Tier 1 of this standard, implemented in 2004, and Tier 2, implemented in 2007, have reduced and will continue to reduce PM emissions.

Large nonroad diesel engine standards. Promulgated in 2004, this rule is being phased in between 2008 and 2014. This rule will reduce sulfur content in nonroad diesel fuel and, when fully implemented, will reduce NO_X and direct $PM_{2.5}$ emissions by over 90 percent from these engines.

NO_X SIP Call. On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the NO_X SIP Call are permanent and enforceable.

CAIR and the Cross-State Air Pollution Rule (CSAPR). As previously discussed, the remanded CAIR, originally promulgated to reduce transported pollution, was left in place to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaced it with a rule consistent with the Court's opinion. To remedy CAIR's flaws, EPA promulgated the final CSAPR on August 8, 2011. CSAPR addresses the interstate transport requirements of the CAA with respect to the 1997 ozone, 1997 PM2.5 and 2006 $PM_{2.5}$ NAAQS. As noted previously, the requirements of CAIR address emissions thru the 2011 control period and CSAPR requires similar or greater emission reductions in the relevant areas in 2012 and beyond.

The state measures that have been implemented to date and relied upon by Kentucky to demonstrate attainment and/or maintenance include NO_X SIP Call regulations, open burning bans, and fugitive emissions standards.

EPA believes that $PM_{2.5}$ and $PM_{2.5}$ precursor reductions in and around the Tri-state Cincinnati-Hamilton Area have contributed to improved air quality. The majority of the improvement in ambient $PM_{2.5}$ concentrations has resulted from reductions in emissions from coal fired power plants. In addition, local controls of NO_X and SO_2 installed on Unit 2 of the Duke Energy East Bend coal fired utility plant in the Boone County have decreased emissions by approximately 38 and 53 percent, for NO_X and SO_2 respectively, between 2005 and 2009. These reductions, prompted by the NO_X SIP Call and CAIR, included upgrades to flue gas desulfurization system in response to CAIR and selective catalytic reduction (SCR) system installation as a result of the NO_X SIP Call. A summary of the emissions reductions from 2005 to 2009 is for the entire Tri-state Cincinnati Hamilton Area is provided in Table 2. EPA's analysis shows that reductions of SO_2 and NO_X emissions, in tons per year (tpy) are greater than decreases in emissions that could be attributed to any decreases in electrical demand in the Tri-state Cincinnati-Hamilton Area. These reductions are permanent and enforceable through the NO_X SIP Call and CSAPR.

TABLE 2—SUMMARY OF EMISSIONS REDUCTIONS FROM COAL FIRED UTILITIES IN THE TRI-STATE CINCINNATI-HAMILTON AREA [8]

Facility—county	Emissions difference from 2005–2009 (tpy)			
	SO_2	Percent reduction	NO_X	Percent reduction
Kentucky				
East Bend—Boone Co	1,942	53	1,516	38
Indiana				
Tanners Creek—Dearborn Co	30,091	65	4,432	56
Ohio				
Miami Fort—Hamilton Co	52,243	67	10,927	72
W.H. Zimmer—Clermont Co	8,095	36	11,507	76
Walter C. Beckjord—Clermont Co	24,982	37	2,065	16

Because $PM_{2.5}$ concentrations in the Cincinnati-Hamilton area are impacted by the transport of sulfates and nitrates, the area's air quality is affected by regulation of SO_2 and NO_X emissions from power plants. Table 3, below, presents statewide EGU emissions data compiled by EPA's Clean Air Markets Division for the years 2002 and 2008. Emissions for 2008 reflect implementation of CAIR.

[8] Data reflects reported actual emissions from the Clean Air Markets Division Database *http://camddataandmaps.epa.gov/gdm/index.cfm?fuseaction=emissions.wizard.* Data is not normalized for output.

TABLE 3—COMPARISON OF 2002 AND 2008 STATEWIDE EGU NO_X AND SO_2 EMISSIONS (TPY) FOR STATES IMPACTING THE CINCINNATI-HAMILTON AREA

State	NO_X			SO_2		
	2002	2008	Net change 2002–2008	2002	2008	Net change 2002–2008
Alabama	161,559	112,625	−48,934	448,248	357,546	−90,702
Illinois	174,247	119,930	−54,317	353,699	257,357	−96,342
Indiana	281,146	190,092	−91,054	778,868	565,459	−213,409
Kentucky	198,599	157,903	−40,696	482,653	344,356	−138,297
Michigan	132,623	107,624	−25,000	342,999	326,501	−16,498
Missouri	139,799	88,742	−51,057	235,532	258,269	22,737
Ohio	370,497	235,049	−135,448	1,132,069	709,444	−422,625
Pennsylvania	200,909	183,658	−17,251	889,766	831,915	−57,851
Tennessee	155,996	85,641	−70,356	336,995	208,069	−128,926
West Virginia	225,371	99,484	−125,887	507,110	301,574	−205,536
Wisconsin	88,970	47,794	−41,175	191,257	129,694	−61,563
Total	2,129,716	1,428,541	−701,175	5,699,195	4,290,184	−1,409,011

Table 3 shows that states impacting the Cincinnati-Hamilton area reduced NO_X and SO_2 emissions from EGUs by 701,175 tons per year (tpy) and 1,409,011 tpy, respectively, between 2002 and 2008. In summary, reductions of EGU emissions of SO_2 and NO_X contributed to the air quality improvement in the Tri-state Cincinnati-Hamilton Area. Given the remanded status of CAIR, this air quality improvement could not be considered permanent at the time DAQ submitted its request for redesignation of the Northern Kentucky Area. However, since that time the CSAPR has been finalized, which mandates even greater reductions than have already occurred under CAIR and, more importantly, more reductions than are needed to maintain the standard in the Area. Therefore, the final promulgation of the CSAPR in combination with the other measures cited by Kentucky and described above, ensure that the emission reductions that led the Area to attain the 1997 Annual $PM_{2.5}$ NAAQS can be considered permanent and enforceable for purposes of section 107(d)(3)(E)(iii).

Criteria (4)—The Northern Kentucky Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the Northern Kentucky Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS, DAQ submitted a SIP revision to provide for the maintenance of the 1997 Annual $PM_{2.5}$ NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA believes this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the Commonwealth of Kentucky must submit a revised maintenance plan, which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, as EPA deems necessary, to assure prompt correction of any future 1997 Annual $PM_{2.5}$ violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA finds that the Commonwealth's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Kentucky SIP.

b. Attainment Emissions Inventory

The Tri-state Cincinnati-Hamilton Area attained the 1997 Annual $PM_{2.5}$ NAAQS based on monitoring data for the 3-year period from 2007–2009. The Commonwealth selected 2008 as the attainment emission inventory year. The attainment inventory identifies the level of emissions in the Area, which is sufficient to attain the 1997 Annual $PM_{2.5}$ NAAQS. The Commonwealth began development of the attainment inventory by first generating a baseline emissions inventory for the Tri-state Cincinnati-Hamilton Area. As noted above, the year 2008 was chosen as the base year for developing a comprehensive emissions inventory for the primary $PM_{2.5}$ precursors, SO_2 and NO_X, for which projected emissions could be developed for 2011, 2015, 2018, and 2021. The projected inventory included with the maintenance plan estimates emissions forward to 2021, which is at the 10-year interval required in section 175(A) of the CAA. In addition to comparing the final year of the plan, Kentucky compared interim years to the 2008 baseline to demonstrate that these years are also expected to show continued maintenance of the annual fine particulate matter standard.

The emissions inventories are composed of four major types of sources: point, area, on-road mobile and non-road mobile. The attainment and future year emissions inventories were projected by Lake Michigan Air Directors Consortium using the 2005 base year inventory methodology as provided in the Appendix D of Kentucky's Submittal. The future year emissions inventories have been estimated using projected rates of growth in population, traffic, economic activity, expected control programs, and

other parameters. Non-road mobile emissions estimates were based on the EPA's non-road mobile model, with the exception of the railroad locomotives, commercial marine, and aircraft engine. These emissions are estimated by taking activity data, such as landings and takeoffs, and multiplying by an Economic Growth Analysis System emission factor. On-road mobile source emissions were calculated using EPA's MOVES2010 mobile emission factors model. The 2008 SO_2, NO_X and $PM_{2.5}$ emissions for the Tri-state Cincinnati-Hamilton Area, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Table 5 of the following subsection discussing the maintenance demonstration.

c. Maintenance Demonstration

The January 27, 2011, final submittal includes a maintenance plan for the Northern Kentucky Area. This demonstration:

(i) Shows compliance with and maintenance of the annual $PM_{2.5}$ standard by providing information to support the demonstration that current and future emissions of SO_2, NO_X and $PM_{2.5}$ remain at or below 2008 emissions levels.

(ii) Uses 2008 as the attainment year and includes future emission inventory projections for 2011, 2015, 2018, and 2021.

(iii) Identifies an ''out year'' at least 10 years after EPA review and potential approval of the maintenance plan. per 40 CFR part 93, NO_X and $PM_{2.5}$ MVEBs were established for the last year (2021) of the maintenance plan. Additionally, Kentucky also opted to establish MVEBs for the interim year of 2015. See section VI below.

(iv) Provides, as shown in Tables 4, 5, and 6 below, the actual and projected emissions inventories, in tpy, for the Northern Kentucky Area, and Table 7 below shows the actual and emissions inventories for the entire Tri-state Cincinnati-Hamilton Area.

TABLE 4—ANNUAL $PM_{2.5}$ FOR THE NORTHERN KENTUCKY AREA

$PM_{2.5}$	Actual and projected estimated emissions (tpy)				
Sector	2008	2011	2015	2018	2021
Point	246.14	260.41	280.39	295.19	310.51
Area	921.66	922.39	923.39	924.46	925.55
Nonroad	497.22	457.58	408.89	372.32	338.50
Mobile	645.62	513.85	371.11	320.84	275.38
Total	2,310.64	2,154.23	1,983.78	1,912.82	1,849.94

TABLE 5—ANNUAL NO_X FOR THE NORTHERN KENTUCKY AREA

NO_X	Actual and projected estimated emissions (tpy)				
Sector	2008	2011	2015	2018	2021
Point	2,094.21	1,891.67	1,646.47	1,549.91	1,457.54
Area	4,015.59	4,095.47	4,203.83	4,286.15	4,369.53
Nonroad	8,168.48	7,219.36	6,086.95	5,202.60	4,410.56
Mobile	13,114.20	10,135.95	6,996.22	5,618,08	4,435.96
Total	27,392.48	23,342.46	18,933.47	16,656.74	14,673.59

TABLE 6—ANNUAL SO_2 FOR THE NORTHERN KENTUCKY AREA

SO_2	Actual and projected estimated emissions (tpy)				
Sector	2008	2011	2015	2018	2021
Point	2,844.98	2,761.67	2,653.54	2.613.08	2,573.07
Area	2,756.35	2,785.21	2,824.05	2,853.38	2,882.91
Nonroad	832.54	728.03	604.74	513.85	433.13
Mobile	42.74	45.94	50.50	54.46	58.62
Total	7,422.44	6,476.61	6,132.83	6,034.77	5,947.73

TABLE 7—EMISSION ESTIMATES FOR THE TRI-STATE CINCINNATI-HAMILTON AREA

Year	NO_X (tpy)	SO_2 (tpy)	$PM_{2.5}$ (tpy)
2008	148,706.15	117,016.14	8,904.64
2015	105,712.02	112,250.26	8,634.55
2021	78,819.13	88,510.27	8,202.63
Difference from 2008 to 2021	−69,887.02	−28,505.87	−702.01

Tables 4 through 7 summarize the 2008 and future projected emissions of direct $PM_{2.5}$ and precursors from the counties in the Northern Kentucky Area, and Tri-state Cincinnati-Hamilton Area. As reflected in these tables, future emissions for the relevant pollutants and precursors are expected to be below the'' attainment level'' emissions in

2008, and thus illustrates that the Northern Kentucky and Tri-state Cincinnati-Hamilton Area as a whole are expected to continue to attain the 1997 $PM_{2.5}$ NAAQS through 2021. In situations where local emissions are the primary contributor to nonattainment, if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the ambient air quality standard should not be violated in the future. EPA and the Commonwealth believe that a significant portion of the nonattainment problem in the Northern Kentucky Area is due to transport of power plant emissions from power plants outside the nonattainment area. EPA recently finalized the CSAPR, which mandates substantial regional reductions of SO_2 and NO_X emissions in the Eastern United States.

In CSAPR, EPA quantifies the reductions needed in specific states to address each covered state's significant contribution to nonattainment and interference with maintenance of specific NAAQS. In that action, EPA also established FIPs to ensure that the significant contribution to nonattainment and interference with maintenance identified by EPA is prohibited.

The modeling for the final CSAPR identified nine states, including Kentucky, Indiana, and Ohio, that have emissions that affect the Tri-state Cincinnati-Hamilton Area's air quality. Table 8, below, shows state-wide emission estimates for SO_2 and NO_X for 2005, 2012, and 2014, for the nine eastern states that were determined to have a significant effect on the Tri-state Cincinnati-Hamilton Area's air quality in relation to the 1997 Annual NAAQS. The values for 2005 reflect base year emissions estimates. The values for 2012 reflect estimates for a scenario in which neither the CAIR nor a replacement for the CAIR is in effect, reflecting a baseline that EPA used in developing its proposed rule. The values for 2014 reflect estimates of the mandated CSAPR reductions. These estimates are taken from Tables 6–1 (NO_X) and 6–2 (SO_2) of the emissions technical support document for the Transport Rule, available at *http://www.epa.gov/airquality/transport/pdfs/TR_Proposal_Emissions_TSD.pdf.* These estimates exclude emissions from fires, which are a small fraction of the inventory (well under 0.1 percent) that is projected to remain constant and does not materially affect the comparison here.

TABLE 8—SO_2 AND NO_X EMISSIONS FOR STATES SIGNIFICANTLY CONTRIBUTING TO THE TRI-STATE CINCINNATI-HAMILTON AREA 1997 ANNUAL $PM_{2.5}$ NONATTAINMENT AREA (TPY)

State	SO_2 emissions			NO_X emissions		
	2005 base	2012 (w/o transport rule)	2014 (with transport rule)	2005 base	2012 (w/o transport rule	2014 (with transport rule)
Kentucky	572,424	780,885	182,630	435,837	345,073	247,270
Ohio	1,276,270	1,076,470	361,138	816,239	552,864	453,167
Indiana	1,047,371	986,601	396,403	614,861	505,039	386,251
Illinois	516,950	866,376	304,834	773,276	542,886	480,743
Michigan	490,190	415,042	300,560	638,546	478,625	410,319
Missouri	421,979	570,575	315,283	505,195	353,407	317,092
Pennsylvania	1,173,296	1,119,680	303,071	704,936	566,301	454,248
Tennessee	388,191	708,905	218,065	471,705	338,154	270,171
West Virginia	535,586	645,431	184,341	294,016	206,630	144,970
Total	6,422,257	7,169,965	2,566,325	5,254,611	3,888,979	3,164,231

While EPA has not made emission estimates for 2021 that are premised on the implementation of the CSAPR, Table 8 above shows emission estimates that EPA has made for 2014 that include reductions from the implementation of the CSAPR. These emission estimates show a substantial decline in SO_2 and NO_X emissions comparable to that shown in Kentucky's maintenance plan. Given the substantial degree of control of the various electric EGUs in the Tri-state Cincinnati-Hamilton Area, EPA finds Kentucky's projection of such emission declines through 2021 to be appropriate forecasts of future emissions. The promulgation of the CSAPR requires additional control beyond those projected by Kentucky will result in emission reductions in excess of those needed for continued maintenance of the $PM_{2.5}$ Annual NAAQS in the Northern Kentucky Area.

A maintenance plan requires the state to show that projected future year emissions will not exceed the level of emissions which led the Area to attain the NAAQS. Kentucky has projected emissions as described previously and determined that emissions in the Northern Kentucky Area will remain below those in the attainment year inventory for the duration of the maintenance plan.

As discussed further in section VII of this proposed rulemaking, a safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Kentucky has decided to allocate a portion of the available safety margins to the Area's NO_X and $PM_{2.5}$ MVEBs for both 2015 and 2021 for the Northern Kentucky Area and has calculated the safety margin in its submittal. Specifically, 18.56 tpy and 27.54 tpy of the available $PM_{2.5}$ safety margin for the Kentucky portion of the Tri-state Cincinnati-Hamilton Area will be allocated to the 2015 and 2021 Northern Kentucky Area MVEBs, respectively. In addition, 1,049.43 tpy and 963.17 tpy of the available NO_X safety margins will be allocated to the 2015 and 2021 MVEBs, respectively. This allocation and the resulting available safety margin for the Northern Kentucky Area are discussed further in section VI of this proposed rulemaking.

d. Monitoring Network

There are currently two monitors measuring $PM_{2.5}$ in the Tri-state Cincinnati-Hamilton Area (two in the Northern Kentucky Area and twelve in the remainder in the Ohio portion of this Area). The Commonwealth of Kentucky, through DAQ, has committed to continue operation of the monitors in the Northern Kentucky Area in

compliance with 40 CFR part 58 and have thus addressed the requirement for monitoring. EPA approved Kentucky's 2010 monitoring plan on October 8, 2010. Ohio has made a similar commitment in their redesignation and maintenance plan submission to EPA for this Area. There is no monitor in the Indiana portion of this Area.

e. Verification of Continued Attainment

The Commonwealth of Kentucky, through DAQ, has the legal authority to enforce and implement the requirements of the Northern Kentucky Area 1997 Annual $PM_{2.5}$ maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future $PM_{2.5}$ attainment problems.

DAQ will track the progress of the maintenance plan by performing future reviews of triennial emission inventories for the Northern Kentucky Area as required in the Air Emissions Reporting Rule (AERR) and Consolidated Emissions Reporting Rule (CERR). For these periodic inventories, DAQ will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, then DAQ will re-project emissions for the Northern Kentucky Area.

f. Contingency Measures in the Maintenance Plan

The contingency measures are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the Commonwealth. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the January 27, 2011, submittal, Kentucky affirms that all programs instituted by the Commonwealth and EPA will remain enforceable and that sources are prohibited from reducing emissions controls following the redesignation of the Area. The contingency plan included in the submittal includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The Commonwealth of Kentucky will use actual ambient monitoring data as the triggering event to determine when contingency measures should be implemented.

Kentucky has identified a primary trigger as occurring when the 3-year average of annual mean $PM_{2.5}$ concentration is greater than the 1997 Annual $PM_{2.5}$ NAAQS of 15.0 $\mu g/m^3$, as described in the Tri-state Cincinnati-Hamilton Area. In the event of a monitored violation of the 1997 Annual NAAQS, the Commonwealth commits to adopt one or more of the following control measures within nine months in order to bring the Area into compliance. All regulatory programs will be implemented within 18 months of the triggering monitored violation:

- Implementation of a program to require additional emissions reductions on stationary sources;
- Implementation of fuel programs, including incentives for alternative fuels;
- Restriction of certain roads or lanes, or construction of such lanes for use by passenger buses or high-occupancy vehicles;
- Trip-reduction ordinances;
- Employer-based transportation management plans, including incentives;
- Programs to limit or restrict vehicle use in downtown areas, or other areas of emission concentration, particularly during periods of peak use;
- Programs for new construction and major reconstruction of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest;
- Diesel reduction emissions strategies, including diesel retrofit programs;
- Any other control program that is developed and deemed to be more advantageous for the area.

A secondary trigger will occur in the event that a measured value of the weighted annual mean is 15.5 $\mu g/m^3$ or greater in a single calendar year in any portion of the maintenance area. In such a case, the Commonwealth will evaluate existing controls measures and determine whether any further emission reduction measures should be implemented. In addition to the triggers indicated above, Kentucky will monitor regional emissions through the CERR and AERR, and compare them to the projected inventories and the attainment year inventory.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, monitoring network, verification of continued attainment, and a contingency plan. Therefore, the maintenance plan SIP revision submitted by the Commonwealth of Kentucky for the Northern Kentucky Area meets the requirements of section 175A of the CAA and is approvable.

VI. What is EPA's analysis of Kentucky's proposed NO_X and $PM_{2.5}$ MVEBs for the Northern Kentucky Area?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstration) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is

allocated to highway and transit vehicle use and emissions. See 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for the Tri-state Cincinnati-Hamilton Area, Kentucky has elected to develop MVEBs for NO_X and $PM_{2.5}$ for the Northern Kentucky Area (*i.e.,* Boone, Campbell and Kenton Counties).[9] Kentucky is developing these MVEBs, as required, for the last year of its maintenance plan, 2021. Kentucky also established MVEBs for the interim year of 2015. The MVEBs reflect the total on-road emissions for 2015 and 2021, plus an allocation from the available NO_X and $PM_{2.5}$ safety margin. Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. The NO_X and $PM_{2.5}$ MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model vehicle miles traveled and new emission factor models. The NO_X and $PM_{2.5}$ MVEBs for the Northern Kentucky Area are defined in Table 9 below.

TABLE 9—NORTHERN KENTUCKY AREA MVEBS

[tpy]

	$PM_{2.5}$	NO_X
2015 Mobile Emissions	371.11	6,996.22
2015 Safety Margin Allocation	18.56	1,049.43
2015 Total Mobile Budget	389.67	8,045.65
2021 Mobile Emissions	275.38	6,421.15
2021 Safety Margin Allocation	27.54	963.17
2021 Total Mobile Budget	302.92	7,384.32

As mentioned above, Kentucky has chosen to allocate a portion of the available safety margin for the Northern Kentucky Area to the NO_X and $PM_{2.5}$ MVEBs for 2015 and 2021. The NO_X safety margin allocation is 1,049.43 tpy and 963.17 tpy for 2015 and 2021, respectively. Likewise, the $PM_{2.5}$ safety margin allocation is 18.56 tpy and 27.54 tpy for 2015 and 2021, respectively.

Through this rulemaking, EPA is proposing to approve the MVEBs for $PM_{2.5}$ and NO_X for 2015 and 2021, including the allocation from the $PM_{2.5}$ and NO_X safety margins, for the Northern Kentucky Area because EPA has made the preliminary determination that the Area maintains the 1997 Annual $PM_{2.5}$ NAAQS with the emissions at the levels of the budgets. Once the MVEBs for the Northern Kentucky Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations and the metropolitan planning organizations must use the MOVES model in future $PM_{2.5}$ conformity determinations for their long-range transportation plans and transportation improvement plans. After thorough review, EPA has preliminarily determined that the budgets meet the adequacy criteria, as outlined in 40 CFR 93.118(e)(4), and is proposing to approve the budgets because they are consistent with maintenance of the Annual $PM_{2.5}$ NAAQS through 2021.

VII. What is the status of EPA's adequacy determination for the proposed NO_X and $PM_{2.5}$ MVEBs for 2015 and 2021 for the Northern Kentucky Area?

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Kentucky's maintenance plan submission includes NO_X and $PM_{2.5}$ MVEBs for the Northern Kentucky Area for 2015 and 2021, the last year of the maintenance plan. EPA reviewed the NOx and $PM_{2.5}$ MVEBs through the adequacy process. The Kentucky SIP submission, including the Northern Kentucky Area NO_X and $PM_{2.5}$ MVEBs, was open for public comment on EPA's adequacy Web site on February 14, 2011, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*. The EPA public comment period on adequacy for the MVEBs for 2015 and 2021 for Northern Kentucky Area closed on March 16, 2011. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal.

EPA intends to make its determination on the adequacy of the 2015 and 2021 MVEBs for the Northern Kentucky Area for transportation conformity purposes in the near future by completing the adequacy process that was started on February 14, 2011. After EPA finds the 2015 and 2021 MVEBs adequate or approves them, the new MVEBs for NO_X and $PM_{2.5}$ must be used for future transportation conformity determinations. For required regional emissions analysis years between 2015 and 2021, the applicable budgets will be the new 2015 MVEBs established in the maintenance plan. Starting in 2021, the applicable budgets will be the new 2021 MVEBs. Both the 2015 and 2021 MVEBs are defined in section VII of this proposed rulemaking.

VIII. What is EPA's analysis of the proposed 2008 base year emissions inventory for the Northern Kentucky Area?

As discussed in section V above, section 172(c)(3) of the CAA requires areas to submit a base year emissions inventory. As part of Kentucky's request to redesignate the Northern Kentucky

[9] MVEBs for the remaining portion of the Tri-state Cincinnati-Hamilton Area is addressed in the Ohio and Indiana submissions for this Area, and will be addressed through a separate EPA action.

Area, the Commonwealth submitted a 2008 attainment year emissions inventory to meet this requirement. Emissions contained in the submittal cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. All emission summaries were accompanied by source-specific descriptions of emission calculation procedures and sources of input data. Kentucky's submittal documents 2008 emissions in the Northern Kentucky Area in units of tpy. Table 10 below provides a summary of the 2008 emissions of direct $PM_{2.5}$, NO_X, and SO_2 for the Northern Kentucky Area.

TABLE 10—NORTHERN KENTUCKY AREA 2008 EMISSIONS FOR $PM_{2.5}$, NO_X, BY SOURCE CATEGORY

[tpy (percent total)]

	$PM_{2.5}$	NO_X	SO_2
Point Source Total	246.14 [10.7]	2094.21 [7.6]	2,844.98 [43.9]
Area Source Total	921.66 [39.9]	4,015.59 [14.7]	2,756.35 [42.6]
On-Road Mobile Source Total	645.62 [27.9]	13,114.20	42.74 [0.7]
Non-Road Mobile Source Total	497.22 [21.5]	8,168.48 [29.8]	832.54 [12.9]
Total for all Sources	2,310.64	27,392.48	6,476.61

In today's notice, EPA is proposing to approve this 2008 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

IX. Proposed Actions on the Redesignation Request and Maintenance Plan SIP Revisions Including Approval of the NO_X and $PM_{2.5}$ MVEBs for 2015 and 2021 for the Northern Kentucky Area

EPA previously proposed to determine that the Tri-state Cincinnati-Hamilton Area was attaining the 1997 $PM_{2.5}$ NAAQS on June 3, 2011, at 76 FR 32110. EPA did not receive any comments, adverse or otherwise, on its June 3, 2011, and will take final action on this determination through an action separate from today's action. Further, EPA is now taking three separate but related actions regarding the Area's redesignation and maintenance of the 1997 Annual $PM_{2.5}$ NAAQS.

First, EPA is proposing to determine, based on complete, quality-assured and certified monitoring data for the 2007–2009 monitoring period, and after review of preliminary data in AQS for 2008–2010, that the Tri-state Cincinnati-Hamilton Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS. Provided that EPA takes final action to approve the 2008 base emissions inventory, EPA is proposing to determine that the Northern Kentucky Area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. On this basis, EPA is proposing to approve Kentucky's redesignation request for the Northern Kentucky Area.

Second, EPA is proposing to approve Kentucky's 2008 emissions inventory for the Northern Kentucky Area (under CAA section 172(c)(3)). Kentucky selected 2008 as the attainment emissions inventory year for the Northern Kentucky Area. This attainment inventory identifies a level of emissions in the Area (as a part of the Tri-state Cincinnati-Hamilton Area) that is sufficient to attain the 1997 Annual $PM_{2.5}$ NAAQS and also is a current, comprehensive inventory that meets the requirements of section 172(c)(3).

Third, EPA is proposing to approve the maintenance plan for the Northern Kentucky Area, including the $PM_{2.5}$ and NO_X MVEBs for 2015 and 2021 submitted by Kentucky for the Northern Kentucky Area, as meeting the requirements of section 175A of the CAA. The maintenance plan demonstrates that the Area will continue to maintain the 1997 Annual $PM_{2.5}$ NAAQS, and the MVEBs meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5). Further, as part of today's action, EPA is describing the status of its adequacy determination for the $PM_{2.5}$ and NO_X MVEBs for 2015 and 2021 in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy determination or EPA's final action to approve the MVEBs (whichever comes first), the transportation partners will need to demonstrate conformity to the new $PM_{2.5}$ and NO_X MVEBs pursuant to 40 CFR 93.104(e).

If finalized, approval of the redesignation request would change the official designations of Boone, Campbell, and Kenton in the Northern Kentucky Area for the 1997 Annual $PM_{2.5}$ NAAQS, found at 40 CFR part 81, from nonattainment to attainment. EPA is also proposing to approve, into the Kentucky SIP, the maintenance plan for the Northern Kentucky Area, the emissions inventory submitted with the maintenance plan, and the 2015 and 2021 MVEBs.

X. What is the effect of EPA's proposed actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Kentucky's redesignation request would change the legal designation of Boone, Campbell, and Kenton Counties in Kentucky for the 1997 Annual $PM_{2.5}$ NAAQS, found at 40 CFR part 81, from nonattainment to attainment. Approval of the Commonwealth's request would also incorporate a plan for maintaining the 1997 Annual $PM_{2.5}$ NAAQS in the Northern Kentucky Area through 2021 into the Kentucky SIP. This maintenance plan includes contingency measures to remedy any future violations of the 1997 Annual $PM_{2.5}$ NAAQS and procedures for evaluation of potential violations. The maintenance plan also establishes NO_X and $PM_{2.5}$ MVEBs for the Northern Kentucky Area portion of the Tri-state Cincinnati-Hamilton Area. The proposed NO_X and $PM_{2.5}$ MVEBs for 2021 for the Northern Kentucky Area are 7,384.32 tpy and 302.92 tpy, respectively. Kentucky also chose to establish interim year MVEBs for 2015 of 8,045.65 tpy and 389.67 tpy for NO_X and $PM_{2.5}$, respectively. Final action would also approve the Northern Kentucky Area's emissions inventory under CAA section 172(c)(3). Additionally, EPA is notifying the public of the status of its adequacy determination for the NO_X and $PM_{2.5}$ MVEBs for 2015 and 2021 pursuant to 40 CFR 93.118(f)(1).

XI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not

impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

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

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, and Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: October 6, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–26773 Filed 10–20–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 25

[IB Docket No. 11–133; FCC 11–121]

Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission is initiating a review of its policies and procedures that apply to foreign ownership of common carrier, aeronautical en route and aeronautical fixed radio station licensees. The Commission seeks to reduce to the extent possible the regulatory costs and burdens imposed on common carrier, aeronautical en route and aeronautical fixed radio station applicants, licensees, and spectrum lessees; provide greater transparency and more predictability with respect to the Commission's foreign ownership filing requirements and review process; and facilitate investment from new sources of capital, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.

DATES: Submit comments on or before December 5, 2011, and replies on or before January 4, 2012. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB) and other interested parties on or before December 20, 2011.

ADDRESSES: You may submit comments, identified by Docket No. 11–133, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's ECFS Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail to *FCC504@fcc.gov,* phone: 202–418–0530 (voice), tty: 202–418–0432.

In addition to filing comments as described above, a copy of any comments on the PRA information collection requirements contained herein should be submitted to the FCC via email to *PRA@fcc.gov* and to Nicholas A. Fraser, OMB, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Susan O'Connell or James Ball, Policy Division, International Bureau, FCC, (202) 418–1460 or via e-mail to *Susan.OConnell@fcc.gov, James.Ball@fcc.gov.* On PRA matters, contact Cathy Williams, Office of the Managing Director, FCC, (202) 418–2918 or via e-mail to *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 11–133, FCC 11–121, adopted and released on August 9, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The document also is available for download over the Internet at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0809/FCC-11-121A1.pdf.* The complete text also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), located in Room CY–B402, 445 12th Street, SW., Washington, DC 20554. Customers may contact BCPI at its Web site, *http://www.bcpiweb.com,* or call 1–800–378–3160.

Comment Filing Procedures

Pursuant to §§ 1.415, 1.419, interested parties may file comments and reply

comments on or before the dates indicated above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's ECFS Web site at *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of Notice of Proposed Rulemaking

1. The Notice of Proposed Rulemaking (NPRM) initiates a review of the policies and procedures of the Federal Communications Commission (Commission) that apply to foreign ownership of common carrier radio station licensees—*e.g.,* companies using wireless licenses to provide phone service—and of aeronautical en route and aeronautical fixed radio station licensees (together, aeronautical licensees) pursuant to section 310(b)(4) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 310(b)(4). For ease of reference, the NPRM refers to applicants, licensees, and spectrum lessees collectively as ''licensees'' unless the context warrants otherwise. ''Spectrum lessees'' are defined in section 1.9003 of the Commission's rules, 47 CFR 1.9003.

2. The Commission seeks to reduce to the extent possible the regulatory costs and burdens imposed on wireless common carrier and aeronautical applicants, licensees, and spectrum lessees; provide greater transparency and more predictability with respect to the Commission's filing requirements and review process; and facilitate investment from new sources of capital, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy. The NPRM does not address Commission policies with respect to the application of section 310(b)(4) to broadcast licensees.

3. The Commission seeks comment in the NPRM on measures to revise and simplify the agency's regulatory framework under section 310(b)(4) for authorizing foreign ownership of common carrier and aeronautical radio licensees. The Commission also proposes to codify whatever measures it ultimately adopts to provide more predictability and ensure transparency of the section 310(b)(4) filing requirements and review process. The Commission estimates that adopting the proposals and other options discussed in the NPRM would result in a more than 70 percent reduction in the number of section 310(b)(4) petitions for declaratory ruling filed with the Commission annually, as compared to the current regulatory framework. The Commission also anticipates a reduction in the time and expense associated with filing petitions under the proposed framework.

4. Section 310(b)(4) of the Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in U.S.-organized entities that directly or indirectly control a U.S. broadcast, common carrier, or aeronautical radio station licensee. This section also grants the Commission discretion to allow higher levels of foreign ownership of a controlling U.S.-organized parent company—up to and including 100 percent of its equity and voting interests—unless the Commission finds that such ownership is inconsistent with the public interest. Licensees must request Commission approval of their U.S. parents' foreign ownership under section 310(b)(4), normally done by filing a petition for declaratory ruling with the agency. In order for the Commission to make the required public interest findings, licensees must file the petition and obtain Commission approval *before* direct or indirect foreign ownership of their U.S. parent companies exceeds 25 percent.

5. In the 1997 *Foreign Participation Order,* the Commission concluded that the public interest would be served by permitting greater investment in U.S. common carrier and aeronautical radio licensees by foreign individuals and entities from countries that are Members of the World Trade Organization (WTO) pursuant to the discretionary authority in section 310(b)(4).[1] The Commission adopted a rebuttable presumption by which it presumes that foreign investment from WTO Member countries does not pose competitive concerns in the U.S. market. For purposes of determining whether foreign investors are based in WTO Member countries, the Commission uses the ''principal place of business'' test to determine the nationality or ''home market'' of foreign entities that seek to invest directly or indirectly in the U.S. parent of a common carrier or aeronautical radio licensee. The Commission's public interest analysis under section 310(b)(4) also considers any national security, law enforcement, foreign policy or trade policy concerns raised by the proposed foreign investment. In assessing the public interest, the Commission takes into account the record developed in each particular case and accords deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, foreign policy and trade policy.

6. With respect to foreign investment from countries that are not Members of the WTO, the Commission determined in the *Foreign Participation Order* to continue to apply the ''effective competitive opportunities'' (ECO) test, adopted in the 1995 *Foreign Carrier Entry Order,* as part of the Commission's public interest analysis under section 310(b)(4).[2] Thus, to the extent non-WTO Member investment in the controlling U.S. parent of a common carrier or aeronautical radio licensee would exceed 25 percent, the Commission requires the petitioner to submit an ECO showing for the relevant wireless service sector in each non-WTO Member country where an investor has its home market. The Commission

[1] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market: Market Entry and Regulation of Foreign-Affiliated Entities,* IB Docket No. 97–142 and 95–22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23893–97, paras. 1–12, 23935–42, paras. 97–118 (1997) (*Foreign Participation Order*).

[2] *See Market Entry and Regulation of Foreign-Affiliated Entities,* IB Docket No. 95–22, Report and Order, 11 FCC Rcd 3873, 3941–64, paras. 179–238 (1995) (*Foreign Carrier Entry Order*).

found in the *Foreign Participation Order* that the circumstances that existed when it adopted the *Foreign Carrier Entry Order* had not changed sufficiently with respect to countries that were not Members of the WTO, as the markets of non-WTO Members, in almost all cases, were not liberalized and presented legal and practical barriers to entry. Thus, the Commission determined that it would deny an application if it found that more than 25 percent of the ownership of an entity that controls a common carrier or aeronautical radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding. The Commission concluded that its goals of increasing competition in the U.S. telecommunications service market and opening foreign telecommunications service markets would continue to be served by opening the U.S. market to non-WTO investors only to the extent that the investors' home markets are open to U.S. investors.

Proposals and Other Options To Modify Current Regulatory Framework

7. *The Distinction Between WTO and non-WTO Investment.* The Commission requests comment whether there is a policy basis for retaining the distinction between WTO and non-WTO Member investment in its current form, modifying the Commission's application of the distinction, or eliminating the distinction. The Commission asks commenters to identify changes that have occurred in U.S. and foreign wireless telecommunications markets since 1997 that support their position. In particular, the Commission seeks comment on the extent of foreign ownership in the U.S. telecommunications market today and the trends over the last several years. The Commission also seeks comment on the relative costs and benefits of maintaining the current distinction between WTO and non-WTO Member investment. Specifically, the Commission asks commenters to provide for the record quantification of the costs and burdens currently associated with filing a section 310(b)(4) petition, complying with the limitations of the section 310(b)(4) declaratory ruling, and the extent to which a change in policy would result in cost savings to U.S. wireless carriers and consumers. The Commission also asks commenters to address to what extent any costs and burdens have either deterred foreign investment or added significant transaction costs to the flow of such investments.

8. If the Commission were to eliminate the distinction between WTO and non-WTO Member investment, a U.S. wireless carrier would no longer be required to demonstrate in its section 310(b)(4) petition that non-WTO Member investment in its U.S-organized parent company does not exceed 25 percent or, alternatively, that non-WTO Member investment is from countries that satisfy the ECO test. The Commission would presume, subject to rebuttal, that direct or indirect foreign ownership of a wireless carrier's U.S. parent company does not pose competitive concerns in the U.S. market regardless of the nationality (in the case of an individual) or principal place(s) of business (in the case of a business entity) of the U.S. parent's foreign investor(s). The Commission seeks comment on whether it is prudent to presume that non-WTO Member investment in U.S. parent companies does not raise competitive concerns in the U.S. market and the circumstances, if any, that would allow the leveraging of market power in foreign telecommunications services or facilities into U.S. wireless markets.

9. Commenters should also address whether maintaining the distinction between WTO and non-WTO Member investment, including the ECO test, focuses Commission resources on the most pressing international competitive concerns, and whether eliminating the distinction between WTO and non-WTO Member investment and the ECO test would produce net public interest benefits by reducing asymmetries in regulation of wireless and wireline carriers, which are not subject to the foreign ownership restrictions in section 310(b) except to the extent they hold a common carrier radio license.

10. The Commission does not propose to change its long-standing requirement that applies to a licensee's determination of basic compliance with the 25 percent statutory benchmark in section 310(b)(4). In making that determination, licensees and their U.S. parent companies are required to count all equity and voting interests held in the U.S. parent, including interests held indirectly in the parent through intermediate companies. The agency seeks comment, however, on whether there are ways to reduce the costs and burdens of ascertaining the level of non-WTO investment in U.S. parent companies while continuing to support the agency's objectives to promote competition in the U.S. market and encourage market-opening in non-WTO Member countries. In particular, the Commission requests comment on allowing U.S. parent companies filing section 310(b)(4) petitions to exclude from their calculations of non-WTO investment those equity and voting interests that are held by a single non-WTO investor or ''group'' of non-WTO investors in an amount that constitutes 5 percent or less of the U.S. parent company's total capital stock (equity) and/or voting stock. Should the Commission continue to issue section 310(b)(4) rulings subject to the standard condition that prohibits the U.S. parent from accepting non-WTO investment that exceeds, in the aggregate, 25 percent of the U.S. parent's equity interests or 25 percent of its voting interests? If so, should the Commission allow the U.S. parent to exclude from the 25 percent amount those equity and voting interests that are held by a single non-WTO investor or ''group'' of non-WTO investors in an amount that constitutes 5 percent or less of the U.S. parent company's total capital stock (equity) and/or voting stock?

11. The Commission asks whether it should treat two or more non-WTO investors as a ''group'' when the investors have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the U.S. parent company or any intermediate company(ies) through which any of the investors holds its interests in the U.S. parent. As part of such an approach, should the Commission subject any individual or entity that, directly or indirectly, creates or uses a trust, proxy, power of attorney, or any other contract, arrangement, or device with the purpose of divesting itself, or preventing the vesting, of an equity interest or voting interest in the U.S. parent as part of a plan or scheme to evade the application of our policies that apply to non-WTO investment under section 310(b)(4) to enforcement action by the Commission, including an order requiring divestiture of the investor's direct or indirect interests in the U.S. parent? Should a 5 percent or less exclusion for non-WTO investments apply only when the U.S. parent or an entity that controls the U.S. parent is a publicly-traded company, or also when they are privately-held companies?

12. The Commission requests comment on whether a 5 percent or less exclusion would allow the Commission to adequately screen and potentially disallow non-WTO investment that may be contrary to the public interest; or would the exclusion amount be more

properly set at some other level? Are there ways to simplify the principal place of business test? Alternatively, should the agency eliminate the test in favor of a different approach? The Commission also seeks input on whether it is feasible and desirable to modify the ECO test to acknowledge and further encourage the efforts of non-WTO Member countries to open their markets to foreign investment and competition.

13. Regardless of whether the Commission retains the current distinction between WTO and non-WTO Member investment in a modified form or eliminates the distinction, it would continue to coordinate all section 310(b)(4) petitions with the appropriate Executive Branch agencies and accord deference to their views in matters related to national security, law enforcement, foreign policy, or trade policy that may be raised by a particular transaction. The Commission does not propose to adopt any change in policy that would affect the Commission's ability to condition or disallow foreign investment that may pose a risk of harm to important national policies.

14. *Issuing Section 310(b)(4) Rulings to the Licensee's U.S. Parent.* The Commission proposes to issue section 310(b)(4) rulings in the name of the controlling U.S. parent company of the licensee(s) that are the subject of the petition. Where there are successive, controlling U.S. parent companies in the vertical ownership chain of the licensee, it proposes to issue the ruling in the name of the lowest-tier, controlling U.S. parent. The Commission makes this proposal to ensure that it issues the foreign ownership ruling to the particular entity whose aggregate, direct and/or indirect foreign ownership would trigger the applicability of section 310(b)(4) to the extent it exceeds 25 percent, based on the company's ownership structure at the time the ruling is granted, and to accommodate other aspects of the proposed framework, such as allowing the U.S. parent's ruling to cover automatically any of its subsidiaries or affiliates.

15. *Approval of Named Foreign Investors.* The Commission proposes to continue to entertain petitions that request authority for foreign individual(s) and entity(ies) named in the petition to hold specified percentages of equity and/or voting interests in the U.S. parent whether directly or indirectly through intervening U.S.-organized entities. It proposes several key changes to the current framework for authorizing ownership of the U.S. parent by named foreign investors and by other potential foreign investors, to reduce the need for U.S. parent companies to return to the Commission, *after* receiving an initial ruling, to obtain prior approval for subsequent changes in their foreign ownership (including increased interests by foreign investors that the Commission already has approved in the initial ruling and interests to be acquired by new foreign investors).

16. The proposed rules would require a U.S. parent company to include in its section 310(b)(4) petition a request for specific approval of any named foreign individual or entity that holds, or would hold upon closing of any transactions contemplated by the petition, a direct or indirect equity and/or voting interest in the U.S. parent in excess of 25 percent or a controlling interest at any level. The U.S. parent would be required to monitor and stay ahead of changes in ownership of its approved foreign investors to ensure that the parent has an opportunity to obtain Commission approval before a change in ownership of an approved investor results in an unapproved investor acquiring an indirect interest in the U.S. parent that exceeds 25 percent. As is the case under the current regulatory framework, the proposed framework may necessitate the placement of restrictions in the bylaws or other organic documents of the controlling U.S. parent and/or other entities situated above it in the vertical chain of ownership to ensure the parent is able to comply with the terms of its section 310(b)(4) ruling. The Commission seeks comment on this aspect of the proposed framework, including whether it would present any new issues for U.S. common carrier and aeronautical radio licensees. It also requests comment on whether the proposal would be consistent with the statute. To the extent this proposal raises concern regarding the Commission's ability to monitor foreign investment in regulated entities, the Commission seeks comment on how it should modify the proposed framework.

17. The Commission proposes to provide the petitioning U.S. parent with the option of requesting specific approval for any named foreign investor to increase its equity and/or voting interests in the U.S. parent from existing levels (or levels that would exist upon closing of any related transactions) up to a non-controlling, 49.99 percent equity and/or voting interest (the ''49.99 percent approval option for named foreign investors''). It requests comment on this option and specifically seeks input whether, once it has reviewed and approved foreign ownership of a licensee's U.S. parent by a named foreign investor after coordination with relevant Executive Branch agencies, there is any public interest reason for the Commission to scrutinize additional investments by the same foreign individual or entity where the investment would not effectuate a transfer of control of the licensee. Commenters who oppose this approach should specify the potential harms such an approach may pose. Would the 49.99 percent approval option encourage the filing of speculative requests to the extent that the resulting administrative costs and burdens on the Commission and relevant Executive Branch agencies would outweigh the potential benefits to U.S. carriers and consumers? Or, are there reasons why a U.S. parent should only request 49.99 percent approval for a particular named foreign investor where the carrier has a reasonable expectation of needing such approval? Would this option increase the likelihood of unauthorized transfers of control because *de facto* control may be implicated at ownership levels below 49.99 percent depending on the distribution of other shares? To the extent that foreign investment raises unique issues with regard to potential unauthorized transfers of control, what mechanisms, if any, could the Commission adopt or are already in place to minimize such transfers in the event it adopts the 49.99 percent approval option?

18. The Commission also seeks comment on its proposal to provide foreign transferees with the option of seeking approval at the outset, in the section 310(b)(4) petition that is filed in connection with a transfer of control application, to acquire 100 percent of the equity and/or voting interests in the licensee's U.S. parent company (the ''100 percent approval option for controlling foreign investors'').

19. *The Aggregate Allowance for Unnamed Foreign Investors.* The Commission seeks comment on whether, in addition to approving ownership interests held or to be held directly or indirectly in the U.S. parent by named foreign investors for which the petition requests specific approval, it should, as a general rule, authorize the U.S. parent to have, on a going-forward basis, 100 percent aggregate foreign ownership, including by foreign investors for which the parent did not request specific approval in its petition, *provided that* no single foreign investor or ''group'' of foreign investors acquires, directly or indirectly, an ownership interest that exceeds 25 percent of the parent's equity interests or 25 percent of its voting interests, or a controlling interests at any level, without the Commission's prior approval. In recent

rulings, the Commission and its International Bureau have permitted 100 percent aggregate foreign ownership of U.S. parent companies subject to a 25 percent ceiling on interests acquired by a single foreign investor and the aggregate 25 percent limit on non-WTO investment. The Commission is not aware of any problems that have resulted from this approach or objections raised in the context of any particular proceedings. If the Commission determines to retain the current distinction between WTO and non-WTO Member investment, the Commission would continue to condition the ruling to require that non-WTO investment not exceed, directly or indirectly, in the aggregate, 25 percent of the U.S. parent's equity interests or 25 percent of its voting interests without prior Commission approval.

20. The Commission recognizes that, if it were to adopt such a 100 percent aggregate allowance, the 25 percent aggregate allowance that it currently includes in section 310(b)(4) rulings would effectively increase to 100 percent. It seeks comment on any burdens the current 25 percent allowance may impose on U.S. wireless carriers and whether it can mitigate any such burdens by increasing the allowance in a manner that would not compromise its statutory obligations under the Act. For example, if the Commission were to adopt a 100 percent aggregate allowance, should it provide public notice and an opportunity for comment when a foreign investor's interest would increase from a minority to a majority interest? Or, is it sufficient to rely on the Commission review process that would take place pursuant to section 310(d) of the Act, 47 U.S.C. 310(d)? The Commission requests that commenters also address whether it should apply a 100 percent aggregate allowance only to publicly-traded companies or also to privately-held companies. In addition, the Commission seeks input on the feasibility of applying a 25 percent allowance to a U.S. parent that is wholly owned and controlled by a foreign public company that is traded only on foreign exchanges and that is owned substantially by foreign citizens and entities. Is it possible for such foreign public companies to comply with a 25 percent allowance? Other than including a 100 percent allowance in the U.S. parent's section 310(b)(4) ruling in these circumstances, is there another way to address the possibility that the foreign company may be wholly foreign owned on any given day? If there is no alternative to using a 100 percent allowance in such a case, is there a policy basis for applying a more restrictive 25 percent allowance to U.S. parents that are owned in whole or in part by U.S. public companies? Would such an approach have the effect of treating foreign companies more favorably than U.S. companies? The Commission requests comment on each of these questions. It also seeks comment whether, if it were to adopt a 100 percent aggregate allowance, it should include it in the petitioning U.S. parent's section 310(b)(4) ruling regardless of whether, under the proposed rules, the U.S. parent is required to, or otherwise chooses to, request specific approval for any named foreign investors.

21. The Commission requests comment whether it should adopt a non-controlling, 25 percent standard for triggering prior approval of new or increased foreign investment by a foreign individual or entity, or by a ''group'' of foreign investors, that has not received specific approval in the U.S. parent's foreign ownership ruling. An investment greater than 25 percent may confer upon a foreign investor substantial influence over the core operations of a U.S. carrier and thus may warrant imposing additional conditions on the operations of the U.S. parent and licensee or disallowing the investment in whole or in part. At the same time, it would appear that the potential for harm from a non-controlling interest at an equity and/or voting level of 25 percent or less can be addressed sufficiently at the time of the initial grant of the parent's ruling through the negotiation of a security agreement or similar arrangement between the U.S. parent and relevant Executive Branch agencies and pursuant to the Commission's authority to impose conditions on a ruling where the Commission deems it is warranted in the public interest.

22. *Expanding Beyond Carrier-Specific Rulings.* The Commission currently issues foreign ownership rulings to cover only the licensee(s) named in the underlying petition. An affiliated entity must submit its own petition for declaratory ruling pursuant to section 310(b)(4). Similarly, where a licensee is the subject of a transfer of control application under section 310(d) of the Act, the fact that the Commission previously has approved the transferee's foreign ownership does not relieve the transferee of the obligation to obtain section 310(b)(4) approval in the name of licensees in which it proposes to acquire a controlling interest.

23. The Commission proposes to issue section 310(b)(4) rulings in the name of the U.S. parent of the licensee(s) that are the subject of the petition, but also to provide for automatic extension of the U.S. parent's ruling to cover any subsidiary or affiliate of the U.S. parent, whether existing at the time of the ruling or formed or acquired subsequently. It would define ''subsidiary or affiliate'' as an entity that is wholly owned and controlled by, or is under 100 percent common ownership and control with, the U.S. parent. Any subsidiary or affiliate of the U.S. parent, as so defined, would be covered by the parent's ruling, *provided that* the U.S. parent remains in compliance with the terms of its ruling(s). The Commission proposes to require that a subsidiary or affiliate attach to any common carrier or aeronautical wireless application a certification, signed by the U.S. parent, stating that the U.S. parent is in compliance with the terms and conditions of its section 310(b)(4) ruling(s) and providing citations to the ruling(s). The Commission also proposes to extend automatically the U.S. parent's section 310(b)(4) ruling to cover successors-in-interest to the parent, *provided that* foreign ownership of any such successors-in-interest complies with the terms of the ruling. The Commission proposes to require that successors-in-interest notify it within 30 days of the reorganization. The Commission requests comment on these two automatic extension proposals. In particular, are they likely to achieve the intended purpose of reducing the number of section 310(b)(4) petitions that wireless carriers must file under current procedures?

24. *Introducing New Foreign-Organized Entities into the Vertical Ownership Chain.* A controlling U.S. parent of a licensee may itself have one or more controlling foreign-organized companies situated above it in the vertical chain of ownership, and new foreign-organized parent companies may be added to the vertical chain of ownership over time as a result of internal reorganizations. The Commission seeks input on whether it should permit the insertion of new, controlling foreign-organized companies at any level in the vertical ownership chain above the U.S. parent that has received a foreign ownership ruling without prior Commission approval, *provided that* any new foreign-organized company(ies), either alone or together, are under 100 percent common ownership and control with the controlling foreign parent for which the U.S. parent has received prior Commission approval. The Commission

also requests comment on whether it should permit a U.S. parent company's approved, non-controlling foreign investors to insert new, foreign-organized companies into their vertical chains of ownership without the U.S. parent having to return to the Commission for prior approval, *provided that* the new foreign company is under 100 percent common ownership and control with the approved foreign investor. It requests comment on the costs and benefits of allowing foreign-organized companies to be introduced into the vertical ownership chains of the U.S. parent company and its approved, non-controlling foreign investors without prior approval once the Commission has issued the U.S. parent a section 310(b)(4) ruling. If the Commission determines to allow such post-ruling changes in foreign ownership, should it require the U.S. parent company to notify the Commission about the changes in ownership and, if so, would 30 days be a reasonable timeframe within which to require the U.S. parent to notify the Commission?

25. *Service- and Geographic-Specific Rulings.* The Commission requests comment on whether to retain its general practice of issuing rulings on a service-specific and geographic-specific basis. Section 310(b)(4) rulings typically cover only the particular wireless service(s) referenced in the petition for declaratory ruling, and the scope of the ruling may also be limited to the geographic service area of the licenses or spectrum leasing arrangements referenced in the petition. The Commission has previously recognized, in the *Secondary Markets Second Report and Order,* that service-specific and geographic-specific rulings might require carriers to make multiple filings for section 310(b)(4) approval, resulting in increased transaction costs and regulatory delay.[3] The Commission found that a policy of entertaining petitions that seek ''blanket'' approval, under section 310(b)(4), to cover future spectrum leasing arrangements and license assignments/transfers for services and geographic coverage areas specified in the petition would eliminate unnecessary regulatory hurdles for carriers seeking maximum flexibility to expand the scope of their service offerings, while continuing to ensure that the Commission and the Executive Branch have a meaningful opportunity to review applications and petitions for potential harms to national security, law enforcement, foreign policy and trade policy. The Commission seeks input on the public interest costs and benefits of issuing section 310(b)(4) rulings on a service-specific basis; and, similarly, on the costs and benefits of issuing section 310(b)(4) rulings on a geographic-specific basis. It requests that comments that advocate a change in policy include specific proposals as to the appropriate service and geographic limitations of section 310(b)(4) rulings, if any.

26. *Contents of Section 310(b)(4) Petitions for Declaratory Rulings.* The Commission proposes to require that all section 310(b)(4) petitions contain the name, address, citizenship, and principal places of business of any individual or entity, regardless of citizenship, that directly or indirectly holds or would hold, after effectuation of any planned ownership changes described in the petition, at least 10 percent of the equity or voting interests in the controlling U.S. parent company or a controlling interest at any level. Petitioners also would be required to provide the percentage of equity and/or voting interests held or to be held by each such ''disclosable interest holder'' (to the nearest one percent). The Commission proposes a 10 percent ownership threshold for its disclosure requirement because it essentially mirrors the ownership disclosure requirements that currently apply to most common carrier wireless applicants under the Commission's licensing rules. A foreign investor holding a non-controlling equity and/or voting interest of less than 10 percent in the U.S. parent would not need to be identified in the petition, unless the parent seeks specific approval for that investor (as a ''named foreign investor''). The Commission seeks comment on the proposed ownership disclosure requirement. It also seeks comment on whether a lower ownership percentage disclosure threshold, such as an interest that exceeds 5 percent, may be appropriate. Additionally, it seeks input on whether to require a description of the control structure of the U.S. parent, including an ownership diagram and/or identification of the real party-in-interest disclosed in any companion licensing or spectrum leasing applications.

27. The Commission also proposes that section 310(b)(4) petitions include ownership information for each foreign individual or entity for which the petition seeks specific approval: Its name, citizenship, principal business(es), and the percentage of equity and/or voting interest held or to be held by the foreign investor (to the nearest one percent). It proposes that, where the named foreign investor is a corporation or other business entity, the petition shall identify each of the named foreign investor's direct or indirect 10 percent interest holders, specifying each by name, citizenship, principal business(es), and percentage of equity and/or voting interest held in the named foreign investor. The Commission believes that this ownership information is necessary for it to verify the identity and ultimate control of the foreign investor for which the petitioner seeks specific approval. It seeks comment on these proposed information collection requirements, including whether to set the proposed disclosure threshold at interests of more than 5 percent. The Commission believes that it will be particularly critical to obtain ownership information with respect to foreign investors for which a U.S. parent seeks specific approval to the extent the agency adopts its proposal to entertain a U.S. parent's request for approval to allow one or more named foreign investors to increase its interest in the U.S. parent up to and including a non-controlling 49.99 percent equity and/or voting interest.

28. The Commission proposes to adopt rules that set forth the methodology for calculating a petitioner's disclosable interest holders. It also proposes that petitioners requesting specific approval for named foreign investors use the same methodology to calculate the foreign investors' equity and voting interests in the U.S. parent. The proposed rules largely track the methodology articulated in the *Foreign Ownership Guidelines* for determining the level of foreign equity and voting interests that are held directly and/or indirectly in the U.S. parent of a common carrier or aeronautical licensee that is the subject of a section 310(b)(4) petition.[4]

29. That is, in calculating foreign equity interests in a parent company, the Commission uses a multiplier to dilute the percentage of each investor's equity interest in the parent when those interests are held through intervening companies, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier. By

[3] *See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking,* FCC 04–167, 19 FCC Rcd 17503, 17515, para. 22 (2004) (*Secondary Markets Second Report and Order*), Second Order on Reconsideration, FCC 08–243, 23 FCC Rcd 15081 (2008).

[4] *See Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses,* 19 FCC Rcd 22612, 22627–31 (Int'l Bur. 2004), erratum, 21 FCC Rcd 6484 (*Foreign Ownership Guidelines*), pet. for recon. pending.

contrast, in calculating foreign voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier.

30. In circumstances where voting interests in the U.S. parent are held through one or more intervening partnerships, the multiplier is not applied to dilute a general partnership interest or uninsulated limited partnership interest held by a foreign individual or entity. A general partner, and a limited partner that does not specifically demonstrate it is insulated from active involvement in partnership affairs, are considered to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. Where a foreign investor holds an ownership interest indirectly in the U.S. parent through an intervening limited partnership, and the investor is effectively insulated from active involvement in partnership affairs, the U.S. parent may apply the multiplier in calculating the foreign investor's voting interest in the U.S. parent under section 310(b)(4), and its voting interest will be calculated as equal to its equity interest in the U.S. parent. Similarly, where the U.S. parent is itself organized as a limited partnership, an insulated limited partner's voting interest in the U.S. parent will be calculated as equal to the limited partner's equity interest in the parent. A limited partnership interest will be treated as insulated where the section 310(b)(4) petition contains a showing that the foreign limited partner is prohibited by the relevant partnership agreement from participating in the day-to-day management of the partnership, and that only the usual and customary investor protections are contained in the limited partnership agreement.

31. The Commission requests comment on the proposed rules for calculating the equity and voting interests held, or to be held, in a petitioner by its disclosable interest holders and by foreign investors for which the petitioner requests specific approval. In particular, it requests comment on whether to revise its current methodology for calculating voting interests held in U.S. parent companies of common carrier or aeronautical licensees through intervening limited partnerships. It also requests comment on the appropriate methodology for calculating voting interests held in U.S. parent companies of common carrier or aeronautical licensees through intervening limited liability companies, an issue not addressed in the *Foreign Ownership Guidelines.*

32. The Commission additionally requests comment on whether the insulation standard that applies to foreign limited partners investing in U.S. parents of common carrier and aeronautical licensees is sufficient to support a presumption that an insulated limited partner will not be materially involved in managing partnership affairs. To the extent such a presumption holds true, would it justify treating the limited partner as having no voting interest in the limited partnership under section 310(b)(4), effectively treating the limited partner like a non-voting stockholder of a corporation? Is there a need to relax or clarify the insulation standard: *e.g.,* to require insulation only with respect to the telecommunications-related businesses of the partnership? Alternatively, is there a perceived legal or policy reason to tighten the insulation standard, particularly if the agency determines to treat insulated limited partnership interests like non-voting stock interests? For example, should the Commission codify in its rules a list of investor protections which would not, in themselves, result in a limited partner being deemed uninsulated? Are the matters listed in proposed rule 47 CFR 1.993(c) underinclusive or overinclusive of matters properly considered to be usual and customary investor protections? Regardless of its determination on this issue, the Commission would continue to calculate the *pro rata* equity holdings of insulated limited partners investing in a U.S. parent directly, where the parent is itself organized as a limited partnership, or indirectly through intervening limited partnerships, as required by section 310(b)(4).

33. The Commission also requests comment as to how it should calculate the voting interests held in U.S. parent companies of common carrier or aeronautical licensees through intervening limited liability companies (and, to the extent they may be used, registered limited liability partnerships). The Commission has previously determined, in the context of its broadcast attribution rules, to treat limited liability companies in the same manner as limited partnerships and has declined to differentiate its treatment of limited liability companies based on whether their management form is centralized or decentralized. It also concluded that it would treat registered limited liability partnerships in the same manner as limited partnerships and limited liability companies. The Commission asks that commenters address whether the Commission should apply to limited liability companies and registered limited liability partnerships the same principles that it ultimately adopts for calculating voting interests in limited partnerships.

34. The Commission additionally requests comment whether it is reasonable for it to rely on a petitioner's certification that it has calculated the ownership interests disclosed in its petition based upon its review of the Commission's rules and that the interests disclosed satisfy each of the pertinent standards and criteria required by the rules. The Commission preliminarily finds that it is reasonable to adopt a certification approach in the context of its section 310(b)(4) ownership disclosure rules, and it seeks comment on the draft certification that is included in the proposed rules. Finally, the Commission requests comment regarding the nature of any other information which the Commission should require to be submitted in support of section 310(b)(4) petitions.

35. *Filing and Processing of Section 310(b)(4) Petitions for Declaratory Rulings.* The Commission proposes to continue to: place section 310(b)(4) petitions on public notice as accepted for filing after International Bureau staff has reviewed each petition for completeness; ensure that the appropriate Executive Branch agencies receive a copy of each petition; act on each petition after the Executive Branch agencies have completed their review and in light of any comments or objections that the agencies or other interested parties file for the record; and, unless it otherwise specifies in the ruling, issue the ruling subject to the standard terms and conditions that it adopts in this proceeding and codifies in the Commission's rules. The Commission asks whether it should retain its current approach to streamlining section 310(b)(4) petitions. In particular, it seeks input on whether extending the streamlined processing procedures is likely to result in more efficient and timely Commission processing of section 310(b)(4) petitions while continuing to ensure that Executive Branch agencies have sufficient opportunity to engage in a meaningful review. Finally, it seeks comment on whether there may be additional ways to accelerate the section 310(b)(4) review process. It asks commenters addressing ideas for modernizing the current process to discuss how any new approach would

affect the Commission's public interest review.

36. *Continued Compliance with Section 310(b)(4) Declaratory Rulings.* The Commission requests comment on whether to require the U.S. parent to file a periodic certification with the Commission to demonstrate the parent is in compliance with its foreign ownership ruling. The agency asks whether to require a certification every 4 years after the anniversary of the effective date of the ruling or, alternatively, with a licensee's renewal applications.

37. *Transition Issues.* The Commission does not propose to change retroactively the terms and conditions of any section 310(b)(4) ruling issued prior to the effective date of the rules adopted in this proceeding. It proposes to permit the controlling U.S. parent company of a wireless carrier with an existing ruling to file a new petition under the rules adopted in this proceeding. It seeks comment on this approach and on alternative approaches that would extend the benefits of the rules in a way that minimizes the need for U.S. parent companies to return to the Commission for a new ruling. For example, if the Commission modifies or eliminates current policy with respect to non-WTO Member investment, should it adopt a rule that modifies all existing section 310(b)(4) rulings to incorporate the new policy? If the Commission adopts a 100 percent aggregate allowance, should it adopt a rule that would incorporate this provision in all rulings in place of the current, standard 25 percent aggregate allowance? Are there public policy reasons to require in all cases that a U.S. parent company return to the Commission for a new ruling to obtain the benefits of the rules adopted in this proceeding?

Paperwork Reduction Act of 1995 Analysis

38. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due on or before December 20, 2011. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

39. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' (FCC) from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

40. The proposed information collection requirements are as follows:

OMB Control Number: 3060–xxxx.

Title: Regulations Applicable to Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Businesses or other profit entities.

Number of Respondents and Responses: 79 respondents and 79 responses.

Estimated Time per Response: 1 hour to 46 hours.

Frequency of Response: On occasion and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for these proposed information collections is found in Sections 1, 4(i)–(j), 211, 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 211, 309, 310, and 403.

Total Annual Burden Hours: 942 hours.

Total Annual Costs: $282,600.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered. This information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Act Impact Assessment: No impacts.

Needs and Uses: On August 9, 2011, the Commission adopted a Notice of Proposed Rulemaking in (FCC 11–121) in Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, IB Docket No. 11–133 (rel. Aug. 9, 2011) (Section 310(b)(4) NPRM). The Section 310(b)(4) NPRM initiates a review of the Commission's policies and procedures that apply to foreign ownership of common carrier and aeronautical en route and aeronautical fixed radio station licensees pursuant to section 310(b)(4) of the Communications Act of 1934, as amended. It seeks comment on measures to revise and simplify the Commission's regulatory framework under section 310(b)(4) for authorizing foreign ownership in the U.S. parents of common carrier and aeronautical radio licensees. It also proposes to codify whatever measures the Commission ultimately adopts in this proceeding to provide more predictability and ensure transparency of its section 310(b)(4) filing requirements and review process.

Initial Regulatory Flexibility Analysis

41. The Regulatory Flexibility Act of 1980, as amended (RFA),[5] requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' [6] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [7] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[8] A

[5] *See* 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[6] 5 U.S.C. 605(b).

[7] 5 U.S.C. 601(6).

[8] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601 (3), the statutory definition of a small business applies ''unless an agency, after consultation with

Continued

''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

42. In this NPRM, the Commission seeks comment on proposed changes and other options to revise and simplify its policies and procedures implementing section 310(b)(4) of the Act, 47 U.S.C. 310(b)(4), for common carrier and aeronautical radio station licensees while continuing to ensure that the agency has the information it needs to carry out its statutory duties. The proposals in this NPRM are designed to reduce to the extent possible the regulatory costs and burdens imposed on wireless common carrier and aeronautical applicants, licensees, and spectrum lessees; provide greater transparency and more predictability with respect to the Commission's filing requirements and review process; and facilitate investment from new sources of capital, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.

43. We estimate that the rule changes discussed in this NPRM, if adopted, would result in a more than 70 percent reduction in the number of section 310(b)(4) petitions for declaratory ruling filed with the Commission annually, as compared to the current regulatory framework.[9] We also anticipate a reduction in the time and expense associated with filing petitions under the proposed framework. For example, we propose that U.S. parent companies of common carrier and aeronautical licensees that seek Commission approval to exceed the 25 percent benchmark in section 310(b)(4) no longer be required to request, in their section 310(b)(4) petitions, specific approval of named foreign investors unless a foreign investor proposes to acquire a direct or indirect equity and/or voting interest in the U.S. parent that exceeds 25 percent, or a controlling interest at any level. Another proposal would, if adopted, allow the U.S. parent to request specific approval for foreign investors named in the section 310(b)(4) petition to increase their direct or indirect equity and/or voting interests in the U.S. parent at any time after issuance of the section 310(b)(4) ruling, up to and including a non-controlling 49.99 percent equity and/or voting interest. Under another proposal, if adopted, the Commission would issue section 310(b)(4) rulings in the name of the U.S. parent of the licensee, and allow for automatic extension of the U.S. parent's ruling to cover any of the U.S. parent's subsidiaries or affiliates, whether existing at the time of the ruling or formed or acquired subsequently, *provided that* the U.S. parent remains in compliance with the terms of its ruling.

44. The Commission believes that the streamlining proposals and other options in the Section 310(b)(4) NPRM will reduce costs and burdens currently imposed on licensees, including those licensees that are small entities, and accelerate the foreign ownership review process, while continuing to ensure that the agency has the information it needs to carry out its statutory duties. Therefore, the Commission certifies that the proposals in the Section 310(b)(4) NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the NPRM, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.[10] This initial certification will also be published in the **Federal Register**.[11]

Ordering Clauses

45. *It is ordered* that, pursuant to the authority contained in 47 U.S.C. 151, 152, 154(i), 154(j), 211, 303(r), 309, 310 and 403, this *Notice of Proposed Rulemaking* is *adopted.*

46. *It is futher ordered that notice is hereby given* of the proposed regulatory changes to Commission policy and rules described in this Notice of Proposed Rulemaking and that comment is sought on these proposals.

47. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 1 and 25

Communications common carriers, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 25 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, and 310.

2. Section 1.907 is amended by adding definitions for *Spectrum leasing arrangement* and *Spectrum lessee* to read as follows:

§ 1.907 Definitions.

* * * * *

Spectrum leasing arrangement. An arrangement between a licensed entity and a third-party entity in which the licensee leases certain of its spectrum usage rights to a spectrum lessee, as set forth in Subpart X of this part (47 CFR 1.9001 *et seq.*). Spectrum leasing arrangement is defined in § 1.9003.

Spectrum lessee. Any third party entity that leases, pursuant to the spectrum leasing rules set forth in Subpart X of this part (47 CFR 1.9001 *et seq.*), certain spectrum usage rights held by a licensee. Spectrum lessee is defined in § 1.9003.

* * * * *

3. Subpart F is amended by adding §§ 1.990 through 1.994 and an undesignated center heading to read as follows:

Sec.

Foreign Ownership of U.S.-Organized Entities That Control Common Carrier, Aeronautical en Route, and Aeronautical Fixed Radio Station Licensees

1.990 Filing requirements.
1.991 Contents of petitions for declaratory ruling.
1.992 How to calculate indirect equity and voting interests.
1.993 Insulation Criteria for Interests in Limited Partnerships and Limited Liability Companies.
1.994 Routine terms and conditions.

Foreign Ownership of U.S.-Organized Entities That Control Common Carrier, Aeronautical en Route, and Aeronautical Fixed Radio Station Licensees

§ 1.990 Filing requirements.

(a)(1) The controlling U.S.-organized parent company of a common carrier,

the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register**.''

[9] This estimate is based on the International Bureau staff's review of the 21 section 310(b)(4) petitions filed with the Commission during a randomly-selected period (September 1, 2007 through August 31, 2008).

[10] 5 U.S.C. 605(b).

[11] *Id.*

aeronautical en route or aeronautical fixed radio station applicant, licensee, or spectrum lessee shall file a petition for declaratory ruling pursuant to section 310(b)(4) of the Communications Act to obtain Commission approval *before* the parent company's aggregate foreign ownership exceeds, directly or indirectly, 25 percent of its equity interests and/or 25 percent of its voting interests.

(2) Where there are successive, controlling U.S.-organized parent companies in the vertical ownership chain of the applicant, licensee or spectrum lessee, the petition for declaratory ruling required by paragraph (a)(1) of this section shall be filed by, or on behalf of, the lowest-tier, controlling U.S.-organized parent company.

Example 1. U.S.-organized Licensee A is wholly owned and controlled by U.S.-organized Corporation B, that is, in turn, wholly owned and controlled by U.S.-organized Corporation C. Foreign-organized Corporation D plans to acquire a non-controlling 30% equity and voting interest in U.S.-organized Corporation C. The petition for declaratory ruling required by paragraph (a)(1) of this section should be filed by or on behalf of U.S.-organized Corporation B.

Example 2. U.S.-organized Licensee A is wholly owned and controlled by U.S.-organized Corporation B, that is, in turn, wholly owned and controlled by U.S.-organized Corporation C. U.S.-organized Corporation C is 51% owned and controlled by U.S.-organized Corporation D, which is, in turn, wholly owned and controlled by Foreign-organized Corporation E. The remaining 49% equity and voting interests in U.S.-organized Corporation C are owned by U.S.-organized Corporation F, which is, in turn, wholly owned and controlled by Foreign-organized Corporation G. The petition for declaratory ruling required by paragraph (a)(1) of this section should be filed by or on behalf of U.S.-organized Corporation B.

(b) The petition for declaratory ruling required by paragraph (a)(1) of this section shall be filed electronically on the Internet through the International Bureau Filing System (IBFS). For information on filing your petition through IBFS, *see* part 1, subpart Y and the IBFS homepage at *http://www.fcc.gov/ib.*

(c) The U.S. parent filing the petition for declaratory ruling required by paragraph (a)(1) of this section shall certify to the information contained in the petition in accordance with the provisions of § 1.16.

(d) The following definitions shall apply to this section and §§ 1.991 through 1.994.

(1) *Individual* refers to a natural person as distinguished from a partnership, association, corporation, or other organization.

(2) *Entity* includes a partnership, association, estate, trust, corporation, limited liability company, governmental authority or other organization.

(3) *Control* includes actual working control in whatever manner exercised and is not limited to majority stock ownership. *Control* also includes direct or indirect control, such as through intervening subsidiaries.

§ 1.991 Contents of petitions for declaratory ruling.

The petition for declaratory required by § 1.990(a)(1) shall contain the following information:

(a) The name(s) and FCC Registration Number(s) (FRN) of the applicant(s), licensee(s), or spectrum lessees for which a ruling is requested.

(b)(1) For each named licensee or spectrum lessee, specify:

(i) The Call Sign(s) or, in the case of a spectrum leasing arrangement, the File No(s). under which the licensee or spectrum lessee is authorized to provide common carrier, aeronautical fixed or aeronautical en route service; and

(ii) The type(s) of radio service authorized (*e.g.,* cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service).

(2) If the petition is filed in connection with an application for a radio station license or a spectrum leasing arrangement, or an application to acquire a license or spectrum leasing arrangement by assignment or transfer of control, specify for each named applicant:

(i) The File No(s). of the associated application(s), if available at the time the petition is filed; otherwise, specify the anticipated filing date for each application; and

(ii) The type(s) of radio services covered by each application (*e.g.,* cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service).

(c) With respect to the petitioning U.S.-organized parent company, its name; FCC Registration Number (FRN); mailing address; place of organization; telephone number; facsimile number (if available); electronic mail address (if available); type of business organization (*e.g.,* corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)); name and title of officer certifying to the information contained in the petition.

(d) If the petitioning U.S.-organized parent company is represented by a third party (*e.g.,* legal counsel), that person's name, the name of the firm or company, mailing address and telephone number/electronic mail address may be specified.

(e) With respect to the petitioning U.S.-organized parent company, the name of any individual or entity that holds *directly* 10 percent or more of the U.S. parent's equity interests and/or voting interests, or a controlling interest at any level as follows:

(1) In the case of a U.S. parent that is organized as a corporation, the name of any individual or entity that holds 10 percent or more of the U.S. parent company's total capital stock and/or voting stock, or a controlling interest at any level.

(2) In the case of a U.S. parent that is organized as a general partnership, the names of its constituent general partners.

(3) In the case of a U.S. parent that is organized as a limited partnership, the name(s) of the general partner(s), any uninsulated limited partner(s), and any insulated limited partner(s) with an equity interest in the U.S. parent of at least 10 percent (calculated according to the percentage of the limited partner's capital contribution). With respect to each named limited partner, state whether its partnership interest is insulated or uninsulated, based on the insulation criteria specified in § 1.993.

(4)(i) Except as otherwise provided in paragraph (e)(4)(ii) of this section, in the case of a U.S. parent that is organized as a limited liability company, the name(s) of each uninsulated member, regardless of its equity interest in the U.S. parent, any insulated member with an equity interest in the U.S. parent of at least 10 percent (calculated according to the percentage of the member's capital contribution), and any non-member manager(s). With respect to each named member, state whether its membership interest is insulated or uninsulated, based on the insulation criteria specified in § 1.993, and whether the member is a managing member.

(ii) Where a U.S. parent is organized as a limited liability company and demonstrates in its section 310(b)(4) petition that the company is governed in a manner similar to a corporation, the name of any individual or entity that holds 10 percent or more of the U.S. parent company's total equity interests and/or voting interests, or a controlling interest at any level. For purposes of this paragraph, equity interests shall be calculated according to the percentage of the member's capital contribution, and voting interests shall be calculated based on the governance provisions of the particular limited liability company

agreement and other operative documents. The demonstration required by this paragraph shall include a description of the members' respective voting rights and roles in managing the affairs of the company.

(f) With respect to the petitioning U.S.-organized parent company, the name of any individual or entity that holds *indirectly,* through one or more intervening entities, 10 percent or more of the U.S. parent's equity interests and/or voting interests, or a controlling interest at any level. Equity interests and voting interests held indirectly shall be calculated in accordance with the principles set forth in § 1.992.

(g)(1) For each 10 percent interest holder named in response to paragraphs (e) and (f) of this section, specify the equity interest held and the voting interest held (each to the nearest one percent); in the case of an individual, his or her citizenship; in the case of a business organization, its place of organization, type of business organization (*e.g.,* corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)); and principal business(es).

(2) For purposes of this paragraph (g), where the petitioning U.S. parent is organized as a limited partnership or limited liability company, any limited partner or member that is insulated as specified in § 1.993 shall be deemed to hold no voting interest in the U.S. parent. Thus, the U.S. parent is not required to calculate any voting interest for its insulated limited partners or insulated members.

(h) Attach an ownership diagram illustrating the vertical ownership structure of the applicant(s), licensee(s), or spectrum lessee(s) that are the subject of the petition, including the direct and indirect ownership (equity and voting) interests held in the petitioning U.S. parent by the person(s) and/or entity(ies) named in response to paragraphs (e) and (f) of this section, each of which should be depicted in the ownership diagram. All controlling interests should be labeled as such.

(i)(1) Provide the name of each foreign individual and/or entity for which the petitioning U.S. parent company requests specific approval, if any, and the respective percentages of equity and/or voting interests that each holds, or would hold, upon consummation of any transactions described in the petition, directly or indirectly in the U.S. parent company. Equity and voting interests shall be calculated in accordance with the principles set forth in paragraphs (e) and (f) of this section and in § 1.992.

(2) The petitioning U.S. parent must request specific approval for any foreign individual and/or entity that holds, or would hold, upon consummation of any transactions described in the petition, a direct and/or indirect equity and/or voting interest in the U.S. parent in excess of 25 percent, or a controlling interest at any level. The U.S. parent may, but is not required to, request specific approval for any other foreign individual or entity that holds, or would hold, a direct and/or indirect equity and/or voting interest in the U.S. parent.

(3) The Commission will not authorize a U.S. parent to have aggregate, direct or indirect investment exceeding 25 percent of the parent's equity interests or 25 percent of its voting interests from individuals or entities that have their ''home markets'' in countries that are not Members of the World Trade Organization (WTO), *unless* the petitioning U.S. parent demonstrates in its petition that the non-WTO Member country(ies) offer effective competitive opportunities to U.S. investors in the particular service sector in which the parent competes, or seeks to compete, in the U.S. market, or that countervailing public interest considerations weigh in favor of authorizing the non-WTO investment.

(4) For purposes of calculating its non-WTO Member investment, the U.S. parent may exclude those equity and/or voting interests that are held by a single non-WTO investor or ''group'' of non-WTO investors in an amount that constitutes 5 percent or less of the U.S. parent's total capital stock (equity) and/or voting stock. For this purpose, two or more non-WTO investors will be treated as a ''group'' when the investors have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the U.S. parent company or any intermediate company(ies) through which any of the investors holds its interests in the U.S. parent.

(5) The Commission generally considers a foreign individual's ''home market'' to be his or her country of citizenship. Where the interest would be held by a foreign corporation, partnership, or other business organization, the petition must establish the investing entity's principal place of business by specifying the following information: the country of a foreign entity's incorporation, organization, or charter; the nationality of all investment principals, officers, and directors; the country in which the world headquarters is located; the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities is located; and the country from which the foreign entity derives the greatest sales and revenues from its operations.

(6) In applying the effective competitive opportunities (ECO) test, the Commission will consider the legal and practical limitations on U.S. investment in the foreign investor's home market for the particular wireless service (or analogous service) in which the investor seeks to participate in the U.S. market. The ECO analysis compares restrictions on U.S. participation in the home market for the particular wireless service in which the foreign investor seeks to participate in the U.S. market. If the services in the U.S. and home markets are not precisely matched, we will use the most closely substitutable wireless service in the home market, as determined from the consumers' perspective. The petition should demonstrate the existence and extent of any legal restrictions on U.S. investment in the relevant market(s) and the absence of practical limitations on U.S. participation, including the price, terms and conditions of interconnection, competitive safeguards, and the regulatory framework of the relevant market(s).

(j) The petitioning U.S. parent company may, but is not required to, request advance approval in its petition for any foreign individual or entity named in response to paragraph (i) of this section to increase its direct and/or indirect equity and/or voting interests in the petitioning U.S. parent above the percentages specified in response to paragraph (i) of this section. Requests for advance approval shall be made as follows:

(1) Where a foreign individual or entity named in response to paragraph (i) of this section holds, or would hold upon consummation of any transactions described in the petition, a *de jure* or *de facto* controlling interest in the U.S. parent, the U.S. parent may request advance approval in its petition for the foreign individual or entity to increase its interests up to any amount, including 100 percent of the direct and/or indirect equity and/or voting interests in the U.S. parent. Specify for the named controlling foreign person(s) the maximum percentages of equity and/or voting interests for which advance approval is sought or, in lieu of a specific amount, state that the petitioner requests advance approval for the named controlling foreign person to increase its interests up to and including 100 percent of the U.S.

parent's direct and/or indirect equity and/or voting interests.

(2) Where a foreign individual or entity named in response to paragraph (i) of this section holds, or would hold upon consummation of any transactions described in the petition, a non-controlling interest in the U.S. parent, the U.S. parent may request advance approval in its petition for the foreign individual or entity to increase its interests up to any non-controlling amount. Specify for the named foreign person(s) the maximum percentages of equity and/or voting interests for which advance approval is sought or, in lieu of a specific amount, state that the petitioner requests advance approval for the named foreign person(s) to increase their interests up to and including a non-controlling 49.99 percent direct and/or indirect equity and/or voting interest in the U.S. parent. *See* § 1.990(i)(3).

§ 1.992 How to calculate indirect equity and voting interests.

(a) The criteria specified in this section shall be used for purposes of calculating equity and voting interests held indirectly in a petitioning U.S. parent under § 1.991.

(b)(1) *Equity interests held indirectly in the petitioning U.S. parent.* Equity interests that are held by any individual or entity indirectly in a petitioning U.S.-organized parent company through one or more intervening entities shall be calculated by successive multiplication of the equity percentages for each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier.

Example. Assume that a foreign individual holds a 30 percent equity and voting interest in Corporation A which, turn, holds a non-controlling 40 percent equity and voting interest in U.S. Parent Corporation B. The foreign individual's equity interest in U.S. Parent Corporation B would be calculated by multiplying the foreign individual's equity interest in Corporation A by that entity's equity interest in U.S. Parent Corporation B. The foreign individual's equity interest would be 12 percent (30% × 40% = 12%). Even if Corporation A's 40% voting interest in U.S. Parent Corporation B constituted a *controlling* interest, the foreign individual's equity interest would still be calculated as 12 percent (30% × 40% = 12%).

(2) *Voting interests held indirectly in the petitioning U.S. parent.* Voting interests that are held by any individual or entity indirectly in a petitioning U.S.-organized parent company through one or more intervening entities will be determined depending upon the type of business organization(s) through which the person or entity holds a voting interest as follows:

(i) Voting interests that are held through one or more intervening corporations shall be calculated by successive multiplication of the voting percentages for each link in the vertical ownership chain, except that wherever the voting interest for any link in the chain is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

Example. Assume that a foreign individual holds a 30 percent equity and voting interest in Corporation A which, turn, holds a *controlling* 40 percent equity and voting interest in U.S. Parent Corporation B. Because Corporation A's 40 percent voting interest in U.S. Parent Corporation B constitutes a *controlling* interest, it is treated as a 100 percent interest. The foreign individual's 30 percent voting interest in U.S. Parent Corporation B would flow through in its entirety to U.S. Parent Corporation B and thus be calculated as 30 percent (30% × 100% = 30%).

(ii) Voting interests that are held through one or more intervening partnerships shall be calculated depending upon whether the individual or entity holds a general partnership interest, an uninsulated limited partnership interest, or an insulated limited partnership interest as specified in paragraphs (b)(2)(ii)(A) and (B) of this section.

(A) *General partnership and uninsulated limited partnership interests.* A general partner and uninsulated limited partner shall be deemed to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. A limited partner shall be treated as uninsulated unless the limited partnership agreement or other operative agreement satisfies the insulation criteria specified in § 1.993.

(B) *Insulated limited partnership interests.* A limited partner that satisfies the insulation criteria specified in § 1.993 shall be treated as an insulated limited partner that has no voting interest in the limited partnership. Thus, the petitioning U.S. parent is not required to calculate any voting interest for the insulated limited partners of any limited partnership situated above the petitioning U.S. parent in its vertical chain of ownership.

(iii) Voting interests that are held through one or more intervening limited liability companies shall be calculated depending upon whether the individual or entity is a non-member manager, an uninsulated member or an insulated member as specified in paragraphs (b)(2)(iii)(A) and (B) of this section.

(A) *Non-member managers and uninsulated membership interests.* A non-member manager and an uninsulated member of a limited liability company shall be deemed to hold the same voting interest as the limited liability company holds in the company situated in the next lower tier of the vertical ownership chain. A member shall be treated as uninsulated unless the limited liability company agreement satisfies the insulation criteria specified in § 1.993.

(B) *Insulated membership interests.* A member of a limited liability company that satisfies the insulation criteria specified in § 1.993 shall be treated as an insulated member that has no voting interest in the limited liability company. Thus, the petitioning U.S. parent is not required to calculate any voting interest for the insulated members of any limited liability company situated above the petitioning U.S. parent in its vertical chain of ownership.

§ 1.993 Insulation Criteria for Interests in Limited Partnerships and Limited Liability Companies.

(a)(1) Where the petitioning U.S. parent is organized as a limited partnership, the U.S. parent's limited partners shall be treated as uninsulated within the meaning of § 1.992(b)(2)(ii)(A) unless the petitioning U.S. parent's limited partners are prohibited by the limited partnership agreement or other operative agreement from participating in the day-to-day management of the partnership and only the usual and customary investor protections are contained in the limited partnership agreement or other operative agreement.

(2) Where there is one or more limited partnerships situated above the U.S. parent in its vertical chain of ownership, the limited partners of each such partnership shall be treated as uninsulated within the meaning of § 1.992(b)(2)(ii)(A) unless the petitioning U.S. parent's limited partners are prohibited by the limited partnership agreement or other operative agreement from participating, and in fact do not participate, in the day-to-day management of the partnership and only the usual and customary investor protections are contained in the limited partnership agreement or other operative agreement.

(b)(1) Where the petitioning U.S. parent is organized as a limited liability company, members of the limited liability company shall be treated as uninsulated for purposes of § 1.992(b)(2)(iii)(A) unless a member is

prohibited by the limited liability company agreement from participating, and in fact does not participate, in the day-to-day management of the company and only the usual and customary investor protections are contained in the agreement.

(2) Where there is one or more limited liability companies situated above the U.S. parent in its vertical chain of ownership, the members of each such company shall be treated as uninsulated for purposes of § 1.992(b)(2)(iii)(A) unless a member is prohibited by the limited liability company agreement from participating, and in fact does not participate, in the day-to-day management of the company and only the usual and customary investor protections are contained in the agreement.

(c) The usual and customary investor protections referred to in paragraphs (a) and (b) of this section shall consist of:

(1) The power to prevent the sale or pledge of all or substantially all of the assets of the limited partnership or limited liability company or a voluntary filing for bankruptcy or liquidation;

(2) The power to prevent the limited partnership or limited liability company from entering into contracts with majority investors or their affiliates;

(3) The power to prevent the limited partnership or limited liability company from guaranteeing the obligations of majority investors or their affiliates;

(4) The power to purchase an additional interest in the limited partnership or limited liability company to prevent the dilution of the partner's or member's pro rata interest in the event that the limited partnership or limited liability company issues additional instruments conveying interests in the partnership or company;

(5) The power to prevent the change of existing legal rights or preferences of the limited partners or members, as provided in the limited partnership or limited liability company agreement or other operative agreement;

(6) The power to vote on the removal of a general partner or managing member in situations where the general partner or managing member is subject to bankruptcy, insolvency, reorganization, or other proceedings relating to the relief of debtors; adjudicated insane or incompetent by a court of competent jurisdiction (where the general partner or managing member is a natural person); convicted of a felony; or otherwise removed for cause, as determined by an independent party;

(7) The power to prevent the amendment of the limited partnership agreement or limited liability company agreement, or other organizational documents of the partnership or limited liability company with respect to the matters described in paragraph (c)(1) through (6) of this section.

§ 1.994 Routine terms and conditions.

Section 310(b)(4) rulings issued pursuant to §§ 1.990 through 1.994 shall be subject to the following terms and conditions, except as otherwise specified in the U.S. parent's particular ruling:

(a)(1) In addition to the foreign ownership interests approved specifically in the section 310(b)(4) ruling, the U.S.-organized parent company named in the ruling (or a U.S.-organized successor-in-interest formed as part of a *pro forma* reorganization) may have up to and including an additional, aggregate 25 percent direct or indirect equity and/or voting interests from other foreign individuals or foreign-organized entities without prior Commission approval, *provided that* no foreign person or foreign-organized entity acquires a direct or indirect equity and/or voting interest in excess of 25 percent, or a controlling interest at any level, unless approved specifically in the ruling *and provided that* aggregate investment from individuals or entities that have their ''home markets'' in countries that are not Members of the World Trade Organization (WTO) does not exceed, directly or indirectly, 25 percent of the U.S.-organized parent company's equity and/or voting interests.

Note to paragraph (a)(1): For purposes of calculating compliance with the 25 percent aggregate ceiling on foreign investment from non-WTO Member countries, the U.S.-organized parent may exclude those equity and/or voting interests that are held by a single non-WTO investor or ''group'' of non-WTO investors in an amount that constitutes 5 percent or less of the U.S. parent's total capital stock (equity) and/or voting stock. For this purpose, two or more non-WTO investors will be treated as a ''group'' when the investors have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the U.S. parent company or any intermediate company(ies) through which any of the investors holds its interests in the U.S. parent.

(2) Any individual or entity that, directly or indirectly, creates or uses a trust, proxy, power of attorney, or any other contract, arrangement, or device with the purpose of divesting itself, or preventing the vesting, of an equity interest or voting interest in the U.S. parent as part of a plan or scheme to evade the application of the Commission's rules or policies that apply to non-WTO investment under section 310(b)(4) shall be subject to enforcement action by the Commission, including an order requiring divestiture of the investor's direct or indirect interests in the U.S. parent.

(b) The section 310(b)(4) ruling issued to the U.S. parent named in the ruling shall cover the applicant(s), licensees(s), and spectrum lessee(s) that are the subject of the ruling *and* any other subsidiary or affiliate of the named U.S. parent, whether existing at the time the ruling is issued or formed or acquired subsequently, *provided that* the U.S. parent remains in compliance with the terms and conditions of its ruling.

(1) For purposes of this paragraph (b), ''subsidiary or affiliate'' is defined as any entity that is wholly owned and controlled by, or is under 100 percent common ownership and control with, the U.S. parent.

(2) A subsidiary or affiliate filing an application for an initial common carrier, aeronautical en route, or aeronautical fixed radio station license or spectrum leasing arrangement, or an application to acquire such license or spectrum leasing arrangement by assignment or transfer of control, shall attach to its application a certification, signed by the U.S. parent, stating that the U.S. parent is in compliance with the terms and conditions of its section 310(b)(4) ruling(s). The certification shall also provide the citation(s) of the U.S. parent's section 310(b)(4) ruling(s) (*i.e.,* the DA or FCC Number, FCC Record citation when available, and release date).

(c) The section 310(b)(4) ruling issued to the U.S. parent named in the ruling shall cover any successor-in-interest to the U.S. parent that takes the place of the U.S. parent in the vertical ownership chain of the applicant(s), licensee(s), or spectrum lessee(s) covered by the U.S. parent's section 310(b)(4) ruling, *provided that* the foreign ownership of the successor-in-interest complies with the terms of the ruling. The successor-in-interest shall notify the Commission within 30 days of the reorganization. The notification shall include a certification, signed by the successor-in-interest, stating that it is in compliance with the terms and conditions of the section 310(b)(4) ruling(s) issued to the former U.S. parent, which shall be named in the certification. The certification shall also provide the citation(s) of the section 310(b)(4) ruling(s) (*i.e.,* the DA or FCC Number, FCC Record citation when available, and release date). The notification shall be filed electronically on the Internet through the International Bureau Filing System (IBFS). For information on filing the notification through IBFS, *see* part 1, subpart Y and the IBFS homepage at *http://www.fcc.gov/ib.*

(d) The section 310(b)(4) ruling issued to the U.S. parent named in the ruling

shall permit the insertion of new, foreign-organized companies at any level in the vertical ownership chain above the U.S. parent *provided that* any new foreign-organized company(ies), either alone or together, are under 100 percent common ownership and control with the controlling foreign parent for which the U.S. parent has received prior Commission approval.

Example. U.S. parent company (''U.S. Parent A'') receives a section 310(b)(4) ruling that approves its 100% foreign ownership by a foreign-organized company (''Foreign Company''). Foreign Company is minority owned (20%) by U.S.-organized Corporation B, with the remaining 80% controlling interest held by Foreign Citizen C. After issuance of the section 310(b)(4) ruling to U.S. Parent A, Foreign Company forms a wholly-owned, foreign-organized subsidiary (''Foreign Subsidiary '') to hold all of Foreign Company's shares in U.S. Parent A. There are no other changes in the direct or indirect foreign ownership of U.S. Parent A. The insertion of Foreign Subsidiary into the vertical ownership chain of U.S. Parent A would not require prior Commission approval.

(e) The section 310(b)(4) ruling issued to the U.S. parent named in the ruling shall permit the insertion of new, foreign-organized companies into the vertical ownership chains of non-controlling foreign investors for which the U.S. parent has received specific approval under § 1.991(i) *provided that* any new foreign company is under 100 percent common ownership and control with the approved foreign investor.

Example. U.S. parent company (''U.S. Parent A'') receives a section 310(b)(4) ruling that specifically approves Foreign Citizen B's planned acquisition of a non-controlling, 30% common stock interest in U.S. Parent A. Two years after issuance of the section 310(b)(4) ruling to U.S. Parent A, Foreign Citizen B organizes a wholly-owned foreign corporation to hold Foreign Citizen B's common stock interest in U.S. Parent A. U.S. Parent A would not be required to seek Commission approval for this change.

(f) The U.S.-organized parent company named in the section 310(b)(4) ruling (or a U.S.-organized successor-in-interest formed as part of a *pro forma* reorganization) shall file a new petition for declaratory under § 1.990 to obtain Commission approval *before* its direct or indirect foreign ownership exceeds the routine terms and conditions of this section and any specific terms or conditions of its ruling.

(g)(1) A U.S.-organized parent company that has received a section 310(b)(4) ruling from the Commission shall file with the Commission a certification of compliance with the section 310(b)(4) ruling every four (4) years after the anniversary of the effective date of the ruling. The U.S. parent shall base its certification of compliance on information that is current at least as of 8 months prior to the date the certification must be filed with the Commission. Its certification of compliance with respect to the calculation of ownership interests disclosed in its petition shall be based upon its review of the Commission's rules, such that it is able to certify that the interests disclosed satisfy each of the pertinent standards and criteria required by the rules.

(2) If at any time the U.S. parent knows, or has reason to know, that it is no longer in compliance with its ruling, the U.S. parent shall file a statement with the Commission explaining the circumstances within 30 days of the date the U.S. parent knew, or had reason to know, that it was no longer in compliance with its ruling. Subsequent actions taken by or on behalf of the U.S. parent to remedy its non-compliance shall not relieve the U.S. parent of the obligation to notify the Commission of the circumstances (including duration) of non-compliance. The U.S. parent, any affiliated licensees or spectrum lessees covered by the section 310(b)(4) ruling, and any controlling companies, whether U.S.- or foreign–organized, shall be subject to enforcement action by the Commission for non-compliance with the section 310(b)(4) ruling.

PART 25—SATELLITE COMMUNICATIONS

4. The authority citation for part 25 is revised to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sections 4, 301, 302, 303, 307, 309, 310 and 332 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309, 310 and 332, unless otherwise noted.

5. Subpart A is amended by adding § 25.105 to read as follows:

§ 25.105 Citizenship.

The Commission will not grant an authorization governed by this part to any individual or entity that is precluded from holding such authorization by section 310(a)–(b) of the Communications Act of 1934, as amended (47 U.S.C. 310(a)–(b)). The rules that establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in common carrier licensees that would exceed the 25 percent benchmark in section 310(b)(4) are set forth in §§ 1.990 through 1.994 of this chapter.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. NHTSA–2011–0152; Notice 1]

Petition for Approval of Alternate Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of initial determination.

SUMMARY: The State of New York has petitioned for approval of alternate odometer requirements to certain requirements under Federal odometer law. New York's proposed program would apply to vehicles that have been transferred to New York motor vehicle dealers. Ultimately, the proposed program would generate the issuance of a non-secure paper odometer disclosure receipt when a vehicle is transferred from a licensed New York dealer to a person other than a licensed New York dealer, such as an out-of-state person. In view of the nature of this receipt as an odometer disclosure for vehicle titling, NHTSA preliminarily denies New York's petition. This notice is not a final agency action.

DATES: Comments are due no later than November 21, 2011.

ADDRESSES: You may submit comments [identified by DOT Docket ID Number NHTSA–2011–0152] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

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FOR FURTHER INFORMATION CONTACT: Otto G. Matheke, III, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building W41–227, Washington, DC 20590 (*Telephone:* 202–366–5253) (*Fax:* 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Introduction

Federal odometer law, which is largely based on the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) [1] and the Truth in Mileage Act of 1986, as amended (TIMA),[2] contains a number of provisions to limit odometer fraud and assure that the buyer of a motor vehicle knows the true mileage of the vehicle. The Cost Savings Act requires the Secretary of Transportation to promulgate regulations requiring the transferor (seller) of a motor vehicle to provide a written statement of the vehicle's mileage registered on the odometer to the transferee (buyer) in connection with the transfer of ownership. This written statement is generally referred to as the odometer disclosure statement. Further, under TIMA, vehicle titles themselves must have a space for the odometer disclosure statement and States are prohibited from licensing a vehicle unless a valid odometer disclosure statement on the title is signed and dated by the transferor. Titles must also be printed by a secure printing process or other secure process. Federal law also contains document retention requirements for odometer disclosure statements.

TIMA's motor vehicle mileage disclosure requirements apply in a State unless the State has alternate requirements approved by the Secretary. The Secretary has delegated administration of the odometer program to NHTSA. Therefore, a State may Petition NHTSA for approval of such alternate odometer disclosure requirements.

[1] Public Law 92–513, 86 Stat 947, 961 (1972).

[2] Public Law 99–579, 100 Stat. 3309 (1986).

Seeking to replace an existing system of paper records for dealer inventories, transfers, and sales—including the transfer of titles and odometer disclosures—with an electronic system, the State of New York has petitioned for approval of alternate odometer disclosure requirements. The New York State Department of Motor Vehicles (''NYSDMV'') proposes a paperless odometer disclosure program for transfers to, between and from licensed New York motor vehicle dealers. The initial transfer of the vehicle to a New York dealer would include an odometer disclosure on a secure paper title, following the present practice. The final transfer of the vehicle from a New York dealer to a non-New York dealer would include an odometer disclosure on a two part paper receipt. The odometer disclosures would be recorded electronically.

In 2009, NHTSA reviewed certain requirements for alternative state programs and approved the Commonwealth of Virginia's alternate odometer disclosure program. 74 FR 643, 650 (January 7, 2009). New York's program bears some similarities to Virginia's program in scope. Like Virginia's program, the scope of New York's proposed program does not include transactions involving leased vehicles, or odometer disclosures by power of attorney. However, while Virginia's program was limited to in-state transfers (Virginia's program required Virginia owners to obtain a paper title for out-of-state transfers), New York's program is not so limited. Moreover, aspects of New York's proposed system, including reassignments between dealers and ultimately from a dealer to a non-dealer, were not examined in NHTSA's analysis of Virginia's program.

II. Statutory Background

As noted above, NHTSA recently reviewed the statutory background of Federal odometer law in its consideration and approval of Virginia's Petition for alternate odometer disclosure requirements. *See* 73 FR 35617 (June 24, 2008) and 74 FR 643 (January 7, 2009). The statutory background of the Cost Savings Act and TIMA and the purposes behind TIMA, as they relate to odometer disclosure, are discussed at length in NHTSA's Final Determination granting Virginia's Petition. 74 FR 643, 647–48. A brief summary of the statutory background of Federal odometer law and the purposes of TIMA follows.

In 1972, Congress enacted the Cost Savings Act to, among other things, prohibit tampering with odometers on motor vehicles and to establish certain safeguards for the protection of buyers with respect to the sale of motor vehicles having altered or reset odometers. *See* Public Law 92–513, section 401, 86 Stat. 947, 961–63 (1972). Section 408 of the Cost Savings Act required that, under regulations to be published by the Secretary, the transferor of a motor vehicle provide a written vehicle mileage disclosure to the transferee.[3] In general, the purpose for the disclosure was to assist buyers to know the true mileage of a motor vehicle. The Act also prohibited odometer tampering and provided for enforcement.

A major shortcoming of the odometer provisions of the Cost Savings Act was their failure to require that the odometer disclosure statement be on the vehicle's title. In a number of States, the disclosures were on separate documents that could be easily altered or discarded and did not travel with the title. *See* 74 FR 644. Consequently, the disclosure statements did not necessarily deter odometer fraud employing altered documents, discarded titles, and title washing. *Id.*

Congress enacted TIMA in 1986 to address the Cost Savings Act's shortcomings. It amended Section 408 of the Cost Savings Act to add a new subsection (d) to prohibit States from licensing vehicles unless the new owner (transferee) submitted a title from the seller (transferor) containing the seller's signed and dated vehicle mileage statement. *See* Public Law 99–579, 100 Stat. 3309 (1986); 74 FR 644 (Jan. 7, 2009). Section 408(d) also prohibits the licensing of vehicles, for use in any State, unless the title issued to the transferee is printed using a secure printing process or other secure process, indicates the vehicle mileage at the time of transfer and contains additional space for a subsequent mileage disclosure by the transferee when it is sold again. *Id.* TIMA also added subsection 408(e)(1), which provided for the use of odometer

[3] Section 408 stated:

(a) Not later than 90 days after the date of enactment of this Act, the Secretary shall prescribe rules requiring any transferor to give the following written disclosure to the transferee in connection with the transfer of ownership of a motor vehicle:

(1) Disclosure of the cumulative mileage registered on the odometer.

(2) Disclosure that the actual mileage is unknown, if the odometer reading is known to the transferor to be different from the number of miles the vehicle has actually traveled.

Such rules shall prescribe the manner in which information shall be disclosed under this section and in which such information shall be retained.

(b) It shall be a violation of this section for any transferor to violate any rules under this section or to knowingly give a false statement to a transferee in making any disclosure required by such rules.

disclosure statements when leased vehicles are sold or transferred.

TIMA added a provision to the Cost Savings Act allowing States to have alternate odometer disclosure requirements with the approval of the Secretary of Transportation. Section 408(f) of the Cost Savings Act states that the odometer disclosure requirements of subsections (d) and (e)(1) shall apply in a State unless the State has alternate motor vehicle mileage disclosure requirements approved by the Secretary in effect. Section 408(f) further states that the Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.

In 1994, in the course of the recodification of various laws pertaining to the Department of Transportation, the Cost Savings Act, as amended, was repealed, reenacted and recodified without substantive change. *See* Public Law 103–272, 108 Stat. 745, 1048–1056, 1379, 1387 (1994). The odometer statute is now codified at 49 U.S.C. 32701 *et seq.* In particular, Section 408(a) of the Cost Savings Act was recodified at 49 U.S.C. 32705(a). Sections 408(d) and (e) as later amended were recodified at 49 U.S.C. 32705(b) and (c). The provisions pertaining to approval of State alternate motor vehicle mileage disclosure requirements were recodified at 49 U.S.C. 32705(d).

III. Statutory Purposes

As discussed above, the Cost Savings Act, as amended by TIMA in 1986, states that NHTSA ''shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the [NHTSA] determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) as the case may be.'' Subsections 408(d), (e) of the Cost Savings Act were recodified to 49 U.S.C. 32705(b) and (c). In light of this provision, we now turn to our interpretation of the purposes of these subsections, as germane to New York's petition.

Our Final Determination granting Virginia's petition for alternate odometer disclosure requirements identified the purposes of TIMA germane to petitions for approval of odometer disclosure requirements on in-state transfers that did not include disclosures involving dealer reassignments, leased vehicles or disclosures by power of attorney.[4] 74 FR 643, 647–48 (January 7, 2009). New York's petition encompasses vehicle transfers/reassignments to and among licensed New York dealers and from licensed dealers to a retail or out-of-state purchaser, but does not address transfers involving leased vehicles and disclosures by power of attorney. A brief summary of the purposes identified in the Virginia Final Determination follows. In addition, we address reassignments, which were not addressed in the Virginia petition.

One purpose of TIMA is to assure that the form of the odometer disclosure precludes odometer fraud. 74 FR 647. To prevent odometer fraud facilitated by disclosure statements that were separate from titles, TIMA required mileage disclosures to be on a secure vehicle title instead of a separate document. These titles also had to contain space for the seller's attested mileage disclosure and a new disclosure by the buyer when the vehicle was sold again. This discouraged mileage alterations on titles and limited opportunities for obtaining new titles with lower mileage than the actual mileage. *Id.* In addition, an aspect of the purpose of assuring that the form of the odometer disclosure precludes fraud is that the transfer by a titled owner must be on the title and not a reassignment document, but a reassignment document subsequently may be used by a transferor in whose name the vehicle has not been titled.[5] To preclude fraud, the reassignment document(s) must have an odometer disclosure executed by the transferor and transferee, and the reassignment document(s) must be accompanied by the title transferring ownership of the vehicle to the dealer, with a proper odometer disclosure. The reassignment document is not a standalone document.

A second purpose of TIMA is to prevent odometer fraud by processes and mechanisms making odometer mileage disclosures on the title a condition of any application for a title, and a requirement for any title issued by a State. 74 FR 647. The same applies to reassignment documents; they must contain odometer disclosures and be presented for titling. This was intended to eliminate or significantly reduce abuses associated with lack of control of the titling process. *Id.*

Third, TIMA sought to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. 74 FR 648. In furtherance of these purposes, paper titles and reassignment documents (incorporating the disclosure statement) must be produced using a secure printing process or protected by ''other secure process.'' [6] *Id.*

A fourth purpose is to create a record of vehicle mileage and a paper trail. 74 FR 648. The underlying purposes of this record and paper trail were to better inform consumers and provide mechanisms for tracing odometer tampering and prosecuting violators. TIMA's requirement that new applications for titles include signed mileage disclosure statements on the titles from the prior owners creates a permanent record that is easily checked by subsequent owners or law enforcement officials. Proper reassignment documents, when accompanied by the title from the initial transferor, similarly create a permanent record. This record provides critical snapshots of vehicle mileage at every transfer, which are the fundamental links of this paper trail.

Finally, the general purpose of TIMA is to protect consumers by assuring that they receive valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. 74 FR 648.

IV. The New York Petition

New York, which is in the process of implementing an Electronic Vehicle Inventory and Transfer System (System), petitions for approval of alternate odometer disclosure requirements. New York requests alternate disclosure requirements for transfers of motor vehicles in transactions to, from, and among licensed New York dealers.

[4] Since Virginia's program did not cover disclosures involving leased vehicles or disclosures by power of attorney, the purposes of Sections 408(d)(2)(C) and 408(e) of the Cost Savings Act, as amended, were not germane and were not addressed in the notice approving the Virginia program. *See* 74 FR 647 n. 12.

[5] NHTSA amended 49 CFR 580.5(c) to preclude use of a separate reassignment form at the time of the first transfer, by a titled owner. *See* 56 FR 47684–85 (Sep. 20, 1991). Section 580.5 provides that in the case of a transferor in whose name the vehicle is titled, the transferor shall disclose the mileage on the title, and not on a reassignment document.

[6] Congress intended to encourage new technologies by including the language ''other secure process.'' The House Report accompanying TIMA noted that '''other secure process' is intended to describe means other than printing which could securely provide for the storage and transmittal of title and mileage information.'' H.R. Rep. No. 99–833, at 33 (1986). ''In adopting this language, the Committee intends to encourage new technologies which will provide increased levels of security for titles.'' *Id. See also* Cost Savings Act, as amended by TIMA, § 408(d), recodified at 49 U.S.C. 32705(b); 49 CFR 580.4 which requires that titles and documents used to reassign titles shall be issued by the State and printed using a secure process.

A. Overview of Current New York Transfer/Odometer Disclosure System

As New York stated in its petition, odometer disclosures are made on securely printed documents produced by NYSDMV. Each document—the Certificate of Title (MV–999), the Retail Certificate of Sale (MV–50) (Dealers Reassignment Form), and the Wholesale Certificate of Sale (MV–50W)—may be used depending on the circumstances of the transfer. In order to comply with Federal odometer disclosure requirements, all three documents include built-in security features along with an area to disclose the odometer reading. They have been designed with unique numbers. The MV–999 has space for one odometer disclosure statement and is used where title is held by the transferor. If this space has been filled by an odometer disclosure statement in a prior transaction, New York dealers must use either the MV–50 or MV–50W reassignment document, as appropriate, to make the required odometer disclosure statement and transfer vehicle title. See 15 NYCRR section 78.10.

Currently, in New York, dealers are required by NYSDMV to keep a paper inventory (Book of Registry) in which dealers record identifying information about vehicles they purchase and sell. NYS Vehicle and Traffic Law section 415(15); 15 NYCRR section 78.25. When a New York dealer sells a vehicle to another New York dealer, the purchasing dealer is required to enter the vehicle identifying information including the odometer disclosure statement in its Book of Registry. A dealer's Book of Registry is subject to review during on-site audits by NYSDMV.

When a New York dealer sells a vehicle to a purchaser, an MV–50/MV–50W is filled out with the vehicle identifying information, the name and address of the dealer, and the name and address of the purchaser. The dealer fills in the odometer disclosure statement found on the MV–50/MV–50W and then both the dealer and purchaser sign the statement. Odometer readings are recorded in the selling dealer's Book of Registry, a purchasing dealer's Book of Registry (if the purchaser is a New York dealer), and the MV–50, all of which are subject to audit by NYSDMV. In cases where the purchaser is not another New York dealer, the purchaser would take a copy of the MV–50, along with other ownership documentation provided by the dealer (*e.g.* original title, prior MV–50/MV–50Ws), and a completed Vehicle Registration/Title Application (MV–82) to a NYSDMV office to apply for a new title.

B. New York's Proposed Electronic Vehicle Inventory and Transfer System

1. Accessing the Proposed System

According to New York's petition, the System will control access to MV–50 processing. New York dealerships would access the System to enter inventory and record vehicle sales transactions, including making the odometer disclosure statements required under TIMA. Dealers will be required to join the System when they are due for business license renewal. Each licensed New York dealer is required to renew its business license every two years.

To join the System, a dealer first would request access to the system from NYSDMV. NYSDMV would register the dealership as a group and would designate a System administrator for that dealership (a dealership employee chosen by the dealer) to be responsible for assigning System accounts to employees (users) within the dealership.[7] The number of users and the level of access for each user would be determined and controlled at the administrator's discretion. User accounts created by the dealership's administrator would be subject to review during onsite audits by NYSDMV and Enforcement staff.

Each year, the administrator would be prompted by the System to re-certify the facility on the System with the NYSDMV. If the administrator does not comply with the System recertification prompt, dealership access to the System would be turned off, preventing the dealership from completing any sales transaction. An entire dealership or an individual working at a dealership could be denied access to the System any time NYSDMV deemed it necessary. The System would be limited to New York dealer transactions, as others except for NYSDMV would not have access to it.

2. Using the Proposed System

Under New York's proposal, when a vehicle is transferred to a dealership, the vehicle's identifying information would be entered into the System using a standardized template through a user's account. The vehicle identification number would be automatically verified by the System using the appropriate Vehicle Identification Number Analysis (VINA) file. (VINA is a system used to verify and decode information contained in vehicle identification numbers.) If the vehicle is sold to another New York dealer, the purchasing dealer's System template for that vehicle would pre-fill with the vehicle's identification information from the System. During sales/transfer transactions, the seller would electronically disclose vehicle information including the current mileage and would be issued a unique transaction number.

Because it relies primarily on dealers making entries into the system, New York's proposed Electronic Vehicle Inventory and Transfer System encompasses only transactions involving dealers: Sales of vehicles by non-dealer vehicle owners to dealers, sales of vehicles between licensed New York dealers and vehicle sales from licensed New York dealers to non-dealers, including retail consumers, out of state dealers, vehicle dismantlers, and junk and salvage dealers.

More specifically, NYSDMV's proposed process for handling vehicle transfers to licensed New York dealers would be as follows. When the dealer receives a vehicle (whether from a manufacturer, a customer, or another dealer), including the vehicle ownership documentation, an authorized dealership user would sign on to the System and enter the vehicle's identifying information. The vehicle's odometer reading, disclosed on the title in the case of a consumer trading in or selling a vehicle to the dealer, would be recorded in the system by the dealer.

If a dealer sells a vehicle to another licensed New York dealer, the selling dealer would sign on to the System using its unique sign on and password and would access the vehicle's identifying information on the System. The selling dealer would enter current vehicle information including the current odometer reading and would enter seller and purchaser information on the System. The System would then generate a transaction number. The purchasing dealer would sign on to the System using its unique sign on and password and would access the vehicle's identifying information on the System using the transaction number. The purchasing dealer would then review the vehicle's identifying information, including the odometer disclosure statement made by the selling dealer,[8] and would accept or reject the

[7] Each user would be prompted at first sign-on to the System to change his or her password. Every 90 days, the user would need to change his or her password. The new password must be different than the last three passwords. Passwords will be stored in the System and encrypted.

[8] The System automatically checks the odometer disclosure statement entered by the seller against the odometer disclosure statement previously recorded on the System for that vehicle. If the

transaction. If the purchasing dealer accepts the transaction it would be considered complete. The original pre-dealer ownership document (still in the prior owner's name) would be surrendered to the purchasing dealer at the time of sale.

If, during the purchasing dealer user's review of the vehicle's identifying information on the System, the user did not agree with all of the information, the user could reject the transaction. Subsequent transfers between licensed New York dealers would be recorded in the same manner. It is the Agency's understanding that the entire history of the vehicle's identifying information entered into the System at each transfer would be maintained indefinitely on the System.

Under the New York proposal, when a vehicle owned by a New York dealer is sold to a retail purchaser, salvage dealer, auction house, out-of-state buyer or other non-New York dealer purchaser, an authorized user at the selling dealer would sign on to the System and access the vehicle information on the System. The selling dealer would enter current vehicle information including the current odometer reading, and would enter seller and purchaser information on the System. A two-part sales receipt/odometer statement would be created on the System. The purchaser would then review the information, including the odometer statement, on a draft receipt displayed on the computer screen. If the purchaser agrees with the odometer statement and other information, the authorized dealer representative would save the data in the system and then print a two-part sales receipt. Both parties would then sign the odometer disclosure statement printed on each of the two parts of the receipt. The dealer would retain the dealer part of the receipt for its files. The purchaser would be given the purchaser's copy of the receipt along with the original title acquired by the dealer when it purchased the vehicle.

If the purchaser does not agree with any of the information displayed on the dealer's computer screen,[9] the purchaser could reject the transaction. In that case, the dealer would have to cancel the transaction in the System and resubmit using the correct information.

New York's petition further states that during vehicle registration by a New York purchaser, NYSDMV office staff would review the vehicle's data and odometer disclosure on New York's system and compare it to the paper ownership documents and the purchaser's copy of the aforementioned two-part receipt. This would verify the mileage reported on the paper documents. If a vehicle had gone in and out of New York State multiple times, New York's petition states that the proposed system would show the New York State history for the vehicle, which would help to identify gaps in mileage and ownership.

C. New York's Position on Meeting the Purposes of TIMA

New York contends that its proposed program meets the purposes of TIMA as described by NHTSA in its Final Determination on the Commonwealth of Virginia's Petition for alternate odometer disclosure requirements. The Petition identified the purposes of TIMA and the State's position that its proposed program satisfied each purpose.

One purpose is to assure that the form of the odometer disclosure precludes odometer fraud. As noted by New York based on NHTSA's Virginia program approval notice, the disclosure must be contained on the title provided to the transferee and not on a separate document. New York states that its proposal satisfies this purpose because the odometer disclosure will remain on the back of the New York Certificate of Title (MV–999) and will be added to the Electronic Vehicle Inventory and Transfer System. Other transactions, currently recorded on paper reassignment documents (MV–50 or MV50W), will be recorded in the proposed electronic system. For dealer to dealer transactions that presently use a paper reassignment document, dealers would make disclosures directly into the Electronic Vehicle Inventory and Transfer System after both buyer and seller agree electronically that the information, including the odometer disclosure, is correct. For transactions where a dealer transfers a vehicle to a consumer or other buyers who are not New York dealers, the odometer disclosure would, with the buyer's assent, be entered into the System. The electronic disclosure would also be recorded on a two-part receipt generated by the System and printed by the dealer. Both buyer and seller would sign this paper disclosure and each would retain one part of the two part form. This paper receipt would then be presented when the buyer wishes to register the vehicle and checked against the electronic record by New York DMV personnel.

A second purpose is to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title and a requirement for the title issued by the State. New York contends that its proposal satisfies this purpose by requiring odometer disclosures to remain on the back of the New York DMV Certificate of Title, requiring electronic odometer disclosures for subsequent reassignments at the time of transfer and requiring that non-dealer purchasers be issued a receipt documenting the electronic disclosure made at the time of purchase. Because these documents will be required when a purchaser applies for a title and NYSDMV will verify the odometer reading through a review of both the Electronic Vehicle Inventory and Transfer System and the documents before issuing a title, New York contends that its proposal meets this TIMA purpose.

A third purpose is to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. New York states that its proposal satisfies the purpose because the paper title (MV–999) will continue to be produced through a secure printing process. Further, the paper reassignment documents (MV–50 or MV50W) used in transfers between licensed New York dealers will be replaced with the secure Electronic Vehicle Inventory and Transfer System that will prevent odometer tampering and allow individuals and NYSDMV to trace a more definitive mileage history. According to New York, the proposed electronic odometer disclosure scheme would also meet this purpose in sales from dealers to consumers and other non-dealer buyers. In that case, the odometer disclosure would be made electronically on the secure System and on a two-part receipt generated by that system. New York contends that the security of the Electronic Vehicle Inventory and Transfer System that will prevent odometer tampering and allow individuals and NYSDMV to trace a more definitive mileage history.

A fourth purpose is to create a record of the mileage on vehicles and a paper

odometer reading entered by the seller is lower than what was previously recorded, the transaction would not be processed without a proper notation explaining the odometer discrepancy. According to the NYSDMV, this notation can be either ''true mileage unknown'' or ''exceeds mechanical limits'', as indicated in a check-box in the System. This notation would remain in the vehicle's history through all subsequent transactions.

[9] As with transfers between licensed New York dealers described above, the System automatically checks the odometer disclosure statement entered by the seller against the odometer disclosure statement previously recorded on the System for that vehicle. If the odometer reading entered by the seller is lower than what was previously recorded, the transaction would be cancelled.

trail. New York contends its proposal satisfies this purpose because the odometer disclosure statement from the consumer to the New York dealer will remain on the back of the MV–999 and will be added to the Electronic Vehicle Inventory and Transfer System by the purchasing dealer. Disclosures made at the time of dealer to dealer transfers and when dealers sell to consumers and other non-New York dealer buyers will also be entered into the New York System. As a result, dealers will be able to check, and NYSDMV will be able to monitor, odometer history through the System and fraud will be reduced. Subsequent purchasers, both dealers and consumers alike, will be able to check, and NYSDMV will be able to monitor, odometer history through the System.

A fifth purpose is to protect consumers by assuring that they received valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. New York states that its proposal satisfies this purpose because dealers will be able to use the Electronic Vehicle Inventory and Transfer System to verify the odometer history of the vehicle, and NYSDMV will be able to monitor odometer history.[10] Similarly, New York states that consumers will be able to check odometer history through a Web-based application and thereby evaluate the accuracy of the odometer readings for vehicles they wish to buy.

IV. Analysis

Under TIMA, NHTSA ''shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless [NHTSA] determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) as the case may be.'' The purposes are discussed above, as is the New York alternative. We now provide our initial assessment whether New York's proposal satisfies TIMA's purposes as relevant to its Petition.[11]

A. New York's Proposal and the Specific Purposes of TIMA

One purpose is to assure that the form of the odometer disclosure precludes odometer fraud. When title is held by the transferor, the disclosure must be contained on the title provided to the transferee and not on a separate document. In the case of a transferor of a vehicle in whose name the vehicle is not titled (*e.g.,* the transferor of the vehicle is the transferee on the title) the odometer disclosure statement may be made on a secure reassignment document if the title does not have sufficient space for recording the additional disclosure.

NHTSA has initially determined that New York's proposed alternate disclosure requirements satisfy this purpose. Under New York's proposal, when an owner transfers ownership of a vehicle to a dealer, the odometer disclosure statement would be on the paper title. The dealer would input the vehicle's identifying information and odometer disclosure into the Electronic Vehicle Inventory and Transfer System. The odometer disclosure, including the names of the transferor and transferee, would be required. Thereafter the odometer disclosure statement will reside as an electronic record within the System that will be linked to the vehicle by the vehicle's VIN.

If a dealer transfers a vehicle to another licensed New York dealer, the selling dealer would sign on to the System using its unique sign on and password and would access the vehicle's identifying information on the System. The selling dealer would enter current vehicle information including the current odometer reading and would enter seller and purchaser information on the System. The System would then generate a transaction number. The purchasing dealer would use the transaction number to access the vehicle's information on the System, review the information, including the selling dealer's odometer disclosure statement, and accept or reject the transaction. If the transaction is accepted, the sale is completed and the odometer disclosure is recorded in the System. In essence, this is an electronic reassignment from one licensed dealer to another licensed dealer, using a transaction based approach in a secure computer system in which both the selling dealer and purchasing dealer sign off on the odometer disclosure.

When the vehicle is sold from a licensed New York dealer to a person or entity other than a licensed New York dealer, the dealer/seller enters the purchaser's identifying information and the odometer disclosure statement into the System. If the buyer agrees that the odometer disclosure in the System is accurate, the System creates a two part receipt that is signed by the selling dealer and purchaser. The paper title and one part of the receipt must be presented to a State motor vehicle titling and registration agency when the purchaser applies to title and register the vehicle.

NHTSA's initial determination is that the New York proposal meets the TIMA purpose of assuring that the form of the odometer disclosure precludes odometer fraud. We note that New York's proposal involves a proper odometer disclosure on the title itself when the seller is the person in whose name the vehicle is titled. Following transfer of a vehicle to a New York dealer, when the vehicle is not re-titled in the name of the dealer, the proposed New York system would provide for odometer disclosures to be made electronically in a secure electronic system with sign offs by the seller and buyer instead of on the paper reassignment documents currently being used. In addition, the paper title with an odometer disclosure would be transferred to the transferee/purchasing dealer. This is comparable to paper reassignments employing a paper State title and paper State reassignment form. Ultimately, for sales from New York dealers to consumers and other non-dealer buyers, the odometer disclosure would be recorded in the State's electronic system and on a two-part receipt signed by both buyer and seller. The receipt—a form of paper reassignment document—memorializes the electronic disclosure. This would accompany the initial title with an odometer disclosure.

A second purpose of TIMA is to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer mileage on the title both a condition for the application for a title and a requirement for the title issued by the State. NHTSA has initially determined that New York's proposed process satisfies this purpose. New York's proposed transfer process requires disclosure of odometer information on the paper title, at first sale from a titled owner to a New York licensed dealer, and electronically within the System in transfers between New York licensed dealers before the transaction can be completed. In addition, in sales from New York licensed dealers to non-dealer purchasers, the purchaser must present the prior paper title from the initial sale to the first dealer and the receipt of purchase with a mileage disclosure from the last dealer when applying for a vehicle title and registration. New York's proposal requires that the vehicle title from the initial owner in the process to the first dealer—with the odometer disclosure—be provided to the person purchasing the vehicle from

[10] According to New York's petition, the proposed System has no effect on the current practice in transfers from consumers to dealers—the odometer disclosure statement from the consumer to the dealer will continue to be made on the back of the MV–999.

[11] New York would continue to be subject to all Federal requirements that are not based on Section 408(d) and (e) of the Cost Savings Act as amended, recodified at 49 U.S.C. 32705(b) and (c).

the last dealer in the dealer chain. This original title—with an odometer disclosure—along with the buyer's part of the proposed two-part paper receipt and mileage disclosure must both be presented to state titling officials in order for the buyer to obtain a new title.

Another purpose of TIMA is to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. The agency has initially determined that New York's alternate disclosure requirements do not satisfy this purpose. When a vehicle is first transferred to a dealer, the transfer and required odometer disclosure statement are made using the vehicle's secure paper title document (MV–999). Subsequent transfers between licensed New York dealers are processed electronically—the selling dealer submits the vehicle's identifying information into the System, including the odometer disclosure statement; the purchasing dealer then verifies the information on the System, including the odometer disclosure statement made by the selling dealer, and either accepts or rejects the transaction electronically.

Under New York's proposal, upon final retail sale of a vehicle to a consumer or other non-New York dealer entity, the odometer disclosure statement would be made electronically and on a two part paper receipt, one part of which is given to the new owner to use in obtaining a title. More particularly, the selling dealer would access the Electronic Vehicle Inventory and Transfer System and enter the odometer disclosure and the dealer's and buyer's information into the system. If the odometer reading entered is not lower than a prior entry, a two-part odometer statement and receipt would be then be created electronically. The purchaser would review the information on the receipt prior to the receipt being printed and verify the odometer disclosure statement on the receipt. If the purchaser accepts the information, then the two-part sales receipt would be printed and both parties would sign the odometer disclosure statement printed on each part of the receipt. The dealer would retain the dealer part of the receipt for its files and the purchaser would be given the purchaser part of the receipt along with the original ownership document.

New York's petition does not state that the receipt form would be generated by a secure process, and in any event does not describe any such processes. NHTSA cannot assume that the reassignment document would be produced using secure processes. The agency's preliminary conclusion is that New York's use of a non-secure paper receipt and disclosure form does not satisfy the TIMA purpose of preventing alterations of disclosures on titles and precluding counterfeit titles through secure processes.

When, following New York dealer to New York dealer sale(s), a vehicle is purchased by an out-of-state buyer, the non-secure receipt form proposed by New York would be used as a reassignment document outside of New York. This non-secure document therefore would be used to satisfy part of the titling requirements for the vehicle in the State where it would be titled and registered. This non-secure document could be easily altered or counterfeited and used in those jurisdictions outside New York. The result is that the odometer disclosure statement printed by the last New York dealer as part of the sale to a non-New York dealer would not be made by secure processes, and thus would not be not in conformance with a TIMA purpose. We appreciate that the proposed New York system would allow other state motor vehicle agencies to check the electronic disclosure information maintained on New York's electronic system, or that the non-dealer purchaser may be able to obtain a New York title. In our view, as explained further below, this does not rectify the shortcoming in New York's proposed program.

Another purpose of TIMA is to create a record of the mileage on vehicles and a paper trail. The underlying purposes of this record and paper trail are to enable consumers to be better informed and provide a mechanism through which odometer tampering can be traced and violators prosecuted. Under New York's proposal, creation of a paper trail starts with the requirement that the initial transfer to a dealer is processed on the vehicle's secure paper title, including the odometer disclosure statement. Each subsequent dealer-to-dealer transfer is processed electronically, with the selling dealer inputting the vehicle's identifying information into the System, and the purchasing dealer verifying and certifying this information to complete the transfer. Under New York's proposed program, the most recent vehicle odometer disclosure will be available for public view via an online application. A dealer selling a vehicle to a non-dealer would record the odometer statement in the System at the time of sale. A selling dealer must also transfer the paper title obtained from the first seller to the purchasing dealer or retail and/or out of state buyer.

For ultimate sales to New Yorkers, the final retail purchaser would be required to present paperwork (including the title containing an executed odometer disclosure statement used to transfer title of the vehicle from the initial owner to a New York dealer and, if appropriate, one copy of the receipt generated by the System when the dealer transferred the vehicle to the purchaser) to the NYSDMV when applying to register and title the vehicle in the purchaser's name. The NYSDMV would use this paperwork in conjunction with the vehicle's identifying information available on the System to verify the trail of ownership and odometer disclosure statements for the vehicle through the final retail sale. The paper title used to transfer the vehicle to the dealer would be retained by the NYSDMV in a file associated with the vehicle VIN for at least ten years, and it would be available to dealers and NYSDMV and Enforcement staff. The System will maintain the vehicle identifying information, including odometer disclosure, indefinitely. The NYSDMV could track the odometer disclosure statements through the System. The System would not allow a transfer to be completed in which the disclosed odometer reading is lower than a prior odometer disclosure statement. In addition, New York's petition states that it will not issue a title to the buyer unless the disclosures on the foregoing paper documents match those found in the System.

In those cases in which a New York dealer sells a vehicle to a person who would title and register it out-of-state, the buyer would be provided with the title used to transfer it initially to a dealer and one part of the two-part receipt. As noted above, the receipt, which is not specified to be on secure paper, is a vulnerability. A substitute document could readily be created.

In NHTSA's preliminary view, the New York's proposed program would create a scheme of records equivalent to the current ''paper trail'' that assists law enforcement in identifying and prosecuting odometer fraud, except where the vehicle ultimately is titled in a state other than New York. In those instances, it is less effective than the current system that employs a Paper MV 50 Retail Certificate of Sale (Dealers Reassignment form), which is on secure paper with a control number, and the dealer has a copy. The resolution of whether New York's proposed program satisfies the purpose of creating a paper trail factor turns on the security of the final reassignment document used to obtain a title. At this juncture, it does not satisfy this purpose.

B. New York's Proposal in Light of TIMA's Overall Purpose

TIMA's overall purpose is to protect consumers by assuring that they receive valid odometer disclosures representing a vehicle's actual mileage at the time of transfer. Here, except for the portions of the proposed program relating to the security of the odometer disclosure statement made on the two-part receipt in a vehicle sale from a licensed New York dealer to an out of state buyer, New York's proposed alternate disclosure requirements include characteristics that would assure that representations of a vehicle's actual mileage would be as valid as those found in current paper title transfers and reassignments.

Other than the portions related to the security of the odometer disclosure statement made at the sale of a vehicle from a licensed New York dealer to an out of state buyer, New York's proposal likely will provide more protection for consumers than the current procedures. Transfers of vehicles between licensed New York dealers, including the required odometer disclosure statements, would be processed and the records maintained electronically in the System. Transfer records would be maintained on the System. The paper title used for the initial transfer to a licensed New York dealer would follow the vehicle and would be required when applying for registration and titling of the vehicle in the final purchaser's (not a licensed New York dealer) name. Potential buyers can examine the most recent odometer disclosure statement online before purchasing the vehicle. In-state consumers are at least as protected under New York's proposed program as they are under the current system.

V. NHTSA Initial Determination

For the foregoing reasons, NHTSA preliminarily denies New York's Petition regarding proposed alternate disclosure requirements. During the comment period, New York may submit additional information demonstrating how its program satisfies the concerns identified above or may amend its program to satisfy these concerns.

This is not a final agency action. NHTSA invites public comments within the scope of this notice. Should NHTSA decide to issue a final grant of New York's Petition, in whole or in part, it would likely reserve the right to rescind that grant in the event that future information indicates that, in operation, New York's alternate disclosure requirements do not satisfy applicable standards.

Request for Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (*see* 49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given under **ADDRESSES**.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information,'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

Will the Agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we also will consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing the final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You also may see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov,* and follow the instructions for accessing the Docket.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued on: October 14, 2011.

O. Kevin Vincent,

Chief Counsel.

[FR Doc. 2011–27089 Filed 10–20–11; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 76, No. 204
Friday, October 21, 2011

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

Commodity Credit Corporation

Draft Environmental Assessment; Giant Miscanthus in REPREVE Renewables, LLC Project Areas Under the Biomass Crop Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of a Draft Environmental Assessment (EA) for the proposed establishment and production of giant miscanthus (*Miscanthus X giganteus*) as a dedicated energy crop to be grown in the REPREVE Renewables, LLC (project sponsor) proposed project areas in Georgia, North Carolina and South Carolina as part of the Biomass Crop Assistance Program (BCAP). This notice provides a means for the public to voice any concerns they may have about the proposed BCAP project areas.

DATES: We will consider comments that we receive by November 21, 2011. Comments submitted after this date will be considered to the extent possible.

ADDRESSES: We invite you to submit comments on this Draft EA. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-Mail: SEGiantMiscanthusEAComments@intenvsol.com.*
- *Fax:* (972) 562–7673 ATTN: SE Giant Miscanthus EA Comments.
- *Mail:* SE Giant Miscanthus EA Comments, Integrated Environmental Solutions, LLC, 2150 S Central Expy, Ste 110, McKinney, TX 75070.
- *Hand Delivery or Courier:* Deliver comments to the above address.

Comments may be inspected in the Office of the Director, CEPD, FSA, USDA, Room 4709 South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this notice is available through the FSA home page at *http://www.fsa.usda.gov/.*

You may request copies of the draft EA for Giant Miscanthus by writing to: SE Giant Miscanthus EA Draft Request, Integrated Environmental Solutions, LLC, 2150 S Central Expy, Ste 110, McKinney, TX 75070.

The draft EA can be viewed online at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nepcd.*

FOR FURTHER INFORMATION CONTACT: Matthew Ponish, National Environmental Compliance Manager, USDA/FSA/CEPD/Stop 0513, 1400 Independence Ave., SW., Washington, DC 20250–0513, phone: (202) 720–6853, e-mail: *Matthew.Ponish@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The United States Department of Agriculture (USDA) Commodity Credit Corporation (CCC) implements the Biomass Crop Assistance Program (BCAP). BCAP is authorized by Title IX of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill, Pub. L. 110–246). BCAP is administered by the Deputy Administrator for Farm Programs of the Farm Service Agency (FSA) on behalf of the CCC with the support of other Federal and local agencies and is intended to assist agricultural and forest land owners and operators with the establishment and production of eligible crops including woody biomass in selected project areas for conversion to bioenergy, and the collection, harvest, storage, and transportation of eligible material to designated biomass conversion facilities for use as heat, power, biobased products, or advanced biofuels.

REPREVE Renewables, LLC has submitted a proposal to FSA to establish BCAP project areas in Georgia, North Carolina and South Carolina as part of BCAP. The proposal is to establish and produce giant miscanthus as a dedicated energy crop. The draft EA analyzes the environmental impacts of growing giant miscanthus in those areas. FSA will review comments submitted on the draft EA in response to this notice and use the additional input in developing the final EA and decision document about whether to approve the project or not. This notice announces the availability of the draft EA and the opening of the comment period; it does not discuss the contents of the draft EA.

The EA announced in this notice is being prepared in accordance with the National Environmental Policy Act (NEPA, Pub. L. 91–190, 42 U.S.C. 4321–4347); implementing regulations adopted by the Council on Environmental Quality (CEQ) (40 CFR 1500–1508); and FSA implementing regulations for NEPA compliance (7 CFR 799). According to CEQ guidance, an EA is a ''concise document for which a Federal agency is responsible that serves to (1) briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact (FONSI).'' Since this document falls under the guidance of the BCAP Final PEIS, which was a broad national-level program document, CEQ guidance allows for ''tiering.'' CEQ guidance defines tiering as, ''the coverage of general matters in broader EIS with subsequent narrower statements or environmental analyses incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.''

On October 27, 2010, CCC published the Record of Decision (ROD) for the BCAP final PEIS (75 FR 65995–66007) and BCAP final rule (76 FR 66202–66243) in the **Federal Register**. As part of the mitigation measures detailed in the ROD, each project proposal is subject to NEPA analysis prior to approval of the project area proposal. The initial environmental evaluation of a project area proposal is developed through the completion of Forms BCAP 19, BCAP–20, BCAP–21, and BCAP–22 and supporting information.

After this initial evaluation FSA can conclude either that:

(1) No additional environmental analyses are applicable due to no potential for the proposed BCAP activity to significantly impact the environment, or

(2) Additional environmental analyses in the form of an EA or EIS are necessary, depending upon the potential level of significance.

Due to inconclusive results in the initial environmental evaluation, FSA is required to do an EA to make a determination whether there could be significant environmental impacts.

Signed on October 18, 2011.

Carolyn B. Cooksie,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2011–27339 Filed 10–20–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Business R&D and Innovation Survey.

Form Number(s): BRDI–1, BRDI–1A.

OMB Control Number: 0607–0912.

Type of Request: Revision of a currently approved collection.

Burden Hours: 130,855.

Number of Respondents: 43,000.

Average Hours per Response: 3 hours.

Needs and Uses: The National Science Foundation Act of 1950 as amended authorizes and directs NSF ''* * * to provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies of the Federal government.'' The Business R&D and Innovation Survey (BRDIS) is the vehicle with which NSF carries out the business portion of this mandate. NSF together with the Census Bureau, the collecting and compiling agent, analyze the data and publish the resulting statistics.

Companies are the major performers of research and development (R&D) in the United States, accounting for over 70 percent of total U.S. R&D outlays each year. A consistent business R&D information base is essential to government officials formulating public policy, industry personnel involved in corporate planning, and members of the academic community conducting research. To develop policies designed to promote and enhance science and technology, past trends and the present status of R&D must be known and analyzed. Without comprehensive business R&D statistics, it would be impossible to evaluate the health of science and technology in the United States or to make comparisons between the technological progress of our country and that of other nations.

NSF has published annual R&D statistics collected from the Survey of Industrial Research and Development (1953–2007) and BRDIS (2008–2010) for more than 50 years. The results of the survey are used to assess trends in R&D expenditures by industry sector, investigate productivity determinants, formulate science and tax policy, and compare individual company performance with industry averages. This survey is the Nation's primary source for international comparative statistics on business R&D spending.

The 2011 BRDIS will continue to collect the following types of information:

- R&D expense based on accounting standards.
- Worldwide R&D of domestic companies.
- Business segment detail.
- R&D related capital expenditures.
- Detailed data about the R&D workforce.
- R&D strategy and data on the potential impact of R&D on the market.
- R&D directed to application areas of particular national interest.
- Data measuring innovation, intellectual property protection activities and technology transfer.

The following changes will be made to the 2011 BRDIS from the 2010 BRDIS.

- Section 7: R&D Time Frame and R&D Product Life will be deleted. This section was only collected in 2010 at the request of the Bureau of Economic Analysis.
- The 2011 BRDIS will only have one short form (BRDI–1A). The 2010 BRDIS included two versions of the short form to conduct a test on the innovation data collection.

Starting in 2009, BRDIS decreased the number of long forms mailed from approximately 5,000 to 3,000. This was done based on a study done during the processing of the 2008 BRDIS pilot. The data showed that the imputation rate on the key data variables would not be significantly impacted by reducing the number of long forms for the details that are only collected on the long forms. Also, R&D activity in the U.S. is highly concentrated to a relatively small number of large firms so the potential benefit in the reduction of burden was deemed to outweigh the need to collect all of the detail from smaller R&D performing firms.

Policy officials from many Federal agencies rely on these statistics for essential information. For example, total U.S. R&D expenditures statistics have been used by the Bureau of Economic Analysis (BEA) to update the System of National Accounts and, in fact, the BEA recently has established a separate R&D satellite account in the System. Accurate R&D data are needed to continue the development and effect subsequent updates to this detailed satellite account. Also, a data linking project has been designed to augment the Foreign Direct Investment (FDI) data collected by BEA. The initial attempt to link the SIRD data with BEA's FDI benchmark files was successful, and plans now call for the annual linkage of the R&D data to the Foreign Direct Investment (FDI) and U.S. Direct Investment Abroad (USDIA) data. Further, the Census Bureau links data collected by the Survey with other statistical files. At the Census Bureau, historical company-level R&D data are linked to a file that contains information on the outputs and inputs of companies' manufacturing plants. Researchers are able to analyze the relationships between R&D funding and other economic variables by using micro-level data.

Many individuals and organizations access the survey statistics via the Internet and hundreds have asked to have their names placed on the mailing list for a paper copy of the annual SRS InfoBrief that announces the availability of statistics from each cycle of the Survey. Information about the kinds of projects that rely on statistics from the Survey is available from internal records of NSF's Division of Science Resources Statistics (SRS). In addition, survey statistics are regularly printed in trade publications and many researchers use the survey statistics from these secondary sources without directly contacting NSF or the Census Bureau.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224, and 225.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: October 17, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–27254 Filed 10–20–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1791]

Grant of Authority for Subzone Status, Cabela's Inc., (Hunting, Fishing, Camping and Related Outdoor Merchandise), Triadelphia, WV

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 special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the West Virginia Economic Development Authority, grantee of Foreign-Trade Zone 229, has made application to the Board for authority to establish a special-purpose subzone at the warehouse and distribution facility of Cabela's Inc., located in Triadelphia, West Virginia, (FTZ Docket 16–2011, filed 3–7–2011);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 13354, 3–11–2011) 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 report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to hunting, fishing, camping and related outdoor merchandise warehousing and distribution at the facility of Cabela's Inc., located in Triadelphia, West Virginia (Subzone 229C), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 13th day of October 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–27297 Filed 10–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1793]

Grant of Authority for Subzone Status, Cabela's Inc., (Hunting, Fishing, Camping and Related Outdoor Merchandise), Sidney, NE

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 special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, Lincoln Foreign-Trade Zone, Inc, grantee of Foreign-Trade Zone 59, has made application to the Board for authority to establish a special-purpose subzone at the warehouse and distribution facilities of Cabela's Inc., located in Sidney, Nebraska, (FTZ Docket 18–2011, filed 3–7–2011);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 13602, 3–14–2011) 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 report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to hunting, fishing, camping and related outdoor merchandise warehousing and distribution at the facilities of Cabela's Inc., located in Sidney, Nebraska (Subzone 59C), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 13th day of October 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–27296 Filed 10–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1792]

Grant of Authority for Subzone Status, Cabela's Inc., (Hunting, Fishing, Camping and Related Outdoor Merchandise), Prairie Du Chien, WI

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 special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, Dane County, grantee of Foreign-Trade Zone 266, has made application to the Board for authority to establish a special-purpose subzone at the warehouse and distribution facility of Cabela's Inc., located in Prairie Du Chien, Wisconsin, (FTZ Docket 17–2011, filed 3–7–2011);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 13354–13355, 3–11–2011) 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 report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to hunting, fishing, camping and related outdoor merchandise warehousing and distribution at the facility of Cabela's Inc., located in Prairie Du Chien, Wisconsin (Subzone 266A), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 13th day of October 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–27298 Filed 10–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1790]

Reorganization of Foreign-Trade Zone 119 Under Alternative Site Framework, Minneapolis/St. Paul, MN

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 Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Greater Metropolitan Area Foreign-Trade Zone Commission, grantee of Foreign-Trade Zone 119, submitted an application to the Board (FTZ Docket 40–2011, filed 6/8/2011) for authority to reorganize under the ASF with a service area of Isanti, Chisago, Sherburne, Wright, Anoka, Washington, Ramsey, Hennepin, McLeod, Carver, Scott, Dakota, Sibley, LeSueur, and Rice Counties, Minnesota, within and adjacent to the Minneapolis Customs and Border Protection port of entry, and FTZ 119's existing Sites 1–3 and 7–10 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 34649–34650, 6/14/2011) 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 report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 119 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 2–3 and 7–10 if not activated by October 4, 2016.

Signed at Washington, DC, this 13th day of October 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–27299 Filed 10–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–840]

Certain Orange Juice From Brazil; Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 21, 2011.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Hector Rodriguez, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–0629, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2011, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain orange juice from Brazil. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 23545 (Apr. 27, 2011). The period of review is March 1, 2010, through February 28, 2011, and the preliminary results are currently due no later than December 1, 2011. The review covers three producers/exporters of the subject merchandise to the United States.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. Section 751(a)(3)(A) of the Act further provides, however, that the Department may extend the 245-day period up to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act because we require more time to issue supplemental questionnaires to certain of the respondents and analyze their responses. Therefore, we have fully extended the deadline for completing

the preliminary results until March 30, 2012. The deadline for the final results of the review continues to be 120 days after the publication of the preliminary results.

This extension notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: October 14, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–27295 Filed 10–20–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part

Correction

In notice document 2011–26069 appearing on pages 62349 through 62356 in the issue of Friday, October 7, 2011 make the following correction:

On page 62349, in the second column, the subject heading should read as set forth above.

[FR Doc. C1–2011–26069 Filed 10–20–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–821]

Certain Hot-Rolled Carbon Steel Flat Products From India: Amended Final Results of Countervailing Duty Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 13, 2010, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) redetermination pursuant to the CIT's remand in *United States Steel Corporation, et al.* v. *United States et al. and Essar Steel Limited* v. *United States. See United States Steel Corporation, et al.* v. *United States et al. and Essar Steel Limited* v. *United States et al.,* Slip Op. 10–104 (*Essar*); *see also Final Results of Redetermination Pursuant to Court Remand,* dated July 15, 2010 (found at *http://ia.ita.doc.gov/remands*). On November 9, 2010, Essar Steel Limited (Essar) appealed the CIT's decision. *See United States Steel Corporation, et al.* v. *United States et al. and Essar Steel Limited* v. *United States et al.,* Consol. Court No. 08–0239 Appeal (November 9, 2010). On July 7, 2011, the United States Court of Appeals for the Federal Circuit (CAFC) sustained the Department's redetermination. *See United States Steel Corporation, et al.* v. *United States et al. and Essar Steel Limited* v. *United States et al.,* CAFC 11–1074 Affirmed, Rule 36 (July 7, 2011).

The Department is amending the final results of the administrative review of the countervailing duty order on certain hot-rolled carbon steel flat products (HRCS) from India covering the January 1, 2006, through December 31, 2006, period of review (2006 POR) with respect to Essar, to reflect the CIT's decision in *Essar. See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review,* 73 FR 40295 (July 14, 2008) (*Final Results*), and accompanying Issues and Decision Memorandum (I&D Memorandum).

DATES: *Effective Date:* October 21, 2011.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3338.

Background

On July 14, 2008, the Department published its final results in the countervailing duty administrative review of HRCS from India covering the 2006 POR. *See Final Results.* Following publication of the *Final Results,* respondent Essar, filed a lawsuit with the CIT challenging the Department's *Final Results. See Essar.* At issue in the litigation was the Department's calculation of the government price for iron ore lumps and fines as well as Essar's purchases of lumps and fines with respect to the program ''Sale of High-Grade Iron Ore for less Than Adequate Remuneration.'' *See Final Results,* and accompanying I&D Memorandum at ''Sale of High-Grade Iron Ore for Less Than Adequate Remuneration'' section and Comment 4.

After a court ordered remand, the Department issued its final results of redetermination on July 15, 2010. *See Final Results of Redetermination Pursuant to Court Remand,* dated July 15, 2010 (found at *http://ia.ita.doc.gov/remands*); and *Essar.* In its remand redetermination, the Department made redeterminations with respect to the calculation of the government price for iron ore lumps and fines as well as Essar's purchase of iron ore lumps and high-grade iron ore fines from the National Mineral Development Corporation (NMDC). Specifically, we adjusted our iron ore calculations to measure the adequacy of remuneration of sales of lumps and fines by the Government of India (GOI) to Essar to include the Central Sales Tax for Essar's purchase of iron ore lumps and high-grade iron ore fines from the NMDC and to include import duties payable on iron ore with regard to the corresponding benchmark prices. Then, we corrected the government price for iron ore lumps and fines to address erroneous freight calculations for Essar's purchases of iron ore from NMDC. Lastly, for fines purchases from NMDC made on or after the date the slurry pipeline became operational, we replaced the per metric ton (MT) rail cost with the per MT slurry transportation costs. *See Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Court Decision Not in Harmony with Final Results of Administrative Review,* 75 FR 59689 (September 28, 2010). The Department's redetermination resulted in changes to the *Final Results* for Essar's net subsidy rate concerning the sale of iron ore for less than adequate remuneration program from 13.21 percent to 19.35 percent. Therefore, Essar's total net countervailable subsidy rate from the *Final Results,* 17.50 percent, increased by 6.14 percentage points, to a total net countervailable subsidy rate of 23.64 percent. *Id.*

Amended Final Results

Because there is now a final court decision, the total net countervailable subsidy for Essar for the period January 1, 2006, through December 31, 2006, is 23.64 percent. Because the cash deposit rate of 22.19 percent, which was determined for Essar in the amended final results of the administrative review covering the period January 1, 2007, through December 31, 2007 (2007 POR) supersedes the cash deposit rate for the 2006 POR, there is no change in Essar's cash deposit rate. *See Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Court Decision not in Harmony with Final Results of Administrative Review and Notice of Amended final Results of Administrative Review Pursuant to Court Decision,* 76 FR 7820 (February 11, 2011). The Department will instruct U.S. Customs and Border Protection (CBP) to continue to collect cash

deposits for Essar at the current rate of 22.19 percent.

Assessment of Duties

In accordance with the CIT's order, CBP shall assess countervailing duties on all appropriate entries covered by these amended final results. The Department intends to issue liquidation instructions to CBP 15 days after publication of these amended final results in the **Federal Register**.

Notification

We are issuing and publishing these amended final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended.

Dated: October 17, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–27292 Filed 10–20–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Executive-led Business Development Mission to Kabul, Afghanistan

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce's International Trade Administration is organizing a business development trade mission to Kabul, Afghanistan in September 2012. This mission will be led by a Senior Commerce Department official. Targeted sectors include: Construction (including engineering, architecture, transportation and logistics, and infrastructure); mining (including equipment, technology, and services); agribusiness; and information and communications technology. The mission's goal is to help U.S. companies explore long-term business opportunities in Afghanistan and enhance U.S.-Afghan commercial relations by providing U.S. participants with firsthand market information, access to government decision makers as well as one-on-one meetings with business contacts, including potential agents, distributors, and partners, to position themselves to enter or expand their presence in the targeted sectors.

Commercial Setting

The Government of the Islamic Republic of Afghanistan (GIRoA) is taking steps to develop its market economy and increase both domestic and foreign private investment. GIRoA continues to develop legal and administrative regulatory frameworks that will lead to a market more conducive to trade, investment and private sector development. For example, Afghanistan adopted an investment law that allows investments to be 100% foreign-owned. Additionally, on October 28, 2010, Afghanistan and Pakistan signed the Afghanistan Pakistan Transit Trade Agreement (APTTA), allowing Afghan container trucks to drive through Pakistan to the Indian border, and also to port cities such as Karachi.

After of 30 years of war require reconstruction and development efforts are required to grow and stabilize Afghanistan's economy. The GIRoA is committed to promoting economic development, increasing production and earnings, promoting technology transfer, improving national prosperity and advancing Afghans' standard of living in partnership with international donor agencies. GIRoA recognizes that U.S. services, equipment and technology would enhance development of Afghanistan's industrial sector and lead to increased productivity and greater technical skills for Afghan citizens. International donors continue to support Afghanistan's development; however, long-term sustainable growth will take place through private sector development.

To support Afghanistan's private sector and promote reconstruction efforts, GIRoA has identified domestic priority sectors needing investment and development in both equipment and services. These priority sectors are: construction and infrastructure, logistics and transportation, mining, agribusiness, and information and communications technology providers.

The economy is beginning to move from one based on state owned enterprises and the informal economy to a more formal market economy. A notable sign of this transition for the U.S. business community is the establishment of an American Chamber of Commerce in Kabul in 2010.

Kabul is the capital of Afghanistan, situated in Kabul Province. With a total metropolitan population of 2.6 million, it is also the largest city in Afghanistan. It is the commercial center for the country, with national Afghan businesses, associations, and GIRoA ministries maintaining a presence in Kabul. Afghanistan's GDP per capita is approximately $500, and has experienced double digit growth in recent years.

The Commerce Department has supported commercial and private sector development in Afghanistan since 2002, and posted a Senior Commercial Officer in Kabul in June 2010.

Mission Goals

The goal of the mission is to provide U.S. participants with first-hand market information, access to government decision makers and one-on-one meetings with business contacts, including potential agents, distributors, and partners, so that they can position themselves to enter the Afghan market or expand their business presence in Afghanistan. Thus, the mission seeks to:

- Improve U.S. companies' understanding of commercial opportunities in Afghanistan.
- Facilitate business meetings between U.S. and Afghan businesses to promote the development of U.S. commercial opportunities in Afghanistan.
- Introduce U.S. industry to the Afghan business community and government leaders.
- Provide GIRoA policymakers with U.S. industry feedback on the direction of its commercial reforms.

Mission Scenario

The business development mission will take place in Kabul, Afghanistan. Participants will meet with Afghan leaders in the public and private sector, learn about the market by participating in Embassy briefings, and explore additional opportunities at networking receptions. Activities will include one-on-one meetings with pre-screened business prospects. (Note that the regular workweek in Afghanistan is Sunday through Thursday.)

Proposed Timetable

(The State Department will follow RSO procedure in reference to security within and around the mission event.)

Day One (weekend)	Travel Day—Depart U.S. on evening flight.
Day Two	Travel Day—Participants arrive in transit city (tbd) and overnight in pre-arranged departure from transit city.
Day Three	Travel Day.

	Arrive in Kabul, Afghanistan (afternoon).
	Evening Event.
Day Four	Security Briefing.
	Market Briefing.
	One-on-One Business Appointments.
	Reception.
Day Five	Market Briefing.
	Industry Sector Briefing.
	Meetings with Government and Industry Officials.
	One-on-One Business Appointments.
	Reception.
Day Six	One-on-One Business Appointments (optional).
	Travel Day—Depart for the U.S. (evening).
Day Seven	Travel Day—Arrive in U.S. (morning).

Participation Requirements

This business development mission is designed for a minimum of 10 qualified companies and can accommodate a maximum of 20 participants from the companies accepted. All parties interested in participating in this business development mission to Kabul, Afghanistan, must submit a completed application package [I've always wished that we would include a link to the application at this point] for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and to best satisfy the selection criteria as outlined below. U.S. companies already doing business in the target sectors as well as U.S. companies seeking to enter this market for the first time are encouraged to apply.

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the U.S. Department of Commerce in the form of a participation fee is required. The participation fee is $4,800 for a single participant for a small- or medium-sized enterprise (SME) [1] and $5,245 for a single participant for a large firm. Participants per company will be limited due to space constraints. The fee for each additional participant is $1,500. Applicants are encouraged to provide a clear business purpose and clarification of role of any additional participants proposed to participate in the mission.

Interpretation services for official activities are included in the fee. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Lodging and meals for each participant will cost approximately $150 USD per day.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the application.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of the company's products or services to the mission goals.
- Applicant's potential for business in Afghanistan.
- Consistency of the applicant's goals and objectives with the stated scope of the mission.

(Additional factors, such as diversity of company, size, type and location, may be considered during the selection process)

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and will not be considered during the selection process.

Timeframe For Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including posting on the U.S. Department of Commerce trade missions calendar—*http://www.trade.gov/trade-missions/*—and other Internet Web sites, publication in domestic trade publications and association newsletters, direct outreach to the Department's clients and distribution lists, publication in the **Federal Register,** and announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than January 3, 2012, by the close of business. Applications received after January 3, 2012, will be considered only if space and scheduling constraints permit.

Disclaimer, Security, and Transportation

Business development mission members participate in the mission and undertake related travel at their own risk and are advised to obtain insurance accordingly. Any question regarding insurance coverage must be resolved by the participant. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. Companies should consult the State Department's travel warning for Afghanistan: *http://travel.state.gov/travel/cis_pa_tw/tw/tw_2121.html, http://travel.state.gov/travel/cis_pa_tw/tw/tw_2121.html.*

ITA will coordinate with the U.S. Embassy in Kabul to arrange for transportation of the mission participants to and from the airport and lodging facilities. The primary venue for the mission has security measures in place.

For More Information and an Application Packet Contact:

U.S. Commercial Service Domestic Contact:

Jessica Arnold, International Trade Specialist, U.S. Commercial Service, Washington, DC, *Tel.:* 202–482–2026, *afghanmission2011@trade.gov.*

Afghanistan Investment and Reconstruction Task Force Contact:

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations. *See http://www.sba.gov/contractingopportunities/owners/basics/whatismallbusiness/index.html.* Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008. *See http://www.export.gov/newsletter/march2008/initiatives.html.*

Ariana Marshall, International Trade Specialist, Afghanistan Investment and Reconstruction Task Force, *Tel:* 202–482–3754, *afghanmission2011@trade.gov.*

Elnora Moye,

Trade Program Assistant, Commercial Service Trade Mission Program, U.S. Department of Commerce.

[FR Doc. 2011–27302 Filed 10–20–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Highly Migratory Species Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 20, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Steve Durkee (202) 670–6637 (*steve.durkee@noaa.gov*) or Karyl Brewster-Geisz (301) 427–8503 (*karyl.brewster-geisz@noaa.gov*), Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a current information collection.

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) is responsible for management of the Nation's marine fisheries. In addition, NMFS must comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*). NMFS issues permits to fishing vessels and dealers in order to collect the information necessary to comply with domestic and international obligations, secure compliance with regulations, and disseminate necessary information.

Current regulations at 50 CFR 635.4 require that vessels participating in commercial and recreational fisheries for Atlantic highly migratory species (HMS) and dealers purchasing Atlantic HMS from a vessel, obtain a Federal permit issued by NMFS. Current regulations at 50 CFR 300.182 require that individuals entering for consumption (importing into the Customs territory of the United States or the separate customs territory of a U.S. insular possession, for domestic use), exporting, or re-exporting consignments of bluefin tuna, southern bluefin tuna, swordfish, or frozen bigeye tuna obtain an HMS International Trade Permit (ITP) from NMFS. This action addresses the renewal of permit applications currently approved under information collection, including both vessel and dealer permits. Vessel permits include Atlantic tunas, HMS charter/headboats, HMS angling, swordfish (directed, incidental, and hand gear), sharks (directed and incidental), smoothhound sharks, and incidental HMS squid trawl permits. Dealer permits include swordfish, sharks, and Atlantic tunas dealer permits and the HMS ITP.

II. Method of Collection

Applications for Atlantic Tunas, HMS Angling, and HMS Charter/Headboat Vessel Permits may be submitted online at *http://www.hmspermits.gov,* mailed, or faxed. All other applications including dealer permits and other vessel permits must be mailed.

III. Data

OMB Control Number: 0648–0327.

Form Number: None.

Type of Review: Regular submission (request for extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 38,446.

Estimated Time per Response: HMS ITP application, initial and renewal Shark and Swordfish Dealer Permit applications, and renewal Atlantic Tunas Dealer Permit application, 5 minutes; renewal applications for the following vessel permits—Atlantic Tunas, HMS Charter/Headboat, and HMS Angling, 6 minutes; initial Atlantic Tunas Dealer Permit application and the initial Incidental HMS Squid Trawl Permit, 15 minutes; initial and renewal shark and swordfish vessel permit applications, 20 minutes; initial applications for the following vessel permits—Atlantic Tunas, HMS Charter/Headboat, HMS Angling, and Smoothhound Shark, 30 minutes (the burden for renewal for the last two permits is covered under OMB Control No. 0648–0202 (checkbox on the Federal Fisheries Permit application).

Estimated Total Annual Burden Hours: 8,053.

Estimated Total Annual Cost to Public: $1,190,593.50.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 17, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–27251 Filed 10–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA747

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Public Workshops

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

ACTION: Notice of workshop.

SUMMARY: NMFS, Alaska Region, will present a workshop on seaLandings, a consolidated electronic means of reporting landings and production of commercial groundfish to multiple management agencies for Federal and State fisheries off Alaska, and 2012 recordkeeping and reporting requirements for the Alaska groundfish fisheries and Individual Fishing Quota fisheries.

DATES: The workshop will be held on November 16, 2011, from 9 a.m. to 3 p.m., Pacific Standard Time.

ADDRESSES: The workshop will be held at the Silver Cloud Lake Union Hotel located at 1150 Fairview Ave. North, Seattle, WA. Directions to the hotel can be found on their Web site, *http://www.silvercloud.com/seattlelakeunion/location.php*.

FOR FURTHER INFORMATION CONTACT: Susan Hall, 907–586–7462.

SUPPLEMENTARY INFORMATION: The workshop will include a discussion of 2012 recordkeeping and reporting requirements for Alaska groundfish fisheries and Individual Fishing Quota fisheries and instructions for completing and submitting required reports and logbooks using seaLandings.

NMFS will provide a demonstration of the new version of seaLandings for at-sea catcher/processors and motherships, and training on how to submit daily production reports and landing reports with and without Individual Fishing Quota. NMFS will also provide a demonstration of the trawl catcher/processor electronic logbook in seaLandings.

Special Accommodations

These workshops will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Susan Hall, 907–586–7462, at least 5 working days prior to the meeting date.

Dated: October 18, 2011.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–27345 Filed 10–20–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 11/21/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 8/19/2011 (76 FR 51955–51956) and 8/26/2011 (76 FR 53419–53420), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.

2. The action will result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Distribution of USCG Promotional Materials, Coast Guard Recruiting Command, Washington, DC (Off Site: 445 S. Curtis Rd., West Allis, WI).
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Department of Homeland Security, U.S. Coast Guard, HQ Contract Operations (CG–912), Washington, DC.
Service Type/Location: Grounds Maintenance, Air Force Research Laboratory Stockbridge Test Facility, 5251 Burleson Road, Oneida, NY.
NPA: Human Technologies Corporation, Utica, NY.
Contracting Activity: Dept of the Air Force, FA8751 AFRL RIKO, Rome, NY.

Patricia Briscoe,

Deputy Director, Business Operations, Pricing and Information Management.

[FR Doc. 2011–27273 Filed 10–20–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete a product and service previously furnished to the Procurement List by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: 11/21/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or To Submit Comments Contact: Patricia Briscoe, *Telephone:* (703) 603–7740, *Fax:* (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service proposed for deletion from the Procurement List.

End of Certification

The following product and service are proposed for deletion from the Procurement List:

Product

Pad, Cooling, Chemical
NSN: 6530–00–133–4299,
NPA: Employ+Ability, Inc., Braintree, MA.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.

Service

Service Type/Location: Janitorial/Custodial, FAA NAVAIDS Communication, Building 1300, Spokane International Airport, Spokane, WA.
NPA: Career Connections, Spokane, WA.
Contracting Activity: Department of Transportation, Massena, NY.

Patricia Briscoe,

Deputy Director, Business Operations, Pricing and Information Management.

[FR Doc. 2011–27274 Filed 10–20–11; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before November 21, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, D. 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The 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.

Dated: October 17, 2011.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title of Collection: State Educational Agency Local Educational Agency, and School Data Collection and Reporting under the Elementary and Secondary Education Act of 1965 (ESEA) as amended, Title I, Part A.
OMB Control Number: 1810–0622.
Agency Form Number(s): N/A.
Frequency of Responses: Annually.
Affected Public: State, Local and Tribal Government.
Total Estimated Number of Annual Responses: 52.
Total Estimated Annual Burden Hours: 2,080.
Abstract: Although the U.S. Department of Education (ED) determines Title I, Part A allocations for Local Educational Agencies (LEAs), State Educational Agencies must adjust ED-determined Title I, Part A LEA allocations to account for newly created LEAs and LEA boundary changes, to redistribute Title I, Part A funds to small LEAs (under 20,000 total population) using alternative poverty data, and to reserve funds for school improvement, State administration, and the State academic achievement awards program.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4688. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–27341 Filed 10–20–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before November 21, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or

e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The 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.

Dated: October 18, 2011.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: State Agency Use of Alternative Method to Distribute Title I Funds to Local Educational Agencies with Fewer Than 20,000 Total Residents.

OMB Control Number: 1810–0620.

Agency Form Number(s): N/A.

Frequency of Responses: Once during current authorization.

Affected Public: State, Local and Tribal Government.

Total Estimated Number of Annual Responses: 25.

Total Estimated Annual Burden Hours: 200.

Abstract: Title I, Part A of the Elementary and Secondary Education Act gives State educational agencies the flexibility to use an alternative method to distribute Title I, Part A funds to small Local Educational Agencies.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4689. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–27342 Filed 10–20–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Performance Review Board Membership

AGENCY: Office of Management, Department of Education.

ACTION: Notice of Membership of the Performance Review Board.

SUMMARY: The Secretary announces the members of the Performance Review Board (PRB) for the Department of Education for the Senior Executive Service (SES) performance cycle that ended September 30. Under 5 U.S.C. 4314(c)(1) through (5), each agency is required to establish one or more PRBs.

Composition and Duties

The PRB of the Department of Education is composed of career and non-career senior executives.

The PRB reviews and evaluates the initial appraisal of each senior executive's performance, along with any comments by that senior executive and by any higher-level executive or executives. The PRB makes recommendations to the appointing authority relative to the performance of the senior executive, including recommendations on performance awards. The Department of Education's PRB also makes recommendations on SES pay adjustments for career senior executives.

Membership

The Secretary has selected the following executives of the Department of Education for the SES performance cycle: Winona H. Varnon (Chair), Thomas Skelly, Danny Harris, James Manning, Linda Stracke, Joe Conaty, Sue Betka, Russlyn Ali, and Martha Kanter.

FOR FURTHER INFORMATION CONTACT: Andrea Burckman, Director, Executive Resources Division, Human Capital and Client Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., room 2C150, LBJ, Washington, DC 20202–4573. Telephone: (202) 401–0853.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: October 18, 2011.

Arne Duncan,

Secretary of Education.

[FR Doc. 2011–27336 Filed 10–20–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–230–4]

Notice of Extension of Comment Period; International Transmission Company, d/b/a ITC Transmission

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Extension of Comment Period.

SUMMARY: International Transmission Company, d/b/a ITC*Transmission* (ITC), filed a request to further extend the comment period on its supplemental filing of operational documents in an ongoing Presidential permit proceeding regarding the ITC application to amend Presidential Permit No. PP–230–3.

DATES: Comments must be submitted and received by DOE on or before November 4, 2011.

ADDRESSES: Comments should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260, or by e-mail to *Christopher.Lawrence@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 5, 2009, ITC applied to the DOE to amend Presidential Permit No. PP–230–3 by authorizing ITC to replace a failed 675–MVA transformer with two 700–MVA phase-shifting transformers connected in series at ITC's Bunce Creek Station in Marysville, Michigan.

On August 9, 2011, DOE received Supplemental Reply Comments from ITC, which completed the ITC response to earlier comments filed in the proceeding by the Midwest Independent Transmission System Operator (MISO), Inc. and the Independent Electricity System Operator of Ontario. According to ITC, the supplemental filing provided the operational agreements required to complete ITC's application in the amendment proceeding, including a letter of agreement between ITC and MISO assigning functional control of the subject facilities at the Bunce Creek Station to MISO.

DOE published a notice in the **Federal Register** on August 18, 2011 (76 FR 52945) inviting comments from prior participants in the proceeding and other interested persons on the ITC supplemental filing until September 23, 2001. Specifically, DOE was interested in obtaining the views of other affected utilities and system operators on the sufficiency of the operating principles provided by ITC.

In response to a motion from ITC filed on September 15, 2011, DOE extended the comment period on the supplemental filing through the publication of a notice in the **Federal Register** on September 27, 2011 (76 FR 59668). The current comment period is scheduled to expire on October 14, 2011.

On October 11, 2011 ITC filed a motion requesting an extension of the comment period for an additional week in order to allow more time for the parties in the case to finalize ongoing settlement discussions. In the interest of ensuring that there is sufficient time for the parties to be able to conclude the settlement and provide any additional comments that may be warranted, DOE has decided to extend the public comment period until November 4, 2011.

Procedural Matters: Any person desiring to be heard in response to this notice should file written comments with DOE. Five copies of such comments should be sent to the address provided above on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: Stephen J. Videto, ITC*Transmission,* 27175 Energy Way, Novi, MI 48377 and John R. Staffier, Stuntz, Davis & Staffier, P.C., 555 Twelfth Street, NW., Suite 630, Washington, DC.

All of the documents filed in the OE Docket No. PP–230–4 proceeding may be viewed by going to the Pending Applications page at *http://energy.gov/node/11845* on the DOE Web site and scrolling to the PP–230–4 section under Pending Presidential Permit Applications.

Issued in Washington, DC, on October 13, 2011.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2011–27278 Filed 10–20–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD11–10–000]

Proposed Agency Information Collection

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice and Request for Comments

SUMMARY: The Federal Energy Regulatory Commission (Commission) invites public comment in Docket No. RD11–10–000 on a proposed collection of information that the Commission is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance 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.

DATES: Comments regarding this proposed information collection must be received on or before December 20, 2011.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The proposed information collection in Docket No. RD11–10–000 relates to a proposed Reliability Standard, FAC–008–3—Facility Ratings, developed by the North American Electric Reliability Corporation (NERC), and submitted to the Commission for approval. NERC's petition related to proposed Reliability Standard FAC–008–3 is pending before the Commission. The proposed Reliability Standard modifies the currently effective version Reliability Standard FAC–008–1 and subsumes Reliability Standard FAC–009–1. Concurrent with the effectiveness of FAC–008–3, Reliability Standards FAC–008–1 and FAC–009–1 will be retired. The information collection requirements contained in Reliability Standards FAC–008 and FAC–009 are contained in

FERC–725A (OMB Control Number 1902–0244).

There is a net increase in information collection and reporting that would result from implementing proposed Reliability Standard FAC–008–3 and retiring the two superseded Reliability Standards. The breakdown is as follows:

FAC–008–3	Applies to:	Additional reporting beyond FAC–008–1 and FAC–009–1	Additional recordkeeping beyond FAC–008–1 and FAC–009–1
R1	Generator owners	None, this requirement is derived from R1 of FAC–008–1.	Retention period increased by 2 years.
R2	Generator owners	None, this requirement is derived from R1 of FAC–008–1.	Retention period increased by 2 years.
R3	Transmission owners	None, this requirement is derived from R1 of FAC–008–1.	Retention period increased by 2 years.
R4	Generator owners and Transmission owners.	None, this requirement is derived from R2 of FAC–008–1.	Retention period increased by 2 years.
R5	Generator owners and Transmission owners.	None, this requirement is derived from R3 of FAC–008–1.	Retention period increased by 2 years.
R6	Generator owners and Transmission owners.	None, this requirement is derived from R1 of FAC–008–1.	Retention period increased by 2 years.
R7	Generator owners	None, this requirement is derived from R2 of FAC–008–1.	Retention period increased by 2 years.
R8	Generator owners that are subject to R2 and Transmission owners.	Newly added reporting of the next most limiting equipment and the thermal rating for the next most limiting equipment.	New retention period of 3 years.

Burden Statement: Public reporting burden for this proposed collection is estimated as:

Additional proposed burden in FERC–725A	Number of respondents per compliance registry summary as of August 29, 2011 (A)	Number of responses per respondent (B)	Hours per respondent per response (C)	Total annual hours (A × B × C)
Report the next most limiting equipment and the thermal rating for the next most limiting equipment.	83 [1] Generator owners	1	80	6,640
Report the next most limiting equipment and the thermal rating for the next most limiting equipment.	342 Transmission owners	1	[2] 20	6,840
Increase in retention time by 2 years for R1 through R7.	833 Generator owners	1	2	1,666
Increase in retention time by 2 years for R1 through R7.	342 Transmission owners	1	2	684
Compliance sub-total				13,480
Recordkeeping sub-total				2,350
Total				15,830

Estimated cost burden to respondents is $1,683,400; [*i.e.,* (13,480 hours @ $120 an hour (compliance cost)) + (2,350 hours @ $28 an hour (recordkeeping cost))]. The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any particular function or activity.

Dated: October 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27225 Filed 10–20–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Requirement R8 applies to generator owners that own facilities between the step-up transformer and the point of interconnection. We estimate that 10% of all NERC registered generator owners own such facilities.

[2] Transmission Owner estimate based on the supplemental work required to report the next most limiting equipment and assumes all prerequisite work was performed in compliance with currently effective Reliability Standard FAC–008–1.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13220–001]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; Pacific Gas and Electric Company

On September 1, 2011, Pacific Gas and Electric Company (PG&E) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Kings River Pumped Storage Project (project) to be located on North Fork Kings River, Short Hair Creek, and Lost Canyon Creek, about 30 miles east of Shaver Lake in Fresno County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of one of the following two possible designs: [1] (1) Option 1 consisting of (i) a dam in the Lost Canyon area, 200 feet high and 700 feet long; (ii) a reservoir with a surface elevation of 7,720 feet above mean sea level (msl) and an estimated storage capacity of 15,695 acre-feet; (iii) an 8,000-foot-long power tunnel including intake structure, penstock, and tailrace; (2) option 2 consisting of (i) a dam in the Lower Short Hair Creek area with a height of 175 feet high and length of 1,700 feet; (ii) a reservoir with full pool elevation of 8,245 feet msl and storage capacity of 16,290 acre-feet; (iii) a 14,000-foot-long power tunnel including intake structure, penstock, and tailrace; (3) the existing Wishon reservoir, with a surface area of 1,025 acres, storage capacity of 128,639 acre-feet, and a normal water surface elevation of 6,550 feet msl, acting as the lower reservoir for either proposed plan; (4) a powerhouse with a total installed capacity from 380 to 1,140 megawatts; (5) a transmission line between 2,000 and 5,000 feet long and of 230 or 500 kilovolts; and (6) appurtenant facilities. The proposed project would have an annual production between 508 and 2,031 gigawatt hours.

Applicant Contact: Mr. Randall Livingston, Vice President—Power Generation, Pacific Gas and Electric Company, 245 Market Street, San Francisco CA 94105–1702; phone: (415) 973–6950.

FERC Contact: Joseph Hassell; phone: (202) 502–8079.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13220–001) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27229 Filed 10–20–11; 8:45 am]

BILLING CODE 6717–01–P

[1] PG&E would also investigate the possible addition of equipment and other infrastructure within the existing Helms Project (FERC Project No. 2375), which uses the existing Courtland reservoir as the upper reservoir and the existing Wishon reservoir as a lower reservoir. Any such addition may require an amendment of the existing license.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2256–068]

Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests; Consolidated Water Power Company

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Request to remove lands from the project boundary.

b. *Project No.:* 2256–068.

c. *Date Filed:* August 15, 2011, and supplemented September 2 and 28, 2011.

d. *Applicant:* Consolidated Water Power Company.

e. *Name of Projects:* Wisconsin Rapids Hydroelectric Projects.

f. *Location:* Wisconsin River in the City of Wisconsin Rapids, Wood County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Thomas J. Witt, Consolidated Water Power Company, P.O. Box 8050, Wisconsin Rapids, WI 54495–8050, (715) 422–3073.

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2256–068) on any comments, motions, or recommendations filed.

k. *Description of Request:* The applicant proposes to remove an approximately one acre parcel of property, with an existing office building, from the project boundary. The parcel is located in downtown Wisconsin Rapids, WI, on the west side

of the Wisconsin River about 1,000 feet downstream from the Wisconsin Rapids dam and about 100 feet from the river's shoreline. The applicant states the parcel is not and has not been needed for any project purposes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208- 3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: October 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27228 Filed 10–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–2–000]

Notice of Filing; Crosstex LIG, LLC

Take notice that on October 7, 2011, Crosstex LIG, LLC (Crosstex) submitted a revised Statement of Operating Conditions (SOC) for services provided under Section 311 of the Natural Gas Policy Act of 1978 (''NGPA''). Crosstex states it is filing the SOC in searchable PDF format.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday October 25, 2011.

Dated: October 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27230 Filed 10–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–3–000]

Notice of Petition for Rate Approval; Eagle Ford Midstream, LP

Take notice that on October 11, 2011, (Eagle Ford) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations, and its initial baseline Statement of Operating Conditions. Eagle Ford states that it is an existing intrastate pipeline, within the meaning of sections 2(16) and 311(a)(2) of the Natural Gas Policy Act of 1978, currently providing intrastate services to its customers. Eagle Ford proposed rates for Section 311 jurisdictional firm, enhanced, interruptible and parking and loaning interstate natural gas transportation services.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Dated: October 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27231 Filed 10–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–1–000]

Notice of Request Under Blanket Authorization; Northwest Pipeline GP

Take notice that on October 3, 2011 Northwest Pipeline GP (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP12–1–000, a Prior Notice request pursuant to Sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act for authorization to replace approximately 5.06 miles of certain pipeline facilities located in Spokane County, Washington. Specifically, Northwest proposes to replace 5.06 miles of 16-inch diameter pipeline between mileposts 158.3 and 164.3 with approximately 4.9 miles of new 16-inch diameter pipeline on Northwest's Spokane Lateral. The decrease in pipeline length is a result of minor reroutes requested by landowners and will have no effect on capacity, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Pam Barnes, Manager, Certificates and Tariffs, Northwest Pipeline GP, P.O. Box 58900, Salt Lake City, Utah 84158, or call (801) 584–6857, or fax (801) 584–7764, or by e-mail *pam.j.barnes@williams.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Dated: October 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27226 Filed 10–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Extension of the Public Comment Period for the Draft Site-Wide Environmental Impact Statement for the Continued Operation of the Department of Energy/National Nuclear Security Administration Nevada National Security Site and Off-Site Locations in the State of Nevada

AGENCY: National Nuclear Security Administration, U.S. Department of Energy.

ACTION: Notice of extension of the public comment period.

SUMMARY: On July 29, 2011, the National Nuclear Security Administration (NNSA), a separately organized semi-autonomous agency within the U.S. Department of Energy (DOE), published a notice of availability of the *Draft Site-Wide Environmental Impact Statement for the Continued Operation of the Department of Energy/National Nuclear Security Administration Nevada National Security Site and Off-Site Locations in the State of Nevada* (Draft SWEIS, DOE/EIS–0426D). That notice stated that the public review and comment period would continue until October 27, 2011. NNSA has decided to extend the public comment period by 36 days through December 2, 2011.

ADDRESSES: The Draft SWEIS and its reference material are available for review on the NNSA Web site at: *http://nnsa.energy.gov/nepa.* Written comments on the Draft SWEIS should be submitted to Ms. Linda Cohn, SWEIS Document Manager, NNSA Nevada Site Office, U.S. Department of Energy, P.O. Box 98518, Las Vegas, Nevada 89193–8518. Comments may also be submitted by facsimile to 702–295–5300, by telephone at 1–877–781–6105, or on the Internet at *http://nnsa.energy.gov/nepa.* Please title correspondence ''Draft SWEIS Comments.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information on the Draft SWEIS, including requests for copies of the document, should be directed to Ms. Linda Cohn by contact methods shown above under **ADDRESSES.**

For general information regarding the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; by telephone at 202–586–4600 or leave a message at 1–800–472–2756; by electronic mail at *askNEPA@hq.doe.gov;* or by facsimile at 202–586–7031. Additional information regarding DOE NEPA activities is available on the Internet through the DOE NEPA Web site at *http://nnsa.energy.gov/nepa.*

SUPPLEMENTARY INFORMATION: The Draft SWEIS for the continued management and operation of the Nevada National Security Site (formerly known as the Nevada Test Site) and other NNSA-managed sites in Nevada, including the Remote Sensing Laboratory on Nellis Air Force Base, the North Las Vegas Facility, and the Tonopah Test Range on the U.S. Air Force Nevada Test and Training Range, analyzes the potential environmental impacts for three alternatives: No Action, Expanded Operations, and Reduced Operations. Each alternative comprises current and reasonably foreseeable activities at the NNSS and three offsite locations in the NNSA mission-associated programs in Nevada of (1) the National Security/Defense Mission, which includes the Stockpile Stewardship and Management, Nuclear Emergency Response, Nonproliferation and Counterterrorism, and Work for Others Programs; (2) the Environmental Management Mission, which includes the Waste Management and Environmental Restoration Programs; and (3) the Nondefense Mission, which includes the General Site Support and Infrastructure, Energy Conservation and Renewable Energy, and Other Research and Development Programs.

The NNSA Nevada Site Office held five public hearings to receive comments on the *Draft Site-Wide Environmental Impact Statement for the Continued Operation of the Department of Energy/National Nuclear Security Administration Nevada National Security Site and Off-Site Locations in the State of Nevada* (Draft SWEIS, DOE/EIS–0426D). In response to comments received prior to and at the public hearings, NNSA has decided to extend the public comment period. The original NNSA Notice of Availability (76 FR 45548) indicated that the public comment period would close on October 27, 2011. The comment period will now end on December 2, 2011. Comments received after this date will be considered to the extent practicable as the Final NNSS SWEIS is prepared.

Signed in Washington, DC, on October 17, 2011.

Thomas P. D'Agostino,

Administrator, National Nuclear Security Administration.

[FR Doc. 2011–27287 Filed 10–20–11; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8999–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed 10/10/2011 Through 10/14/2011. Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EIS are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20110349, Final EIS, USFS, NV, Ely Westside Rangeland Project, Authorization of Livestock Grazing, To Improve the Health of the Land and To Protect Essential Ecosystem Functions and Values, Implementation, Humboldt-Toiyabe National Forest, Lincoln, Nye, and Pine Counties, NV, Review Period Ends: 11/21/2011, Contact: Vern Keller 775–355–5356.

EIS No. 20110350, Draft EIS, USFS, AZ, Rosemont Copper Project, Proposed Construction, Operation with Concurrent Reclamation and Closure of an Open-Pit Copper Mine, Coronado National Forest, Pima County, AZ, Comment Period Ends: 01/18/2012, Contact: Bev Everson 520–388–8300.

EIS No. 20110351, Final EIS, BLM, OR, North Steens 230-kV Transmission Line Project, Construction and Operation of a Transmission Line and Access Roads Associated with the Echanis Wind Energy Project, Authorizing Right-of-Way Grant, Harney County, OR, Review Period Ends: 11/21/2011, Contact: Skip Renchler 541–573–4443.

EIS No. 20110352, Final EIS, FHWA, CA, Yerba Buena Island Ramps Improvement Project on Interstate 80 (I–80), Proposals to Replace the Existing Westbound on- and off-ramp, Funding, San Francisco County, CA, Review Period Ends: 11/21/2011, Contact: Melanie Brent 510–286–5231.

EIS No. 20110353, Draft EIS, USFS, UT, Fishlake National Forest Oil and Gas Leasing Analysis Project, To Exploration, Development, and Production of Mineral and Energy Resources and Reclamation of Activities, Beaver, Garfield, Iron, Juab, Millard, Piute, Sanpete, Sevier, and Wayne Counties, UT, Comment Period Ends: 12/05/2011, Contact: Diane Freeman 435–896–1050.

EIS No. 20110354, Draft EIS, NOAA, AS, Fagatele Bay National Marine Sanctuary, Management Plan, Implementation, along the southwestern coast of Tutuila Island, AS, Comment Period Ends: 01/06/2012, Contact: Gene Brighouse 684–633–5155 Ext 264.

EIS No. 20110355, Final EIS, FHWA, CA, Northwest Corridor Improvements, I–75/I–575 Construction, New Alternative, USACE Section 404 Permit, NPDES Permit, Cobb and Cherokee Counties, CA, Review Period Ends: 11/21/2011, Contact: Rodney N. Barry 404–562–3630.

EIS No. 20110356, Final EIS, BLM, AZ, Sonoran Solar Energy Project, Construction and Operation of a 3756-megawatt (MW) Concentrated Solar Thermal Power Plant and Ancillary Facilities on 3,702 Areas, Right-of-Way Granting, Maricopa County, AZ, Review Period Ends: 11/21/2011, Contact: Joe Incardine 801–524–3833.

Amended Notices

EIS No. 20110241, Draft EIS, NNSA, NV, Site-Wide EIS—Continued Operation of the Department of Energy/National Nuclear Security Administration, Nevada National Security Site and Off-Site Location in Nevada, Comment Period Ends: 12/02/2011, Contact: Linda M. Cohn 702–295–0077 Revision to FR Notice Published 07/29/2011: Extending Comment Period from 10/27/2011 to 12/02/2011.

Dated: October 18, 2011.

Cliff Rader,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–27284 Filed 10–20–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under the Home Owners' Loan Act (HOLA) (12 U.S.C. 1461 *et seq.*), and Regulation LL (12 CFR part 238) or Regulation MM (12 CFR part 239) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is described in 238.53 or 238.54 of Regulation LL (12 CFR 238.53 or 238.54) or 239.8 of Regulation MM (12 CFR 239.8). Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 10a(c)(4)(B) of HOLA (12 U.S.C. 1467a(c)(4)(B)).

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 4, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Lincoln Federal Bancorp, Inc. and Lincoln Federal Bancorp M.H.C.,* both in Lincoln, Nebraska; to engage in real estate development activities through Stone Bridge Creek, L.L.C., Lincoln, Nebraska, pursuant to section 239.8(a) of Regulation MM.

Board of Governors of the Federal Reserve System.

Dated: October 17, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–27238 Filed 10–20–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0141; Docket 2011–0079; Sequence 15]

Federal Acquisition Regulation; Submission for OMB Review; Buy American—Construction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the Buy American Act—Construction (Grimberg Decision). A notice was published in the **Federal Register** at 76 FR 40367, on July 8, 2011. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 21, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia Davis, Procurement Analyst, Acquisition Policy Division, GSA (202) 219–0202 or *Cecelia.davis@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 9000–0141, Buy American—Construction, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0141'', Buy American—Construction, under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0141'', Buy American—Construction. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0141'', Buy American—Construction, on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. *Attn:* Hada Flowers/IC 9000–0141, Buy American—Construction.

Instructions: Please submit comments only and cite Information Collection 9000–0141, Buy American—Construction, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clauses at FAR 52.225–9, Buy American Act—Construction Materials, and FAR 52.225–11, Buy American Act—Construction Materials under Trade Agreements, provide that offerors/contractors requesting to use foreign construction material, other than construction material eligible under a trade agreement, shall provide adequate information for Government evaluation of the request.

These regulations implement 41 U.S.C. chapter 83, Buy American, for construction.

B. Annual Reporting Burden

Respondents: 500.
Responses per Respondent: 2.
Annual Responses: 1,000.
Hours per Response: 2.5.
Total Burden Hours: 2,500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0141, Buy American—Construction, in all correspondence.

Dated: October 14, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.

[FR Doc. 2011–27333 Filed 10–20–11; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice–MC–2011–3; Docket No. 2011–0006; Sequence 20]

The President's Management Advisory Board (PMAB); Notification of Upcoming Public Advisory Meeting

AGENCY: Office of Executive Councils, U.S. General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: The President's Management Advisory Board (PMAB), a Federal Advisory Committee established in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C., App., and Executive Order 13538, will hold a public meeting on Friday, November 4, 2011.

DATES: *Effective date:* October 21, 2011.

Meeting date: The meeting will be held on Friday, November 4, 2011, beginning at 11 a.m. eastern time, ending no later than 3 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Brockelman, Designated Federal Officer, President's Management Advisory Board, Office of Executive Councils, General Services Administration, 1776 G Street, NW., Washington, DC 20006, at *stephen.brockelman@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The PMAB was established to provide independent advice and recommendations to the President and the President's Management Council on a wide range of issues related to the development of effective strategies for the implementation of best business practices to improve Federal Government management and operation, with a particular focus on productivity and the application of technology.

Agenda: The main purpose for this meeting is for the PMAB to hear reports from federal agency executives regarding their efforts implementing the latest PMAB recommendations to the President's Management Council. The Board made recommendations at its September 23, 2011, teleconference aimed at improving Information Technology (IT) portfolio and project management, IT vendor performance management, Senior Executive Service (SES) leadership development and SES performance appraisal systems. More detailed information on the PMAB recommendations can be found on the PMAB Web site (see below).

Meeting Access: The PMAB will convene its meeting in the Eisenhower Executive Office Building, 1650 Pennsylvania Avenue, NW., Washington, DC. Due to security, there will be no public admittance to the Eisenhower Building to attend the meeting. However, the meeting is open to the public; interested members of the public may view the PMAB's discussion at *http://www.whitehouse.gov/live.* Members of the public wishing to comment on the discussion or topics outlined in the Agenda should follow the steps detailed in Procedures for Providing Public Comments below.

Availability of Materials for the Meeting: Please see the PMAB Web site (*http://www.whitehouse.gov/administration/advisory-boards/pmab*) for any available materials and detailed meeting minutes after the meeting.

Procedures for Providing Public Comments: In general, public statements will be posted on the PMAB Web site (see above). Non-electronic documents will be made available for public inspection and copying in PMAB offices at GSA, 1776 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect statements by telephoning (202) 501–1398. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Any statements submitted in connection with the PMAB meeting will be made available to the public under the provisions of the Federal Advisory Committee Act.

The public is invited to submit written statements for this meeting to the PMAB prior to the meeting until 5 p.m. eastern time on Thursday, November 3, 2011, by either of the following methods:

Electronic or Paper Statements: Submit written statements to Mr. Brockelman, Designated Federal Officer at *stephen.brockelman@gsa.gov;* or send paper statements in triplicate to Mr. Brockelman at the PMAB GSA address above.

Dated: October 13, 2011.

Robert Flaak,

Director, Office of Committee and Regulatory Management, General Services Administration.

[FR Doc. 2011–27335 Filed 10–20–11; 8:45 am]

BILLING CODE 6820–BR–P

GENERAL SERVICES ADMINISTRATION

[Notice–MG–2011–2; Docket No. 2011–0006; Sequence 21]

Office of Governmentwide Policy; Office of Federal High-Performance Green Buildings; the Green Building Advisory Committee Notification of Upcoming Public Advisory Meeting

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: This notice provides the schedule and agenda for the first meeting of the Green Building Advisory Committee Meeting (the Committee). The meeting is open to the public and the site is accessible to individuals with disabilities.

DATES: *Effective date:* October 21, 2011.

Meeting date: The meeting will be held on Wednesday, November 9, 2011, starting at 1 p.m. Eastern time, and ending by 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Ken Sandler, Designated Federal Official, Office of Federal High-Performance Green Buildings, Office of Governmentwide Policy, General Services Administration, 1275 First Street, NE., Room 633D, Washington, DC 20417, telephone (202) 219–1121 (*Note:* This is not a toll-free number.)

Contact Ken Sandler at (202) 219–1121 to register to comment during the meeting's public comment period as well as to obtain meeting materials. Requests to comment at the meeting must be received by 5 p.m. Eastern time, Friday, November 4. Written comments may be provided to Mr. Sandler at *ken.sandler@gsa.gov* until Monday, November 21.

SUPPLEMENTARY INFORMATION: Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2).

The Green Building Advisory Committee will provide advice to GSA as specified in Public Law 110–140, as a mandatory Federal advisory committee. Under this authority, the Committee will advise GSA on the rapid transformation of the Federal building portfolio to sustainable technologies and practices. The Committee will focus primarily on reviewing strategic plans, products and activities of the Office of Federal High-Performance Green Buildings and providing advice regarding how the Office can most effectively accomplish its mission.

Agenda: November 9, 2011.

—Introduction to GSA's Office of Federal High-Performance Green Buildings.
—Strategic partnerships for sustainable Federal buildings.
—Project discussions:
- Energy Research into Practice.
- High-Performance Green Building Demonstration Projects.
- National Research Council ''Levers for Change'' Report and Expert Meetings.
- Green Building Certification Systems review.

—30 Minute public comment period for individuals pre-registered per instructions above. Each individual will be able to speak for 5 minutes.
—Next steps.
—Adjourn by 4:30 p.m.

Meeting Access: The Committee will convene its meeting at: One Constitution Square, 1275 First Street, NE., Room 201, Washington, DC 20417. Please allow time for a Security check prior to entering the building.

Dated: October 18, 2011.

A. Robert Flaak,

Director, Office of Committee and Regulatory Management, General Services Administration.

[FR Doc. 2011–27347 Filed 10–20–11; 8:45 am]

BILLING CODE 6820–14–P

GENERAL SERVICES ADMINISTRATION

[Notice: PBS–2011–02; Docket No. 2011–0006; Sequence 17]

Record of Decision Addendum for the Department of Homeland Security Headquarters Consolidation at St. Elizabeths in Southeast, Washington, DC

AGENCY: National Capital Region, U.S. General Services Administration (GSA).

ACTION: Record of Decision Addendum.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), GSA Order PBS P 1095.1F (Environmental considerations in decision-making, dated October 19, 1999), and the GSA Public Buildings Service NEPA Desk Guide, dated October 1999, on September 28, 2011, GSA issued a Record of Decision Addendum to the DHS Headquarters Consolidation at St. Elizabeths Final Environmental Impact Statement (EIS) (GSA, November 2008), to implement the revised West Access Road from Firth Sterling Avenue to Gate 4 of the St. Elizabeths West Campus. The complete Record of Decision Addendum can be viewed on the project Web site *http://www.stelizabethsdevelopment.com.*

FOR FURTHER INFORMATION CONTACT: Denise Decker, NEPA Lead, General Services Administration, National Capital Region, at (202) 538–5643.

Decision

It is the decision of the Regional Administrator of GSA, NCR, and in support of DHS, to approve the Addendum to the 2008 ROD and thereby implement the Preferred Alternative of the West Campus Access Road from Gate 4 to its intersection with Firth Sterling Avenue. This action is necessary as part of the redevelopment of the St. Elizabeths Campus associated with consolidating DHS headquarters. The Preferred Alternative includes intersection improvements at Firth Sterling Avenue resulting in a left-turn lane onto the West Campus Access Road, and construction of 10 bus bays along the West Campus Access Road.

The selection of the Preferred Alternative for the West Campus Access Road from Gate 4 to its intersection with Firth Sterling Avenue is conditioned on the following:

- Approval of the design for the West Campus Access Road by NCPC.
- Successful execution of the MOA regarding historic preservation signed by GSA, DC HPO, ACHP, FHWA, NCPC, and DHS in September 2011.
- Subsequent final determinations by DDOT on the Firth Sterling Avenue intersection with the West Campus Access Road. The Preferred Alternative could be implemented immediately after approval by DDOT.

Development of the West Campus Access Road will be guided by the Overall Development Phasing schedule included in the Master Plan Amendment and the PA. This decision is based on information and analyses contained in the following:

- 2008 Final Master Plan EIS and ROD.
- 2010 Draft Master Plan Amendment EIS.
- 2010 St. Elizabeths Transportation Technical Report.
- Comments from Federal and state agencies, stakeholder organizations, members of the public, elected officials, and other information in the project administrative record.

The proposed transportation improvements under the Preferred Alternative in this ROD Addendum, namely the West Campus Access Road from Gate 4 to Firth Sterling Avenue, do not conflict with the conclusions presented in the 2008 Master Plan EIS and ROD.

Issued September 28, 2011 by Julia E. Hudson, Regional Administrator, General Services Administration, National Capital Region.

Dated: October 18, 2011.

Dawud Abdur-Rahman,

Director, Planning and Management, Office of Planning and Design Quality, General Services Administration, Public Building Services, National Capital Region.

[FR Doc. 2011–27349 Filed 10–20–11; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–11JD]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of Dating Matters: Strategies to Promote Healthy Teen Relationships™—New—National Center for Injury Prevention and Control—Centers for Disease Control and Prevention.

Background and Brief Description

Evaluation of Dating Matters: Strategies to Promote Healthy Teen Relationships™ is the Centers for Disease Control and Prevention's new teen dating violence prevention initiative.

Recently, efforts to prevent teen dating violence (TDV) have grown, particularly in schools, among policymakers, and among sexual violence and domestic violence coalitions. Now many states and communities also are working to stop teen dating violence. However, these activities vary greatly in quality and effectiveness. To address the gaps, CDC has developed Dating Matters, a teen

dating violence prevention program that includes programming for students, parents, educators, as well as policy development. Dating Matters is based on the current evidence about what works in prevention and focuses on high-risk, urban communities where participants include: Middle school students age 11 to 14 years; middle school parents; brand ambassadors; educators; school leadership; program implementers; community representatives; and local health department representatives in the following four communities: Alameda County, California; Baltimore, Maryland; Broward County, Florida; and Chicago, Illinois.

The primary goal of the current proposal is to conduct an outcome and implementation evaluation of Dating Matters in the four metropolitan cities to determine its feasibility, cost, and effectiveness. In the evaluation a standard model of TDV prevention (Safe Dates which is administered in the 8th grade) will be compared to a comprehensive model (this model will be administered to students in the 6th, 7th, and 8th grades). The comprehensive model also includes communications strategies, policy development, and programs involving parents of 6th, 7th, and 8th graders and their educators.

Burden estimates are based on the following information:

- *Number of communities/sites:* 4.
- *Number of schools across 4 communities/sites:* 48 (12 schools per community).
- *Number of students in each middle school:* 600 students—6th, 7th, 8th grade (200 students per grade).
- *Number of educators/school staff (e.g., teachers, principals, support staff) in each school:* 40.
- *Number of schools implementing the standard model of TDV prevention:* 24 (6 schools per community).
- *Number of schools implementing the comprehensive model of TDV prevention:* 24 (6 schools per community).

Across 4 communities/sites, 48 schools will implement the two models of teen dating violence prevention. Based on an anticipated school size of 600 the sampling frame for this data collection is 28,800 each year. The sampling frame for parents, given that we would only include one parent per student, is also 28,800. Based on our research and consultation with middle schools, most schools with approximately 600 students have approximately 40 staff. If we assume 40 educators per school, the sampling frame for the educator sample is 1,920.

The following are explanations of estimated burden by respondent:

Students: We will use random selection to identify one-third of the total participants, which is 9,600 student participants per year.

Parents: We will attempt to recruit all parents participating in the parent curricula and select an equal number of parents from the standard of care schools to serve as a matched comparison group. We anticipate our final sample will include 40 parents per grade per school, with a total of (40 parents $\times$ 48 schools $\times$ 3 grades) 5,760 parents per year. This sample of parents will respond to surveys twice per year.

Educators: Although we will attempt to recruit all educators in each school (1,920) each year, we expect that 85 percent will participate, with the total number of 1,632 educator respondents per year.

School data extractors: We will attempt to recruit one data extractor per 48 schools to extract school data to be used in conjunction with the outcome data for the students. Individual level school data will only be collected for students participating in the evaluation (one-third of all students in each school or 200 students), so the number of respondents/extractors will be 48 and the number of responses per data extractor is 200.

School leadership: Based on the predicted number of one school leadership (e.g., principal, vice principal) per 48 schools, the number of respondents will be 48.

Local Health Department representative: Based on the predicted number of four communities/sites and four local health department representatives working on Dating Matters per community, the number of respondents will be 16.

Parent Program Manager: With a maximum of one parent program manager per community/site, the number of program manager respondents will be 4.

Community Representative: Based on the predicted number of 10 community representatives per 4 communities/sites, the number of respondents will be 40.

Parent Curricula Implementers: 6 schools from each community will implement the comprehensive approach. Parent groups in the comprehensive approach are led by one male and one female parent. We have estimated 7 parent pairs per community with 56 total parent implementers (2 parents $\times$ 7 parent pairs $\times$ 4 communities = 56 implementers). These 56 implementers will host 5 sessions to 6th graders (280 respondents) and 3 sessions to 7th graders (168 respondents). It is anticipated that the parent curricula implementers will conduct three rounds of each curricula per year, with three responses per session log per year.

Student Curricula Implementers: There are six student curricula implementers per school that will be completing fidelity instruments (48 schools $\times$ 6 implementers = 288 respondents). The 6th and 7th grade implementers will complete 6 program sessions each (288 $\times$ 6 = 1,728 respondents) and the 8th grade implementers will complete 10 program sessions (288 $\times$ 10 = 2,880 respondents). It is anticipated that the student curricula implementers will conduct one round of each curricula per year, with one response per session log per year.

Safe Dates Implementers: Based on the predicted number of 3 implementers in each of 48 schools, who will implement the 8th grade SafeDates program, the number of respondents for the Safe Dates implementer survey will be 144.

Brand Ambassadors: The Brand Ambassador Implementation Survey will be provided to each brand ambassador in each community. With a maximum of 20 brand ambassadors per community, the feedback form will be collected from a total of 80 brand ambassadors. Brand Ambassadors will respond to the survey twice per year.

Communications Implementers (''Brand Ambassador Coordinators''): The Communications Campaign Tracking form will be provided to each brand ambassador coordinator in each community. With a maximum of one brand ambassador coordinator per community (n = 4), the feedback form will be collected from a total of 4 brand ambassador coordinators.

There are no costs to the respondents other than their time. The total estimated annual burden hours are 60,182.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Student Program Participant	Student Outcome Survey Baseline—Appendix D.	9600	1	1.5
Student Program Participant	Student Outcome Survey Follow-up—Appendix E.	9600	2	1.5
School data extractor	School Indicators—Appendix F	48	200	15/60
Parent Program Participant	Parent Outcome Survey—Appendix G	5760	2	1
Educator	Educator Outcome Survey—Appendix H	1632	1	30/60
Student Brand ambassador	Brand Ambassador Implementation Survey—Appendix I.	80	2	20/60
School leadership	School Leadership Capacity and Readiness Survey—Appendix J.	48	1	1
Parent Curricula Implementer (6th grade)	Parent Program Fidelity 6th Grade Sessions 1–5—Appendices K, L, M, N, O.	280	3	15/60
Parent Curricula Implementer (7th grade)	Parent Program Fidelity 7th Grade Sessions 1, 3–5—Appendices P, Q, R.	168	3	15/60
Safe Dates Implementer (implementation)	Safe Dates Implementation Survey—Appendix S.	144	1	1
Student Curricula Implementer (6th grade)	Student Program Fidelity 6th Grade Session 1–6—Appendices T, U, V, W, X, Y.	1728	1	15/60
Student Curricula Implementer (7th grade)	Student Program Fidelity 7th Grade Sessions 1–6—Appendices Z–EE.	1728	1	15/60
Student Curricula Implementer (8th grade)	Student Program Fidelity 8th Grade Sessions 1–10—Appendices FF–OO.	2880	1	15/60
Communications Implementer	Communications Campaign Tracking—Appendix PP.	4	4	20/60
Local health department representative	Local Health Department Capacity and Readiness—Appendix QQ.	16	1	2
Parent Program Manager	Parent Program Capacity and Readiness—Appendix RR.	4	1	1
Community Representative	Community Capacity and Readiness—Appendix SS.	40	1	1

Catina Conner,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–27245 Filed 10–20–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10291 and CMS–10403]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* State Collection and Reporting of Dental Provider and Benefit Package Information on the Insure Kids Now! Web site and Hotline; *Use:* The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) sections 501(f)(1) and (2), requires that state-specific information on dental providers and benefits be posted on the Insure Kids Now (IKN) Web site and available on the hotline. States must update the information on the dental providers quarterly and the information on their benefit package annually. CMS is asking States to submit their dental benefits in a revised format that is designed to reduce the amount of time States have to spend in compiling the dental benefit information. Although in the past we allowed States to only check a box to indicate that the Medicaid dental benefits were in compliance with Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services, we are also modifying the form to ask States to include their Medicaid dental benefits in this form so those may also be posted on the Web site. In addition, we are asking States to specify if they have a dollar or code limit at which point prior authorization is required for any additional services and if they have cost sharing requirements for dental services; *Form Number:* CMS–10291 (OMB #: 0938–1065); *Frequency:* Yearly (dental benefits) and quarterly (dental providers); *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 255; *Total Annual Hours:* 190. (For policy questions regarding this collection contact Nancy Goetschius at 410–786–0707. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Community-

based Care Transitions Program (CCTP) Implementation and Monitoring; *Use:* The Medicare Community-Based Care Transitions Program (CCTP), authorized by Section 3026 of the 2010 Affordable Care Act, is a major component of the Partnership for Patients initiative, one goal of which is to decrease preventable complications during transition from a care setting, such as a hospital, to home, community, or another care setting. Appendix A contains a copy of the relevant portion of the legislation.

The CCTP will provide funding to test models for improving care transitions from the hospital to the community for high-risk Medicare beneficiaries. The Centers for Medicare & Medicaid Services (CMS) initiated the CCTP in early 2011 and will operate the program for five years. Congress has authorized $500 million to cover the cost of the program. CMS expects that program agreements will be in place to authorize community-based organizations (CBOs), in partnership with acute care hospitals, to begin providing care transition services in November 2011 and, if successful, continue doing so for up to five years. The planned collection of a participant experience survey is part of the implementation and monitoring strategy that will review the performance of organizations contracted to provide transitional care services under the CCTP. This clearance package seeks approval for the participant experience survey.

Form Number: CMS–10403 (OMB # 0938–New); *Frequency:* Once; *Affected Public:* Individuals or Households; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 12,500. (For policy questions regarding this collection contact Juliana Tiongson at 410–786–0342. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *November 21, 2011.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer.

Fax Number: (202) 395–6974.

E-mail: OIRA_submission@omb.eop.gov.

Dated: October 18, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–27300 Filed 10–20–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10249]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Administrative Requirements for Section 6071 of the Deficit Reduction Act; *Use:* Under section 6071 of the Deficit Reduction Act of 2005 (P.L. 109–171) subsection (c), the Secretary may require States to meet requirements and provide additional information, provisions, and assurances. Through the Operational Protocol, States provide the requirements, information, provisions and assurances which, following CMS approval, States may enroll individuals in the State's demonstration program or begin to claim for service dollars. The Act also requires the Money Follows the Person Rebalancing Demonstration (MFP) program be evaluated to determine program effectiveness. One aspect of the evaluation is determining participant quality of life and how the program affects quality of life. Medicaid enrollees who participate in the MFP program are expected to have need for long-term care services for the rest of their lives and are a particularly vulnerable population if the community setting cannot adequately meet their needs or does not provide them a suitable quality of life.

State Operational Protocols should provide enough information that: the CMS Project Officer and other Federal officials may use it to understand the operation of the demonstration and/or prepare for potential site visits without needing additional information; the State Project Director can use it as the manual for program implementation; and external stakeholders may use it to understand the operation of the demonstration. The financial information collection will be used in CMS financial statements and shared with the auditors who validate CMS' financial position. The Maintenance of Effort forms as well as the MFP Budget Form are required each year. Submissions of MFP Demonstration Financial Forms are 90 days after the end of each Federal fiscal quarter. The MFP Finders File, MFP Program Participation Data file, and MFP Services File will be used by the national evaluation contractor to assess program outcomes. The MFP Quality of Life data will be used by the national evaluation contractor to assess program outcomes. Specifically, the evaluation will determine how participants' quality of life changes after transitioning to the community. The semi-annual progress reports will be used by the national evaluation contractor and CMS to monitor program implementation at the grantee level; *Form Number:* CMS–10249 (OCN: 0938–1053); *Frequency:* Yearly, Semi-annually, Quarterly, Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 43; *Total Annual Responses:* 360; *Total Annual Hours:* 9,360. (For policy questions regarding this collection contact Marybeth Ribar at 410–786–1121. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the

Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by December 20, 2011:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention Document Identifier/OMB Control Number: CMS–10249 (OCN: 0938–1053), Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 18, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–27301 Filed 10–20–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development, Special Emphasis Panel, Topics In Female Reproduction.

Date: November 17, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: David H. Weinberg, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Rockville, MD 20852, 301–435–6973, *David.Weinberg@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27306 Filed 10–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development, Special Emphasis Panel, Resource Program Grant in Bioinformatics (P41): Echinoderm Genome Database.

Date: November 15, 2011.

Time: 4:15 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Cathy J. Wedeen, PhD, Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health And Human Development, NIH, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892. 301–435–6878. *wedeenc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27307 Filed 10–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development Notice of 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, NICHD.

The meeting will be open to the public as indicated below, with the attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Eunice Kennedy Shriver National Institute of Child Health & Human Development, 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, NICHD.

Date: December 2, 2011.

Open: 8 a.m. to 11:30 a.m.

Agenda: A report by the Scientific Director, NICHD, on the status of the NICHD Division of Intramural Research.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Room 2A48, Bethesda, MD 20892.

Closed: 11:30 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Room 2A48, Bethesda, MD 20892.

Contact Person: Constantine A. Stratakis, MD, D(med)Sci, Scientific Director, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, Building 31, Room 2A46, Bethesda, MD 20892, 301–594–5984, *stratakc@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page *http://www.nichd.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27304 Filed 10–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse 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, NIDA.

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 Institute on Drug Abuse, 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, NIDA.

Date: November 9–10, 2011.

Closed: 8 a.m. to 7 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, National Institute on Drug Abuse, NIH, Johns Hopkins Bayview Campus, Baltimore, MD 21223.

Contact Person: Joshua Kysiak, Program Specialist, Biomedical Research Center, Intramural Research Program, National Institute on Drug Abuse, NIH, DHHS, 251 Bayview Boulevard, Baltimore, MD 21224, 443–740–2465, *kysiakjo@nida.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27293 Filed 10–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development, Special Emphasis Panel, Reproductive Science Centers.

Date: November 2, 2011.

Time: 5 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.

Date: November 3, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.

Date: November 4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.

Contact Person: Dennis E. Leszczynski, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health And Human Development, NIH, 6100 Executive Blvd., Room 5B01, Rockville, MD 20852, 301–435–2717, *leszczyd@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27303 Filed 10–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA R13 Conference Grant Review.

Date: November 1, 2011.

Time: 8 a.m. to 5 p.m.

Agenda To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Minna Liang, PhD, Scientific Review Officer, Grants Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, 6001 Executive Blvd., Room 4226, MSC 9550, Bethesda, MD 20892–9550, 301–435–1432, *liangm@nida.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Research Education Program for Clinical Researchers and Clinicians.

Date: November 1, 2011.

Time: 11 a.m. to 2 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: Gerald L. McLaughlin, PhD, Chief, Grants Review Branch and Contracts Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, B/START Review Committee.

Date: November 4, 2011.

Time: 8 a.m. to 8 p.m.

Agenda To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mark Swieter, PhD, Chief, Extramural Activities Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4235, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–435–1389, *ms80x@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, HIV/AIDS Implementation Science Targeting Drug Using Populations: PEPFAR (R01).

Date: November 15, 2011.

Time: 9 a.m. to 5:30 p.m.

Agenda To review and evaluate grant applications.

Place: Hilton Garden Inn—Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Nadine Rogers, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4229, MSC 9550, Bethesda, MD 20892–9550, 301–402–2105, *rogersn2@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Remote Monitoring System for Cocaine Ingestion.

Date: November 17, 2011.

Time: 10 a.m. to 1 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: Gerald L. McLaughlin, PhD, Chief, Grants Review Branch and Contracts Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, DIDARP Review.

Date: December 13, 2011.

Time: 9 a.m. to 5 p.m.

Agenda To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Nadine Rogers, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4229, MSC 9550, Bethesda, MD 20892–9550, 301–402–2105, *rogersn2@nida.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27294 Filed 10–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Development of a Companion Diagnostic Kit for Predicting Therapeutic Efficacy of Anti-Cancer Agents

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in US Patent Application 61/144,501 entitled ''Ratio Based Biomarker of Survival Utilizing PTEN and Phospho-AKT'' [HHS Ref. E–025–2009/0–US–01], and all continuing applications and foreign counterparts, to 20/20 GeneSystems, Inc. The patent rights in this invention have been assigned to the Government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to: the use of the Licensed Patent Rights limited to an FDA-approved (i) Laboratory Developed Test (LDT) offered as a service or (ii) in vitro diagnostic (IVD) kit distributed in commerce for human use of a protein panel predictive of the therapeutic effect of an anti-cancer agent in the treatment of kidney, lung, and breast cancers that includes at least one of the following proteins (phosphorylated or unphosphorylated): PTEN, Akt, mTOR.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before November 21, 2011 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Patrick P. McCue, Ph.D., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5560; Facsimile: (301) 402–0220; E-mail: *mccuepat@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This invention concerns methods for the prognosis for a subject with cancer and to evaluate therapeutic regimes through the comparison of normalized expression values of two or more cancer-associated proteins. Several specific cancer-associated proteins are covered by this technology, including PTEN, phosphorylated Akt, phosphorylated mTOR, EGFR, phosphorylated MAPK, HER2, and HER3. Examined individually, these proteins do not provide discrimination of survival. However, examined together as protein ratios, the prognostic function survived multivariate analysis. The approach has been demonstrated for biliary tract, kidney, lung, and stomach cancers.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7 within thirty (30) days from the date of this published notice.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 13, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–27308 Filed 10–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part M of the Substance Abuse and Mental Health Services Administration (SAMHSA) Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) at 75, Number 157, pages 49942–49943, August 16, 2010, is amended to revise the functional statements for the Office of Policy, Planning, and Innovation (OPPI) and the Office of the Director (OD). These changes are necessary to strengthen the Office of Policy, Planning, and Innovation's cross-cutting policy role in the Agency as well as externally on a regional and national level. The changes are as follows:

Section M.20, Functions is amended as follows:

The functional statements for the Office of Policy, Planning and Innovation (MD) and the Office of the Director (MD1) are replaced with the following:

Office of Policy, Planning, and Innovation (MD)

The mission of the Office of Policy, Planning, and Innovation (OPPI) is to develop, coordinate, and communicate SAMHSA policy to improve behavioral health in America's communities.

The Office represents SAMHSA at meetings, both internal and external, while promoting SAMHSA's profile in health services research by collaborating with other Departments and Agencies. These include, but are not limited to other operational divisions within the U.S. Department of Health and Human Services (such as the National Institutes of Health, the Centers for Disease Control and Prevention, and the Centers for Medicare and Medicaid Services). The primary intent is to facilitate the adoption of data-driven policies and practices by those working in the field to improve behavioral health outcomes. While SAMHSA's primary mission is to serve those with behavioral health needs and foster health improvements, many partners and allies exist within other fields that also play a crucial role in supporting and improving behavioral health. OPPI will seek to influence these partners and allies to encourage inclusion of behavioral health within their policy initiatives. These objectives are accomplished, in part, by the following OPPI functions and associated directives. OPPI:

1. Facilitates the exchange of information and coordinates activity between SAMHSA and State, Regional, Tribal, Federal, National, and International partners.

2. Works with SAMHSA's Office of the Administrator (OA), and SAMHSA's Offices and Centers to foster a unified understanding and operationalization of policy and budget directions for SAMHSA.

3. Partners with SAMHSA's Centers and Offices to achieve policy alignment in communications, evaluation, operations, and programs.

4. Provides policy advice to the Administrator.

5. Provides policy leadership in cross-cutting issue areas (*e.g.,* Disparities, Tribal Issues, Health Reform, Trauma & Justice, Women's Services, *etc.*).

6. Provides staff support, portfolio tracking, and coordination services for the Strategic Initiatives leaders and/or teams.

Office of the Director (MD1)

As the chief policy advisor to the Administrator, SAMHSA, the OPPI Director leads the review and development of policy in close coordination with the Administrator, SAMHSA Centers and Offices, DHHS and other Federal Agencies, Tribal, State and local governments, Congress and private constituents and groups.

The Office of the Director serves in other duties designed to promote the organizational mission. These are detailed below:

1. Provides leadership and coordination of strategic planning and provides an integrated and structured approach to program policy analysis, coordination, development, and communication.

2. Coordinates and collaborates with the Office of Financial Resources (OFR) to assure consistency and integration of Agency program policy in budget formulation, and coordinates and collaborates with Centers and programs to assure consistency and integration of Agency policy across programs.

3. Coordinates and collaborates with the OFR on appropriations presentations, analyses, implementation plans and reporting, and with Center and Office leadership on SAMHSA and program authority.

4. Manages and directs the staff and all programmatic activity in the Office of Policy, Planning and Innovation.

Delegation of Authority

All delegations and re-delegations of authority to officers and employees of SAMHSA which were in effect immediately prior to the effective date of this reorganization shall continue to be in effect pending further re-delegations, provided they are consistent with this reorganization.

These organizational changes are effective: October 21, 2011.

Rose Shannon,

Director, Division of Executive Correspondence.

[FR Doc. 2011–27235 Filed 10–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5484–N–32]

Notice of Proposed Information Collection: Comment Request; Construction Complaint—Request for Financial Assistance

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 20, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Karin Hill, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed

information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Construction Complaint—Request for Financial Assistance.

OMB Control Number, if applicable: 2502–0047.

Description of the need for the information and proposed use: The Housing Act of 1954, Section 801(a) [12 U.S.C. 1701j–1] details the requirements for eligibility of the property with respect to compliance with HUD statutory and regulatory requirements. The form HUD–92556 is submitted by homeowners and is used by HUD to provide orderly processing of homeowner complaints. This form is used in establishing a list of complaint items that the builder is responsible to correct as provided for in a warranty of completion and performance. The form is also used to list structural defects that may cause the property to be considered unsafe for habitation as described in the National Housing Act, Section 518(a) [12 U.S.C. 1735b], and for the mortgagor to request financial assistance.

Agency form numbers, if applicable: HUD–92556.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 5. The number of respondents is 10, the number of responses is 10, the frequency of response is on occasion, and the burden hour per response is .5.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 17, 2011.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2011–27334 Filed 10–20–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–42]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing

sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202: (571) 256–8145; *GSA:* Mr. John E.B. Smith, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave., NW., 4th Floor, Washington, DC 20006: (202) 254–5522; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9426; (These are not toll-free numbers).

Dated: October 13, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/21/2011

Suitable/Available Properties

Building

Maine

Columbia Falls Radar Site
Tibbetstown Road
Columbia Falls ME 04623
Landholding Agency: GSA
Property Number: 54201140001
Status: Excess
GSA Number: 1–D–ME–0687
Directions: Buildings 1, 2, 3, and 4
Comments: Four bldgs. totaling 20,375 sq. ft.; each one-story; current use: varies among properties

Michigan

Beaver Island High Level Site
South End Road
Beaver Island MI 49782
Landholding Agency: GSA
Property Number: 54201140002
Status: Excess
GSA Number: 1–X–MI–664B
Comments: 89 sq. ft; current use: storage; non-friable asbestos and lead base paint present; currently under license to the CCE Central Dispatch Authority

Missouri

FAA NDB Facility
N. Farm Rd. 95
Willard MO
Landholding Agency: GSA
Property Number: 54201120012
Status: Surplus
GSA Number: 7–U–MO–0689
Comments: Correction: this property is now ''unavailable'' it was published as ''available'' in Oct. 7 Federal Register (48 sq. ft., recent use: electrical equipment storage, chain-link fence surrounds property)

Suitable/Unavailable Properties

Land

New Mexico

FAA RML Facility—West Mesa
Lost Horizon Drive
Albuquerque NM
Landholding Agency: GSA
Property Number: 54201120013
Status: Surplus
GSA Number: 7–U–NM–0486–6
Comments: Correction: This property was published as ''available'' in the Oct. 7 Federal Register; it is now ''unavailable''(0.3462 acres, recent use: FAA RML Facility, chain- link fence surrounds property)

Unsuitable Properties

Building

California

Death Valley Nat'l Park
SPW Powerhouse, No. 2
Death Valley CA 92328
Landholding Agency: Interior
Property Number: 61201140001
Status: Underutilized
Reasons: Extensive deterioration

Idaho

2 Bldgs.
Dam Camp House
Boise ID 83716
Landholding Agency: Interior
Property Number: 61201140003
Status: Unutilized
Directions: 0004–0201–00B and 0004–0202–00B
Comments: both properties has asbestos present
Reasons: Contamination

Bldgs. 0004–0203
Dam Camp Storage
Boise ID 83716
Landholding Agency: Interior
Property Number: 61201140004
Status: Unutilized
Reasons: Floodway, Extensive deterioration

2 Bldgs.
Black Canyon
Parma ID
Landholding Agency: Interior
Property Number: 61201140005
Status: Unutilized
Directions: Ditchrider House and Garage
Reasons: Extensive deterioration

Bldg. 0004–0205
Dam Camp Storage
Boise ID 83716
Landholding Agency: Interior
Property Number: 61201140006
Status: Unutilized
Comments: Asbestos present
Reasons: Floodway, Contamination, Extensive deterioration

Mississippi

12 Bldgs.
Naval Air Station
Meridian MS 39309
Landholding Agency: Navy
Property Number: 77201140001
Status: Excess
Directions: 21, 151, 166, 223, 314, 350, 363, 422, 445, 467, 468, and 993
Comments: Reasons for unsuitability varies among properties
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Contamination

Oregon

2 Bldgs.
Bureau of Reclamation
Grand Nyssa OR
Landholding Agency: Interior
Property Number: 61201140002
Status: Unutilized
Directions: Ditchrider House and Garage
Reasons: Extensive deterioration

Washington

Bldgs. 00852 and 00853
Yakima Trng. Ctr.
Yakima WA 98901
Landholding Agency: Army
Property Number: 21201140001
Status: Unutilized
Reasons: Extensive deterioration

[FR Doc. 2011–26924 Filed 10–20–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket ID BOEM–2011–0036; OMB Number 1010–0048]

Information Collection; Geological and Geophysical Explorations of the Outer Continental Shelf; Submitted for OMB Review; Comment Request

ACTION: 30-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by November 21, 2011.

ADDRESSES: Submit comments by either fax (202) 395–5806 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for the Department of the Interior (1010–0048). Please also submit a copy of your comments to BOEM by any of the means below.

• *Electronically:* go to *http://www.regulations.gov.* In the entry titled, ''Enter Keyword or ID,'' enter BOEM–2011–0036 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. BOEM will post all comments.

• E-mail *arlene.bajusz@boem.gov.* Mail or hand-carry comments to: Department of the Interior; Bureau of Ocean Energy Management, *Attention:* Arlene Bajusz; 381 Elden Street, Herndon, Virginia 20170–4817. Please reference ICR 1010–0048 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Office of Policy, Regulations, and Analysis (703) 787–1025. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review). You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations and form that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 551, Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf.

Form: BOEM–0327, Application for Permit to Conduct Geological or Geophysical Exploration for Mineral Resources or Scientific Research on the Outer Continental Shelf.

OMB Control Number: 1010–0048.

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 mineral resources on the OCS.

The OCS Lands Act (43 U.S.C. 1340) also states that ''any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this OCS Lands Act, and which are not unduly harmful to aquatic life in such area.'' The section further requires that permits to conduct such activities may only be issued if it is determined that the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and they do not disturb a site, structure, or object of historical or archaeological significance. Applicants for permits are required to submit form BOEM–0327 to provide the information necessary to evaluate their qualifications. Upon approval, respondents are issued a permit. In this collection, the form is being modified to clarify for potential permittees existing requirements in light of new technologies. In particular, BOEM–0327 clarifies the type(s) of information and maps submitted as identified in Attachment 1, sections A, General Information, B & C Geological and Geophysical Exploration for Minerals and Scientific Research, and primarily D, Proprietary Information. These modifications reflect information and technology currently used and developed by industry.

The OCS Lands Act (43 U.S.C. 1352) further requires that certain costs be reimbursed to the parties submitting required G&G information and data. Under the OCS Lands Act, permittees are to be reimbursed for the costs of reproducing any G&G data required to be submitted. Permittees are to be reimbursed also for the reasonable cost of processing geophysical information required to be submitted when processing is in a form or manner required by the Director, BOEM, and is not used in the normal conduct of the business of the permittee.

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 the OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. All G&G permits are subject to cost recovery, and BOEM regulations specify service fees for these requests.

Effective October 1, 2011, the Department's responsibilities for leasing, exploration, and development of the nation's offshore resources became the responsibility of the Bureau of Ocean Energy Management (BOEM), per Secretarial Order 3299. Regulations to carry out these responsibilities are contained in 30 CFR 551 (previously assigned under 30 CFR 251). This request is a revision of the currently approved information collection (IC) because we are revising form BOEM–0327 to adapt to new advances in technology.

Responses to this collection are mandatory or required to obtain or retain a benefit. No questions of a sensitive nature are asked. BOEM protects proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and under regulations at 30 CFR 551.

BOEM uses the information to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the government for certain costs. BOEM uses information collected to understand the G&G characteristics of oil- and gas-bearing physiographic regions of the OCS. It aids the Secretary in obtaining a proper balance among the potentials for environmental damage, the discovery of oil and gas, and adverse impacts on affected coastal states. Information from permittees is necessary to determine the propriety and amount of reimbursement.

Form BOEM–0327 is submitted under this part to determine if permittees have the necessary qualifications pertinent to G&G explorations or scientific research. This ICR also clarifies of the type(s) of information and maps submitted as identified in Attachment 1, sections A, General Information, B & C Geological and Geophysical Exploration for Minerals and Scientific Research, and primarily D, Proprietary Information of the form. These clarifications reflect information and technology currently used and developed by industry, in areas such as energy sources, navigation and location, maps, and charts, *etc.* This information can also be used to satisfy other environmental compliance requirements and is completed by industry in their normal course of business and does not represent any new or additional burden hours.

Frequency: Responses are generally on occasion or as specified in each permit.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and holders of pipeline rights-of-way.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 1,033 hours. The following table details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 551	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
		Non-hour cost burden*		
30 CFR 551.1 through 551.6				
551.4(a), (b); 551.5(a), (b), (d); 551.6; 551.7.	Apply for permits (form BOEM–0327) to conduct G&G exploration, including deep stratigraphic tests/ revisions when necessary.	3	74 Applications	222
		74 applications x $2,012 = $148,888		
551.4(b); 551.5(c), (d); 551.6.	File notices to conduct scientific research activities, including notice to BOEM prior to beginning and after concluding activities.	1	3 Notices	3
551.6(b)(5) 551.7(b)(5)	Notify BOEM if specific actions should occur; report archaeological resources (no instances reported since 1982).	1	1 Notice	1
Subtotal			78 responses	226 hours
			$148,888 non-hour cost burden	
30 CFR 551.7 through 551.9				
551.7	Submit information on test drilling activities under a permit.	Burden included under BSEE regulations at 30 CFR 250, subpart D		0
551.7(c)	Enter into agreement for group participation in test drilling, including publishing summary statement; provide BOEM copy of notice/list of participants (no agreements submitted since 1989).	1	1 Agreement	1
551.7(d)	Submit bond(s) on deep stratigraphic test.	Burden included under 30 CFR part 556 (1010–0006)		0
551.8(a)	Request reimbursement for certain costs associated with BOEM inspections (no requests in many years).	1	1 Request	1
551.8(b), (c)	Submit modifications to, and status/final reports on, activities conducted under a permit.	2	55 Respondents x 3 Reports = 165.	330
551.9(c)	Notify BOEM to relinquish a permit	½	2 Notices	1
Subtotal			169 responses	333 hours
30 CFR 551.10 through 551.13				
551.10(c)	File appeals	Exempt under 5 CFR 1320.4(a)(2), (c)		0
551.11; 551.12	Notify BOEM and submit G&G data and/or information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results, analyses, descriptions, etc.	4	40 Submissions	160
551.13	Request reimbursement for certain costs associated with reproducing data/information.	2	40 Submissions	80
Subtotal			80 responses	240 hours
30 CFR 551.14				
551.14(a), (b)	Submit comments on BOEM intent to disclose data and/or information to the public.	1	1 Comment	1
551.14(c)(2)	Submit comments on BOEM intent to disclose data and/or information to an independent contractor/ agent.	1	1 Comment	1

Citation 30 CFR 551	Reporting and recordkeeping requirement	Hour burden	Average Number of annual responses	Annual burden hours
551.14(c)(4)	Contractor/agent submits written commitment not to sell, trade, license, or disclose data and/or information without BOEM consent.	1	1 Commitment	1
551.1—551.14	General departure and alternative compliance requests not specifically covered elsewhere in part 551 regulations.	1	1 Request	1
Subtotal			4 responses	4 hours
Extension for Permit Form & Recordkeeping				
BOEM–0327; 551.14(b)	Request extension of permit time period	1	100 Extensions	100
	Retain G&G data/information for 10 years and make available to BOEM upon request.	1	130 Record-keepers	130
Subtotal			230 responses	230 hours
Total Burden			561 Responses	1,033 Hours
			$148,888 Non-Hour Cost Burden	

*The non-hour cost burdens that are associated with cost recovery monies collected are based on actual submittals through Pay.gov for FY 2010.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden for this collection of information. Under § 551.5(a) there is an application fee of $2,012 when respondents submit a permit application. We have not identified any other non-hour cost burden associated with this collection of information.

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 proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate 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 automated collection techniques or other forms of information technology.

To comply with the public consultation process, on June 30, 2011, we published a **Federal Register** notice (76 FR 38412) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 551.15 provides the OMB control number for the information collection requirements imposed by the 30 CFR 551 regulation. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received two comments in response to the **Federal Register** notice. The first commenter, the Marine Mammal Commission stated that it was in support of our submission to OMB. The second commenter, Center for Regulatory Effectiveness, requested two actions. One, that we should state that we are not submitting any ICR for seismic regulations that is more stringent than current regulations, including NTL 2007–G02. Response: For the renewal of this ICR, we are not requesting anything more stringent than in current 30 CFR 551 regulations; NTL 2007–G02 is covered under OMB Control Number 1010–0151. Second, that we wait to submit the ICR to OMB. There is current on-going litigation pertaining to seismic regulations (BOEM vs environmental plaintiff(s)). Response: This particular ICR renewal pertains mostly to revising the form currently in use due to new developments in technology; we are not requesting any new requirements. If the lawsuit settlement or decree requires changes to the form and/or DOI regulations, information collection coordination and OMB approval will occur before the form is reissued or regulations are promulgated.

Public Availability of Comments: Before including your address, phone number, e-mail 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.

BOEM Information Collection Clearance Officer: Arlene Bajusz (703) 787–1025.

Dated: October 12, 2011.

Charles E. Norfleet,

Acting Chief, Office of Policy, Regulations, and Analysis.

[FR Doc. 2011–27331 Filed 10–20–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–R–2011–N134; 60138–1265–6CCP–S3]

Huron, Madison, and Sand Lake Wetland Management District; Comprehensive Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that our draft comprehensive conservation plan (CCP) and environmental assessment (EA) for the Huron, Madison, and Sand Lake Wetland Management Districts is available. This draft CCP/EA describes how the Service intends to manage these wetland management districts for the next 15 years.

DATES: To ensure consideration, we must receive your written comments on the draft CCP/EA by November 21, 2011. Submit comments by one of the methods under **ADDRESSES**.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

E-mail: bernardo_garza@fws.gov. Include ''South Dakota WMDs Draft CCP/EA'' in the subject line of the message.

U.S. Mail: Bernardo Garza, Planning Team Leader, Division of Refuge Planning, P.O. Box 25486—DFC, Denver, CO 80225–0486.

FOR FURTHER INFORMATION CONTACT: Bernardo Garza, 303–236–4377 (phone); 303–236–4792 (fax); or *bernardo_garza@fws.gov* (e-mail) or David C. Lucas, 303–236–4366 (phone): 303–236–4792 (fax): or *david_c_lucas@fws.gov.*

SUPPLEMENTARY INFORMATION: The Huron Wetland Management District (district), Madison Wetland Management District, and Sand Lake Wetland Management District are part of the National Wildlife Refuge System. Together, these three districts manage 445 waterfowl production areas (WPA); over 378,000 acres of wetland easements, and more than 616,000 acres of grassland easements and other lands, such as Farmers Home Administration lands, in 27 counties in northern and eastern South Dakota. The lands managed by these districts comprise a mosaic of wetlands and grasslands which, with only few exceptions, are all within an area known as the prairie pothole region. These wetlands range from seasonal shallow basins to deeper, more permanent ponds that provide resting and feeding areas for millions of migratory birds during spring and fall migration, and year round for many other resident wildlife species.

The fee lands administered by these three districts provide opportunities for the public to enjoy compatible wildlife-dependent public use activities including hunting, fishing, wildlife observation, photography, environmental education, and interpretation. Domestic livestock grazing, prescribed fire, and haying are the primary management tools used to maintain and enhance WPA habitats. Where available, water level manipulation is used to improve wetland habitats. Invasive and nonnative plant species are controlled and eradicated in ongoing and methodical cooperative management activities with county governments and adjacent landowners.

Large, intact, native prairie communities can still be found throughout the area encompassed by these districts providing nesting habitat for a wide array of resident and migratory birds. As part of the central flyway, the concentration and variety of wetland types found in the planning area attracts thousands of migrating shorebirds and waterfowl to the district's lands.

Alternatives for the Overall Management of the Districts

The draft CCP/EA for the Huron, Madison, and Sand Lake Wetland Management Districts includes the analyses and description of three alternatives, including the No Action or Current Management Alternative, for the management of the district.

Alternative A, Current Management (No Action). Under this alternative, management activities currently conducted by the Service throughout all three districts would not change. The no-action alternative provides the baseline against which to compare other alternatives. It is also a requirement of the National Environmental Policy Act that a no-action alternative be addressed in the planning process. The Service would not develop any new management, restoration, education, or visitor services programs for the districts. Staff would not expand or change current habitat and wildlife management practices conducted for the benefit of waterfowl, migratory birds, and other wildlife. Staff would conduct monitoring, inventory, and research activities at their current level (that is, limited, issue-driven research and limited avian and vegetative monitoring and inventory). Funding and staff levels would not change, and programs would follow the same direction, emphasis, and intensity as they do at present.

Alternative B, Increased Efficiency (proposed action). Under this alternative, management of the three districts would emphasize developing and implementing an improved, science-based priority system to restore native prairie habitats for the benefit of waterfowl and other migratory birds. District staff would focus on high-priority tracts and, when possible, on medium-priority tracts. The focus of this alternative would be to restore ecological processes and native grassland species to the greatest extent possible within the parameters of available resources and existing budgetary and staffing constraints. Under this alternative, district staff would seek to maintain the existing levels and types of public use programs, ensuring that programs offered to the public are of consistently high quality.

Alternative C, Increased Efficiency with Expanded Resources. Under this alternative, management would follow the same prioritization system for restoration and management as under alternative B, but it would be based on projected staffing and funding increases. The management focus, like that of alternative B, would follow an improved prioritization system, but would also widen into additional existing WPAs. With increased funding and staffing, acquisition of new WPAs in fee title would also increase. Similarly, increased funding and staffing would enable commensurate increases in the number and scope of partnerships. The districts would continue to provide the same types of public uses but would expand the scope and quality of these opportunities.

Under Alternative C, targeting management of native prairie/wetland complexes would be more intensive and widespread. District staff would seek out projects for restoring high-quality native prairie in both high-and-low-priority tracts. This alternative would have the potential to provide additional management options to address habitat requirements and wildlife needs. The staff would seek to develop new environmental education and other public use programs as well as to reach out to new users. As under alternative B, the Service proposes, at a future date, a new administration/visitor center for the Huron WMD at the Taha-Mahopi WPA near the City of Huron, South Dakota.

Public Meetings and Availability of Comments

The Service will carry out open house public meetings during the public review period. District staff will be available during those public meetings to address questions from the attending public and provide printed or electronic copies (on compact discs) of the draft plan to anyone requesting them. Please visit the following Web sites for dates and other details regarding the upcoming public meetings.

Huron WMD: http://www.fws.gov/huronwetlands/.

Madison WMD: http://www.fws.gov/madisonwetlands/.

Sand Lake WMD: http://www.fws.gov/sandlake/.

Before including your address, phone number, e-mail 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. We will not consider anonymous comments. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); Department of Interior NEPA regulations; other appropriate Federal laws and regulations; Executive Order 12996 ''Management and General Public Use of the National Wildlife Refuge System''; the National Wildlife Refuge System Improvement Act of 1997; and Service policies and procedures for compliance with those laws and regulations.

Dated: July 21, 2011.

Noreen E. Walsh,

Deputy Regional Director.

[FR Doc. 2011–27263 Filed 10–20–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–FHC–2011–N187; 30140–1335–0000–W4]

Fisheries and Habitat Conservation; Draft Environmental Impact Statement for the Proposed Demolition of the Ballville Dam on the Sandusky River, Fremont, OH

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; announcement of meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), advise the public that we intend to prepare a draft environmental impact statement (EIS) to evaluate the impacts of the proposed demolition of the Ballville Dam, located on the Sandusky River, near the City of Fremont in Sandusky County, Ohio. We are also announcing a public meeting and requesting public comments.

DATES: The public scoping period begins with publication of this notice in the **Federal Register** and will continue through November 21, 2011. The Service will consider all comments defining the scope of the EIS received or postmarked by this date. Comments received or postmarked after this date will be considered to the extent practicable. The Service will conduct a public scoping meeting in Fremont, Ohio, on October 27, 2011, from 7 to 9 p.m. The scoping meeting will provide the public with an opportunity to present comments, ask questions, and discuss issues with Service staff regarding the draft EIS.

ADDRESSES: The meeting will take place at Vanguard Vocational School Tech Center, 1220 Cedar Street, Fremont, OH 43420.

You may submit comments by any one of the following methods:

- *U.S. mail or hand-delivery:* Brian Elkington, U.S. Fish and Wildlife Service, Fisheries, 5600 American Boulevard West, Suite 990, Bloomington, MN 55437–1458.
- *E-mail: Ballvilledam@fws.gov.*
- *Fax:* (612) 713–5289 (Attention: Brian Elkington).

FOR FURTHER INFORMATION CONTACT: Brian Elkington, 612–713–5168. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION: We publish this notice in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations (40 CFR 1506.6). The Service, in cooperation with the Ohio Department of Natural Resources (ODNR) and the Ohio Environmental Protection Agency (OEPA), will prepare a draft environmental impact statement (EIS) on a proposal to remove the Ballville Dam from the Sandusky River. The purpose of the draft EIS is to address the environmental, economic, cultural and historical, and safety issues associated with removal of the dam.

Ballville Dam is currently a complete barrier to upstream fish passage for the commercially and recreationally valuable Sandusky River walleye stock. Removal of the dam will restore access to approximately 22 miles of previously unavailable riverine habitat, including an estimated 300 acres of suitable walleye spawning habitat. Removal of the dam is anticipated to restore the designated beneficial uses to this segment of the river. Additionally, ODNR has identified a number of safety hazards associated with the condition of the 97-year old structure. Removal of the dam will alleviate these hazards. Current funding for the dam removal is being provided through grants from the Service, through the Great Lakes Restoration Initiative (GLRI) under the Great Lakes Fish and Wildlife Restoration Act (GLFWRA); the OEPA's Water Resource Restoration Sponsor Program; and the Clean Water Act's section 319 nonpoint source pollution prevention program, which is administered by OEPA.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. After the draft EIS is released, a public meeting will be held at a place to be determined to solicit comments. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Public Comments

The Service requests data, comments, new information, or suggestions from the public, concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. These comments will be considered in the development of the draft EIS.

You may submit your comments and materials considering this notice by one of the methods listed in the **ADDRESSES** section.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, e-mail 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.

Background

Ballville Dam was built in 1913 for hydroelectric power generation. The City of Fremont purchased the dam in 1959 from the Ohio Power Company, which no longer used the dam for generating electricity, for the purpose of supplying raw water to the city. With the construction of a raw water reservoir, completion expected by the end of 2011, the dam will no longer be required for this purpose. In 2007, the ODNR issued a Notice of Violation (NOV) to the City, stating that the dam was being operated in violation of the law as a result of its deteriorated condition. The Ballville Dam cannot be rendered safe without expenditure of large sums of money. Removal of the dam will achieve the objective of opening approximately 22 miles of riverine habitat, including an estimated 300 acres of suitable walleye spawning habitat, that is currently inaccessible, thereby increasing walleye populations and stimulating the sport fishing and tourism industries. It will also help to restore impaired water quality in the project area.

Environmental Review

The Service will conduct an environmental review to analyze alternatives for implementing the proposed action and the associated impacts of each. The draft EIS will evaluate alternatives that are developed and the impact of each of those alternatives, including a no action alternative. Following completion of the environmental review, the Service will publish a notice of availability and a request for comments on the draft EIS.

Authority

This notice is being furnished as provided for by NEPA and its implementing Regulations (40 CFR1501.7 and 1508.22). The intent of the notice is to obtain suggestions and additional information from other agencies and the public on the scope of issues to be considered. Comments and participation in this scoping process are solicited.

Mike Weimer,

Assistant Regional Director, Fisheries, Midwest Region.

[FR Doc. 2011–27244 Filed 10–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2011–N144; 80221–1112–81420–F2]

Habitat Conservation Plan/Natural Community Conservation Plan for Yolo County, CA: Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and notice of public meeting; request for comments.

SUMMARY: Under the National Environmental Policy Act of 1969, we, the U.S. Fish and Wildlife Service, advise the public that we intend to gather information necessary to prepare, in coordination with the Yolo County Habitat Conservation Plan/Natural Community Conservation Plan Joint Powers Agency (Joint Powers Agency), a joint Environmental Impact Statement/Environmental Impact Report for the Yolo County Natural Heritage Program Habitat Conservation Plan/Natural Community Conservation Plan (Plan). This document is being prepared under the Endangered Species Act of 1973, as amended, and the California Natural Community Conservation Planning Act. The Joint Powers Agency and the local partners intend to apply for a 50-year incidental take permit from the United States Fish and Wildlife Service. This permit is needed to authorize the incidental take of threatened and endangered species that could result from activities covered under the Plan. We announce meetings and invite comments.

DATES: We must receive written comments on or before December 5th, 2011. Two public scoping meetings will be held on November 7th 2011, the first from 3 to 5 p.m., and the second from 6 to 8 p.m.

ADDRESSES: The public meetings will be held at the West Sacramento City Hall Galleria, 1110 West Capitol Avenue, West Sacramento, CA 95691. Submit written comments to Cori Mustin, Senior Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825. Comments may alternatively be sent by facsimile to (916) 414–6713. In addition, a traveling information kiosk will be available to the public throughout the 45-day comment period. The kiosk will include a computer station, on which maps and related information will be available for viewing and comments can be submitted. For kiosk locations, dates, and times, see *http://www.yoloconservationplan.org/kiosk/schedule.*

FOR FURTHER INFORMATION CONTACT: Cori Mustin, Senior Fish and Wildlife Biologist, or Mike Thomas, Chief, Habitat Conservation Planning Division, Sacramento Fish and Wildlife Office, by phone at (916) 414–6600 or by U.S. mail at the above address.

SUPPLEMENTARY INFORMATION: The Yolo County Habitat Conservation Plan/Natural Community Conservation Plan Joint Powers Agency (Joint Powers Agency) is composed of members representing Yolo County; the cities of Davis, West Sacramento, Winters, and Woodland; and the University of California at Davis (local partners).

The EIS will be a joint EIS/Environmental Impact Report (EIR), for which the Service, Joint Power Agency (JPA), and California Department of Fish and Game (CDFG), intend to gather information necessary for preparation. The Plan will be prepared to meet the requirements of section 10 of the Act and the Natural Community Conservation Planning (NCCP) Act. The Service will serve as the administrative lead for all actions related to this **Federal Register** notice for the EIS component of the EIS/EIR. The JPA will serve as the State lead agency under the California Environmental Quality Act (CEQA) for the EIR component.

The Joint Powers Agency, in accordance with the California Environmental Quality Act, is publishing a similar notice.

The Joint Powers Agency and the local partners intend to apply for a 50-year incidental take permit from the U.S. Fish and Wildlife Service. This permit is needed to authorize the incidental take of threatened and endangered species that could result from activities covered under the habitat conservation plan (Plan).

The Fish and Wildlife Service provides this notice to (1) describe the proposed action and potential alternatives; (2) advise other Federal and State agencies, affected Tribes, and

the public of our intent to prepare an Environmental Impact Statement/Environmental Impact Report; (3) announce the initiation of a public scoping period; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the Environmental Impact Statement/Environmental Impact Report.

Background

The Plan is both a habitat conservation plan (HCP), intended to fulfill the requirements of the Act, and a natural community conservation plan, to fulfill the requirements of the NCCP Act. The Plan is being prepared under the combined efforts of Yolo County; the cities of Davis, West Sacramento, Winters, and Woodland; and the University of California at Davis, in coordination with the Service and CDFG.

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the ''take'' of wildlife species listed as endangered or threatened. The Act defines the term ''take'' as: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or to attempt to engage in such conduct (16 U.S.C. 1532). Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. Pursuant to section 10(a)(1)(B) of the Act, we may issue permits to authorize ''incidental take'' of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Service regulations governing permits for threatened species and endangered species, respectively, are promulgated in 50 CFR sections 17.22 and 17.32.

Section 10 of the Act specifies the requirements for the issuance of incidental take permits to non-Federal entities. Any proposed take must be incidental to otherwise lawful activities and cannot appreciably reduce the likelihood of the survival and recovery of the species in the wild. The impacts of such take must also be minimized and mitigated to the maximum extent practicable. To obtain an incidental take permit, an applicant must prepare an HCP describing the impacts that will likely result from the proposed taking, measures for minimizing and mitigating the impacts of the take, funding available to implement such measures, alternatives to the taking, and reasons for not implementing the alternatives. Thus, the HCP sets forth a uniform and systematic conservation strategy that ensures that impacts to Covered Species and their habitats from activities covered by the HCP (Covered Activities) are minimized and mitigated to the maximum extent practicable. If a section 10 permit is issued, the permittee(s) would receive assurances for all plant and animal species covered by the HCP on non-Federal land and included on the permit under the Service's ''No Surprises'' regulation (50 CFR 17.22(b)(5) and 17.32(b)(5)).

Plan Area

The plan area covers approximately 653,817 acres, which encompasses the entire extent of Yolo County. The boundary of the plan area is based on political, ecological, and hydrologic factors.

Covered Activities

The proposed section 10 incidental take permit may allow take of wildlife Covered Species resulting from Covered Activities on non-Federal land in the proposed plan area. The purpose of the Plan is to contribute to the conservation of Covered Species while streamlining endangered species permitting. The Joint Powers Agency and local partners intend to request incidental take authorization for Covered Species that could be affected by the following three general categories of Covered Activities: (1) Permanent development; (2) operation, maintenance, and other ongoing activities; and (3) implementation of the Plan's conservation strategy. Permanent development could include land conversion, public and private infrastructure, and new facilities associated with agricultural and livestock production. Examples of public infrastructure include, but are not limited to, roadways, bridges, utilities (*i.e.* natural gas), solar and wind power generation facilities, and water conveyance (including flood control). Operation, maintenance, and other ongoing activities could include operation and maintenance of permanent development described above as well as the operation and maintenance of recreational and mining facilities, and agricultural operations and processing. Implementation of the Plan's conservation strategy could include preservation, restoration, creation, enhancement, management, and monitoring activities.

Covered Species

Covered Species are those species addressed in the proposed Plan for which conservation actions will be implemented and for which the Joint Powers Agency and local partners will seek incidental take authorizations for a period of up to 50 years. Proposed Covered Species are expected to include threatened and endangered species listed under the Act, species listed under the California Endangered Species Act, as well as currently unlisted species. Species proposed for coverage in the Plan are species that are currently listed as federally threatened or endangered or have the potential to become listed during the life of this Plan and have some likelihood to occur within the plan area. The Plan is currently expected to address 35 listed and nonlisted wildlife and plant species. The list of proposed Covered Species may change as the planning process progresses; species may be added or removed as more is learned about the nature of Covered Activities and their impact within the plan area.

The following federally listed threatened and endangered wildlife species are proposed to be covered by the Plan: The endangered conservancy fairy shrimp (*Branchinecta conservatio*), threatened vernal pool fairy shrimp (*Branchinecta lynchi*), endangered vernal pool tadpole shrimp (*Lepidurus packardi*), threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), threatened California tiger salamander (Central California Distinct Population Segment) (*Ambystoma californiense*), threatened California red-legged frog (*Rana draytonii*), threatened giant garter snake (*Thamnophis gigas*), and endangered least Bell's vireo (*Vireo bellii pusillus*).

The following unlisted wildlife species are proposed to be covered by the Plan: Midvalley fairy shrimp (*Branchinecta mesovallensis*), California linderiella (*Linderiella occidentalis*), western spadefoot toad (*Spea hammondii*), foothill yellow-legged frog (*Rana boylii*), western pond turtle (*Clemmys marmorata*), Swainson's hawk (*Buteo swainsoni*), northern harrier (*Circus cyaneus*), white-tailed kite (*Elanus leucurus*), mountain plover (*Charadrius montanus*), black tern (*Chlidonias niger*), western yellow-billed cuckoo (*Coccyzus americanus*), western burrowing owl (*Athene cunicularia hypugaea*), loggerhead shrike (*Lanius ludovicianus*), purple martin (*Progne subis*), bank swallow (*Riparia riparia*), yellow-breasted chat (*Icteria virens*), grasshopper sparrow (*Ammodramus savannarum*), tricolored blackbird (*Agelaius tricolor*), and Townsend's big-eared bat (*Corynorhinus townsendii*).

Take of federally listed plant species is not prohibited on non-Federal land under the Act, and authorization under

a section 10 permit is not required. Section 9 of the Act does, however, prohibit the removal or malicious destruction of federally listed plants from areas under Federal jurisdiction and the removal or destruction of such plants in knowing violation of State law. In addition, section 7(a)(2) of the Act prohibits Federal agencies from jeopardizing the continued existence of any listed plant or animal species or destroying or adversely modifying the critical habitat of such species. The following federally listed plant species are proposed to be included in the Plan in recognition of the conservation benefits provided for them under the Plan and the assurances permit holders would receive if they are included on a permit: The endangered palmate-bracted bird's-beak (*Cordylanthus palmatus*), threatened Colusa grass (*Neostapfia colusana*), and endangered Solano grass (*Tuctoria mucronata*). The following unlisted plant species are also proposed to be included in the Plan: alkali milkvetch (*Astragalus tener* var. *tener*), brittlescale (*Atriplex depressa*), San Joaquin spearscale (*Atriplex joaquiniana*), Heckard's pepper-grass (*Lepidium latipes* var. *heckardii*), and Baker's navarretia (*Navarretia leucocephala* ssp. *bakeri*).

Environmental Impact Statement

Before deciding whether to issue the requested Federal incidental take permit, the Service will prepare a draft EIS as part of the EIS/EIR, in order to analyze the environmental impacts associated with issuance of the incidental take permit. In the EIS component of the EIS/EIR, the Service will consider the following alternatives: (1) The proposed action, which includes the issuance of take authorizations consistent with the proposed Plan under section 10(a)(1)(B) of the Act; (2) no action (no permit issuance); and (3) a reasonable range of additional alternatives. The EIS/EIR will include a detailed analysis of the impacts of the proposed action and alternatives. The range of alternatives could include variations in impacts, conservation, permit duration, Covered Species, Covered Activities, permit area, or a combination of these elements.

The EIS/EIR will identify and analyze potentially significant direct, indirect, and cumulative impacts of our authorization of incidental take (permit issuance) and the implementation of the proposed Plan on biological resources, land uses, utilities, air quality, water resources, cultural resources, socioeconomics and environmental justice, recreation, aesthetics, climate change and greenhouse gases, and other environmental issues that could occur with implementation of each alternative. The Service will use all practicable means, consistent with NEPA and other essential considerations of national policy, to avoid or minimize significant effects of our actions on the quality of the human environment.

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meetings should contact Cori Mustin at (916) 414–6600 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Public Comments

Before including your address, phone number, e-mail 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.

Material the Service receives will be available for public inspection, by appointment, during normal business hours (Monday through Friday, 8 a.m. to 4:30 p.m.) at the Service's Sacramento address (see **ADDRESSES**).

Authority: 40 CFR 1501.7.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2011–27266 Filed 10–20–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX12EB00A181000]

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of a currently approved information collection (1028–0085).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we (U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. for the National Land Remote Sensing Education, Outreach and Research Activity (NLRSEORA). As required by the Paperwork Reduction Act of 1995 (PRA), and as a 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. As a federal agency, we may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. This ICR is scheduled to expire on February 29, 2012.

DATES: Submit written comments by December 20, 2011.

ADDRESSES: Please send your comments concerning the IC to the USGS Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); 703–648–7199 (fax); or *smbaloch@usgs.gov* (e-mail). Please reference Information Collection 1028–0085.

FOR FURTHER INFORMATION PLEASE CONTACT: Thomas Cecere at 703–648–5551 (phone), *tcecere@usgs.gov* (e-mail), or 12201 Sunrise Valley Drive MS 517, Reston, VA, 20192 (mail) .

SUPPLEMENTARY INFORMATION:

Title: National Land Remote Sensing Education, Outreach and Research Activity (NLRSEORA).

OMB Control Number: 1028–0085.

Form Number: Standard Form 424 Application for Federal Assistance, Standard Form 424A Budget Information Non-Construction Programs, and Standard Form 424B Assurances Non-Construction Programs, and Project narrative guidance posted on Grants.gov.

Abstract: Oversight for this effort is through the U.S. Geological Survey's Land Remote Sensing Program, therefore it is more appropriate to refer to this effort as an activity rather than as a program as was previously indicated. Respondents are submitting proposals to acquire funding for a National (U.S.) activity to promote the uses of space-based land remote sensing data and technologies through education and outreach at the State and local level and through university based and collaborative research projects. Technologies of interest include multispectral and hyper-spectral electro-optical, thermal, and radar. Although most activities are anticipated to occur at the State and local levels, a national coordination effort is necessary

to ensure a standardized approach and to ensure a consistent quality of information.

To submit a proposal for the NLRSEORA, three standard OMB forms and project narrative must be completed and submitted via Grants.gov. This notice provides the public an opportunity to comment on the paperwork burden of these forms. The forms are available at *http://www07.grants.gov/agencies/approved_standard_forms.jsp.*

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked. We intend to release the project abstracts and primary investigators for awarded/funded projects only.

Frequency: Annually.

Estimated Number and Description of Respondents: Approximately 10 proposals are submitted by individuals involved in the area of geospatial science.

Estimated Number of Responses: 10.

Annual Burden Hours: 240.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the public reporting burden averages 16 to 24 hours per response. This includes the time for reviewing instructions, developing the proposal, and completing and reviewing the information.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and you are not required to respond to, 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.

Request for Comments: We invite comment concerning this IC on: (1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this collection of information; (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.

Please note that the comments 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, e-mail 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 it will be done.

Dated: October 17, 2011.

Bruce Quirk,

Program Coordinator, Land Remote Sensing Program, U.S. Geological Survey.

[FR Doc. 2011–27268 Filed 10–20–11; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–10172; LLAK–965000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision Approving Lands for Conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Calista Corporation. The decision will approve the conveyance of the surface and subsurface estates in certain lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). The lands are located east of Pilot Station, Alaska, and contain 2.10 acres. Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until November 21, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Dina L. Torres,

Land Transfer Resolution Specialist, Branch of Land Transfer Adjudication II.

[FR Doc. 2011–27269 Filed 10–20–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14860–A, LLAK–965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision Approving Lands for Conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to The Kuskokwim Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to The Kuskokwim Corporation. The lands are in the vicinity of Georgetown, Alaska, and are located in:

Seward Meridian, Alaska

T. 23 N., R. 44 W.,
Sec. 28;
Secs. 32 and 33.
Containing 1,832.52 acres.

T. 20 N., R. 46 W.,
Sec. 1.

Containing 640 acres.

T. 21 N., R. 46 W.,
Sec. 4.
Containing 640 acres.

T. 22 N., R. 46 W.,
Secs. 24, 25, and 26;
Secs. 33, 35, and 36.
Containing 3,689 acres.

T. 21 N., R. 47 W.,
Sec. 34.
Containing 457.50 acres.
Aggregating 7,259.02 acres.

Notice of the decision will also be published four times in the *Delta Discovery.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until November 21, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Barbara Opp Waldal,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2011–27271 Filed 10–20–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–65891, LLORB00000–L51010000–ER0000–LVRWH09H0560; HAG–11–0077]

Notice of Availability of the Final Environmental Impact Statement for the North Steens Transmission Line Project in Harney County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the North Steens Transmission Line Project and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days from the date that the Environmental Protection Agency publishes its notice of availability of this Final EIS in the **Federal Register**.

ADDRESSES: Notices of Availability of the Final EIS for the North Steens Transmission Line Project will be mailed to individuals, agencies, organizations, or companies who responded to the BLM on the Draft EIS. Compact discs of the Final EIS are available on request from the BLM Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, phone (541) 573–4400, or e-mail: *OR_Burns_NS_Transmission_Line_EIS@blm.gov.* Interested persons may also review the Final EIS at the following Web site: *http://www.blm.gov/or/districts/burns/plans/index.php.*

Printed copies of the Final EIS are available for public inspection at:

- Harney County Library, 80 West ''D'' Street, Burns, Oregon 97720;
- Bend Public Library, Reference Department, 601 NW. Wall Street, Bend, Oregon 97701;
- Multnomah County Library, Government Documents, 801 SW. 10th Avenue, Portland, Oregon 97205; and
- BLM Burns District Office at the address listed above.

FOR FURTHER INFORMATION CONTACT: Skip Renchler, North Steens Transmission Line Project Lead, telephone (541) 573–4400; address 28910 Hwy 20 West, Hines, Oregon 97738; or e-mail *OR_Burns_NS_Transmission_Line_EIS@blm.gov.*

SUPPLEMENTARY INFORMATION: The applicant, Echanis, LLC, has filed applications for rights-of-way (ROWs) with the BLM and the U.S. Fish and Wildlife Service for construction, operation, maintenance, and termination of a 29-mile-long, 230-kilovolt (kV) transmission line that would connect the proposed Echanis Wind Energy Project, located on private land on the north end of Steens Mountain, with Harney Electric Cooperative's existing transmission system near Diamond Junction, Oregon. A Draft EIS analyzing impacts of the project was released for public comment on July 16, 2010, as announced by the BLM's publication of a Notice of Availability in the **Federal Register** (75 FR 41514). The BLM received 258 comments about the Draft EIS. The comments were incorporated, where appropriate, to clarify the analysis presented in the Final EIS. The Final EIS analyzes three alternatives: Two alternatives granting the ROW and a no-action alternative. These alternatives include:

Alternative A—No-Action—This alternative includes denying a ROW for construction and operation of a transmission line and associated facilities across lands administered by the BLM and the Malheur National Wildlife Refuge.

Alternative B—Proposed Action—West Route—This alternative includes the granting of a ROW for construction and operation of a 230-kV transmission line and associated facilities across lands administered by the BLM and the Malheur National Wildlife Refuge from the Echanis Wind Energy Project substation to Harney Electric Cooperative's existing 115-kV transmission line near Diamond Junction, Oregon. Included in the analysis of this alternative are two additional minor route deviations.

Alternative C—Preferred Alternative—North Route—This alternative includes the granting of a ROW for construction and operation of a 230-kV transmission line and associated facilities across lands administered by the BLM from the Echanis Wind Energy Project substation to Harney Electric Cooperative's existing 115-kV transmission line near Crane, Oregon. This alternative is the Preferred Alternative in the Final EIS.

The Final EIS also identifies and analyzes measures to mitigate adverse impacts for each alternative. Because the Echanis Wind Energy Project and other associated developments on private land are ''connected actions'' under NEPA, they are included and analyzed in the Final EIS.

Comments on the Draft EIS received from the public and internal BLM

review were considered and incorporated as appropriate into the Final EIS. The comments were incorporated, where appropriate, to clarify the analysis presented in the Final EIS.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Kenny McDaniel,

BLM Burns District Manager.

[FR Doc. 2011–27146 Filed 10–20–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L51010000.FX0000.LVRWA09A2400. LLAZP01000; AZA34187]

Notice of Availability of the Final Environmental Impact Statement for the Proposed Sonoran Solar Energy Project, Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the Sonoran Solar Energy Project (SSEP) and by this notice is announcing its availability.

DATES: The publication of this Notice of Availability (NOA) in the **Federal Register** initiates a 30-day public comment period. The BLM will not issue a final decision for a minimum of 30 days from the date that the Environmental Protection Agency publishes its NOA in the **Federal Register**.

ADDRESSES: Comments pertaining to the Final EIS for the Sonoran Solar Energy Project may be submitted by any of the following methods:

- *E-mail: sonoransolar@blm.gov.*
- *Mail:* BLM Phoenix District Office, Lower Sonoran Field Office, Sonoran Solar Energy Project, Joe Incardine, National Project Manager, 21605 North 7th Avenue, Phoenix, Arizona 85027–2929.

Copies of the Final EIS for the proposed Sonoran Solar Energy Project have been sent to Federal, state and local government agencies, and to other stakeholders. Copies are available for public inspection at the BLM's Phoenix District Office, Lower Sonoran Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027–2929 and the BLM Arizona State Office, One North Central Avenue, Phoenix, Arizona 85004–4427. Interested parties may also review the Final EIS at the following public libraries in Maricopa County, Arizona:

- Buckeye Public Library, 310 N. 6th Street, Buckeye, Arizona 85236.
- Gila Bend Public Library, 202 N. Euclid Avenue, Gila Bend, Arizona 85337.
- Goodyear Public Library, 250 N. Litchfield Road, Goodyear, Arizona 85338.

Interested parties may also review the Final EIS at the following Web site: *http://www.blm.gov/az/st/en/prog/energy/solar/sonoran_solar.html.*

FOR FURTHER INFORMATION CONTACT: Joe Incardine, BLM National Project Manager; telephone: 801–524–3833; address: 21605 North 7th Avenue, Phoenix, Arizona 85027–2929; e-mail: *jincardi@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Boulevard Associates, LLC (Boulevard), a fully owned subsidiary of NextEra, LLC, is proposing to construct an up to 375-megawatt (MW) concentrated-solar-thermal (CST) power plant and ancillary facilities on 3,620 acres (5.78 square miles) of mostly BLM-administered land. The proposed CST project would be sited in the Little Rainbow Valley, east of State Route 85, and south of the Buckeye Hills in Maricopa County, Arizona. This is in BLM's Lower Gila South Planning Area which is managed in accordance with the Lower Gila South Resource Management Plan (RMP) (1988), as amended (2005). Boulevard has applied for a 14,759-acre right-of-way (ROW); the footprint of the proposed SSEP would total approximately 3,620 acres (5.78 square miles) of mostly BLM land. The project would also include land owned by the Arizona State Land Department (5.23 acres) and private parties (6.04 acres). Related facilities would include road construction and improvements, a gas pipeline, electric lines, and a water well field and pipeline. Boulevard's ROW application only applies to BLM-administered land.

The BLM's purpose and need for Federal action is to respond to Boulevard's application under Title V of FLPMA (43 U.S.C. 1761) for a ROW grant to construct, operate, and decommission a solar power plant on public lands in compliance with FLPMA, BLM's ROW regulations, and other applicable Federal laws. The BLM will decide whether to approve, approve with modification, or deny issuance of a ROW grant to Boulevard for the proposed SSEP. If approved, the solar facility would operate for approximately 30 years based on the purchase power agreement(s) with utilities.

The BLM completed a land use plan conformance analysis of the project proposal and determined that the proposed land use is in conformance with the Lower Gila South RMP, as amended. As part of its review of the Boulevard ROW application, the BLM considered the Energy Policy Act of 2005 and Secretarial Orders 3283 Enhancing Renewable Energy Development on the Public Lands and 3285A1 Renewable Energy Development by the Department of the Interior.

The Proposed Action would consist of two independent, concentrated solar electric generating facilities with expected outputs of 125 MW and 250 MW. Both facilities would use parabolic trough solar thermal technology to produce electrical power using steam turbine generators. The generators would connect to a new SSEP 500-kilovolt (kV) onsite switchyard. Electricity from the new switchyard would be transmitted through a generation tie-line connecting to the existing Jojoba Switchyard. The Proposed Action would use a wet-cooling tower for power plant cooling with up to 3,003 acre-feet per year of water being supplied from an onsite groundwater well field. Three natural gas co-firing boilers would be constructed to augment solar heating when less than optimal solar conditions existed (night time, cloud cover, *etc.*), and would provide up to 25 percent of the annual total electric production. The boilers would be supplied with natural gas via a new 5-mile-long, 8-inch pipeline. A thermal energy storage (TES) system may also be installed to supplement electrical output during reduced solar activity or to extend electrical output into the evening hours. The TES would use molten salt as its energy storage material. The proposed SSEP would include a number of related facilities and infrastructure including power blocks and solar trough arrays (2,300 acres), evaporation ponds, access roads, administration buildings and other support facilities, a land treatment unit, drainage collection and discharge facilities, as well as open areas (totaling 1,300 acres).

As required under NEPA, the EIS also analyzes a No Action alternative which would preclude development of the SSEP in any configuration and maintain existing land uses in the project area. The four action alternatives are: (1) The Proposed Action (as described above); (2) Alternative A: Reduced Water Use (using a dry-cooling technology); (3) Sub-alternative A1: Photovoltaic (PV) (a 300–MW PV facility occupying 2,013 acres); and (4) Alternative B: Reduced Footprint (a 250–MW wet-cooled facility occupying 2,320 acres). Alternatives A and B were developed in response to issues raised during the scoping process. Sub-alternative A1 was developed in response to agency and public comments on the Draft EIS as an alternative to Alternative A for reducing water consumption. Sub-alternative Al would use PV technology instead of solar thermal technology to reduce water use, to decrease the project footprint, and to avoid other issues related to sensitive resources raised by the public and agency cooperators. The use of PV technology was originally eliminated from further analysis in the Draft EIS due to technological and economic infeasibility. However, changing technology and market conditions have made PV technology feasible, and thus, full consideration of PV technology has been added to the Final EIS. A Brine Concentrator Option is also analyzed as a component of the Proposed Action and Alternative B.

The BLM has identified Sub-alternative A1 (which would use PV technology) as the agency-preferred alternative, which would reduce water consumption as well as mitigate other resource issues. This sub-alternative would reasonably accomplish the purpose and need for the Federal action while fulfilling the BLM's statutory mission and responsibilities, giving consideration to economic, environmental, and technical factors. In particular, this sub-alternative best addresses public and agency concerns regarding groundwater use while meeting the purpose and need. Under Sub-alternative A1, approximately 33 acre-feet of groundwater reserves in the Rainbow Valley aquifer would be removed and used annually during operations. This is approximately 98 percent less than the estimated water requirements of the Proposed Action (the highest water use alternative, which would use wet-cooled CST technology) and 72 percent less than the estimated water requirements of Alternative A (the lowest water use alternative after Sub-alternative A1, which would use dry-cooled CST technology). No modeled detectable drawdown to previously existing wells would occur under Sub-alternative A1. In addition, the total estimated acreage of surface disturbance under Sub-alternative A1 (2,013 acres)—the least surface disturbance of all action alternatives—is approximately 44 percent less than under the Proposed Action and approximately 15 percent less than under the reduced footprint of Alternative B. The smaller overall project footprint would also reduce adverse impacts to other resources and uses (e.g., wildlife, visual resources, soils, vegetation) compared to other action alternatives. Sub-alternative A1 would generate approximately 775,000 MW hour per year of electricity, which is approximately 89 percent of the generation under the wet-cooled Proposed Action, 101 percent of the generation under Alternative A, and 144 percent of the generation under Alternative B.

Four agencies are serving as cooperating agencies in the preparation of the Final EIS because of their jurisdictional responsibilities and/or special expertise. Cooperating agencies are the Arizona Game and Fish Department, the Arizona Department of Water Resources, the City of Goodyear, and the Town of Buckeye.

A Notice of Intent to Prepare an EIS for the Proposed Sonoran Solar Energy Project, Maricopa County, Arizona was published in the **Federal Register** on July 8, 2009 (74 FR 32641). The BLM held three public scoping meetings in Phoenix, Buckeye, and Gila Bend, Arizona, on August 4, 5, and 6, 2009, respectively. The formal 30-day public scoping period ended September 8, 2009. On April 19, 2010, the BLM published in the **Federal Register** a Notice of Availability for the Draft EIS for the Proposed Sonoran Solar Energy Project, Maricopa County, Arizona, which initiated a 45-day public comment period (75 FR 20377). The BLM again held three public meetings in Phoenix, Gila Bend, and Buckeye, Arizona, on April 27, 28, and 29, 2010, respectively. The formal 45-day public comment period ended May 24, 2010. Comments on the Draft EIS received from the public and internal review were considered and incorporated as appropriate into the Final EIS. There were 161 comment letters received; the responses are included in the Final EIS. The majority of the comments received expressed concern about the amount of water to be used, as well as potential effects on air quality conformance, cultural resources, visual resources, and wildlife.

Before including your address, phone number, e-mail 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 request your personal identifying information be withheld from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 1506.10, and 43 CFR 1610.2.

Raymond Suazo,

Acting State Director.

[FR Doc. 2011–27272 Filed 10–20–11; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L19100000–BK0000–LRCMM0E0015P]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; North Carolina.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the land described below in the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management—Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The survey was requested by the Bureau of Indian Affairs.

The land surveyed is:

Swain County, North Carolina

The plat of survey represents the dependent resurvey of a portion of the 3200 acre tract, lands held in trust for the Eastern Band of Cherokee Indians, Swain County, in the State of North Carolina, and was accepted September 26, 2011.

We will place copies of the plats we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against a survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: October 17, 2011.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2011–27265 Filed 10–20–11; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYD01000.L13110000.EJ0000. LXSI016K0000]

Call for Nominations for the Pinedale Anticline Working Group, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Nominations are being solicited for two positions on the Pinedale Anticline Working Group (PAWG).

DATES: All nominations must be received no later than November 21, 2011.

ADDRESSES: Nominations should be mailed or delivered to Shelley Gregory, Bureau of Land Management (BLM), Pinedale Field Office, 1625 West Pine Street, P.O. Box 768, Pinedale, WY 82941, or e-mailed to: *ssgregory@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Shelley Gregory, BLM, Pinedale Field Office, 1625 West Pine Street, P.O. Box 768, Pinedale, WY 82941; 307–315–0612, or e-mail: *ssgregory@blm.gov.*

SUPPLEMENTARY INFORMATION: The PAWG was established by the Environmental Impact Statement (EIS) Record of Decision (ROD) for the Pinedale Anticline Project Area (PAPA) on July 27, 2000, and carried forward with the release of the ROD for the PAPA Supplemental EIS on September 12, 2008. The Secretary of the Interior renewed the PAWG charter on August 3, 2010.

The PAWG is a Federal Advisory Committee Act (FACA) group which develops recommendations and provides advice to the BLM on mitigation, monitoring, and adaptive management in the PAPA. The PAWG is governed by rules found at 43 CFR 1784 *et seq.* and FACA provisions at 5 U.S.C. App. 2, as amended.

Additional information about the PAWG, its membership and activities, and the nomination process can be found at: *http://www.blm.gov/wy/st/en/field_offices/pinedale/pawg.html.*

Nominations for the PAWG seats are being solicited for persons representing the following categories:

1. Archaeological and historical organizations or expertise; or

2. The affected public-at-large.

PAWG duties and responsibilities are as follows:

1. Develop recommendations for the BLM regarding matters relating to monitoring and mitigation of oil and gas development as described in the Supplemental EIS ROD for the PAPA. At the direction of the Designated Federal Officer, the PAWG may review and analyze information, recommend issues for evaluation, and provide advice on the issues presented.

2. Review the implementation of construction and rehabilitation operations through an annual field inspection to provide advice to ensure that the mitigation measures are reasonable and effective.

3. Advise the BLM on working with stakeholders to develop or enhance resource management programs and objectives.

4. Make recommendations on future PAWG resource management priorities.

Members are expected to attend all scheduled PAWG meetings. Members are appointed for 2-year terms and may be reappointed to additional terms at the discretion of the Secretary of the Interior.

Nomination packages should contain the following information:

1. Representative category;

2. Full legal name;

3. Business address and phone number;

4. Home address and phone number;

5. Mailing address, if different from item 4;

6. E-mail address;

7. Occupation title;

8. Qualifications (education, including colleges, degrees, major fields of study and/or training);

9. Career highlights (significant related experience, civic and professional activities, elected offices, prior advisory committee experience, or career achievements related to the interest to be represented);

10. Experience in collaborative management techniques, such as long-term planning, management across jurisdictional boundaries, data sharing, information exchange, and partnerships;

11. Experience in data analysis and interpretation, problem identification, and evaluation of proposals;

12. A description of the applicant's knowledge of issues involving oil and gas development;

13. List any leases, licenses, permits, contracts, or claims held by the nominee or his or her employer that involve lands or resources administered by the BLM;

14. Verification that the nominee is not a federally registered lobbyist. The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils;

15. A minimum of two letters of reference from group or organization to be represented;

16. Nominator's name, address, and telephone numbers (if not self-nominated); and

17. Date of nomination.

A group nominating more than one person should indicate its preferred order of appointment selection.

Donald A. Simpson,

State Director.

[FR Doc. 2011–27270 Filed 10–20–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Modification of Consent Decree Under the Resource Conservation and Recovery Act

Notice is hereby given that on October 14, 2011, a proposed Modification of a Consent Decree between the United States of America and Rineco Chemical Industries, Inc. (''Rineco'') was lodged with the United States District Court for the Eastern District of Arkansas in the case of *United States* v. *Rineco Chemical Industries, Inc., Civil Action No. 4–07–CV–01189SWW.*

In December 2007, the United States filed a complaint seeking injunctive relief and civil penalties resulting from Rineco's failure, *inter alia,* to obtain a permit under the Resource Conservation and Recovery Act (''RCRA'') for its ownership and operation of a Thermal Metal Washing unit (''TMW''), in violation of Section 3005(a) of RCRA, 42 U.S.C. 6925(a); and applicable Arkansas Pollution Control and Ecology Commission regulations in connection with Rineco's fuel blending facility located in Benton, Arkansas.

On October 16, 2010, the United States and Rineco entered into a Consent Decree which resolved the claims alleged in the United States'

complaint. Under the Consent Decree, Rineco paid a civil penalty of $1,350,000. The Consent Decree also requires Rineco to apply for a RCRA permit for the TMW and its related hazardous waste storage and control any fugitive emissions from the TMW at the facility; perform trial and risk burns for the TMW to identify appropriate incinerator level and risk based operating and control parameters for the unit; file a notification and description of hazardous waste activity for the TMW; and establish financial assurances for the TMW and its related hazardous waste storage.

The proposed Modification of the Consent Decree allows Rineco an additional year until October 14, 2012, to obtain a final permit and to continue to operate its TMW under RCRA; provided that Rineco complies with a number of specified interim operation conditions and deadlines as well as the other requirements of the Consent Decree. Rineco's authorization to continue to operate the TMW under the Consent Decree beyond October 14, 2011, is expressly conditioned on Rineco's completion of each of the milestone deadlines specified in the modification to the satisfaction of the Arkansas Department of Environmental Quality (''ADEQ'') and the Environmental Protection Agency (''EPA''). The interim milestones include deadlines for the approval of the trial burn plan, the conduct of the trial burn, the notice of compliance (''NOC''), the risk assessment report, the approval of the NOC, and the issuance of a final RCRA permit for the TMW. Significant stipulated penalties are included in the modification for Rineco's operation of the TMW after failure to meet any of the interim milestones set forth in the modification.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Modification of the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov,* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States et al.* v. *Rineco Chemical Industries, Inc.,* D.J. Ref. #90–7–2–1–08902.

The Modification of the Consent Decree may be examined at U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202 (contact Jonathan Bull). During the public comment period, the Modification of the Consent Decree also may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Modification of the Consent Decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.25 (25 cents per page reproduction cost) payable to the U.S. Treasury, or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–27260 Filed 10–20–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 002–2011]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice to remove one system of records and modify another system of records.

SUMMARY: The Federal Bureau of Investigation (FBI) proposes to delete ''FBI Automated Payroll Records, Justice/FBI–007,'' published at 58 FR 51874 (Oct. 5, 1993), from its existing inventory because this system of records has been made obsolete by virtue of an amendment to the ''Department of Justice Payroll System, Justice/JMD–003,'' published at 72 FR 51663 (Sept. 10, 2007), which added FBI employees to this DOJ system.

The FBI also is modifying another system notice, the ''Time Utilization Recordkeeping System (TURK), Justice/FBI–012,'' last published in full at 58 FR 51876 (Oct. 5, 1993), and revised to incorporate the FBI Blanket Routine Uses (the FBI ''Blanket Routine Uses'' notice was originally published at 66 FR 33558 (June 22, 2001), and was updated at 70 FR 7513 (Feb. 14, 2005) and 72 FR 3410 (Jan. 25, 2007)). TURK is the method by which the FBI tracks the workload of its employees and certain individuals under its supervision, such as task force officers. The data, which reflects work hours, direct agent work years, direct support work years, and average on board figures, is assigned to an investigative classification according to the nature of the case for which the work was performed. Tracking workload assists the FBI in ascertaining resource use and identifying trends. In addition, the information gained from TURK is used to formulate budget requests and provide reports to FBI oversight authorities. Workload measurement is particularly useful in the FBI because many Special Agents routinely work more than one program and TURK allows for a more accurate picture of work performed by case classification.

The FBI is modifying all sections of this notice, and is also reiterating the incorporation of the FBI BRUs expressly as part of this system notice because the entire notice is being republished. While the FBI BRUs provide necessary flexibility in disseminating records from the system, FBI notes that in most instances when TURK data is shared outside the Bureau, the data does not include personal identifiers. This notice replaces the previously published notice for TURK.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by November 21, 2011.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress are invited to submit any comments to the Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, Department of Justice, National Place Building, 1331 Pennsylvania Avenue, NW., Suite 1070, Washington, DC 20530–0001, or by facsimile at 202–307–0693.

FOR FURTHER INFORMATION CONTACT: Elizabeth Withnell, Supervisory Attorney-Advisor, Privacy and Civil Liberties Unit, Office of the General Counsel, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Washington, DC 20535–0001.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the modification of the system of records.

Dated: September 9, 2011.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/FBI–012

SYSTEM NAME:

Time Utilization Recordkeeping System (TURK).

SECURITY CLASSIFICATION:

Classified.

SYSTEM LOCATION:

Records may be maintained at any location at which the Federal Bureau of Investigation (FBI) operates or at which FBI operations are supported, including: J. Edgar Hoover Building, 935 Pennsylvania Ave., NW., Washington, DC 20535–0001, FBI Academy and FBI Laboratory, Quantico, VA 22135; FBI Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Rd., Clarksburg, WV 26306; and FBI field offices, legal attaches, information technology centers, and other components listed on the FBI's Internet Web site, *http://www.fbi.gov.* Some or all system information may also be duplicated at other locations for purposes of system backup, emergency preparedness, and/or continuity of operations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and current FBI employees and individuals who perform work under the supervision of the FBI who are required to keep track of workload in TURK, including: Special Agents; Financial Assistants/Financial Analysts; Investigative Specialists; Language Specialists; Intelligence Analysts; Forensic Examiners; Surveillance Specialists; and Task Force Officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

TURK contains bi-weekly time utilization data of the individuals listed above. The data includes name and Social Security Number (SSN) of these individuals. SSNs are used to distinguish between individuals with similar names.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512(b); 5 U.S.C. 301; 44 U.S.C. 3101.

PURPOSE:

The TURK system is maintained for the purpose of tracking FBI workload, and for providing reports both internally and externally that reflect personnel utilization by investigative classification.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b), the records or information in this system may be disclosed as a routine use under 5 U.S.C. 552a(b)(3) as follows:

A. In accordance with applicable blanket routine uses established for FBI record systems. See ''Blanket Routine Uses (BRU) Applicable to More Than One FBI Privacy Act System of Records, Justice/FBI–BRU,'' published on June 22, 2001, at 66 FR 33558 and amended on February 14, 2005, at 70 FR 7513, and on January 25, 2007, at 72 FR 3410.

B. To appropriate entities for the purpose of producing and sharing outside the FBI cost accounting reports reflecting use of personnel.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored electronically on magnetic tapes and disks for use in a computer environment. Older records may be maintained in paper form. Paper records are stored in file folders within file cabinets.

RETRIEVABILITY:

Information is retrieved by name and/or social security number.

SAFEGUARDS:

System records are maintained in limited access space in FBI-controlled facilities and offices. Computerized data is password protected. All FBI personnel, including contractors performing work on the system, are required to pass an extensive background investigation. Access to computerized records is limited to those employees and contractors who have agreed to the FBI's rules of behavior for information technology systems. The information is accessed only by authorized FBI personnel or non-FBI personnel properly authorized to assist in the conduct of an agency function related to these records. Paper records are stored in locked GSA-approved storage containers.

RETENTION AND DISPOSAL:

Records are retained during their useful life in accordance with records retention schedules approved by the National Archives and Records Administration.

SYSTEMS MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Washington, DC 20535–0001.

NOTIFICATION PROCEDURES:

Same as Record Access Procedures, below.

RECORD ACCESS PROCEDURES:

Individuals who are required to report TURK hours may obtain copies of their own data from the Service Support Technician assigned to their location. Alternatively, record requests can be submitted in writing, with the envelope and the letter clearly marked ''Privacy Act Request.'' Full name and complete address should be included in the request. The requester must sign the request and verify it, either by having the signature notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. Requests for access to information must be addressed to the Record Information Dissemination Section, Federal Bureau of Investigation, 935 Pennsylvania Ave., NW., Washington, DC 20535–0001.

CONTESTING RECORD PROCEDURES:

To contest or amend information maintained in the system, an individual should follow the procedures in Record Access Procedures and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information is derived from individuals who currently use or in the past have used the system to record their workload.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–27281 Filed 10–20–11; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; IMS Global Learning Consortium, Inc.

Correction

In notice document 2011–26426 appearing on page 63659 in the issue of October 13, 2011, make the following corrections:

(1) On page 63659, in the first column, in the fifth line, ''INS'' should read ''IMS''.

(2) On the same page, in the same column, in the forth paragraph, in the first line, ''earning'' should read ''Learning''.

[FR Doc. C1–2011–26426 Filed 10–20–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–358]

Controlled Substances: Proposed Aggregate Production Quotas for 2012

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice with request for comment.

SUMMARY: This notice proposes initial year 2012 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: Electronic comments must be submitted and written comments must be postmarked on or before November 21, 2011. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–358'' on all electronic and written correspondence. DEA encourages that all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. Written comments submitted via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/OD, 8701 Morrissette Drive, Springfield, VA 22152.

FOR FURTHER INFORMATION CONTACT: Rhea D. Moore, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (202) 307–7165.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by 28 CFR 0.100.

The proposed year 2012 aggregate production quotas represent those quantities of Schedule I and II controlled substances that may be produced in the United States in 2012 to provide adequate supplies of each substance for the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

In determining the proposed 2012 aggregate production quotas, the DEA has taken into account the criteria that DEA is required to consider in accordance with 21 U.S.C. 826(a) and 21 CFR 1303.11. DEA proposes the aggregate production quotas for 2012 by considering (1) total net disposal of the class by all manufacturers during the current and two preceding years; (2) trends in the national rate of net disposal of the class; (3) total actual (or estimated) inventories of the class and of all substances manufactured from the class, and trends in inventory accumulation; (4) projected demand for such class as indicated by procurement quotas requested pursuant to 21 CFR 1303.12; and (5) other factors affecting the medical, scientific, research, and industrial needs in the United States, lawful export requirements, and reserve stocks, as the Administrator finds relevant. Other factors DEA considered include product development requirements of both bulk and finished dosage form manufacturers, and other pertinent information.

The Administrator, therefore, proposes that the year 2012 aggregate production quotas for the following Schedule I and II controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class—Schedule I	Proposed 2012 quotas (g)
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200)	45
1-Butyl-3-(1-naphthoyl)indole (JWH-073)	45
1-Methyl-4-phenyl-4-propionoxypiperidine	2
1-Pentyl-3-(1-naphthoyl)indole (JWH-018)	45
2,5-Dimethoxyamphetamine	2
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
2,5-Dimethoxy-4-n-propylthiophenethylamine	2

Basic class—Schedule I	Proposed 2012 quotas (g)
3-Methylfentanyl	2
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	22
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	15
3,4-Methylenedioxymethamphetamine (MDMA)	22
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5-dimethoxyamphetamine (DOB)	2
4-Bromo-2,5-dimethoxyphenethylamine (2-CB)	2
4-Methoxyamphetamine	77
4-Methylaminorex	2
4-Methyl-2,5-dimethoxyamphetamine (DOM)	2
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	68
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	53
5-Methoxy-3,4-methylenedioxyamphetamine	2
5-Methoxy-N,N-diisopropyltryptamine	2
Acetyl-alpha-methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	2
Allylprodine	2
Alphacetylmethadol	2
Alpha-ethyltryptamine	2
Alphameprodine	2
Alphamethadol	2
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Alpha-methyltryptamine (AMT)	2
Aminorex	2
Benzylmorphine	2
Betacetylmethadol	2
Beta-hydroxy-3-methylfentanyl	2
Beta-hydroxyfentanyl	2
Betameprodine	2
Betamethadol	2
Betaprodine	2
Bufotenine	3
Cathinone	4
Codeine-N-oxide	602
Diethyltryptamine	2
Difenoxin	50
Dihydromorphine	3,608,000
Dimethyltryptamine	7
Gamma-hydroxybutyric acid	29,000,000
Heroin	20
Hydromorphinol	2
Hydroxypethidine	2
Ibogaine	5
Lysergic acid diethylamide (LSD)	16
Marihuana	21,000
Mescaline	5
Methaqualone	10
Methcathinone	4
Methyldihydromorphine	2
Morphine-N-oxide	605
N-Benzylpiperazine	2
N,N-Dimethylamphetamine	2
N-Ethylamphetamine	2
N-Hydroxy-3,4-methylenedioxyamphetamine	2
Noracymethadol	2
Norlevorphanol	52
Normethadone	2
Normorphine	18
Para-fluorofentanyl	2
Phenomorphan	2
Pholcodine	2
Psilocybin	2
Psilocyn	2
Tetrahydrocannabinols	393,000
Thiofentanyl	2
Tilidine	10
Trimeperidine	2

Basic class—Schedule II	Proposed 2012 quotas (g)
1-Phenylcyclohexylamine	2
1-Piperdinocyclohexanecarbonitrile	2
4-Anilino-N-phenethyl-4-piperidine (ANPP)	1,800,000
Alfentanil	11,600
Alphaprodine	2
Amobarbital	40,007
Amphetamine (for conversion)	8,500,000
Amphetamine (for sale)	25,300,000
Cocaine	216,000
Codeine (for conversion)	65,000,000
Codeine (for sale)	39,605,000
Dextropropoxyphene	7
Dihydrocodeine	255,000
Diphenoxylate	500,000
Ecgonine	83,000
Ethylmorphine	2
Fentanyl	1,428,000
Glutethimide	2
Hydrocodone (for sale)	59,000,000
Hydromorphone	3,455,000
Isomethadone	4
Levo-alphacetylmethadol (LAAM)	3
Levomethorphan	5
Levorphanol	3,600
Lisdexamfetamine	10,400,000
Meperidine	5,200,000
Meperidine Intermediate—A	3
Meperidine Intermediate—B	7
Meperidine Intermediate—C	3
Metazocine	5
Methadone (for sale)	20,000,000
Methadone Intermediate	26,000,000
Methamphetamine	3,130,000
[750,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 2,331,000 grams for methamphetamine mostly for conversion to a schedule III product; and 49,000 grams for methamphetamine (for sale)]	
Methylphenidate	56,000,000
Morphine (for conversion)	83,000,000
Morphine (for sale)	39,000,000
Nabilone	10,502
Noroxymorphone (for conversion)	7,200,000
Noroxymorphone (for sale)	401,000
Opium (powder)	63,000
Opium (tincture)	1,000,000
Oripavine	9,800,000
Oxycodone (for conversion)	5,600,000
Oxycodone (for sale)	98,000,000
Oxymorphone (for conversion)	12,800,000
Oxymorphone (for sale)	5,500,000
Pentobarbital	31,000,000
Phenazocine	5
Phencyclidine	24
Phenmetrazine	2
Phenylacetone	8,000,000
Racemethorphan	2
Remifentanil	2,500
Secobarbital	336,002
Sufentanil	5,000
Tapentadol	243,000
Thebaine	116,000,000

The Administrator further proposes that aggregate production quotas for all other Schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 be established at zero. Pursuant to 21 CFR 1303.13, upon consideration of the relevant factors, the Administrator of the DEA may adjust the 2012 aggregate production quotas as needed.

Comments

Pursuant to 21 CFR 1303.11, any interested person may submit written comments on or objections to these proposed determinations. Based on comments received in response to this Notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in her sole discretion to hold

such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments and after a hearing, if one is held, the Administrator will publish in the **Federal Register** a final order determining the 2012 aggregate production quota for the basic class of controlled substance.

Dated: October 7, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–27283 Filed 10–20–11; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–101)]

NASA Advisory Council; Audit, Finance, and Analysis Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change of location.

Reference: **Federal Register**/Vol. 76, No. 200, Monday, October 17, 2011 (Notice 11–096, 64112).

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces that the meeting of the Audit, Finance and Analysis Committee of the NASA Advisory Council scheduled to be held at NASA Goddard Space Flight Center in Greenbelt, Maryland, on November 1–2, 2011, has been moved to a new location. It will now be held as follows: NASA Headquarters, Room 8D48, 300 E Street, SW., Washington, DC 20546, Tuesday, November 1, 2011, 2:00–5:15 p.m. and Wednesday, November 2, 2011, 9:00–9:55 a.m., Local Time.

FOR FURTHER INFORMATION CONTACT: Ms. Charlene Williams, Office of the Chief Financial Officer, NASA Headquarters, Washington, DC 20546, *Phone:* 202–358–2183.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Visitors will need to show a valid picture identification such as a driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center), and must state that they are attending the Audit, Finance, and Analysis Committee meeting in room 8D48 before receiving an access badge. All non-U.S. citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), and place and date of entry into the U.S., fax to Charlene Williams, Executive Secretary, Audit, Finance, and Analysis Committee, FAX (202) 358–4336, by no later than October 27, 2011.

Dated: October 18, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–27329 Filed 10–20–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–099)]

National Space-Based Positioning, Navigation, and Timing (PNT) Advisory Board; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), and the President's 2004 U.S. Space-Based Positioning, Navigation, and Timing Policy, the National Aeronautics and Space Administration announces a meeting of the National Space-Based Positioning, Navigation, and Timing Advisory Board.

DATES: Wednesday, November 9, 2011, 9 a.m. to 5 p.m.; and Thursday, November 10, 2011, 9 a.m. to 1 p.m.

ADDRESSES: The Crowne Plaza Old Town Alexandria, 901 North Fairfax, Washington Ballroom, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Miller, Human Exploration and Operations Mission Directorate, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4417.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register. The agenda for the meeting includes the following topics:

- Update on U.S. Space-Based Positioning, Navigation and Timing Policy and Global Positioning System (GPS) modernization.
- Explore opportunities for enhancing the interoperability of GPS with other emerging international Global Navigation Satellite System constellation services.
- Examine emerging trends and requirements for PNT services in U.S. and international arenas through PNT Board technical assessments.
- Prioritize current and planned GPS capabilities and services while assessing future PNT architecture options.
- Review GPS Standard Positioning Service Performance Standards and effects on ''non-ICD compliant'' receivers in the marketplace.
- Address future challenges to PNT service providers and users such as protecting the emerging role of PNT in cyber networks, including the need for back-ups.
- Identify and respond to the latest developments on radio frequency interference from proposed Mobile Satellite Service Ancillary Terrestrial Component operations.

Dated: October 14, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–27256 Filed 10–20–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–100)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces that the meeting of the NASA Advisory Council scheduled to be held at NASA Goddard Space Flight Center in Greenbelt, Maryland, on November 3–4, 2011, has been postponed due to scheduling conflict. It will be rescheduled in the future.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1148.

Dated: October 18, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–27311 Filed 10–20–11; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0263]

Assuring the Availability of Funds for Decommissioning Nuclear Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) is issuing a revision to Regulatory Guide 1.159, ''Assuring the Availability of Funds for Decommissioning Nuclear Reactors.'' This guide provides guidance to applicants and licensees of nuclear power, research, and test reactors concerning methods acceptable to the staff of the U.S. Nuclear Regulatory Commission (NRC) for complying with requirements in the rules regarding the amount of funds for decommissioning. It also provides guidance on the content and form of the financial assurance mechanisms in those rule amendments.

ADDRESSES: You can access publicly available documents related to this regulatory guide using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The regulatory guide is available electronically under ADAMS Accession Number ML112160012. The regulatory analysis may be found in ADAMS under Accession Number ML112160013.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2009–0263.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Edward O'Donnell, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–251–7655; *e-mail: Edward.Odonnell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

As a guidance document, this regulatory guide and its provisions are not designed to be restrictive or to represent binding requirements. The guide presents methods acceptable to the NRC staff for complying with the decommissioning regulations. The NRC staff recognizes that, in certain circumstances (e.g., to meet requirements established by Federal or state economic regulatory agencies or to comply with other applicable laws), other approaches may be necessary. As a point of clarification, it is the NRC's position that licensees who have existing license conditions relating to topics covered by the final rule, ''Decommissioning Trust Provisions,'' dated December 24, 2002 (67 FR 78332), will have the option of maintaining their existing license conditions or submitting to the new requirements.

II. Further Information

Revision 2 of Regulatory Guide 1.159 was issued with a temporary identification as Draft Regulatory Guide, DG–1229. DG–1229, was published in the **Federal Register** on June 30, 2009 (74 FR 31317) for a 60 days public comment period. The public comment period closed on September 9, 2009. The Commission approved RG 1.159 subject to changes which are spelled out in a Staff Requirements Memorandum dated October 25, 2010 (ML1029805650). Because of the nature of the changes, the draft guide was reissued for comment on January 13, 2011 (76 FR 2425). The NRC staff's responses to the public comments on DG–1229 are available under ADAMS Accession Number ML112160035.

Dated at Rockville, Maryland, this 13th day of October, 2011.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–27338 Filed 10–20–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 50–295 and 50–304; NRC–2011–0244]

Environmental Assessment and Finding of No Significant Impact Related to Exemption From Certain Requirements for the Zion Nuclear Power Station, Units 1 and 2, License DPR–039 and DPR–048, Lake County, IL

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: John Hickman, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–00001; *telephone:* 301–415–3017; *e-mail: John.Hickman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) staff is considering a request dated December 2, 2010, by Zion*Solutions,* LLC (ZS, the licensee) requesting exemptions from certain security requirements in Title 10 of the Code of Federal Regulations (10 CFR) 73.55 for the Zion Nuclear Power Station (ZNPS) Units 1 and 2.

This Environmental Assessment (EA) has been developed in accordance with the requirements of 10 CFR 51.21.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would eliminate certain security plan requirements from the 10 CFR Part 50 licensed site because the ZNPS Units 1 and 2 are permanently shut-down and defueled.

Part of this proposed action meets the categorical exclusion provision in 10 CFR 51.22(c)(25), as part of this action is an exemption from the requirements of the Commission's regulations and (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve safeguard plans. Therefore, this part of the action does not require either an environmental assessment or an environmental impact statement. This environmental assessment was prepared for the part of the proposed action not involving safeguards plans.

Need for Proposed Action

The NRC revised 10 CFR 73.55 through the issuance of a final rule on March 27, 2009 (74 FR 13926). The revised regulation stated that it was applicable to all Part 50 licensees. The NRC became aware that many Part 50 licensees with facilities in decommissioning status did not recognize the applicability of this regulation to their facility. Accordingly, the NRC informed licensees with facilities in decommissioning status and other stakeholders that the requirements of 10 CFR 73.55 were applicable to all Part 50 licensees. By letter dated August 2, 2010, the NRC informed Exelon Nuclear, the ZNPS license holder at that time, of the applicability of the revised rule and stated that it would have to evaluate the applicability of the regulation to its facility and either make appropriate changes or request an exemption.

Section 73.55 requires that licensees establish and maintain physical protection and security for activities involving SNM within the 10 CFR part 50 licensed area of a facility. The proposed action is needed because the permanently shut-down and defueled status of the facility changes the security that is necessary to protect against radiological sabotage or diversion. The proposed action will allow the licensee to conserve resources for decommissioning activities.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that exempting the facility from certain physical protection security requirements will not have any adverse environmental impacts.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

The alternative is the no-action alternative, under which the staff would deny the exemption request. This denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are similar, therefore the no-action alternative is not further considered.

Conclusion

The NRC staff has concluded that the proposed action will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative.

Agencies and Persons Consulted

In accordance with its stated policy, on July 21, 2011, the staff consulted with the Illinois State official of the Division of Nuclear Safety, Illinois Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA as part of its review of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

For further details with respect to the proposed action, see the licensee's letter dated December 2, 2010, [ADAMS Accession Number ML103400569]. Documents related to this action, including the application and supporting documentation, are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 12th day of October, 2011.

For the U.S. Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–27332 Filed 10–20–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–238; NRC–2011–0222]

N.S. Savannah; Exemption From Certain Security Requirements

1.0 Background

The U.S. Department of Transportation, Maritime

Administration (MARAD) is the licensee and holder of Facility Operating License No. NS–1 issued for the N.S. Savannah (NSS) currently located in the Port of Baltimore, Maryland. The NSS was the world's first nuclear powered merchant ship. The NSS was operated in experimental and commercial demonstration service throughout the 1960s.

The ship was removed from service in 1970. In August 1971, the reactor was defueled. The fuel was stored in a ''spent fuel pool'' inside MARAD's Refueling Facility, located at the Todd Shipyard in Galveston, Texas. The refueling facility was licensed by the state of Texas under an agreement with the Atomic Energy Commission (AEC). On November 3, 1972, all 36 Core I spent fuel elements were returned to the AEC and transferred by the AEC for reprocessing at its Savannah River Site in South Carolina.

On May 19, 1976, the operating license for the NSS was amended to a possession-only license.

2.0 Action

Section 50.54(p)(1) of Title 10 of the Code of Federal Regulations (10 CFR) states, in part, ''The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C of Part 73 of this chapter for affecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan.''

Part 73 of 10 CFR, ''Physical Protection of Plant and Materials,'' provides in part in section 73.1(a), ''This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used.'' In Section 73.55, entitled ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' paragraph (b)(1) states, ''The licensee shall establish and maintain a physical protection program, to include a security organization, which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

The U.S. Nuclear Regulatory Commission (NRC or the Commission) revised 10 CFR 73.55, in part to include the preceding language, through the issuance of a final rule on March 27, 2009 (74 FR 13970). The revised regulation stated that it was applicable to all Part 50 licensees. The NRC became aware that some Part 50 licensees with facilities in decommissioning status did not recognize the applicability of this regulation to their facility. Accordingly, the NRC informed licensees with facilities in decommissioning status and other stakeholders that the requirements of 10 CFR 73.55 were applicable to all Part 50 licensees. By letter dated August 2, 2010, the NRC informed MARAD of the applicability of the revised rule and stated that it would have to evaluate the applicability of the regulation to its facility and either make appropriate changes or request an exemption.

By letter dated November 8, 2010, MARAD responded to the NRC's letter and requested exemptions from the security requirements in 10 CFR part 73 and 10 CFR 50.54(p).

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present when, for example, application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or when compliance would result in costs significantly in excess of those incurred by others similarly situated. Also, pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant exemptions from the regulations in Part 73 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The purpose of the security requirements of 10 CFR part 73, as applicable to a 10 CFR part 50 licensed facility, is to prescribe requirements for a facility that possesses and utilizes SNM. By the end of 1972, all spent fuel at the NSS had been returned to the AEC for reprocessing. Since the license defines the facility as the reactor and associated components located aboard the ship, the removal of the spent Core I fuel from the ship is equivalent to removing all SNM from the NRC licensed site other than that contained in plant systems as residual contamination.

The remaining radioactive material of concern (*i.e.,* reactor vessel, piping systems, and ship structures) for the NSS is in a form that does not pose a risk of removal (i.e., an intact reactor pressure vessel) and is well dispersed and is not easily aggregated into significant quantities. With the removal of the fuel containing SNM, the potential for radiological sabotage or diversion of SNM at the 10 CFR part 50 licensed site was eliminated. Therefore, the continued application of the fixed site physical protection requirements of 10 CFR part 73 to the NSS would no longer be necessary to achieve the underlying purpose of the rule. Additionally, as has been noted at other decommissioning nuclear power facilities, with the removal of the spent nuclear fuel from the site, the 10 CFR part 50 licensed site would be comparable to a source and byproduct licensee that uses general industrial security (i.e. locks and barriers) to protect the public health and safety. The continued application of fixed site physical protection requirements of 10 CFR part 73 would cause the licensee to expend significantly more funds for security requirements than other source and byproduct facilities that use general industrial security. Therefore, compliance with the fixed site physical protection requirements of 10 CFR Part 73 would result in costs significantly in excess of those incurred by others similarly situated. Based on the above, the NRC has determined that the removal of the fuel containing SNM at the 10 CFR part 50 licensed site constitutes special circumstances. The possession and responsibility for the security of the SNM was transferred to the AEC and is no longer the responsibility of the licensee. Therefore, protection of the SNM is no longer a requirement of the licensee's 10 CFR part 50 license. With no SNM to protect, there is no need for the physical protection requirements of 10 CFR part 73, which includes a safeguards contingency plan or procedures, physical security plan, guard training and qualification plan, and cyber security plan for the NSS, 10 CFR part 50 licensed site. The requirements for protection of safeguards information, physical protection of SNM in transit, and records and reports remain applicable.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense

and security based on the continued maintenance of appropriate security requirements for the remaining SNM contained in plant systems as residual contamination. Additionally, special circumstances are present based on the removal of the spent nuclear fuel from the 10 CFR part 50 licensed site. Therefore, the Commission hereby grants MARAD an exemption from the requirements of 10 CFR 50.54(p) for the NSS.

The Commission has also determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest based on the security requirements for the spent fuel containing SNM no longer being the responsibility of the licensee. Therefore, the Commission hereby grants MARAD an exemption from the fixed site physical protection requirements of 10 CFR Part 73 for the NSS. The fixed site physical protection requirements of 10 CFR Part 73 are delineated in §§ 73.20, 74.40, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.56, 73.57, 73.58, 73.59, 73.60, 73.61, 73.67, Appendix B and Appendix C. The requirements for protection of safeguards information, physical protection of SNM in transit, and records and reports, contained in these or other sections of Part 73 continue to apply. To the extent that the licensee's request for an exemption from 10 CFR part 73 included requirements other than the fixed site physical protection requirements, that request is denied.

Part of this licensing action meets the categorical exclusion provision in 10 CFR 51.22(c)(25), as part of this action is an exemption from the requirements of the Commission's regulations and (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve safeguard plans. Therefore, this part of the action does not require either an environmental assessment or an environmental impact statement.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact related to the part of this exemption not dealing with safeguards plans (*i.e.;* transportation of SNM, interaction with emergency planning, and background checks) was published in the **Federal Register** on September 23, 2011 (76 FR 59174). Based upon the environmental assessment, the Commission has determined that issuance of this exemption will not have a significant effect on the quality of the human environment.

These exemptions are effective immediately.

Dated at Rockville, Maryland, this 7th day of October 2011.

For the U.S. Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–27279 Filed 10–20–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0323]

Standard Format and Content of License Applications for Mixed Oxide Fuel Fabrication Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) is issuing a revision to regulatory guide (RG) 3.39, ''Standard Format and Content of License Applications for Mixed Oxide Fuel Fabrication Facilities.'' This guide endorses the standard format and content for license applications and integrated safety analysis (ISA) summaries described in the current version of NUREG–1718, ''Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility,'' as a method that the NRC staff finds acceptable for meeting the regulatory requirements of Title 10 of the Code of Federal Regulations (10 CFR) part 70, ''Domestic Licensing of Special Nuclear Material'' for mixed oxide fuel fabrication facilities.

ADDRESSES: You can access publicly available documents related to this regulatory guide using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The regulatory guide is available electronically under ADAMS Accession Number ML100280809. The regulatory analysis may be found in ADAMS under Accession Number ML111780401.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this regulatory guide can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2009–0323.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Sabrina Atack, Mixed Oxide and Uranium Deconversion Branch, Special Projects and Technical Support Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3204; or e-mail: *Sabrina.Atack@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 3.39 was issued with a temporary identification as Draft Regulatory Guide, DG–3038. This guide endorses the standard format and content for license applications and integrated safety analysis (ISA) summaries described in the current version of NUREG–1718, ''Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility,'' as a

method that the NRC staff finds acceptable for meeting the regulatory requirements of Title 10 of the Code of Federal Regulations (10 CFR) part 70, ''Domestic Licensing of Special Nuclear Material'' for mixed oxide fuel fabrication facilities.

Subpart H of 10 CFR part 70, ''Additional Requirements for Certain Licensees Authorized To Possess a Critical Mass of Special Nuclear Material,'' identifies risk-informed performance requirements for mixed oxide fuel fabrication facilities. Subpart H requires applicants to establish and maintain a safety program that includes an integrated safety analysis (ISA), process safety information, and management measures and to submit a description of the safety program as part of the license application. Subpart H of 10 CFR part 70 also requires the applicant to submit an ISA summary to the NRC for approval.

This guide directs the reader to documentation regarding the type of information acceptable to the NRC staff for review of a license application and ISA summary for a mixed oxide fuel fabrication facility. Applicants may choose to submit information supporting the license application in the form of a safety analysis report (SAR), which may be a separate report submitted as part of the application or may be integrated into the license application. This documentation also provides guidance for acceptable format and content for licensing documents submitted as part of an application to construct, use, or possess special nuclear material or modify licensing commitments for a mixed oxide fuel fabrication facility.

II. Further Information

On July 24, 2009, DG–3038 was published in the **Federal Register** with a public comment period of 60 days from the issuance of the guide (74 FR 36780). The comment period closed on September 21, 2009. The staff's responses to the comments received are located in ADAMS under Accession Number ML100280863.

Dated at Rockville, Maryland this 13th day of October, 2011.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–27343 Filed 10–20–11; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Revision of Standard Form 1152: Unpaid Compensation of Deceased Civilian Employee

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of revision.

SUMMARY: The U.S. Office of Personnel Management (OPM) has revised Standard Form (SF) 1152, *Unpaid Compensation of Deceased Civilian Employee,* to update examples of beneficiary designations. The SF 1152 is used by a civilian employee to designate the beneficiary or beneficiaries to receive any unpaid compensation due and payable after the employee's death. The form relates solely to money due as defined in 5 U.S.C. 5581, 5582, and 5583, and has no effect on any benefits which may become payable under the Retirement or Group Life Insurance Acts applicable to the deceased employee's Government service. The revised form is PDF fillable and is located on OPM's Web site at *http://www.opm.gov/forms/html.sf.asp* for agency use. This version supersedes all previous versions. Please destroy any versions you may have in stock.

DATES: The revised form is effective October 21, 2011.

FOR FURTHER INFORMATION CONTACT: Robert D. Hendler by telephone at (215) 861–3102; by fax at (215) 861–3100; or by e-mail at *robert.hendler@opm.gov.*

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–27255 Filed 10–20–11; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–10; Order No. 908]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Agate, Colorado post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 27, 2011; *deadline for notices to intervene:* November 8, 2011, 4:30 p.m., eastern time. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on October 12, 2011, the Commission received a petition for review of the Postal Service's determination to close the Agate post office in Agate, Colorado. The petition for review was filed online on October 12, 2011 by Gail Pitzer (Petitioner). The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–10 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 16, 2011.

Issue Apparently Raised.

Petitioners contend that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 27, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 27, 2011.

Availability; Web Site Posting

The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be

posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webWebmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of Documents

All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention

Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before November 8, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further Procedures

By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 27, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 27, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Pamela A. Thompson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 12, 2011	Filing of Appeal.
October 27, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 27, 2011	Deadline for the Postal Service to file any responsive pleading.
November 8, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 16, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 6, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 21, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 28, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
February 9, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–27247 Filed 10–20–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65580; File No. SR–FINRA–2011–060]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend the Implementation Provision in FINRA Rule 1230(b)(6) (Operations Professional)

October 17, 2011.

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 October 14, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, and II, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

[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

FINRA is proposing to amend FINRA Rule 1230(b)(6) (Operations Professional) to provide persons who are required to register as an Operations Professional from October 18, 2011 through December 16, 2011 and must pass a qualification examination to qualify as an Operations Professional until April 14, 2012 to pass the Operations Professional qualification examination (or an eligible qualification examination),[3] during which time such

[3] FINRA Rule 1230(b)(6)(D) sets forth an exception to the Operations Professional qualification examination requirement for persons who currently hold certain registrations (each an ''eligible registration'') or have held one during the two years immediately prior to registering as an Operations Professional. The exception also applies to persons who do not hold an eligible registration, but prefer an alternative to taking the Operations

persons may function as an Operations Professional.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 16, 2011, the Commission approved FINRA Rule 1230(b)(6), which establishes a registration category and qualification examination requirement for certain operations personnel—Operations Professionals.[4] FINRA is expanding its registration provisions to require registration of certain individuals (''covered persons'') who are engaged in, responsible for or supervising certain member operations functions (''covered functions'') to enhance the regulatory structure surrounding these areas.[5]

FINRA Rule 1230(b)(6)(E)(i) provides that any person who is required to register as an Operations Professional as of October 17, 2011 (a ''Day-One Professional,'' *i.e.,* a person who meets the depth of personnel criteria as a covered person and is engaged in one or more covered functions as of October 17, 2011) must request registration as an Operations Professional via Form U4 in the Central Registration Depository (''CRD®'') within 60 days after October 17, 2011 (*i.e.,* on or before December 16, 2011). Any Day-One Professional who must pass the Operations Professional qualification examination [6] (or an eligible qualification examination) to qualify for Operations Professional registration is allowed a period of 12 months beginning on October 17, 2011 to pass such qualifying examination, during which time such person may function as an Operations Professional.

FINRA Rule 1230(b)(6)(E)(ii) provides that any person who is required to register as an Operations Professional after October 17, 2011 (a ''non-Day-One Professional,'' *i.e.,* a person who does not meet the depth of personnel criteria as a covered person and/or is not engaged in one or more covered functions as of October 17, 2011, or persons hired after October 17, 2011, who will be subject to the registration requirements) must register as an Operations Professional and, if applicable, pass the Operations Professional qualification examination (or an eligible qualification examination) prior to engaging in any activities that would require such registration. However, any non-Day-One Professional who must pass the Operations Professional qualification examination (or an eligible qualification examination) to qualify for Operations Professional registration is allowed a period of 120 days beginning on the date such person requests Operations Professional registration to pass such qualifying examination, during which time such person may function as an Operations Professional.

The proposed rule change would amend FINRA Rule 1230(b)(6)(E) to afford non-Day-One Professionals who must register as an Operations Professional within the first 60 days of the effective date of FINRA Rule 1230(b)(6), and must pass a qualification examination to qualify, additional time to pass the Operations Professional qualification examination (or an eligible qualification examination). Under FINRA Rule 1230(b)(6)(E)(ii), as non-Day-One Professionals, such persons are required to pass a qualification examination within 120 days of requesting registration as an Operations Professional and do not get the benefit of the 12-month period to pass a qualification examination available only to Day-One Professionals.

The content outline for the Operations Professional examination was posted on FINRA's Web site on August 23, 2011. Given the short time period between August 23, 2011 and October 17, 2011, the effective date of FINRA Rule 1230(b)(6), test preparation and firm training materials may not be readily available for candidates who must register within the first 60 days of the effective date of the rule and do not have the benefit of the 12-month period to pass an examination for Day-One Professionals. Accordingly, non-Day-One Professionals who must register as an Operations Professional on or before December 16, 2011 may have difficulty preparing for and passing the Operations Professional examination within 120 days of requesting registration as an Operations Professional.[7]

The proposed rule change would provide that any person who is required to register as an Operations Professional from October 18, 2011 through December 16, 2011 must register as an Operations Professional and, if applicable, pass the Operations Professional qualification examination (or an eligible qualification examination) prior to engaging in any activities that would require such registration. However, any such person who must pass the Operations Professional qualification examination (or an eligible qualification examination) to qualify for Operations Professional registration would be allowed until April 14, 2012 to pass

Professional examination. Such persons may register in an eligible registration category (subject to passing the corresponding ''eligible qualification examination'' or obtaining a waiver) and use such registration to qualify for Operations Professional registration.

[4] *See* Securities Exchange Act Release No. 64687 (June 16, 2011), 76 FR 36586 (June 22, 2011) (Order Approving File No. SR–FINRA–2011–013). In addition to adopting FINRA Rule 1230(b)(6), the rule change adopted NASD Rule 1120 (Continuing Education Requirements) as new FINRA Rule 1250 (Continuing Education Requirements) with certain changes, including expanding the scope of ''covered registered persons'' subject to the Firm Element to include persons registered as Operations Professionals. *See also* Securities Exchange Act Release No. 65222 (August 30, 2011), 76 FR 55443 (September 7, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2011–041) and Securities Exchange Act Release No. 65221 (August 30, 2011), 76 FR 55441 (September 7, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2011–042).

[5] *See Regulatory Notice* 11–33 (July 2011) and *Regulatory Notice* 11–42 (September 2011).

[6] Candidates for the Series 99 examination will be able to schedule and take the examination starting on October 17, 2011. Because this is a new examination for a new registration category, FINRA will be assessing the effectiveness of the examination by, in part, evaluating the candidates' performance during the first 60 days of the administration of the examination. Therefore, candidates who take the examination within the first 60 days (between October 17, 2011 and December 16, 2011) will not receive their test results on the day that they take the examination. Instead, such candidates' firms will be notified of test results (*i.e.,* the candidate's score and whether the candidate has passed or failed the examination) on or shortly after December 16, 2011. The test results will be posted to the CRD system at that time. Candidates who fail the examination during the initial 60-day rollout will be provided an opportunity to retake the examination at no additional cost.

[7] *See* letter from John Polanin and Claire Santaniello, Co-Chairs, Compliance and Regulatory Policy Committee 2011, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated September 30, 2011 (Re: Release No. 34–65222; File No. SR–FINRA–2011–041).

such qualifying examination, during which time such person may function as an Operations Professional.

Any person who is required to register as an Operations Professional on or after December 17, 2011 would be required to register as an Operations Professional and, if applicable, pass the Operations Professional qualification examination (or an eligible qualification examination) prior to engaging in any activities that would require such registration. However, any such person who must pass the Operations Professional qualification examination (or an eligible qualification examination) to qualify for Operations Professional registration would be allowed a period of 120 days beginning on the date such person requests Operations Professional registration to pass such qualifying examination, during which time such person may function as an Operations Professional.

FINRA notes that members are responsible for tracking and monitoring their associated persons to ensure that they are registered, and conducting their activities, in compliance with the time frames described in FINRA Rule 1230(b)(6)(E).

The effective date of the proposed rule change will be October 17, 2011, the effective date of FINRA Rule 1230(b)(6) (Operations Professional).

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Given the short time period between the posting of the content outline for the Operations Professional examination on FINRA's Web site on August 23, 2011 and October 17, 2011, the effective date of FINRA Rule 1230(b)(6), non-Day-One Professionals who must register as an Operations Professional within the first 60 days of the effective date of FINRA Rule 1230(b)(6), and pass the Operations Professional examination (or an eligible qualification examination) to qualify, may have difficulty preparing for and passing such examination within 120 days of requesting registration as an Operations Professional. FINRA believes it is appropriate to provide such persons until April 14, 2012 to pass the Operations Professional qualification examination (or an eligible examination).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FINRA and, in particular, the requirements of Section 15A of the Act,[9] and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act which requires, among other things, that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, because, by providing additional time for non-Day-One Professionals who must register as an Operations Professional within the first 60 days of the effective date of FINRA Rule 1230(b)(6) to pass the qualification examination, the proposed rule change will provide additional time for improvements in examination preparation resources for the new registrants, enhancing registrants' abilities in their roles, and will improve FINRA members' ability to comply with the rule.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[10] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission finds good cause for approving the proposed rule on an accelerated basis because the proposed rule will assist member firms in transitioning to the new requirement for registration of Operations Professionals and provide needed clarification in response to concerns regarding the ability of non-Day-One Professionals who must register as an Operations Professional within the first 60 days of the effective date of FINRA Rule 1230(b)(6), and pass a qualification examination to qualify, to prepare for and pass the Operations Professional qualification examination (or an eligible qualification examination) within 120 of requesting registration as an Operations Professional. Accelerating the approval of this proposed rule to coincide with the effective date of the registration requirements will permit these non-Day-One Professionals to take the extended examination window into account when they schedule their examinations.

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–060 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–FINRA–2011–060. This file number should be included on the subject line if e-mail 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

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78*o*–3. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–060 and should be submitted on or before November 14, 2011.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–FINRA–2011–060) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27262 Filed 10–20–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65579; File No. SR–FINRA–2011–052]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt NASD Rule 2320 (Best Execution and Interpositioning) and Interpretive Material (''IM'') 2320 as FINRA Rule 5310 in the Consolidated Rulebook

October 17, 2011.

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 October 4, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 2320 (Best Execution and Interpositioning) and Interpretive Material (''IM'') 2320 (Interpretive Guidance with Respect to Best Execution Requirements) as a FINRA rule in the consolidated FINRA rulebook with four notable changes. The proposed rule change would combine and renumber NASD Rule 2320 and IM–2320 as FINRA Rule 5310 in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, at the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt NASD Rule 2320 (Best Execution and Interpositioning) and IM–2320 (Interpretive Guidance with Respect to Best Execution Requirements) as a FINRA rule in the Consolidated FINRA Rulebook with several changes, which are described below.

NASD Rule 2320 requires a member, in any transaction for or with a customer or a customer of another broker-dealer, to use ''reasonable diligence'' to ascertain the best market for a security and to buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. The rule identifies five factors that are among those to be considered in determining whether the member has used reasonable diligence: (1) The character of the market for the security; (2) the size and type of transaction; (3) the number of markets checked; (4) the accessibility of the quotation; and (5) the terms and conditions of the order as communicated to the member. The rule also includes provisions related to interpositioning (*i.e.,* interjecting a third party between the member and the best available market), the use of a broker's broker,[4] the staffing of order rooms, and the application of the best execution requirements to other parties.

In addition to these provisions, NASD Rule 2320(f) (commonly referred to as the ''Three Quote Rule'') generally requires members that execute transactions in non-exchange-listed securities on behalf of customers to contact a minimum of three dealers (or all dealers if three or fewer) and obtain quotations from those dealers if there are fewer than two quotations displayed on an inter-dealer quotation system that permits quotation updates on a real-time basis. The Three Quote Rule was adopted in 1988 to further define a firm's best execution obligation to customers by setting forth additional requirements for transactions in non-exchange-listed securities, particularly transactions involving securities with non-transparent prices.[5] Since that time, the Three Quote Rule has been amended on multiple occasions to exclude certain securities and transactions.[6] The Three Quote Rule establishes a minimum standard, and compliance with the Three Quote Rule, in and of itself, does not mean that a member has met its best

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] The proposed rule change moves part of the provision concerning the use of a broker's broker from paragraph (b) of the rule to Supplementary Material .05.

[5] *See* Securities Exchange Act Release No. 25637 (May 2, 1988), 53 FR 16488 (May 9, 1988).

[6] *See* NASD Rule 2320(f)(3)(B), (C). *See also* Securities Exchange Act Release No. 56004 (July 2, 2007), 72 FR 37285 (July 9, 2007); Securities Exchange Act Release No. 43319 (September 21, 2000), 65 FR 58589 (September 29, 2000).

execution obligations under NASD Rule 2320.[7]

IM–2320 was adopted in 2006 to codify interpretive guidance that FINRA staff had provided involving compliance with NASD Rule 2320.[8] Specifically, IM–2320 addresses issues involving the term ''market'' for purposes of the rule as well as the application of the rule to debt securities and to broker-dealers that are executing a customer's order against the broker-dealer's quote.

FINRA is proposing to adopt new FINRA Rule 5310, which is based largely on NASD Rule 2320. IM–2320 will be adopted, in substantially the same form, as Supplementary Material to Rule 5310. FINRA is also proposing several changes, which are described below, to the rule.

(1) The Three Quote Rule

Since the adoption of the Three Quote Rule over twenty years ago, the market for non-exchange-listed securities has changed dramatically.[9] FINRA has found that in certain circumstances the Three Quote Rule can hinder, rather than further, investor protection by causing significant delays in obtaining execution of customer orders. As a result, FINRA has created several exclusions to the Three Quote Rule since it was adopted. For example, in 2000, FINRA determined that where there were two transparent, firm quotes for a security, the costs associated with delayed executions resulting from Three Quote Rule compliance outweighed the benefits of obtaining three telephone quotes.[10] Consequently, the Three Quote Rule currently applies only to non-exchange-listed securities with one or no public quotation.[11] More recently, in 2007, the SEC approved amendments to the Three Quote Rule to exclude certain transactions in non-exchange-listed securities of foreign issuers that are part of the FTSE All-World Index and to exclude certain transactions in Canadian securities executed on a Canadian exchange.[12]

Although the original concerns the Three Quote Rule was designed to address are still valid, FINRA believes that the current requirements in the Three Quote Rule, even with the various exclusions, are overly prescriptive and can often result in unnecessary delay in the execution of a customer's order or impose requirements that do not benefit the customer. Accordingly, rather than maintain the Three Quote Rule and the various exclusions in their current format, the proposed rule change replaces the Three Quote Rule with Supplementary Material emphasizing a member's best execution obligations when handling an order involving any security, equity or debt, for which there is limited pricing information available.[13] The Supplementary Material emphasizes that members must be especially diligent with respect to best execution obligations where there is limited quotation or other pricing information available regarding the security that is the subject of the order and requires members to have written policies and procedures in place to address the steps the member will take to determine the best market for such a security in the absence of multiple quotations or pricing information and to document how they have complied with those policies and procedures.[14] The Supplementary Material specifically notes that, when handling orders for such securities, members should generally seek out other sources of pricing information or potential liquidity, which may include obtaining quotations from other sources (*e.g.,* other firms that the member previously has traded with in the security). For example, in many instances, particularly in the context of equity securities with limited quotation information available, contacting other broker-dealers may be necessary to comply with a member's best execution obligations.[15]

(2) Regular and Rigorous Review of Execution Quality

The proposed rule change includes Supplementary Material to proposed FINRA Rule 5310 codifying a member's obligations when it undertakes a regular and rigorous review of execution quality likely to be obtained from different market centers. These longstanding obligations are set forth and explained in various SEC releases and NASD *Notices to Members.*[16] The proposed rule change codifies this guidance as Supplementary Material and does not alter existing requirements regarding regular and rigorous review.

(3) Orders for Foreign Securities With No U.S. Market

While the determination as to whether a member has satisfied its best execution obligations must take into account the market for a security, NASD Rule 2320 does not specifically distinguish between orders for domestic securities and orders for foreign securities, even if there is no U.S. market for the security. Markets in foreign jurisdictions often do not have identical best execution requirements as those imposed by NASD Rule 2320 and, in many cases, may not have comparable pre-trade or post-trade transparency standards. Thus, the handling of orders for foreign securities with no U.S. market can differ substantially from the handling of

[7] *See* NASD *Notice to Members* 00–78 (November 2000).

[8] *See* Securities Exchange Act Release No. 54339 (August 21, 2006), 71 FR 50959 (August 28, 2006).

[9] For purposes of the Three Quote Rule, a ''non-exchange-listed security'' is any equity security that is not traded on any national securities exchange, but does not include restricted securities. *See* NASD Rule 2320(f)(4)(C).

[10] *See* NASD *Notice to Members* 00–78 (November 2000); *see also* Securities Exchange Act Release No. 43319 (September 21, 2000), 65 FR 58589 (September 29, 2000).

[11] *See* NASD Rule 2320(f)(3)(A).

[12] Securities Exchange Act Release No. 56004 (July 2, 2007), 72 FR 37285 (July 9, 2007). *See Regulatory Notice* 07–40 (August 2007).

[13] NASD Rule 2320(f)(2), which is a subparagraph within the Three Quote Rule, generally requires members that display priced quotations on a real-time basis for a non-exchange-listed security in two or more quotation mediums that permit quotation updates on a real-time basis to display the same priced quotation in each medium except for certain customer limit orders displayed on an electronic communications network. Paragraph (f)(4) of the rule includes definitions of terms used in paragraph (f)(2). At this time, FINRA is proposing to move paragraph (f)(2) into the FINRA Rule 6400 Series (Quoting and Trading in OTC Equity Securities) as FINRA Rule 6438. FINRA is also proposing to replace the term ''non-exchange-listed security'' with the term ''OTC Equity Security'' to conform the rule language to other FINRA rules addressing non-NMS stocks. The terms ''OTC Equity Security'' and ''quotation medium'' are defined in FINRA Rule 6420. Because the provisions relate to the quotation of OTC Equity Securities, FINRA believes that they should be relocated into the FINRA rule series concerning quoting and trading OTC Equity Securities rather than remain part of the Best Execution Rule.

[14] NASD Rule 3110(b) (Books and Records) generally requires members to indicate on the customer order ticket how they complied with the Three Quote Rule, if applicable. FINRA is proposing to replace this provision with a more general documentation requirement in the Supplementary Material to proposed FINRA Rule 5310. Under that provision, members would be required to retain records sufficient to demonstrate that they had handled orders covered by the rule in accordance with their policies and procedures.

[15] As noted above, FINRA believes that requiring compliance with the Three Quote Rule in all circumstances covered by the rule can cause unnecessary delay in the handling of some customer orders. However, as the Supplementary Material recognizes, contacting other broker-dealers can often be necessary for a firm to meet its best execution obligations. In recognizing the importance of contacting other broker-dealers for pricing or liquidity information, FINRA notes that many firms may choose to adopt policies and procedures that are substantially similar to the current Three Quote Rule but may, for example, allow for firms to adapt their procedures for certain situations if the firm reasonably concludes that those requirements would result in unnecessary delay or otherwise not benefit the customer. Firms must also continue to take into account when developing their procedures that the Three Quote Rule is a minimum standard, and contacting other dealers does not guarantee that a firm has met its best execution obligations in all cases.

[16] *See, e.g.,* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996); NASD *Notice to Members* 01–22 (April 2001).

orders in securities that trade in the U.S. Consequently, the proposed rule change includes new Supplementary Material concerning members' best execution obligations when handling orders for foreign securities, and in particular foreign securities with no U.S. trading activity.[17]

The new Supplementary Material recognizes that markets for different securities can vary dramatically and that the standard of ''reasonable diligence'' must be assessed by examining specific factors, including ''the character of the market for the security'' and the ''accessibility of the quotation.'' Accordingly, the determination as to whether a member has satisfied its best execution obligations necessarily involves a ''facts and circumstances'' analysis.

The new Supplementary Material notes that even though a foreign security may not trade in the U.S., members still have an obligation to seek best execution for customer orders involving the security. Consequently, a member that handles customer orders for foreign securities that do not trade in the U.S. must have specific written policies and procedures in place regarding its handling of customer orders for these securities that are reasonably designed to obtain the most favorable terms available for the customer, taking into account differences that may exist between U.S. markets and foreign markets. The Supplementary Material further notes that a member's best execution obligations also must evolve as changes occur in the market that may give rise to improved executions, including opportunities to trade at more advantageous prices. Members must therefore regularly review their policies and procedures to assess the quality of executions received and update or revise the policies and procedures as necessary.

(4) Customer Instructions Regarding the Routing of Orders

When placing an order with a member, customers may specifically instruct the member to route the order to a particular market for execution.[18] The proposed rule change includes Supplementary Material to proposed FINRA Rule 5310 addressing situations where the customer has, on an unsolicited basis, specifically instructed the member to route its order to a particular market.[19] Under those circumstances, the member would not be required to make a best execution determination beyond that specific instruction; however, the Supplementary Material mandates that members process the customer's order promptly and in accordance with the terms of the order. The Supplementary Material also makes clear that where a customer has directed the member to route an order to another broker-dealer that is also a FINRA member, the exception would not apply to the receiving broker-dealer to which the order was directed.[20]

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no later than 90 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[21] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change adds needed clarification and provisions to the existing best execution requirements that enhance investor protection and promote just and equitable principles of trade. FINRA believes that codifying members' obligations regarding directed orders, regular and rigorous review, and orders involving foreign securities will bring needed clarification to these areas and ensure that all members are aware of their obligations. As discussed above, FINRA believes that replacing the Three Quote Rule with the proposed Supplementary Material will improve the handling of customer orders involving securities with limited quotation or pricing information by decreasing the likelihood that execution of these orders will be unnecessarily delayed while still ensuring that members recognize that their best execution obligations apply to these orders. FINRA believes that each of these provisions will help promote just and equitable principles of trade and will protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 08–80 (December 2008). A copy of *Regulatory Notice* 08–80 is attached as Exhibit 2a. The comment period expired on February 27, 2009. FINRA received nine comment letters in response to the *Regulatory Notice*.[22] A list of the comment letters received in response to *Regulatory Notice* 08–80 is attached as Exhibit 2b. Copies of the comment letters received in response to *Regulatory Notice* 08–80 are attached as Exhibit 2c.

(1) General Comments on the Proposed Rule Change

Although most commenters addressed particular issues in the rule changes proposed in *Regulatory Notice* 08–80, some commenters raised broader concerns regarding best execution obligations and NASD Rule 2320 in general. SIFMA expressed concerns about the application of the Best Execution Rule to debt securities and reiterated the concerns previously expressed by the Bond Market Association in response to prior amendments to NASD Rule 2320.[23] In essence, SIFMA asserts that fundamental differences in the operation of the equity and fixed

[17] As discussed more fully in Section 2(C)(2) below, in *Regulatory Notice* 08–80 FINRA had proposed a different approach regarding orders for foreign securities with no U.S. market.

[18] When the order is for an NMS security, these orders are often referred to as ''directed orders.'' *See* 17 CFR 242.600(b)(19). Of note, directed orders are excluded from the order routing statistics required to be produced under Rule 606 of SEC Regulation NMS. *See* 17 CFR 242.606.

[19] FINRA also has proposed technical amendments to paragraph (e) of the rule to clarify that a member's best execution obligations extend to all customer orders and to avoid the potential misimpression that the paragraph limits the scope of the rule's requirements.

[20] For example, if a customer of Member Firm A directs Member Firm A to route an order to Member Firm B, Member Firm B would continue to have best execution obligations to that customer order received from Member Firm A.

[21] 15 U.S.C. 78*o*–3(b)(6).

[22] Letter from first allied (''First Allied''), dated January 27, 2009; Letter from Sidley Austin LLP (''Sidley''), dated January 28, 2009; Letter from Scottrade, Inc. (''Scottrade''), dated January 29, 2009; Letter from National Association of Independent Broker-Dealers, Inc. (''NAIBD''), dated February 16, 2009; Letter from Cutter & Company, Inc. (''Cutter''), dated February 17, 2009; Letter from Securities Industry and Financial Markets Association (''SIFMA''), dated February 26, 2009; Letter from Financial Services Institute (''FSI''), dated February 27, 2009; Letter from Pink OTC Markets, Inc. (''Pink OTC''), dated March 20, 2009; Letter from Liquidnet, Inc. (''Liquidnet''), dated April 24, 2009.

[23] *See* SIFMA.

income markets render the Best Execution Rule inappropriate for the fixed income market. SIFMA states that the current Best Execution Rule, as well as many of the amendments in the proposed rule change, may be appropriate for the equity markets but ''create problems of interpretation, application and enforcement'' in the context of the fixed income markets.

FINRA disagrees. As SIFMA's letter notes, these concerns have been raised numerous times in recent years, and for the same reasons FINRA has noted before, FINRA believes that the Best Execution Rule is broad enough to apply to both the equity and fixed income markets. As FINRA stated in 2005:

> [The] Best Execution Rule looks at a number of factors, including the character of the market for the security, to determine whether a member or associated person(s) has used reasonable diligence. Accordingly, it can be applied in a variety of different markets that can possess divergent characteristics, including the U.S. debt market.[24]

The Best Execution Rule requires the use of ''reasonable diligence'' when handling a customer order. One of the enumerated factors in assessing whether reasonable diligence has been used is ''the character of the market for the security.'' [25] This language makes readily apparent that a determination of best execution must take into account the specific facts and circumstances surrounding the market in which a security trades, whether that is an exchange market, the over-the-counter equity market, or the fixed income market. Different securities trade in myriad ways, and no single rule can address each and every nuance of various types of markets. Moreover, market structure is itself subject to continuous evolution and development; a rule focused on a specific market structure would quickly become outdated. For all of these reasons, the Best Execution Rule is intentionally broad and encompasses all market types by its recognition that a best execution determination cannot be made without first determining the type of market in which the security that is the subject of the order trades.

One commenter suggested that proposed Supplementary Material .01 regarding prompt execution of a marketable customer order [26] be clarified to note that a firm's acceptance of an order ''starts the clock'' as opposed to the time a customer enters an order or the time an order is received.[27] The Supplementary Material requires ''prompt'' execution and does not dictate a specific timeframe because FINRA believes the principle-based standard of acting promptly would encompass all reasonable factors that a prescriptive standard could not address in all cases. Best execution requires firms to minimize the time between order receipt, order acceptance, and order entry. Firms may not defend their failure to act promptly in respect of an order because such an order languished between its receipt and entry. In addition, FINRA has already codified the obligation to handle and execute marketable customer orders promptly in FINRA Rule 5320.07.

(2) Comments Regarding Orders for Foreign Securities With No U.S. Market

In *Regulatory Notice* 08–80, FINRA proposed to adopt a new provision regarding a member's best execution obligations for foreign securities with no U.S. market. Under that provision, a member would have been deemed to have exercised reasonable diligence pursuant to Rule 5310(a) with respect to an order if:

(i) The order was for a non-U.S. traded security; [28]

(ii) The member had adopted written policies and procedures regarding its handling of orders for non-U.S. traded securities that are reasonably designed to obtain the most favorable terms available for the customer;

(iii) The member reviewed those policies and procedures at least annually, or more frequently as appropriate, to assess the quality of the execution venues included in the member's policies and procedures to determine whether they provide for the most favorable terms reasonably available and whether the policies and procedures needed to be updated or revised;

(iv) The member had obtained its customers' consent to its policies and procedures regarding the handling of orders for non-U.S. traded securities; and

(v) The member handled the order in accordance with its policies and procedures.

The proposed provision did not except these orders from the reasonable diligence requirement; rather, in recognition of the differences in how such orders are handled, it provided an alternative mechanism, other than the current list of factors in the rule, in determining whether a firm had met the reasonable diligence obligation.

Although several commenters generally supported the proposed provision addressing foreign securities with no U.S. market, commenters raised numerous issues with specific aspects of the provision. Multiple commenters questioned the requirement that a customer consent to the member's policies and procedures.[29] In addition, commenters also requested guidance on several of the provision's terms and requirements, including asking for additional guidance of ''a non-exclusive list of elements for what a typical set of execution protocols might cover,'' [30] clarification that the presence of American Depositary Receipts with an active market in the U.S. would not affect the analysis with respect to the issuer's ordinary shares,[31] and questioning portions of the definition of non-U.S. traded security.[32]

FINRA continues to believe it is appropriate to address specifically as part of the Best Execution Rule issues involving members' best execution obligations when handling orders for foreign securities with no U.S. market; however, as noted above, FINRA has replaced the proposed provision with Supplementary Material that more generally describes the obligations members have regarding these orders.

(3) Comments on Proposed Supplementary Material .06 (Orders Involving Securities With Limited Quotations or Pricing Information)

Six commenters addressed the proposal to replace the Three Quote Rule with more general Supplementary Material regarding a member's obligations when handling an order for a security for which there is limited pricing information available. Of the six commenters, five supported the proposal,[33] and one commenter opposed the proposed change because

[24] *See* Securities Exchange Act Release No. 52637 n.15 (October 19, 2005), 70 FR 61861, 61863 n.15 (October 26, 2005).

[25] *See* NASD Rule 2320(a)(1)(A).

[26] In *Regulatory Notice* 08–80, FINRA proposed to apply the prompt requirement in Supplementary Material .01 to customer market orders. The proposed rule change applies the prompt requirement in proposed Supplementary Material .01 to ''marketable customer orders'' to clarify that the requirement applies to both market orders and marketable limit orders.

[27] *See* Scottrade.

[28] For purposes of the provision, FINRA proposed to define a ''non-U.S. traded security'' as any non-exchange-listed security issued by a corporation or other entity incorporated or organized under the laws of any foreign country for which there is no quotation or indication of interest displayed in any inter-dealer quotation system generally available in the United States at the time the member receives the order.

[29] *See* First Allied, Scottrade, SIFMA.

[30] SIFMA.

[31] *See* Sidley.

[32] See Sidley, Pink OTC.

[33] *See* Cutter, First Allied, Liquidnet, NAIBD, SIFMA.

the commenter believed that the current Three Quote Rule promotes ''straightforward best execution compliance.'' [34] As FINRA has stressed in the past, the Three Quote Rule is a minimum standard that members are required to meet with respect to non-exchange-listed securities with one or no public quotation; compliance with the Three Quote Rule does not, in and of itself, mean that a member has met its best execution obligations.[35] Thus, contrary to the commenter's assertion that the Three Quote Rule established a straight-forward compliance standard, it sets forth only a non-exhaustive minimum standard.

As noted above, best execution requires the exercise of reasonable diligence. If a security has little or no price transparency, FINRA agrees that a member with an order for such a security should generally seek out other sources of pricing information or potential liquidity, which could include contacting other dealers. Consequently, the Supplementary Material specifically notes that members ''should generally seek out other sources of pricing information or potential liquidity, which may include obtaining quotations from other sources * * *.'' However, FINRA believes that there continue to be instances where contacting additional dealers may not be in the customer's best interest (and, indeed, may be detrimental to the customer).[36] Although the proposed Supplementary Material gives members the ability to determine when that is the case, members continue to have best execution obligations in handling the order.

The commenter also requested that FINRA ''state, whether in the text of the Rule or the Supplementary Material, that member firms must execute customer orders at an equal or better price as displayed in any Inter-Dealer Quotation System that permits quotation updates on a real-time basis.'' [37] FINRA does not believe it is necessary to specifically address this point with respect to the types of orders currently covered under the Three Quote Rule. As is already the case today, paragraph (a)(1) of the proposed rule requires that members use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that ''the resultant price to the customer is as favorable as possible under prevailing market conditions.'' That standard has always applied to orders covered by the Three Quote Rule (indeed, it applies to all customer orders) and will continue to apply under the proposed rule.

As noted above, as part of replacing the Three Quote Rule with Supplementary Material, FINRA has proposed replacing the specific recordkeeping requirements in NASD Rule 3110(b) with a more general recordkeeping requirement. One commenter requested additional guidance on the documentation requirement; [38] however, FINRA is unable to provide specific guidance to a recordkeeping requirement that will vary with the adaptive practices of firms in meeting the principle-based requirements of the rule. Each member must retain sufficient documentation to demonstrate that it has complied with the policies and procedures that it has in place. Because there will no longer be uniform treatment of these types of orders and different firms will have different procedures under the proposal, there can be no uniform recordkeeping requirement.

(4) Comments on Proposed Supplementary Material .09 (Regular and Rigorous Review of Execution Quality)

Five commenters addressed proposed Supplementary Material .09, which codifies the obligations of some firms to regularly and rigorously review execution quality.[39] One commenter questioned the rationale of codifying these obligations, which are already ''well understood'' by the industry and asserted that codification would take them away from being ''fluid and evolving'' standards and make them more rigid and difficult to change.[40] FINRA disagrees. As noted above, the proposed Supplementary Material does not alter existing obligations or standards, and the language of the proposed provision is sufficiently flexible to allow the obligations to evolve along with the markets. Although the commenter expressed concern about the ability to change or amend the provision once it is codified within a FINRA rule, the general obligations of regular and rigorous review have not changed substantially since FINRA issued *Notice to Members* 01–22 in 2001. Moreover, FINRA retains the ability to continue to publish interpretive guidance on the requirements or amend the requirements through rulemaking even if their general contours are codified.

Two commenters suggested that the requirement to periodically review the execution quality of orders not apply to introducing firms with respect to those orders placed through their clearing firm.[41] One commenter stated that, because of the lack of expertise among introducing firms, the requirement leads to a ''pro forma review process'' that does not meaningfully enhance investor protection.[42] These commenters seem to suggest that, because the clearing firm itself has a best execution obligation with respect to the order, the introducing firm should be relieved of its best execution obligation. FINRA does not find these comments persuasive and has consistently rejected this rationale. Every member has an obligation to ensure that each customer order it handles receives best execution, and regular and rigorous review is one method by which firms that route orders to other members (or execute orders internally) can meet their best execution obligations. That is, regular and rigorous reviews are one way for order entry firms and firms that internalize order flow to satisfy their best execution obligations in lieu of an order-by-order best execution analysis.

Three commenters requested that FINRA provide more specific guidance about the types of information introducing firms should review (and clearing firms should provide) and the frequency of the reviews so that introducing firms can ensure they meet their obligations if they choose to rely on their clearing firm.[43] One of these commenters asked FINRA to confirm whether a review of ''those reports prepared and disclosed by executing firms in meeting their obligations under order routing regulations will suffice for the purposes of this review.'' [44] FINRA has previously provided guidance on these questions, and the guidance will continue to be applicable. For example, in *Notice to Members* 01–22, FINRA stated:

> In cases where the introducing broker/dealer is relying on the review conducted by its clearing firm or other executing broker/dealer, the introducing firm must ensure that such analysis is thorough, considers the execution quality of a broad range of market centers, measures the execution quality provided by the clearing or executing firm for the introducing firm's own orders, and considers market centers to which the

[34] Pink OTC.

[35] *See, e.g.,* NASD *Notice to Members* 00–84 (December 2000).

[36] For example, one commenter asserted that contacting multiple dealers regarding an order in a fixed income security could have the effect of moving the market away from the customer in some circumstances. *See* SIFMA.

[37] Pink OTC.

[38] *See* SIFMA.

[39] Cutter, First Allied, NAIBD, Pink OTC, SIFMA.

[40] SIFMA.

[41] *See* Cutter, FSI.

[42] FSI.

[43] *See* FSI, NAIBD, SIFMA.

[44] NAIBD.

clearing or executing firm currently routes its order flow as well as market centers other than those to which the clearing or executing firm currently routes its order flow.

As is the case currently, an introducing firm must review information sufficient to conclude that its clearing firm is providing best execution and is conducting a thorough regular and rigorous review. While in some instances a review of required regulatory reports may suffice, in other instances such a review may not. For example, if a review of required regulatory order routing reports raised concerns or issues, then FINRA would expect the introducing firm to conduct a further inquiry and review. This is currently the case under existing FINRA rules and would remain the case under the proposed rule change. As FINRA stated in *Regulatory Notice* 08–80, in codifying regular and rigorous review standards, FINRA did not intend to alter existing requirements or obligations.

One commenter asked FINRA to state that regular and rigorous review is only required with respect to ''retail-sized, held orders in equity securities for which execution quality statistics are required to be published by market centers pursuant to Rule 605 of Regulation NMS.'' [45] The commenter further stated that regular and rigorous reviews are not appropriate for not held orders and that ''the assessment of execution quality for not held orders is effectively done on an individual, order-by-order basis, in real-time and/or on a post-trade basis.'' FINRA does not view regular and rigorous review as ever being ''required.'' Rather, regular and rigorous review permits order entry firms and firms that internalize order flow to meet their best execution obligations through the use of a periodic regular and rigorous review of execution quality; this review stands in the place of an order-by-order review. Therefore, conducting an order-by-order, individual review for not held orders would eliminate the need for a regular and rigorous review of those order types.

One commenter stated that ''efficiency of execution'' should be added as a factor for members to consider when conducting their regular and rigorous review.[46] FINRA views ''efficiency of execution,'' not as a separate factor, but rather as a term that would encompass several of the existing listed factors (*e.g.,* speed and size of execution). Moreover, the list in the Supplementary Material is intended to be illustrative, not exhaustive.

This commenter also suggests that the factors of speed, size, and transaction costs should be qualified by a materiality standard. These factors are already qualified by a materiality standard under proposed Supplementary Material .09(b), which requires that, ''[i]n conducting its regular and rigorous review, a member must determine whether any material differences in execution quality exist among the markets trading the security * * *.'' The Supplementary Material then goes on to identify a number of factors a member should consider when reviewing and comparing execution quality. However, as proposed in *Regulatory Notice* 08–80, the first two factors identified included an additional reference to ''materiality.'' To avoid confusion, FINRA has removed the additional reference to materiality in the first two factors to avoid the misimpression that the other factors do not have a materiality standard.

(5) Comments on Proposed Supplementary Material .08 (Customer Instructions Regarding Order Handling)

Proposed Supplementary Material .08 addresses a member's obligations when a customer directs, on an unsolicited basis, the member to execute the order in a specific market. Only one commenter opposed the proposed Supplementary Material, stating that ''it is the firm's responsibility to always make a best execution determination in all cases whether specifically instructed to route its order to a particular market or not.'' [47] FINRA agrees that members have best execution responsibilities with respect to each and every customer order the member accepts; however, when a customer directs a member to execute an order in a specific market, the construct of paragraph (a)(1) of the rule is no longer applicable. As noted above, paragraph (a)(1) of the rule requires a member to use reasonable diligence to ascertain the best market for the subject security. When a customer specifies the market, that is no longer a determination that the member can make. However, the Supplementary Material makes clear that members are still required to handle the order promptly and in accordance with its terms.

One commenter suggested that the ''unsolicited'' requirement not apply to orders involving foreign securities.[48] The commenter suggested that a customer should not be deprived of the firm's advice in this area. The rule was not intended to, and does not, deprive a customer of a firm's advice regarding routing decisions; rather, it simply recognizes that in those cases where a customer has made its own routing decision, the member cannot choose a different market for execution without violating the terms of the order. If a member, by contrast, undertakes to advise the customer on routing venues, it should be bound by general best execution obligations with respect to the execution of that order. In addition, however, the commenter stated that a firm and a customer ''may on the basis of long usage and course of dealing have concluded that the customer's orders for foreign securities are most effectively executed in the principal market for such securities in the issuer's home country.'' In the alternative, the commenter suggested that the exception could be available when a customer has instructed that an order for a foreign security be executed in the security's principal market. FINRA agrees with the commenter to the extent that a customer need not provide the direction on an order-by-order basis. Thus, for example, the rule would apply if a customer has made a more general instruction with respect to particular types of orders or securities.

One commenter, while supporting the proposal, suggested that it be broadened to include orders where the broker's judgment and discretion are considerably restricted because of other order terms and conditions.[49] FINRA does not agree that the exception should be so broadened. Paragraph (a)(1)(E) of the proposed rule already notes that one of the factors in any analysis of best execution is the terms and conditions of the order. FINRA believes that the exception should only apply in those circumstances where the ultimate decision that must be made with respect to the order (*i.e.,* execution venue) is specifically directed by the customer. All other terms and conditions are adequately addressed in the rule itself.

(6) Comments on Proposed FINRA Rule 6438

FINRA received several comments regarding the proposal to move the same quote requirements in NASD Rule 2320(f)(2) into a separate rule.[50] One commenter suggested that FINRA amend the provision to require ''similar,'' rather than the ''same,'' quotes and questioned the application of the provision if a member has multiple trading desks that quote the

[45] SIFMA.

[46] Scottrade.

[47] First Allied.

[48] *See* Sidley.

[49] *See* SIFMA.

[50] *See* Pink OTC, SIFMA.

same security.[51] Another commenter [52] suggested that FINRA not alter the definitions of the terms ''quotation medium'' and ''inter-dealer quotation system'' from the way these terms are laid out in Exchange Act Rule 15c2–11(e).[53] This commenter also suggested that the same quote requirements apply to inter-dealer quotation systems rather than quotation mediums. As noted above, at this time, FINRA is proposing to transfer the provisions into a separate rule without change; FINRA believes that the objectives behind adopting this requirement are still valid and is not proposing to amend this provision at this time. In addition, by relocating the provision into the FINRA Rule 6400 Series, the defined terms at issue are already defined in existing FINRA Rule 6420.

(7) Other Comments

Some commenters provided comments on portions of the rule that FINRA has not proposed to change. For example, one commenter requested that the language in proposed Rule 5310(d) be updated to refer to defined industry terms (*e.g.,* ''clearing firm'') rather than descriptions (*e.g.,* ''third party pursuant to established correspondent relationships under which executions are confirmed directly to the member acting as agent for the customer'').[54] Although the term ''clearing firm'' is generally understood, it is not defined in any FINRA rule; consequently, FINRA determined to retain the existing descriptions to avoid any unintended changes in the scope of the rule or any misunderstandings regarding the use of the term. In light of this comment, however, FINRA has replaced the references to ''introducing firms'' and ''clearing firms'' in Supplementary Material .09(c) in addition to clarifying the scope of that provision as proposed in *Regulatory Notice* 08–80.[55]

Finally, one commenter asked FINRA to clarify the meaning of proposed FINRA Rule 5310(c) (current NASD Rule 2320(c)) regarding costs borne by a customer.[56] That provision states that ''the channeling of customers' orders through a broker's broker or third party pursuant to established correspondent relationships under which executions are confirmed directly to the member acting as agent for the customer * * * are not prohibited if the cost of such service is not borne by the customer.'' The commenter asked whether the provision applied to all costs or, rather, to additional or undue costs. In light of this comment, and the fact that the SEC has approved revisions to the interpositioning provisions in the Best Execution Rule that address sending orders through third parties,[57] FINRA is proposing to delete the sentence from the Best Execution Rule. FINRA believes that the issues the provision covers are adequately addressed in the revised interpositioning provision.

[51] SIFMA.

[52] Pink OTC.

[53] 17 CFR 240.15c2–11(e).

[54] FSI.

[55] *See* SIFMA.

[56] NAIBD.

[57] *See* Securities Exchange Act Release No. 60635 (September 8, 2009), 74 FR 47302 (September 15, 2009).

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 FINRA consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–052 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–FINRA–2011–052. This file number should be included on the subject line if e-mail 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2011–052 and should be submitted on or before November 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27277 Filed 10–20–11; 8:45 am]

BILLING CODE 8011–01–P

[58] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65583; File No. SR–ISE–2011–68]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Volume Threshold for Tier-Based Rebates for Qualified Contingent Cross Orders and Solicitation Orders Executed on the Exchange

October 18, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on October 3, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 ISE is proposing to lower the threshold levels for tier-based rebates for Qualified Contingent Cross (''QCC'') orders and Solicitation orders. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to lower the threshold contract levels for tier-based rebates to encourage members to submit greater numbers of QCC orders and Solicitation orders to the Exchange. The Exchange currently provides a rebate to Members who reach a certain volume threshold in QCC orders and/or Solicitation orders during a month.[3] Once a Member reaches the volume threshold, the Exchange provides a rebate to that Member for all of its QCC and Solicitation traded contracts for that month. The rebate is paid to the Member entering a qualifying order, *i.e.,* a QCC order and/or a Solicitation order. The rebate applies to QCC orders and Solicitation orders in all symbols traded on the Exchange. Additionally, the threshold levels are based on the originating side so if, for example, a Member submits a Solicitation order for 1,000 contracts, all 1,000 contracts are counted to reach the established threshold even if the order is broken up and executed with multiple counter parties.

The current volume threshold and corresponding rebate per contract is:

Originating Contract Sides	Rebate per Contract
0–1,999,999	$0.00
2,000,000–3,499,999	0.03
3,500,000–3,999,999	0.05
4,000,000+	0.07

The Exchange now proposes to lower the volume threshold levels to attract additional order flow in QCC and Solicitation orders and make it easier for more firms to reach the levels and receive the corresponding rebate. The Exchange proposes to only lower the number of contracts that Members need to reach in order to receive the rebate; no change is proposed to the amount of rebate per contract. The proposed lower volume threshold is:

Originating Contract Sides	Rebate per Contract
0–1,699,999	$0.00
1,700,000–2,499,999	0.03
2,500,000–3,499,999	0.05
3,500,000+	0.07

Further, the Exchange currently assesses per contract transaction charges and credits to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in a select number of options classes (the ''Select Symbols'').[4] For Solicitation orders in the Select Symbols, the Exchange currently provides a rebate of $0.15 to contracts that do not trade with the contra order in the Solicited Order Mechanism. The Exchange does not propose any change to that rebate and that rebate will continue to apply.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act[6] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange Members. The Exchange believes that the proposed fee change will generally allow the Exchange and its Members to better compete for order flow and thus enhance competition. Specifically, the Exchange believes that its proposal to lower the volume threshold is reasonable as it will encourage Members to direct their QCC and Solicitation orders to the Exchange instead of sending this order flow to a competing exchange. The Exchange notes that it currently has other incentive programs to promote and encourage growth in specific business areas. For example, the Exchange has lower fees (or no fees) for customer orders;[7] and tiered pricing that reduces rates for market makers based on the level of business they bring to the Exchange.[8] This proposed rule change targets a particular segment in which the Exchange seeks to garnish greater order flow. The Exchange further believes that the rebate currently in place for QCC and Solicitation orders is reasonable because it is designed to give Members who trade significant volume on the Exchange a benefit by way of a lower transaction fee. As noted above, once a Member reaches the proposed new threshold, all of the trading activity in the specified order type by that Member will be subject to the corresponding rebate.

The Exchange also believes that its rebate program for QCC and Solicitation orders is equitable because it would uniformly apply to all Members engaged in QCC and Solicitation trading in all option classes traded on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[3] *See* Exchange Act Release No. 65087 (August 10, 2011), 76 FR 50783 (August 16, 2011) (SR–ISE–2011–47).

[4] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] For example, the customer fee is $0.00 per contract for products other than Singly Listed Indexes, Singly Listed ETFs and FX Options. For Singly Listed Options, Singly Listed ETFs and FX Options, the customer fee is $0.18 per contract. The Exchange also currently has an incentive plan in place for certain specific FX Options which has its own pricing. *See* ISE Schedule of Fees.

[8] The Exchange currently has a sliding scale fee structure that ranges from $0.01 per contract to $0.18 per contract depending on the level of volume a Member trades on the Exchange in a month.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[9] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange 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 Exchange 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2011–68 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–ISE–2011–68. This file number should be included on the subject line if e-mail 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 a.m. and 3 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–ISE–2011–68 and should be submitted on or before November 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27305 Filed 10–20–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before December 20, 2011.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Julia Kurnik, Director of Research and Policy, National Women's Business Council, Small Business Administration, 409 3rd Street, Suite 210, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Julia Kurnik, *mail to:* Director of Research and Policy, National Women's Business Council 202–205–6826, *julia.kurnik@nwbc.gov*, Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: The National Women's Business Council (NWBC) is a bi-partisan federal advisory council created to serve as an independent source of advice and counsel to the President, Congress and the U.S. Small Business Administration on economic issues of importance to women business owners. The NWBC proposes to conduct a focus group study to probe in-depth issues relating to the gender gap in the grant of U.S. Patents, Trademarks and Copyrights for the time period 1976–2010. One of NWBC's current priorities is to examine in-depth the relationship between intellectual property and women-owned businesses. Very little has been studied in this area, so the NWBC has crafted a study that is both quantitative and qualitative. The quantitative study will use USPTO data on patents and trademarks to determine the number of women entrepreneurs applying for and receiving patents, trademarks and copyrights. The quantitative study will also analyze the differences in the number of women applying for and receiving patents, trademarks and copyrights as compared to men, and will analyze sub-groups of women as well. The qualitative study will probe in-depth the questions raised by the quantitative study as well as those raised by NWBC. Six focus groups will be conducted, two with women participants who have received U.S. patents, trademarks or copyrights, two with women participants who applied for U.S. patents, trademarks or copyrights but did not receive a grant, and two with women participants who have not applied for IP protection.

Title: Focus Groups: Intellectual Property and Women Entrepreneurs.

Description of Respondents: Women who have received U.S. patents, trademarks or copyrights; women who applied for U.S. patents, trademarks or copyrights but did not receive a grant; and women who have not applied for IP protection.

Form Number: N/A.

Annual Responses: 72.

Annual Burden: 144.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2011–27239 Filed 10–20–11; 8:45 am]

BILLING CODE; P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12884 and #12885]

Massachusetts Disaster #MA–00043

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Massachusetts dated 10/13/2011.

Incident: Severe Storms and Flooding.
Incident Period: 10/04/2011.
Effective Date: 10/13/2011.
Physical Loan Application Deadline Date: 12/12/2011.
Economic Injury (EIDL) Loan Application Deadline Date: 07/13/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Essex.
Contiguous Counties:
Massachusetts Middlesex, Suffolk.
New Hampshire: Hillsborough, Rockingham.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-profit Organizations with Credit Available Elsewhere	3.250
Non-profit organizations without credit available elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128846 and for economic injury is 128850.

The States which received an EIDL Declaration # are Massachusetts, New Hampshire.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 13, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–27242 Filed 10–20–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2007–0092]

Rescission of Social Security Ruling 97–2p

AGENCY: Social Security Administration.

ACTION: Notice of rescission of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of the rescission of Social Security Ruling (SSR) 97–2p.

DATES: *Effective Date:* This rescission will be effective November 21, 2011.

FOR FURTHER INFORMATION CONTACT: Joshua Silverman, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 594–2128. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: SSRs make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. SSRs may be based on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

In SSR 97–2p, we informed the public that we would use our existing regulatory authority to conduct prehearing case reviews in a wider range of circumstances than we had done previously. Specifically, we explained the situations in which an administrative law judge might return a claim to the disability determination services for a prehearing case review that could result in a fully or partially favorable revised determination for a claimant.

SSR 97–2p also explained the procedures a claimant must follow if he or she wished either to continue to the ALJ hearing after receiving a fully favorable revised prehearing determination or to dismiss the request for a hearing after receiving a revised prehearing determination that was partially favorable.

We are publishing regulatory changes in today's **Federal Register** that make some of the information in SSR 97–2p no longer accurate. The final rules, *Amendments to Procedures for Certain Determinations and Decisions,* revise the procedures a claimant must follow if he or she wants to have a hearing after receiving a fully favorable revised prehearing determination or does not want to have a hearing after receiving a partially favorable revised prehearing determination.

We considered whether we should revise SSR 97–2p to reflect these changes. However, much of the information in SSR 97–2p is already contained in our regulations or in other SSRs, and we believe that we no longer need the limited additional information in SSR 97–2p. Accordingly, we are rescinding SSR 97–2p as obsolete.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

Dated: October 12, 2011.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2011–27234 Filed 10–20–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7663]

Culturally Significant Objects Imported for Exhibition Determinations: ''Masterpieces of Landscape Painting From the Forbidden City''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Masterpieces of Landscape Painting from the Forbidden City'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Honolulu Academy of Arts, Honolulu, Hawaii, from on or about November 3, 2011, until on or about January 8, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that

Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 17, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–27288 Filed 10–20–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[PUBLIC NOTICE: 7664]

Culturally Significant Objects Imported for Exhibition Determinations: ''Mummy: Secrets of the Tomb''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Mummy: Secrets of the Tomb'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Virginia Museum of Fine Arts, Richmond, VA, from on or about November 19, 2011, until on or about March 11, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 17, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–27289 Filed 10–20–11; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

North American Free Trade Agreement; Invitation for Applications for Inclusion on the Chapter 19 Roster

AGENCY: Office of the United States Trade Representative.

ACTION: Invitation for applications.

SUMMARY: Chapter 19 of the North American Free Trade Agreement (''NAFTA'') provides for the establishment of a roster of individuals to serve on binational panels convened to review final determinations in antidumping or countervailing duty (''AD/CVD'') proceedings and amendments to AD/CVD statutes of a NAFTA Party. The United States annually renews its selections for the Chapter 19 roster. Applications are invited from eligible individuals wishing to be included on the roster for the period April 1, 2012, through March 31, 2013.

DATES: Applications should be received no later than November 30, 2011.

ADDRESSES: Applications should be submitted (i) electronically to *http://www.regulations.gov,* docket number USTR–2011–0017, or (ii) by fax, to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Suzanne Garner, Assistant General Counsel, Office of the United States Trade Representative, (202) 395–9663.

SUPPLEMENTARY INFORMATION:

Binational Panel Reviews Under NAFTA Chapter 19

Article 1904 of the NAFTA provides that a party involved in an AD/CVD proceeding may obtain review by a binational panel of a final AD/CVD determination of one NAFTA Party with respect to the products of another NAFTA Party. Binational panels decide whether such AD/CVD determinations are in accordance with the domestic laws of the importing NAFTA Party, and must use the standard of review that would have been applied by a domestic court of the importing NAFTA Party. A panel may uphold the AD/CVD determination, or may remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a three-member extraordinary challenge committee, selected from a separate roster composed of fifteen current or former judges.

Article 1903 of the NAFTA provides that a NAFTA Party may refer an amendment to the AD/CVD statutes of another NAFTA Party to a binational panel for a declaratory opinion as to whether the amendment is inconsistent with the General Agreement on Tariffs and Trade (''GATT''), the GATT Antidumping or Subsidies Codes, successor agreements, or the object and purpose of the NAFTA with regard to the establishment of fair and predictable conditions for the liberalization of trade. If the panel finds that the amendment is inconsistent, the two NAFTA Parties shall consult and seek to achieve a mutually satisfactory solution.

Chapter 19 Roster and Composition of Binational Panels

Annex 1901.2 of the NAFTA provides for the maintenance of a roster of at least 75 individuals for service on Chapter 19 binational panels, with each NAFTA Party selecting at least 25 individuals. A separate five-person panel is formed for each review of a final AD/CVD determination or statutory amendment. To form a panel, the two NAFTA Parties involved each appoint two panelists, normally by drawing upon individuals from the roster. If the Parties cannot agree upon the fifth panelist, one of the Parties, decided by lot, selects the fifth panelist from the roster. The majority of individuals on each panel must consist of lawyers in good standing, and the chair of the panel must be a lawyer.

Upon each request for establishment of a panel, roster members from the two involved NAFTA Parties will be requested to complete a disclosure form, which will be used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the roster member and, if applicable, clients of the roster member's firm.

Criteria for Eligibility for Inclusion on Chapter 19 Roster

Section 402 of the NAFTA Implementation Act (Pub. L. 103–182, as amended (19 U.S.C. 3432)) (''Section 402'') provides that selections by the United States of individuals for inclusion on the Chapter 19 roster are to be based on the eligibility criteria set out in Annex 1901.2 of the NAFTA, and without regard to political affiliation. Annex 1901.2 provides that Chapter 19

roster members must be citizens of a NAFTA Party, must be of good character and of high standing and repute, and are to be chosen strictly on the basis of their objectivity, reliability, sound judgment, and general familiarity with international trade law. Aside from judges, roster members may not be affiliated with any of the three NAFTA Parties. Section 402 also provides that, to the fullest extent practicable, judges and former judges who meet the eligibility requirements should be selected.

Adherence to the NAFTA Code of Conduct for Binational Panelists

The ''Code of Conduct for Dispute Settlement Procedures Under Chapters 19 and 20'' (*see http://www.nafta-sec-alena.org/en/view.aspx?x=345&mtpiID=ALL*), which was established pursuant to Article 1909 of the NAFTA, provides that current and former Chapter 19 roster members ''shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.'' The Code also provides that candidates to serve on chapter 19 panels, as well as those who are ultimately selected to serve as panelists, have an obligation to ''disclose any interest, relationship or matter that is likely to affect [their] impartiality or independence, or that might reasonably create an appearance of impropriety or an apprehension of bias.'' Annex 1901.2 of the NAFTA provides that roster members may engage in other business while serving as panelists, subject to the Code of Conduct and provided that such business does not interfere with the performance of the panelist's duties. In particular, Annex 1901.2 states that ''[w]hile acting as a panelist, a panelist may not appear as counsel before another panel.''

Procedures for Selection of Chapter 19 Roster Members

Section 402 establishes procedures for the selection by the Office of the United States Trade Representative (''USTR'') of the individuals chosen by the United States for inclusion on the Chapter 19 roster. The roster is renewed annually, and applies during the one-year period beginning April 1 of each calendar year.

Under Section 402, an interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the Chapter 19 Roster. After consultation with the Senate Committee on Finance and the House Committee on Ways and Means, USTR selects the final list of individuals chosen by the United States for inclusion on the Chapter 19 roster.

Remuneration

Roster members selected for service on a Chapter 19 binational panel will be remunerated at the rate of 800 Canadian dollars per day.

Applications

Eligible individuals who wish to be included on the Chapter 19 roster for the period April 1, 2012, through March 31, 2013, are invited to submit applications. Applications may be submitted either by fax to Sandy McKinzy at 202–395–3640 or electronically to *http://www.regulations.gov,* docket number USTR–2011–0017.

To submit an application via *http://www.regulations.gov,* enter docket number USTR–2011–0017 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Submit a Comment.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the ''How to Use This Site'' on the left side of the home page.)

The *http://www.regulations.gov* site provides the option of providing comments by filling in a ''Type Comment'' field, or by attaching a document. USTR prefers applications will be provided in an attached document. If a document is attached, please type ''Application for Inclusion on NAFTA Chapter 19 Roster'' in the ''Upload File'' field.

Applications must be typewritten, and should be headed ''Application for Inclusion on NAFTA Chapter 19 Roster.'' Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and e-mail address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Spanish language fluency, written and spoken.
7. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, concerning AD/CVD law. Judges or former judges should list relevant judicial decisions. Only one copy of publications, testimony, speeches, and decisions need be submitted.
10. Summary of any current and past employment by, or consulting or other work for, the Governments of the United States, Canada, or Mexico.
11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.,* and the dates of all registration periods.
12. List of proceedings brought under U.S., Canadian, or Mexican AD/CVD law regarding imports of U.S., Canadian, or Mexican products in which the applicant advised or represented (for example, as consultant or attorney) any U.S., Canadian, or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.
13. A short statement of qualifications and availability for service on Chapter 19 panels, including information relevant to the applicant's familiarity with international trade law and willingness and ability to make time commitments necessary for service on panels.
14. On a separate page, the names, addresses, telephone and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and familiarity with international trade law.

Current Roster Members and Prior Applicants

Current members of the Chapter 19 roster who remain interested in inclusion on the Chapter 19 roster must submit updated applications. Individuals who have previously applied but have not been selected may reapply. If an applicant, including a current or former roster member, has previously submitted materials referred to in item 9, such materials need not be resubmitted.

Public Disclosure

Applications normally will not be subject to public disclosure and will not

be posted publicly on *http://www.regulations.gov.* They may be referred to other federal agencies in the course of determining eligibility for the roster, and shared with foreign governments and the NAFTA Secretariat in the course of panel selection.

False Statements

Pursuant to section 402(c)(5) of the NAFTA Implementation Act, false statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants' suitability for placement on the Chapter 19 roster or for appointment to binational panels, are subject to criminal sanctions under 18 U.S.C. 1001.

Paperwork Reduction Act

This notice contains a collection of information provision subject to the Paperwork Reduction Act (''PRA'') that has been approved by the Office of Management and Budget (''OMB''). 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 number. This notice's collection of information burden is only for those persons who wish voluntarily to apply for nomination to the NAFTA Chapter 19 roster. It is expected that the collection of information burden will be under 3 hours. This collection of information contains no annual reporting or record keeping burden. This collection of information was approved by OMB under OMB Control Number 0350–0014. Please send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the above e-mail address or fax number.

Privacy Act

The following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). The authority for requesting information to be furnished is section 402 of the NAFTA Implementation Act. Provision of the information requested above is voluntary; however, failure to provide the information will preclude your consideration as a candidate for the NAFTA Chapter 19 roster. This information is maintained in a system of records entitled ''Dispute Settlement Panelists Roster.'' Notice regarding this system of records was published in the **Federal Register** on November 30, 2001. The information provided is needed, and will be used by USTR, other federal government trade policy officials concerned with NAFTA dispute settlement, and officials of the other NAFTA Parties to select well-qualified individuals for inclusion on the chapter 19 roster and for service on chapter 19 binational panels.

Bradford Ward,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2011–27257 Filed 10–20–11; 8:45 am]

BILLING CODE 3190–W2–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Multistate Corridor Operations and Management Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; Request for applications.

SUMMARY: This notice invites existing and potential multistate organizations, coalitions, or other arrangements or entities engaged in corridor transportation activities and research to apply for participation in the Multistate Corridor Operations and Management (MCOM) Program authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) Intelligent Transportation Systems (ITS) Research program. The purpose of the MCOM program is to promote regional cooperation, planning, and shared project implementation for research programs and projects to improve multimodal transportation system management and operations. This notice seeks applications for available fiscal year (FY) 2011 funding ($7 million), which will be provided to cover a maximum of 80 percent of proposed program/project costs. Multiple awards are possible, but not guaranteed.

DATES: Formal applications must be submitted no later than December 20, 2011 to be assured consideration. Applications should be submitted through *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: For questions about the program discussed herein, contact Mr. Robert Arnold, Director, FHWA Office of Transportation Management, (202) 366–1285, or via e-mail at *Robert.Arnold@dot.gov,* or Ms. Kate Hartman, Program Manager, RITA Truck and Program Assessment, (202) 366–2742, or via e-mail at *Kate.Hartman@dot.gov.* For legal questions, please contact Mr. Adam Sleeter, Attorney Advisor, FHWA Office of the Chief Counsel, (202) 366–8839, or via e-mail at *Adam.Sleeter@dot.gov.* Business hours for the FHWA are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Background

Section 5211 of SAFETEA–LU (Pub. L. 109–59; 119 Stat. 1144) created Section 511 of title 23, United States Code (23 U.S.C. 511) that authorizes the Secretary of Transportation to encourage MCOM programs and projects. The purpose of investments in MCOM research programs and projects is to promote regional cooperation, planning, and shared project implementation for programs and projects to improve multimodal transportation system management and operations.

Since the MCOM program is funded by the DOT Intelligent Transportation Systems (ITS) Research program (Title V, Subtitle C of SAFETEA–LU), eligible activities include research, operational testing, evaluation, technology transfer, and limited pre-deployment support for innovative strategies and technologies intended to improve corridor safety and operational performance, enhance economic competitiveness, improve sustainability by reducing energy use and harmful greenhouse gas emissions, and enhance livability. Examples of the types of multimodal activities that could be supported through the MCOM program include improvements in corridor planning and analysis, performance monitoring and management, low emission zones, eco-lanes for alternative fuel vehicles, efficient and safe movement of freight, data sharing, traveler information, response to major traffic incidents/adverse weather/emergencies, and electronic fee and fare payments. The Department is also particularly interested in programs and projects that support, extend, or complement ongoing ITS program initiatives. More information about the ITS program is available at *http://www.its.dot.gov.*

How To Apply

Formal proposals should include the following:

1. Description of the corridor—geography, States involved,

metropolitan areas encompassed, and other relevant information which the proposer deems important.

2. Transportation assets—describe the transportation assets, modes, and facilities within the corridor that the proposal will impact, including major highways (including truck routes), dedicated truck roadways, international border crossings (if applicable), rail lines, transit facilities, freight intermodal/transfer facilities, freight and passenger maritime facilities, waterways, airports, and existing ITS infrastructure.

3. Performance issues facing the corridor—types of transportation challenges facing the efficient and effective operation and management of transportation facilities and services in the corridor.

4. Membership of the existing or proposed organization, coalition, or other entity—current or proposed list of States and metropolitan areas to be involved including specific organizations such as transportation agencies, State safety enforcement agencies, metropolitan planning organizations, toll authorities, transit operators, port authorities, waterway and port operators, etc., and existing or proposed charter, governance, and/or procedural documentation. Proposers do not necessarily have to be an existing organization or coalition but should show evidence that a cooperative agreement, memorandum of understanding, or other organizational mechanism can be executed in a reasonable timeframe after selection.

5. Vision, goals, and objectives of the applicant for the corridor—The vision of the organization and goals, objectives, and research activities to be pursued in addressing the identified issues and challenges facing the corridor.

6. Support for ITS program initiatives—ability to support or leverage ongoing DOT ITS initiatives. The DOT ITS initiatives are described on-line at *http://www.its.dot.gov.*

7. Funding request and breakdown—A complete list of activities to be funded by the request, including organizations and key staff involved, estimated costs, an identification of all funding sources that will supplement the requested funds and will be necessary to fully fund the request, and a timeline for completion of the activities to be supported. The maximum amount of funding requested from the MCOM program should not exceed $7 million nor should it exceed 80 percent of the total cost of the activities proposed to be funded by the MCOM program.

8. Party or parties to the contract—A description of the entity that will be entering into the agreement or contract with FHWA, and a description of how that entity will process or manage the program funds.

9. Proposals should not exceed 25 pages in length. Additional information supporting the application, such as maps, technical information, and letters of endorsement may be submitted as addenda to the application and will not count against the application page limit.

To ensure that all proposals receive fair and equal consideration for the limited available funds, the Department requires formal grant applications to be submitted to *http://www.grants.gov* by close of business December 20, 2011.

Evaluation Criteria

All proposals will be evaluated based on:

1. Overall effectiveness—how well the vision of the organization and the activities proposed address the transportation issues and challenges in the corridor, provide a multistate perspective, and align with DOT Goals.

2. Multimodal focus—inclusion of various transportation modes in providing solutions to the corridor's performance issues.

3. Transferability—applicability of proposed research, practices, procedures, and use of technology to other transportation corridors.

4. Cost effectiveness—benefits to be derived from activities proposed relative to estimated project costs; and ability and commitment to evaluate the effectiveness of activities proposed.

5. Organizational structure and commitments—depth, clarity, and potential effectiveness of the organization's structure; evidence of commitments by key partners to participate.

6. Support for ITS program initiatives—ability to support or leverage ongoing DOT ITS initiatives.

7. Funding leverage—beyond the required matching funds, the commitment and/or ability to use other funding sources to meet the challenges of the corridor.

8. Past Performance Related to ITS deployment—relevant examples of how the States potentially involved have deployed, operated, and maintained ITS solutions that continue to provide safety, efficiency, mobility, and other benefits to corridor stakeholders and the general public.

Post-Submission Process

Applicants may be contacted for additional information or clarification. The application should include a primary point of contact and provide complete contact information for this individual.

The Department may pursue partial funding of applications.

If selected for funding, a formal agreement will be prepared between the Department and the membership of the multistate organization. The agreement will include a refined and more detailed scope of work.

Issued on: October 12, 2011.

Victor M. Mendez,

Administrator.

[FR Doc. 2011–27249 Filed 10–20–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of One Specially Designated National or Blocked Person Pursuant to Executive Order 13315, as Amended

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of an entity whose property and interests in property have been unblocked pursuant to Executive Order 13315 of August 28, 2003, ''Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions,'' as amended by Executive Order 13350 of July 30, 2004.

DATES: The removal of this entity from the SDN List is effective as of October 13, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLENTARY IMFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On August 28, 2003, the President issued Executive Order 13315 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50

U.S.C. 1701 *et seq.*, the National Emergencies Act, 50 U.S.C. 1601 *et seq.*, section 5 of the United Nations Participation Act, as amended, 22 U.S.C. 287c, section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution 1483 of May 22, 2003. In the Order, the President expanded the scope of the national emergency declared in Executive Order 13303 of May 22, 2003, to address the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative, and economic institutions in Iraq. The Order blocks the property and interests in property of, *inter alia*, persons listed on the Annex to the Order.

On July 30, 2004, the President issued Executive Order 13350, which, *inter alia*, replaced the Annex to Executive Order 13315 with a new Annex that included the names of individuals and entities, including individuals and entities that had previously been designated under Executive Order 12722 and related authorities.

The Department of the Treasury's Office of Foreign Assets Control has determined that the individual identified below, whose property and interests in property were blocked pursuant to Executive Order 13315, as amended, should be removed from the SDN List.

The following designation is removed from the SDN List:

DOMINION INTERNATIONAL, United Kingdom [IRAQ2]

The removal of this Company's name from the SDN List is effective as of October 13, 2011. All property and interests in property of the company that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: October 13, 2011.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2011–27248 Filed 10–20–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for 2011 American Eagle Silver Proof and Uncirculated Coins

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing the re-pricing of the 2011 American Eagle Silver Proof and Uncirculated Coins. The price of the 2011 American Eagle Silver Proof Coins will be lowered from $68.45 to $58.95, and the price of the 2011 American Eagle Silver Uncirculated Coins will be lowered from $60.45 to $50.95.

FOR FURTHER INFORMATION CONTACT: B. B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street, NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: October 13, 2011.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2011–27250 Filed 10–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for America the Beautiful Five Ounce Silver Uncirculated Coins™

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing the re-pricing of the America the Beautiful Five Ounce Silver Uncirculated Coins. The price of the America the Beautiful Five Ounce Silver Uncirculated Coins will be lowered from $279.95 to $229.95.

FOR FURTHER INFORMATION CONTACT: B. B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street, NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: October 13, 2011.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2011–27252 Filed 10–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Genomic Medicine Program Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Genomic Medicine Program Advisory Committee will meet on November 2, 2011, at the Hamilton Crowne Plaza, 14th and K Streets, NW., Washington, DC. The meeting will convene at 8 a.m. and adjourn at 4 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on using genetic information to optimize medical care of Veterans and to enhance development of tests and treatments for diseases particularly relevant to Veterans.

The Committee will receive program updates and will continue to provide insight into optimal ways for VA to incorporate genomic information into its health care program while applying appropriate ethical oversight and protecting the privacy of Veterans. The meeting focus will be on current and upcoming biological informatics technologies and platforms, and their implications for genomic data and health care. The Committee will continue discussions on the potential impact of whole genome data on clinical decisionmaking. The Committee will also receive an update on the status of the ongoing Million Veteran Program. In the afternoon, the Committee will receive public comments limited to 5 minutes each. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record. Members may also submit written statements for the Committee's review to Dr. Sumitra Muralidhar, Designated Federal Official, Department of Veterans Affairs (10P9B), 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *Sumitra.muralidhar@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Dr. Sumitra Muralidhar at (202) 443–5679.

Dated: October 18, 2011.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2011–27291 Filed 10–20–11; 8:45 am]

BILLING CODE P



FEDERAL REGISTER

Vol. 76 Friday,
No. 204 October 21, 2011

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 922

Expansion of Fagatele Bay National Marine Sanctuary, Regulatory Changes, and Sanctuary Name Change; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 100908440–1615–01]

RIN 0648–BA24

Expansion of Fagatele Bay National Marine Sanctuary, Regulatory Changes, and Sanctuary Name Change

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing to add five additional discrete geographical areas to the sanctuary and change the name of the Fagatele Bay National Marine Sanctuary (FBNMS or sanctuary) to the American Samoa National Marine Sanctuary. NOAA also proposes to amend existing sanctuary regulations and apply these regulations to activities in the sanctuary.

DATES: Comments must be received by January 6, 2012. Dates for public hearings are:

(1) November 17, 4:30 p.m.—AS Community College Lecture Hall.

(2) November 18, 9 a.m.—Auasi Village, High Chief Fonoti's Guest Fale.

(3) November 21, 9 a.m.—Fitiuta Village, Ta'u island, Mayor's Meeting Fale.

(4) November 21, 2 p.m.—Ofu island, Mayor's Guest Fale.

ADDRESSES: You may submit comments, identified by NOAA–NOS–2011–0243, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at: *http://www.regulations.gov.*
- *Mail:* Gene Brighouse, Superintendent, Fagatele Bay National Marine Sanctuary, P.O. Box 4318, Pago Pago, American Samoa 96799.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* 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.

NOAA will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. Copies of the draft environmental impact statement and proposed rule can be downloaded or viewed on the Internet at *http://www.regulations.gov* or at *http://fagatelebay.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Gene Brighouse, Superintendent, Fagatele Bay National Marine Sanctuary, at (684) 633–5155 ext 264.

SUPPLEMENTARY INFORMATION:

I. Background

A. Fagatele Bay National Marine Sanctuary

The sanctuary was designated in 1986 in response to a proposal from the American Samoa Government to the (then) National Marine Sanctuary Program. The existing Fagatele Bay National Marine Sanctuary protects 163 acres (0.25 square miles) of bay area off the southwest coast of Tutuila Island, American Samoa. It nestles in an eroded volcanic crater. Fagatele Bay provides a home to a wide variety of animals and plants that thrive in the protected waters of the bay. The sanctuary contains many of the species native to this part of the Indo-Pacific biogeographic region. Turtles, whales, sharks and the giant clam all find refuge in this protected area. For more information on the sanctuary, visit: *http://www.fagatelebay.noaa.gov.*

B. Purpose and Need for Additional Areas and Regulatory Changes

The National Marine Sanctuaries Act (NMSA) requires NOAA to periodically review and evaluate the progress in implementing the management plan and goals for each national marine sanctuary. NOAA must revise management plans and regulations as necessary to fulfill the purposes and policies of the NMSA (16 U.S.C. 1434(e)) to ensure that national marine sanctuaries continue to best conserve, protect, and enhance their nationally significant living and cultural resources. NOAA puts special emphasis on the effectiveness of site-specific techniques and strategies. The FBNMS management plan was published in 1986 and has not been updated since. On a global scale, the past 25 years have been a period of tremendous advancement in marine discovery and exploration, marine conservation science, and ecosystem-based management. New tools and techniques allow for improved management and conservation, which are needed to slow the long-term decline of coral reefs throughout the world. Recent archipelago-wide marine research efforts have led to comprehensive integrated ecosystem assessments of American Samoa's coral reefs. These studies have provided information on the relative biological value of different reefs across the territory, a critical step in determining where to focus marine resource protection efforts.

The environment within American Samoa has also changed over the past 25 years. The sudden growth of the commercial longline fishery in 2001; mass coral bleaching events in 1994, 2002, and 2003; and nonpoint source pollution from land-use practices are recent management concerns that may affect the health and resilience of American Samoa's marine ecosystems. The U.S. Coral Reef Task Force has established the conservation objective to protect ''a minimum of 20% of each coral reef and associated habitat type'' as no-take areas. The American Samoa Governor, like his predecessor in 2000, has committed to reaching this goal in American Samoa by setting aside 20% of the coral reef habitat within the territory for long-term protection.

Finally, Presidential Proclamation 8337 issued by President George W. Bush in 2009 states that, ''[t]he Secretary of Commerce shall initiate the process to add the marine areas of the [Rose Atoll Marine National] monument to the Fagatele Bay National Marine Sanctuary in accordance with the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*).''

C. Background

NOAA conducted a public scoping period in February and March of 2009 (74 FR 5641) to identify issues and gauge interest within American Samoa for possible sanctuary expansion and designation of additional sanctuary units. Scoping revealed wide support for the protection of additional areas throughout the archipelago, as well as some opposition to additional sites. Specific comments received during this process are included in the draft environmental impact statement and yielded a list of four sites for consideration. Three additional sites were included for consideration based on a specific request of the Jennings family (Swains Island), input from the Secretary of Samoan Affairs (Ta'u Island), and Presidential Proclamation 8337 (Rose Atoll, also called Muliāva in Samoan). Two additional sites were included for consideration based on preliminary biogeographic information analyzed by sanctuary staff (Larsen Bay and Aunu'u).

After a list of nine potential sites was developed, the Sanctuary Advisory Council (SAC) established a Site Selection Working Group consisting of members of the SAC and of the public, assisted by sanctuary staff. The Working Group utilized criteria set forth in the NMSA to evaluate the ecological, cultural, and economic value of the areas proposed. Based on this evaluation the areas were ranked in order. These locations were then further analyzed by NOAA through a Biogeographic Assessment of the Samoan Archipelago. Since the two Ta'u sites under consideration were so close geographically, they were combined into one proposed site, as recommended by the Governor. The sites at Nu'uli Pala, Leone, and Outer Banks were considered but eliminated for various reasons described in the DEIS.

During public scoping, some expressed concern over the expansion of FBNMS into a network of sites across the territory. The primary concerns reflected in the public comments were: (1) The Territory already has a process for establishing marine protected areas (MPAs); and (2) a Federal presence would not allow for community-driven marine resource management. As a result of these concerns and NOAA's intention to respect the Samoan culture, NOAA chose each of the proposed units carefully taking into consideration the wishes of the communities as well as the criteria from the NMSA for designating a new national marine sanctuary and the results of a Biogeographic Assessment of the American Samoa Archipelago. After determining which units would be considered for inclusion, NOAA held multiple meetings with each of the communities associated with the units to foster consensus and collaboration with regard to how the unit would be managed. The development of location-specific regulations occurred through a collaborative process during community meetings between NOAA and village representatives. Issues addressed during the meetings included potential gear restrictions, fishing restrictions, and co-management of the sanctuary unit.

The proposed action presented in this document is the direct result of the SAC's recommendations that were provided to the FBNMS Superintendent and comments received during the 2009 public scoping. Several alternatives to the proposed action are analyzed in the accompanying draft environmental impact statement (DEIS).

II. Proposed Revisions to FBNMS Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation for national marine sanctuaries include: (1) The geographic area included within the sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and (3) the types of activities subject to regulation by NOAA to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made.

To implement this action, NOAA is proposing these changes to the FBNMS terms of designation, which were most recently published in the **Federal Register** on April 26, 1986 (51 FR 15878). The proposed changes would:

1. Modify the name of the sanctuary to ''American Samoa National Marine Sanctuary.''

2. Modify Article 2 ''Description of the Area'' by describing the five additional areas.

3. Modify Article 3 ''Special Characteristics of the Area'' by adding additional areas of near-shore, mid-shore, deep reef, a seamount, open pelagic waters and other habitats and areas of cultural significance; and revise the description of the value of the sanctuary.

4. Modify Article 4 ''Scope of Regulations'' by updating Section 1 to expand the goal of the sanctuary to ensure the protection and preservation of the coral ecosystem; and revise Section 1 to include operating a vessel, moving, removing, or tampering with any sign or other sanctuary property, and introducing a non-native species in order to provide authority for sanctuary regulations.

5. Modify Article 4 ''Scope of Regulations'' by updating Section 2 to align the text more closely with the National Marine Sanctuaries Act.

6. Modify Article 5 ''Relation to Other Regulatory Programs'' by updating Section 1 to reflect a more coordinated and collaborative approach to enforcement between NOAA and the Territory of American Samoa.

7. Correct a few typographical errors throughout the terms of designation.

8. Delete Article 7 ''Funding'' because this language is not necessary to control the Joint Enforcement Agreements (JEA), as there is language in the JEA about how priorities are set and communicated among the enforcement partners.

The revised terms of designation would read as follows (new text in quotes and deleted text in brackets and italics):

Revised Terms of Designation for the American Samoa National Marine Sanctuary

Preamble

Under the authority of the National Marine Sanctuaries Act, 16 U.S.C. 1434 [*Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92–532*] (the Act), certain waters off American Samoa are hereby designated a National Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecosystem.

Article 1. Effect of Designation

The designation of the [*Fagatele Bay*] ''American Samoa'' National Marine Sanctuary (the Sanctuary) described in Article 2[.] establishes the basis for cooperative management of the area by the Territory of American Samoa (Territory) and the National Oceanic and Atmospheric Administration (NOAA).

Within the area designated as the Sanctuary, the Act authorizes promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of the Designation lists those activities which may require regulations, but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through regulation, and additional activities may be regulated only by amending Article 4.

Article 2. Description of the Area

[*The Sanctuary consists of 163 acres (0.25 square miles) of bay area off the southwest coast of Tutuila Island, American Samoa.*] ''The Sanctuary consists of six distinct units:

—''Fagatele Bay, which contains 163 acres (0.25 square miles) of bay area off the southwest coast of Tutuila Island, American Samoa.

—''Larsen Bay, which contains 0.46 square miles of bay area off the southwest coast of Tutuila Island, American Samoa.

—''The waters around part of Aunu'u Island, American Samoa that contain 5.8 square miles.

—''The waters around part of Ta'u Island, American Samoa that contain 14.6 square miles.

—''The waters around Swains Island, American Samoa that contain 53.0 square miles.

—''The waters around Rose Atoll, called Muliava in Samoan, which contains 13,507 square miles.''

The precise boundaries are defined by regulation.

Article 3. Special Characteristics of the Area

The Sanctuary contains a unique and vast array of tropical marine organisms, including corals and a diverse tropical reef ecosystem with endangered and threatened species, such as the hawksbill and green sea turtles, and marine mammals like the Pacific bottlenose dolphin. ''The Sanctuary also contains areas such as near-shore, mid-shore, deep reef, seamount, open pelagic waters and

other habitats and areas of historical and cultural significance.''

The area provides exceptional [*scientific*] value as a[*n*] ''scientific,'' ecological, recreational, and aesthetic resource, and ''offers'' unique educational and recreational experiences.

Article 4. Scope of Regulations

Section 1. Activities Subject to Regulations. In order to protect the distinctive values of the Sanctuary, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of the coral ''ecosystem'' and other marine values of the area:

a. Taking or otherwise damaging natural resources.

b. Discharging or depositing any substance.

c. Disturbing the benthic community.

d. Removing or otherwise harming cultural or historical resources.

*''*e. Operating a vessel.''

''f. Moving, removing, or tampering with any sign or other Sanctuary property.''

''g. Introducing or otherwise releasing an introduced species.*''*

Section 2. Consistency with International Law. [*The regulations governing the activities listed in Section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law, including treaties and international agreements to which the United States is signatory.*] ''The regulations governing the activities listed in Section 1 of this article shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States, unless in accordance with generally recognized principles of international law, an agreement between the United States and the foreign state of which the person is a citizen, or an agreement between the United States and the flag state of a foreign vessel, if the person is a crewmember of the vessel.''

Section 3. Emergency Regulations. Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article will be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs

Section 1. Other Programs. (a) NOAA may adopt all regulatory programs pertaining to fishing, including any regulations promulgated by the American Samoa Government and all permits, licenses, and other authorizations issued pursuant thereto under the following conditions:

(1) No alteration or modification of any Sanctuary regulation shall become effective without the written concurrence of both the Territory and NOAA; and

''(2)'' [*The Territory shall be responsible for enforcing all Sanctuary regulations to ensure protection for the values of the Sanctuary. NOAA will engage in enforcement activities only if requested by the Territory or if there has been significant failure to provide adequate enforcement as determined under this Section.*] ''NOAA and the Territory shall be jointly responsible for enforcing Sanctuary regulations to ensure protection for the values of the Sanctuary with the Territory being the preferred enforcement entity. NOAA and the Territory will cooperatively develop Joint Enforcement Agreements (JEA) to implement enforcement and delineate NOAA and Territorial duties.''

(b) Where the Territory shall propose any alteration or modification of the regulations described in Article 4, such alteration or modification shall be submitted to NOAA for agreement and simultaneous proposal in the **Federal Register**. Such alteration or modification shall be finally adopted unless, based on the comments received on the **Federal Register** notice and after consultation with the Territory, NOAA determines that the regulations with the proposed amendments do not provide reasonable and necessary protection for the values of the Sanctuary.

[*(c) Should NOAA preliminary determine that there has been significant failure to provide adequate enforcement, it shall notify the Territory of this deficiency and suggest appropriate remedial action. If, after consultation, NOAA and the Territory are unable to agree that a deficiency exists or on an appropriate remedial action, NOAA may issue a final determination in writing specifying the deficiency and the appropriate action together with the reasons therefore. No less than sixty (60) days prior to issuing a final determination that calls for NOAA to take enforcement action, NOAA shall submit the proposed determination to the Governor of American Samoa. If the Governor finds that NOAA enforcement is unnecessary to protect the values of the Sanctuary, the Governor shall inform NOAA of his objections within thirty (30) days after receipt of the proposed determinations and NOAA shall give such finding presumptive weight in making its final determination.*]

''(c)''[*(d)*] All applicable regulatory programs will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary, unless inconsistent with any regulation implementing Article 4. The Sanctuary regulations will set forth any certification procedures.

Section 2. Defense Activities. The regulation of those activities listed by Article 4 shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be conducted consistent[ly] with such regulations to the maximum extent practicable. All other activities of the Department of Defense are subject to Article 4.

Article 6. Alteration [to] ''of'' *this Designation*

[*(a)*] This designation may be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and Territorial agencies and the Western Pacific Regional Fishery Management Council, and approval by the Governor of American Samoa [*and the President of the United States*].

[End of terms of designation]

III. Summary of Proposed Revisions to the Sanctuary Regulations

A. Adding Five Additional Units to the Existing Sanctuary

The proposed regulations would add the following five additional units to the sanctuary: (1) Larsen Bay, (2) Aunu'u Island, (3) Swains Island, (4) Muliāva (Rose Atoll), and (5) Ta'u Island. NOAA chose these units based on the quality and diversity of their biological resources, their scientific and cultural value, and the specific desire of the communities intimate with these marine habitats, including the government of American Samoa. The Aunu'u Island, Fagatele Bay, and Larsen Bay units are located along the southern coast of Tutuila. The remaining three units are at Ta'u Island, Muliāva, and Swains Island. All units include both shallow reef and deep waters and extend seaward from the mean high water line of the coast, with the exceptions of Muliāva (which extends seaward from the boundary of the Rose Atoll National Wildlife Refuge) and a portion of the Ta'u unit (which extends seaward from the boundary of the American Samoa National Park). This proposed action will increase the overall size of the sanctuary from 0.25 square miles to approximately 13,586 square miles, with the majority of this expansion (99%) resulting from the incorporation of the non-refuge marine areas of the Rose Atoll Marine National Monument (Muliāva unit).

All six units have intrinsic value that merits their inclusion in the National Marine Sanctuary System. Please refer to the FBNMS Web site and the draft environmental impact statement supporting this rulemaking for more information and a map depicting the location of these areas.

Fagatele Bay and Larsen Bay

The Fagatele Bay and Larsen Bay units are the only bays in the territory formed by collapsed craters—a unique geological and habitat feature. In addition, similarities in the fish and coral population between these two sites make them useful replicates of one another for research purposes. Preserving Larsen Bay as a complement to Fagatele Bay provides additional security for the habitats and species that occur in both bays. When they are protected in only a single location, rare

and unique habitats and species are more vulnerable to natural disasters or human disturbance. Furthermore, protecting organisms in Larsen Bay would both increase the genetic diversity of species in different microhabitats within Larsen Bay and increase the abundance of local populations, resulting in increased overall resilience of the coral reef ecosystems. In addition, the prehistoric village site at the Fagatele Bay unit may offer important archeological insights into interactions between humans and the marine environment.

Aunu'u Island

The Aunu'u Island unit bears cultural resource significance due to a 19th century whaling vessel lost there. It also has a unique and vibrant patch reef system, and a coral shelf that provides a continuous habitat extending down to mesophotic reefs. The Aunu'u Island unit would be divided into two zones: a Multiple Use Zone (Zone A), where limited fishing would be allowed, and a Research Zone (Zone B), where all consumptive uses would be prohibited to provide a control area as a mechanism for research activities.

Ta'u Island

The Ta'u unit includes a unique fish community, as well as some extraordinarily large *Porites* coral colonies and provides a buffer zone for important cultural and living resources in the nearshore habitat (a part of the National Park of American Samoa).

Swains Island

The Swains Island unit is the northern most emergent reef in the Territory, is isolated from the rest of the archipelago, and is comprised of unique fish and coral communities.

Muliāva

The Muliāva unit (Rose Atoll) is the easternmost emergent reef in the Territory, includes the Vailulu'u Seamount, and is a potentially key source of coral and fish larvae for Tutuila, the Manu'a islands, and Independent Samoa. Muliāva is also the only site with extensive pelagic habitat. In addition, the expansion of the Muliāva unit to provide sanctuary management for the Vailulu'u Seamount highlights both its physical importance as the only hydrothermally active seamount in the U.S. EEZ around the American Samoa archipelago and its biological importance due to multiple diverse and unusual faunal communities.

B. Changing the Name to the American Samoa National Marine Sanctuary

As a result of the proposed incorporation of five additional units across the archipelago, the current sanctuary name, Fagatele Bay National Marine Sanctuary, would no longer be appropriate. Therefore, NOAA proposes to change the name of the sanctuary to the American Samoa National Marine Sanctuary (ASNMS).

C. Sanctuary Regulations

Existing regulations for the sanctuary (15 CFR part 922 subpart F) would be revised as described below and would apply to activities in all units described above, except as noted below.

1. Definitions

Conventional Hook and Line Gear: The current definition of the term conventional hook and line gear in the system-wide regulations (15 CFR 922.3) is as follows: ''*Conventional hook and line gear means any fishing apparatus operated aboard a vessel and composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hind- or electrically operated, hand-held or mounted. This term does not include bottom longlines.*'' NOAA is proposing to revise this definition to remove the term ''operated aboard a vessel'' to make it applicable where conventional hook and line fishing may occur from shore or from a vessel. Currently, the term ''hook and line gear'' is only used in the regulations for Flower Garden Banks National Marine Sanctuary, which is located about 100 miles offshore. Given its location, the proposed change would not in any way alter the existing prohibitions at Flower Garden Banks NMS since it is not possible to fish from shore in that sanctuary anyway. The revised definition would read as follows: ''*any fishing apparatus composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand or mechanically operated, regardless of whether mounted. This term does not include longlines.*''

In order to clarify the sanctuary-wide regulations described below, the following new terms are being proposed for the definitions section: Clean, fishing, harmful matter, introduced species, live rock, stowed and not available for immediate use, and sustenance harvesting.

2. Prohibited Activities: Sanctuary-Wide

The following activities would be prohibited in all areas and units of the sanctuary:

- Discharging any material within the sanctuary. There are two exceptions to this prohibition. First, an exception is made for clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, anchor wash, or vessel engine or generator exhaust. Second, in the Muliāva unit only, vessels operating within the unit would be allowed to discharge effluent from a Type I or II U.S. Coast Guard-approved Marine Sanitation Device due to the impracticability of holding waste until the vessel is out of the sanctuary in such a large protected area.
- Using or discharging explosives or weapons of any description.
- Discharging any material from outside of sanctuary waters that could enter and injure sanctuary resources, both from land- and sea-based sources.
- Exceeding three knots within 200 feet of a dive flag.
- Disturbing the benthic community by dredging, filling, dynamiting, or otherwise altering the seabed.
- Damaging, removing or displacing any signs, notices, or placards, or stakes, posts, or other boundary markers related to the sanctuary.
- Failing to clearly display the blue-and-white International Code flag alpha ''A'' or the standard red-and-white U.S. ''diver down'' flag when operating a vessel while divers or snorkelers are in the water.
- Removing, damaging, or tampering with any historical or cultural resource.
- Taking any marine mammal, sea turtle, or seabird in the sanctuary, except as authorized by other statutes. (This activity is already prohibited in territorial waters under ASCA 24.0934–0935 and in Federal waters under the Endangered Species Act and Marine Mammal Protection Act.)
- Anchoring, and the requirement to use a mooring buoy where available.
- Introducing or releasing introduced species from within or into sanctuary waters.
- Abandoning any structure, material, or other matter on or in the submerged lands of the sanctuary.
- Deserting a vessel aground, at anchor, or adrift in the sanctuary.
- Leaving harmful matter aboard an abandoned or deserted vessel in the sanctuary.

3. Sanctuary-Wide Prohibited Activities, Except the Muliāva Unit

Section 304(a)(5) of the NMSA requires that NOAA consult with the appropriate Federal fishery management council on any action proposing to regulate fishing in Federal waters, from 3 miles to 200 miles offshore. NOAA is

not proposing any fishing regulations in Federal waters at this time. All areas, existing and proposed, of the sanctuary are in territorial waters except the Muliāva unit, which contains Federal waters. With the exception of the Fish and Wildlife Refuge, NOAA has the primary management responsibility regarding the management of the marine areas with respect to fishery-related activities. Fishing regulations for that area as well as the rest of the Pacific Monuments are being developed by the Western Pacific Fishery Management Council and NOAA's National Marine Fisheries Service. ONMS has deferred the preparation of any fishing regulations for the Muliāva unit until the Council completes its process. Therefore, the following activities would be prohibited in all areas of the sanctuary except the Muliāva unit:

- Possessing or using:
  - Poisons, electrical charges, explosives, or similar environmentally destructive methods of fishing or harvesting. This activity is already prohibited in territorial waters under ASCA 24.0911–0915 and in Federal waters under 50 CFR 665.104(c) and 665.127(b).
  - Any type of fixed net, including seine and trammel nets, or drift gill nets (the use of cast or throw nets would not be prohibited).
  - The use of SCUBA gear in conjunction with the use of spearguns, including Hawaiian slings, pole spears, arbalettes, pneumatic and spring-loaded spearguns, bows and arrows, and bang sticks.
  - Disturbing the benthic community by bottom trawling.
- The take of the following categories of organisms:
  - Live coral and wild rock (take is already prohibited in territorial waters less than 60 feet deep under ASCA 24.0927(a) and in Federal waters under 50 CFR 665.125(c)).
  - Other bottom formations, including precious corals and crustose coralline algae (take of precious corals is already prohibited in territorial waters less than 60 feet deep under ASCA 24.0927(a)).
  - Giant clams [*Tridacna* spp.].
  - All species of live shells except the Goldmouth Turban snail [*Turbo chrysostomus,* Alili in Samoan].
  - Crown-of-Thorns Starfish [*Acanthaster planci*].

4. Unit-Specific Regulations

In addition to the sanctuary-wide prohibited activities described above, this rule proposes unit-specific regulations for four (Fagatele Bay, Larsen Bay, Aunu'u Island, and Swains Island) of the six units that are proposed to be included as part of the FBNMS. The proposed unit-specific regulations are of two types: (1) Allowable or restricted gear, and (2) allowable or restricted fishing practices (for example, sustenance harvesting). At some sites, or in some locations within a given site, all fishing is prohibited, effectively making those areas no-take zones. There are no site-specific restrictions for the Ta'u Island because NOAA determined that the sanctuary-wide regulations that would apply to these areas would be sufficient to meet the goals and objectives of the sanctuary. There are no site-specific restrictions for the Muliāva at this time, as ONMS is awaiting Council/NMFS action regarding fishing regulations in that area.

1. Fagatele Bay

The proposed regulations for the Fagatele Bay unit would prohibit all take of sanctuary resources. While the FBNMS condition report (2007) rates most resources in good condition, a reduction in numbers and size of large predatory fish (*e.g.,* Maori wrasse *Cheilinus undulatus*) from fishing has caused a fair/poor rating for these living resources. Prohibiting removal of all sanctuary resources would provide the opportunity for the natural environment to be restored to a more natural state.

2. Larsen Bay

The regulations for Larsen Bay would prohibit all take and the use of all fishing gear, except for fishing with hook-and-line gear. As mentioned above, preserving Larsen Bay as a complement to Fagatele Bay provides additional security for the habitats and species that occur in both bays. Hook-and-line gear would be allowed to provide the opportunity to assess fishing impacts in comparison with nearby Fagatele Bay, where all fishing would be prohibited. Allowing hook-and-line fishing only would be compatible with the NMSA's primary objective of resource protection because it is unlikely to adversely impact the resource value of the bay due to the low level of fishing activity within Larsen Bay. Annual cultural harvest events such as palolo (*Palola viridis*) and atule (*Selar crumenophthalmus*) would also be allowed in Larsen Bay after obtaining a permit from the Sanctuary Superintendent.

3. Aunu'u Island

The Aunu'u Island unit would be divided into two zones, Zone A and Zone B.

Zone A would be the Multiple Use Zone, in which fishing would be allowed provided that vessel operators make their presence known to the sanctuary or its designate in the village of Aunu'u prior to entering the sanctuary to conduct extractive activities. Zone A would provide protection of the resources within this area, and would allow for a better understanding of current use levels of the area.

Zone B would be the Research Zone, which would be designated no-take for all marine resources. The ONMS may issue permits for research activities that violate sanctuary regulations provided the applications comply with ONMS permitting procedures and criteria. Zone B would prohibit all extractive activities to provide a control area as a mechanism for research activities.

4. Swains Island

Only sustenance harvesting would be allowed in the waters of the sanctuary around Swains Island. All other forms of extraction would be prohibited. This regulation would reduce consumption of sanctuary resources to a level where the natural ecosystem can maintain its integrity and provide long-term benefits (including larval dispersion to other areas of the archipelago). Sustenance harvesting would be allowed because of the remote nature of this location and the need for sustenance for the inhabitants of Swains Island.

5. Enforcement

If adopted, the proposed regulations would be enforced by NOAA and other authorized agencies (*i.e.,* the U.S. Coast Guard, U.S. Department of the Interior, and America Samoan Department of Marine and Wildlife Resources) in a coordinated and comprehensive way. Enforcement actions for an infraction would be prosecuted under the appropriate statutes or regulations governing that infraction. The prohibition against catching or harvesting marine organisms would include a rebuttable presumption that any marine organism or part thereof found in the possession of a person within the protected areas has been collected from the protected areas. Violation of any of these regulations could be punishable under 15 CFR 922.45 with a civil penalty of up to $130,000 per incident, per day. In addition, violators could be held liable for response costs and damages resulting from any destruction, loss, or injury to any sanctuary resource (15 CFR 922.46). The penalty schedule for violations in national marine sanctuaries may be found at *http://www.gc.noaa.gov/enforce-office.html.*

6. Permitting

If this rule is adopted as proposed, the additional areas of the sanctuary would provide researchers a valuable opportunity to discern between human-induced and natural changes in the Samoan archipelago. Researchers would be required to obtain permits to conduct activities related to research that would otherwise be prohibited by the regulations.

NOAA's sanctuary-wide regulations and the site-specific regulations for the FBNMS (15 CFR part 922) allow the ONMS Director to issue permits to conduct activities that would otherwise be prohibited by the regulations. The authority to issue permits for activities in FBNMS is delegated to the Superintendent. Requirements for filing permit applications are specified in 15 CFR 922.104 of the ONMS regulations and the Office of Management and Budget's approved application guidelines (OMB control number 0648–0141). Criteria for reviewing permit applications are also contained in the ONMS regulations at 15 CFR 922.104. In most sanctuaries, permits may be issued for activities related to scientific research, education, and management, among other categories of activities.

In complement to the existing regulations, which allow the Director to issue sanctuary permits for research, education, and salvage activities, NOAA proposes to add a category of sanctuary permit for management activities. Such a management category would allow otherwise prohibited activities that would assist in managing the sanctuary, either by NOAA or third parties. This would provide protection for the sanctuary's physical, biological, and historical resources by ensuring that no activity may cause long-term or irreparable harm to the resources of the sanctuary.

In addition, NOAA proposes to delete a redundant portion of the regulatory text pertaining to the conditions that the ONMS Director may place on a permit. Section 922.106(e) of the FBNMS regulations states that the ONMS Director may issue a permit subject to conditions ''as he or she deems necessary.'' The remainder of the paragraph describes a few of the conditions that the ONMS Director may include for permit issuance. However, these conditions are included in the phrase ''as he or she deems necessary,'' so removing the text does not result in any substantive change in the intent of the regulation. This is simply a technical change.

Presidential Proclamation 8337 (January 12, 2009; 74 FR 1577) states, ''The prohibitions required by this proclamation shall not restrict scientific exploration or research activities by or for the Secretaries, and nothing in this proclamation shall be construed to require a permit or other authorization from the other Secretary for their respective scientific activities.'' In order to be consistent with this requirement and in exercising its discretion under the NMSA, NOAA proposes providing the Departments of Commerce and the Interior with an exception to the prohibitions for the conduct of scientific activities within the Muliāva unit.

Finally, NOAA currently is examining the permitting requirements now in place at all national marine sanctuaries, with the focus on the way that similar requirements might be harmonized. Potential changes to these requirements, which will not be ready for public comment for several months, could ultimately affect the permit regulations for FBNMS. Any changes to the permit requirement proposed here would only occur subsequent to separate notice and comment.

7. Technical Changes

The regulations at 15 CFR 922.103 and 922.104 have also been updated to reflect the change from the Economic and Development Planning Office (EDPO) to the American Samoa Department of Commerce (ASDOC). EDPO was the name of the local agency 25 years ago when the FBNMS was designated, but the agency has been renamed to ASDOC. This change is purely technical.

IV. Classification

A. National Marine Sanctuaries Act

Section 301(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431) provides authority for comprehensive and coordinated conservation and management of national marine sanctuaries in coordination with other resource management authorities. Section 304(a)(4) of the NMSA (16 U.S.C. 1434) requires that the procedures specified in Section 304 for designating a national marine sanctuary be followed for modifying any term of designation. This action proposes to revise the terms of designation (*e.g.,* scope of regulations) for the FBNMS, which would be retitled the ASNMS. In accordance with Section 304, the appropriate documents are being submitted to the specified Congressional committees. NOAA is also required to comply with Section 304(a)(5) of the NMSA, which requires that NOAA consult with the appropriate Federal fishery management council on any action proposing to regulate fishing in Federal waters. As stated in the preamble above, NOAA is not proposing any fishing regulations in Federal waters at this time.

B. National Environmental Policy Act

In accordance with Section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)), and the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4370), a DEIS has been prepared for this proposed action. The DEIS contains a statement of the purpose and need for the project, description of proposed alternatives including the no-action alternative, description of the affected environment, and evaluation and comparison of environmental consequences including cumulative impacts. Copies of the DEIS are available upon request at the address and Web site listed in the **ADDRESSES** section of this rule.

C. Executive Order 12866: Regulatory Impact

Under Executive Order (E.O.) 12866, if the proposed regulations are ''significant,'' as defined in Section 3(f) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget. This proposed rule has been determined to be not significant within the meaning of E.O. 12866.

D. Executive Order 13132: Federalism Assessment

There are no federalism implications as that term is used in E.O. 13132. The changes will not preempt State law, but will simply complement existing Territory authorities. In keeping with the intent of the Order, NOAA consulted with a number of entities within the region, including the American Samoa Government and the Western Pacific Regional Fishery Management Council.

E. Regulatory Flexibility Act

In 2010, the American Samoa Department of Marine and Wildlife Resources and the Western Pacific Fisheries Information Network (ASDMWR and WPFIN, 2010) identified 57 vessels active in the commercial fishery, with 51 identified as homeported on Tutuila and six in the Manu'a Islands. The commercial fishing operations potentially impacted by the proposed regulations typically use small boats, primarily 28 to 32 foot-long, outboard engine-powered catamarans called alias (pronounced ah/LEE/ahs),

and are single-day fisheries occurring in near-shore waters. Less than half of the Tutuila-based boats fall into this category: Approximately 25 of the 51 commercial fishing operations identified are near-shore commercial fishing alias. Based on information obtained from ASDMWR, NOAA believes that all six Manu'a Island boats are near-shore alias. On average, each alia consisted of a three-person crew. Applying that average crew to the total number of alias operating in American Samoa (31), a total employment of approximately 93 can be estimated. The remaining 26 commercial fishing vessels operating out of American Samoa are believed to be larger vessels fishing in offshore areas; therefore, these vessels would not be affected by this proposed action. Presidential Proclamation 8337 prohibited commercial fishing within the waters of the Rose Atoll Marine National Monument, therefore no impact to fishing operations is expected in the Muliāva unit.

The near-shore alias target primarily bottom fish and reef fish species using hook-and-line trolling or bottomfishing. In 2009, approximately 90,000 pounds of bottom, reef, and other fish species (excluding pelagic species) were commercially landed in American Samoa. The total value of these landings was approximately $250,000 in 2009 (Pacific Islands Fishery Science Center, 2010). Secondary economic values in sales/output, income, jobs, and tax revenues in the local economy can be estimated by applying economic multiplier impacts. A recent valuation study used a multiplier of 1.25 to estimate the full value of coastal resources in American Samoa (Spurgeon, 2004). Applying this multiplier, the total economic value of the near shore fishery is estimated to be $312,000 in 2009.

This represents less than 1 percent of the total commercial fishing landings and just over 2 percent of the total value of commercial fishing in American Samoa. The commercial fishing industry in American Samoa is currently dominated by pelagic species, amounting to approximately 10 million pounds, with an approximate value of $10 million, landed annually over the past 10 years. These pelagic commercial fisheries would not be affected by the proposed regulations because the regulations would not apply to the areas where pelagic commercial fishing is conducted.

TABLE 1—AMERICAN SAMOA COMMERCIAL FISHING FLEET VESSELS AND ESTIMATED CREW

Home port	Total number of boats	Number alias boats (nearshore)	Average crew employed per alia boat	Total crew employed (nearshore)
Tutuila Island	51	25	3	75
Manu'a Islands	6	6	3	18
Total	57	31	3	93

In addition to this proposed action, four other alternatives were analyzed in the draft environmental impact statement. These alternatives include: No action, FBNMS management plan update only (alternative 1), incorporation of Muliāva unit (Rose Atoll Marine National Monument) only (alternative 2), and multi-village sanctuary unit expansion with buffer zones and additional regulations (alternative 4). For the no action alternative, there would be no direct adverse impacts on population, employment and total income, recreation or tourism because no new restrictions would be proposed. For alternative 1, which would only update the management plan for FBNMS as it currently exists, the activities presented in the revised management plan would be primarily administrative in nature, designed to assist sanctuary managers in being proactive and respond quickly and appropriately and safely to threats to sanctuary resources. They would most likely occur within existing facilities and would not significantly change the use of facilities or increase traffic, and would have little to no potential to significantly affect the quality of the human environment. For alternative 2, which would add the Muliāva unit to the sanctuary as a result of Presidential Proclamation 8337, there would likely be no impact on human uses, including fishing, tourism, and recreational opportunities. Despite the rich, isolated marine environment that would be attractive to eco-tourists, the atoll would take 5 to 10 hours via boat to reach from Tutuila, and 4 to 8 hours from Ta'u, the closest island and there is currently little to no tourism occurring in that area. Since the alternative does not include any prohibition on fishing, there would be no impact on fishing operations. In addition, Presidential Proclamation 8337 prohibits commercial fishing within the boundaries of the monument and proposed sanctuary unit and Rose Atoll NWR is closed to the public. As such, there is no need for commercial fishing or wildlife tour vessels to operate within the Muliāva unit. Thus, the discharge prohibition is expected to have less than significant impact on human uses at the Muliāva unit. For alternative 4, which would create buffer zones around the multi-village sanctuary units proposed in alternative 3 (the alternative that is being proposed in this rule) as well as add regulations, there would be a less than significant impact on fisheries in American Samoa due to some additional fishing restrictions. None of these alternatives would result in a significant impact to small businesses. A detailed analysis of the socio-economic impacts of these alternatives can be found in the draft environmental impact statement associated with this action.

Summary of Proposed Commercial Fishing Regulations and Related Potential Impact

Fagatele Bay and the research-only area adjacent to the northeast quadrant of Aunu'u Island are proposed as complete no-take zones. Additionally, only sustenance fishing would be allowed at Swains Island, thus prohibiting commercial fishing. Revenue from the commercial sale of fish caught in these proposed areas would drop to zero. Fishing in Larsen Bay would be restricted to hook and line only. Under the proposed regulations, commercial fishing would be allowed in the Larsen Bay unit (hook and line fishing only), Aunu'u in the Multiple Use Zone, and Ta'u. Commercial fishing is currently prohibited at Muliāva by Presidential Proclamation 8337, which designated the area as the Rose Atoll Marine National Monument.

The area of reef habitat was documented by the Biogeography Team of NOAA's National Centers for Coastal Ocean Science (Kendall *et al,* 2011). The results of this research can be seen in

the table below. The total reef habitat area of the proposed no-take areas is 1 square mile, or about 3.7 percent of the reef habitat area of American Samoa, excluding Muliāva, which is currently a no-take area. Applying the 2010 estimated total economic value of the near-shore commercial fishery of $317,235 to the percent of reef habitat of the proposed no-take areas results in the following maximum potential loss estimates:

Fagatele Bay—$2,295.
Aunu'u Research Zone—$5,403.
Swains Island—$4,330.

The estimated maximum potential loss of the three proposed no-take areas combined is $12,028 in 2010 dollars.[1]

Table 2: Reef Habitat and Associated Near Shore Commercial Fishery Economic Value, 2010

Site	Reef Habitat Area (km^2)	Reef Habitat Area w/o Rose (km^2)	Reef Habitat Area (percent)	Reef Habitat Area w/o Rose (percent)	Economic Value of Area (dollars)
Fagatele Bay NMS	**0.51**	**0.51**	**0.7**	**0.7**	**2,295**
Larsen's Bay	0.96	0.96	1.3	1.3	4,266
Aunu'u Unit	0.71	0.71	1.0	1.0	3,170
Aunu'u Research Zone	**1.21**	**1.21**	**1.6**	**1.7**	**5,403**
Ta'u	0.83	0.83	1.1	1.2	3,714
Swains Island	**0.97**	**0.97**	**1.3**	**1.3**	**4,330**
Rose Atoll	0.40		0.5		
Tutuila	63.66	63.66	85.9	88.2	284,369
Manu'a	7.58	7.58	10.2	10.5	33,859
Rose	1.92		2.6		
Swains	0.97	0.97	1.3	1.3	4,330
American Samoa	74.13	72.21	100.0		317,235

American Samoa has been unable to develop a significant tourism industry that could support charter fishing, nor is American Samoa known for producing large game fish. Few, if any, charter boats are in operation, so no data have

[1] This analysis assumes that all economic value associated with a no-take area is lost. Any factor that could mitigate or off-set the level of potential impact is not included. Thus, the estimated impacts are thought of as ''maximum potential losses.'' NOAA's experience, based on post-regulatory monitoring, has demonstrated that this type of estimate rarely predicts the actual ultimate impact.

been collected specifically for the charter fishing sector (WPRFMC, 2011). Because there are few charter boats in operation, this rule is likely to have minimal impact to this industry.

F. Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by the Office of Management and Budget (OMB) under control number 0648–0141. The public reporting burden for national marine sanctuary permits is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Nationwide, NOAA issues approximately 200 national marine sanctuary permits each year. Of this amount, FBNMS averages 1 to 2 permit requests per year, although no permits are currently active for activities within the FBNMS. Even though this proposed rule may result in a few additional permit applications, due to the additional units and an overall larger area under management, this rule would not appreciably change the average annual number of respondents or the reporting burden for this information requirement. Therefore, NOAA has determined that the proposed regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act.

Comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, may be sent to NOAA (see **ADDRESSES**) and to OMB by e-mail to *OIRA_submission@omb.eop.gov* or fax to (202) 395–7285. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

V. References

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: October 13, 2011.

Christopher Cartwright,

Chief Financial Officer for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is proposed to be amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. In § 922.3, revise the definition of ''conventional hook and line gear'' to read as follows:

§ 922.3 Definitions.

* * * * *

Conventional hook and line gear means any fishing apparatus composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand or mechanically operated, regardless of whether mounted. This term does not include longlines.

* * * * *

3. Revise subpart J to read as follows:

Subpart J—American Samoa National Marine Sanctuary

Sec.

922.100 Scope of regulations.
922.101 Boundary.
922.102 Definitions.
922.103 Prohibited or otherwise regulated activities—Sanctuary-wide.
922.104 Prohibited or otherwise regulated activities—Sanctuary-Wide except in the Muliāva Unit.
922.105 Prohibited or otherwise regulated activities—Unit-specific.
922.106 Management and enforcement.
922.107 Permit procedures and criteria.
Appendix to Subpart J of Part 922—American Samoa National Marine Sanctuary Boundary Coordinates

Subpart J—American Samoa National Marine Sanctuary

§ 922.100 Scope of regulations.

The provisions of this subpart J apply only to the areas of the Territory of American Samoa and U.S. waters within the boundary of the American Samoa National Marine Sanctuary (Sanctuary). Neither the provisions of this subpart J nor any permit issued under its authority shall be construed to relieve a person from any other requirements imposed by statute or regulation of the Territory of American Samoa or of the United States. In addition, no statute or regulation of the Territory of American Samoa shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this subpart J.

§ 922.101 Boundary.

The Sanctuary is comprised of six distinct units, forming a network of marine protected areas around the islands of the Territory of American Samoa. Tables containing the exact coordinates of each point described below can be found in Appendix to Subpart J—American Samoa National Marine Sanctuary Boundary Coordinates.

(a) *Fagatele Bay Unit.* The Fagatele Bay Unit is a 163-acre (0.25 sq. mi.) coastal embayment formed by a collapsed volcanic crater on the island of Tutuila, Territory of American Samoa, and includes Fagatele Bay in its entirety. The landward boundary is defined by the mean high high water (MHHW) line of Fagatele Bay until the point at which it intersects the seaward boundary of the Sanctuary as defined by a straight line between Fagatele Point (−14.36527, −170.76932) and Steps Point (−14.37291, −170.76056) from the point at which it intersects the MHHW line seaward.

(b) *Larsen Bay Unit.* The landward boundary of the Larsen Bay Unit is defined by the mean high high water (MHHW) line of Larsen Bay until the point at which it intersects the seaward boundary of the Larsen Bay Unit as defined by a straight line between Steps Point (−14.37307, −170.75852) and Sail Rock Point (−14.36534, −170.74119) from the point at which it intersects the MHHW line seaward.

(c) *Aunu'u Unit.* The Aunu'u Unit is comprised of two adjacent zones.

(1) *Zone A.* The Aunu'u Unit boundary for Zone A is defined by the coordinates provided in Table 1 and the following textual description. The Zone A boundary extends from Point 1, the northwest corner of the unit, to Point 2 along a straight line following the western boundary of the unit, which is aligned with Taugamalama Point on Tutuila. It then extends northeastward in a multi-part line along the deepest seaward edge of Nafanua Bank from Point 2 to Point 3 and then to Point 4, which lies on the southern boundary of Zone B. The boundary then follows a straight line westward towards Point 5 until it intersects the mean high high water (MHHW) line at the southern tip of Ma'ama'a Cove. The landward boundary of Zone A is defined by the mean high high water (MHHW) line from this intersection point at the southern tip of Ma'ama'a Cove to the

intersection of the MHHW line and the straight line between Point 6 and Point 7 at Salevatia Point. From this intersection point at Salevatia Point, the boundary extends straight west to Point 7.

(2) *Zone B.* The Aunu'u Unit boundary for Zone B is defined by the coordinates provided in Table 2 and the following textual description. The Zone B boundary extends from Point 1, the northeast corner of the unit, along a straight line following the eastern boundary of the unit to Point 2, which is on the southern boundary of the unit. The boundary then follows a line westward towards Point 3 until it intersects the mean high high water (MHHW) line at the southern tip of Ma'ama'a Cove Point. The landward boundary of Zone B is defined by the mean high high water (MHHW) line from this intersection point at the southern tip of Ma'ama'a Cove around the volcanic crater to the intersection of the MHHW line and the straight line between Point 4 and Point 5. From here, the boundary extends seaward straight north to Point 5. The last straight line is defined by connecting Point 5 and Point 6, along the northern boundary of the unit, which is aligned with Matuli Point on Tutuila.

(d) *Swains Island Unit.* The landward boundary of the Swains Island Unit is the mean high high water (MHHW) line. The seaward boundary of the Swains Island Unit is the territorial water boundary 3 nautical miles from the mean high high water (MHHW) line that surrounds the island.

(e) *Muliāva Unit.* The Muliāva Unit boundary is defined by the coordinates provided in Table 3 and the following textual description. The landward boundary of the Muliāva Unit is the extreme low water line. The Muliāva Unit boundary extends from Point 1, the southwest corner of the unit, to Point 2 along a straight line northward following the western boundary of the unit. From Point 2, the line extends in a straight line westward to Point 3. It then extends along a straight line northward to Point 4. From Point 4, the line extends in a straight line eastward to Point 5. From Point 5, the line extends along a straight line northward to Point 6. It then extends along a straight line eastward from Point 6 to Point 7, which is on the eastern boundary of the unit. The boundary then follows a line southward until it intersects the line of the southern boundary of the unit at Point 8, the southeastern corner of the sanctuary. The last straight line is defined by connecting Point 8 and Point 9, along the southern boundary of the unit.

(f) *Ta'u Unit.* The Ta'u Unit boundary is defined by the coordinates provided in Table 4 and the following textual description. The Ta'u Unit boundary extends from Point 1, Vaita Point, along the mean high high water (MHHW) line southward along the western coast to Point 2, Si'ufa'alele Point. From Point 2, the boundary extends offshore 0.25 miles to Point 3 to become conterminous with the offshore boundary of the National Park of American Samoa. From Point 3 the boundary continues to follow the coastline 0.25 miles offshore until it reaches Point 4, which is directly south of Si'u Point. From Point 4, the boundary extends due south to Point 5. From Point 5, the boundary extends due west along the parallel to Point 6. From Point 6, the boundary extends due north until it reaches Point 7, directly west and one mile away from Point 8, which is Point 1 also known as Vaita Point.

§ 922.102 Definitions.

Clean means not containing detectable levels of harmful matter.

Fishing means the catching, taking, or harvesting of marine species; the attempted catching, taking, or harvesting of marine species; any other activity which can reasonably be expected to result in the catching, taking, or harvesting of marine species; or any operation at sea in support of, or in preparation for, any activity described in this definition.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: Fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act at 40 CFR 302.4.

Introduced species means any species (including, but not limited to, any of its biological matter capable of propagation) that is nonnative to the ecosystem(s) protected by the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Live rock means any Coral, basalt rock, or other natural structure with any living organisms growing in or on the Coral, basalt rock, or structure.

Stowed and not available for immediate use means not readily accessible for immediate use, *e.g.,* by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

Sustenance harvesting means the take of any marine species in which all catch is consumed within the Sanctuary or on Swains Island, unless prohibited by another statute such as the Endangered Species Act or Marine Mammal Protection Act.

§ 922.103 Prohibited or otherwise regulated activities—Sanctuary-wide.

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Introducing or releasing introduced species from within or into sanctuary waters.

(2) Anchoring a vessel.

(3) Deserting a vessel aground, adrift, or at anchor.

(4) Leaving harmful matter on an abandoned or deserted vessel or structure.

(5) Operating a vessel at a speed exceeding three knots and closer than 200 feet (60.96 meters) from another vessel displaying a dive flag.

(6) Operating a vessel in a manner which causes the vessel to strike or otherwise cause damage to Sanctuary resources.

(7) Diving, snorkeling, or conducting diving or snorkeling operations from a vessel not in compliance with applicable U.S. Coast Guard navigation rules governing the display of lights and signals, and not flying in a conspicuous manner the international code flag alpha ''A'' or the standard red-and-white U.S. ''diver down'' flag.

(8) Discharging, or depositing from within or into the Sanctuary, any material or other matter, except:

(i) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash, or vessel engine or generator exhaust; and

(ii) In the Muliāva unit only, treated sewage effluent from a Type I or II U.S. Coast Guard-approved Marine Sanitation Device.

(9) Discharging or depositing from beyond the boundary of the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraph (a)(8) of this section.

(10) Disturbing the benthic community by sand mining, dredging, filling, dynamiting, or otherwise disturbing or altering the seabed.

(11) Removing, damaging, or tampering with any historical or cultural resource.

(12) Taking any marine mammal, sea turtle, or seabird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.,* Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.,* Migratory Bird Treaty Act, as amended (MBTA), 16 U.S.C. 703 *et seq.,* or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(13) Using or discharging explosives or weapons of any description. Distress signaling devices, necessary and proper for safe vessel operation, and knives generally used by fishermen and swimmers shall not be considered weapons for purposes of this section.

(14) Marking, defacing, or damaging in any way, or displacing or removing or tampering with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, or other boundary markers related to the Sanctuary.

(15) Abandoning a structure, material, or other matter on or in the submerged lands of the Sanctuary.

(b) The prohibitions in paragraphs (a)(1) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity necessary for national defense.

(c) The prohibitions in paragraphs (a)(2) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

(d) The prohibitions in paragraphs (a)(2) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity necessary for valid law enforcement purposes in the Sanctuary.

(e) The prohibitions in paragraphs (a)(2) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.106.

(f) The prohibitions in paragraphs (a)(2) through (15) of this section do not apply to scientific activities of or for the Departments of Commerce or the Interior within the Muliāva Unit consistent with Presidential Proclamation 8337 (Proc. 8337, 74 FR 1577, 3 CFR 2010 Comp., pp. 20–24).

§ 922.104 Prohibited or otherwise regulated activities—Sanctuary-Wide except in the Muliāva Unit.

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within any unit of the Sanctuary except the Muliāva Unit:

(1) Gathering, taking, breaking, cutting, damaging, destroying, or possessing any giant clam [*Tridacna spp.*], crown-of-thorns starfish [*Acanthaster planci*], live coral, bottom formation including live rock and crustose coralline algae and any live shell (except Goldmouth turban [*Turbo chrysostomus*]).

(2) Possessing or using poisons, electrical charges, explosives, or similar environmentally destructive methods of fishing or harvesting.

(3) Possessing or using spearguns, including such devices known as Hawaiian slings, pole spears, arbalettes, pneumatic and spring-loaded spearguns, bows and arrows, bang sticks, or any similar taking device while utilizing SCUBA equipment.

(4) Possessing or using a seine, trammel, drift gill net, or any type of fixed net.

(5) Disturbing the benthic community by bottom trawling.

(b) There shall be a rebuttable presumption that any items listed in paragraph (a) of this section found in the possession of a person within the Sanctuary have been used, collected, or removed within or from the Sanctuary.

§ 922.105 Prohibited or otherwise regulated activities—Unit-specific.

In addition to the prohibitions set forth in § 922.103 and § 922.104, the following regulations apply to activities conducted within specified Sanctuary units described in the appendix to this subpart.

(a) The following activities are prohibited in the Fagatele Bay Unit:

(1) Harvesting, catching, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, including but not limited to fishing, or attempting any of these activities.

(2) Possessing fishing gear unless such gear is stowed and not available for immediate use.

(3) Possessing any Sanctuary resource, except legally harvested fish on board a vessel.

(b) The following activities are prohibited in the Larsen Bay Unit:

(1) Harvesting, catching, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, including but not limited to fishing, or attempting any of these activities, except for fishing with conventional hook and line.

(2) Possessing fishing gear other than conventional hook and line gear on board a vessel unless such gear is stowed and not available for immediate use.

(3) Possessing any Sanctuary resource, except legally harvested fish onboard a vessel.

(c) The following activities are prohibited in the Aunu'u Unit:

(1) In Zone A: Fishing from a vessel without providing notification to the Sanctuary Superintendent or his/her designee in the village of Aunu'u prior to each fishing trip.

(2) In Zone B: (i) Harvesting, catching, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, including but not limited to fishing, or attempting any of these activities.

(ii) Possessing fishing gear on board a vessel unless such gear is stowed and not available for immediate use.

(iii) Possessing any Sanctuary resource, except legally harvested fish on board a vessel in transit.

(d) The following activities are prohibited in the Swain's Island Unit:

(1) Harvesting, fishing, catching, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, including but not limited to fishing, or attempting any of these activities; except for the purpose of sustenance harvesting.

(2) Possessing any Sanctuary resource, except legally harvested fish onboard a vessel.

§ 922.106 Management and enforcement.

The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the management of the Sanctuary pursuant to the Act. The American Samoa Department of Commerce (ASDOC) will assist NOAA in the administration of the Sanctuary, and act as the lead agency, in conformance with the terms of designation, these regulations, and the terms and provisions of any grant or cooperative agreement. NOAA may act to deputize enforcement agents of the American Samoa Government (ASG) to enforce the regulations in this subpart in accordance with existing law. If NOAA chooses to exercise this provision, it will be reflected in a Joint Enforcement Agreement between NOAA and the ASG or the person(s) or entity authorized to act on their behalf.

§ 922.107 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director, in consultation with the ASDOC, in accordance with this section and § 922.48, may conduct an activity otherwise prohibited by § 922.103, § 922.104, and § 922.105 in the Sanctuary if such activity is judged not

to cause long-term or irreparable harm to the resources of the Sanctuary, and is:

(1) Related to research involving Sanctuary resources designed to enhance understanding of the Sanctuary environment or to improve resource management decisionmaking;

(2) Intended to further the educational value of the Sanctuary and thereby enhance understanding of the Sanctuary environmental or improve resource management decisionmaking;

(3) Intended to further the management of the Sanctuary; or

(4) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office National Marine Sanctuaries; ATTN: Sanctuary Superintendent, American Samoa National Marine Sanctuary, P.O. Box 4318, Pago Pago, AS 96799.

(c) In considering whether to grant a permit, the Director shall evaluate such matters as:

(1) The general professional and financial responsibility of the applicant;

(2) The appropriateness of the methods being proposed for the purpose(s) of the activity;

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, education, or scientific information; and

(4) The end value of the activity.

(d) In addition to meeting the criteria in this section and § 922.48, the applicant also must demonstrate to the Director that:

(1) The activity shall be conducted with adequate safeguards for the environment; and

(2) The environment shall be returned to, or will regenerate to, the condition which existed before the activity occurred.

(e) The Director may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject the permit to such condition(s) as he or she deems necessary.

Appendix to Subpart J of Part 922—American Samoa National Marine Sanctuary Boundary Coordinates

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

(a) Fagatele Bay

No coordinates are needed in addition to those described in § 922.101(a).

(b) Larsen Bay

No coordinates are needed in addition to those described in § 922.101(b).

(c) Aunu'u (Zones A, B)

The Aunu'u Unit is comprised of two adjacent zones, described in § 922.101(c), for which the point coordinates are provided in following tables 1 and 2.

TABLE 1—COORDINATES FOR THE AUNU'U UNIT, ZONE A

Point ID	Latitude (south)	Longitude (west)
1	14.286 S	170.577 W
2	14.304 S	170.577 W
3	14.302 S	170.566 W
4	14.286 S	170.533 W
5	14.286 S	170.546 W
6	14.286 S	170.562 W
7	14.286 S	170.577 W

TABLE 2—COORDINATES FOR THE AUNU'U UNIT, ZONE B

Point ID	Latitude (south)	Longitude (west)
1	14.270 S	170.496 W
2	14.286 S	170.496 W
3	14.286 S	170.546 W
4	14.280 S	170.550 W
5	14.270 S	170.550 W
6	14.270 S	170.551 W

(d) Swains Island

No coordinates are needed in addition to those described in § 922.101(d).

(e) Muliāva

The Muliāva Unit boundary is defined by the coordinates provided in Table 3 and the textual description in § 922.101(e).

TABLE 3—COORDINATES FOR THE MULIĀVA UNIT

Point ID	Latitude (south)	Longitude (west)
1	15.387 S	169.012 W
2	14.271 S	169.012 W
3	14.271 S	169.121 W
4	14.150 S	169.121 W
5	14.150 S	169.012 W
6	13.698 S	169.012 W
7	13.698 S	167.283 W
8	15.387 S	167.283 W

TABLE 3—COORDINATES FOR THE MULIĀVA UNIT—Continued

Point ID	Latitude (south)	Longitude (west)
9	15.387 S	169.12 W

(f) Ta'u Unit

The Ta'u Unit boundary is defined by the coordinates provided in Table 4 and the textual description in § 922.101(f).

TABLE 4—COORDINATES FOR THE TA'U UNIT

Point ID	Latitude (south)	Longitude (west)
1	14.24889 S	169.503056 W
2	14.273056 S	169.488056 W
3	14.277222 S	169.488056 W
4	14.261111 S	169.429167 W
5	14.293889 S	169.429167 W
6	14.293889 S	169.519722 W
7	14.24889 S	169.519722 W
8	14.24889 S	169.503056 W

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Part III

Environmental Protection Agency

40 CFR Parts 721 and 799
Certain High Production Volume Chemicals; Test Rule and Significant New Use Rule; Fourth Group of Chemicals; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 721 and 799

[EPA–HQ–OPPT–2010–0520; FRL–8876–6]

RIN 2070–AJ66

Certain High Production Volume Chemicals; Test Rule and Significant New Use Rule; Fourth Group of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to issue a test rule under Toxic Substances Control Act (TSCA) section 4(a)(1)(B) to require manufacturers and processors of 23 high production volume (HPV) chemical substances to develop screening-level health, environmental, and fate data based on the potential for substantial exposures of workers and consumers to these chemicals. EPA is also proposing to issue simultaneously a significant new use rule (SNUR) for another 22 HPV chemical substances under TSCA section 5(a)(2). The SNUR would require persons to file a significant new use notice (SNUN) with EPA prior to manufacturing, importing, or processing any of these chemical substances for use in a consumer product or for any use, or combination of uses, that is reasonably likely to expose 1,000 or more workers at a single corporate entity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs. EPA is also soliciting comment on a number of issues with regard to both the test rule and the SNUR.

DATES: Comments must be received on or before January 19, 2012.

You may submit a request for an opportunity to present oral comments. This request must be made in writing. If such a request is received on or before January 19, 2012, EPA will hold a public meeting on this proposed rule in Washington, DC.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0520, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. *Attention:* Docket ID Number EPA–HQ–OPPT–2010–0520. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2010–0520. 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 regulations.gov or e-mail. The 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 e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

Submission of requests: You may submit a request for an opportunity to present oral comments. This request must be made in writing and submitted to the mailing or hand delivery addresses provided in this unit. If such a request is received, EPA will announce the scheduling of the public meeting in a subsequent document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Robert Jones (test rule) or Amy Breedlove (SNUR), Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–8161 or (202) 564–9823; *e-mail address: jones.robert@epa.gov* or *breedlove.amy@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; *telephone number:* (202) 554–1404; *e-mail address: TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by these actions if you manufacture (defined by statute to include import) or process any of the chemical substances that are listed in Tables A. or B. in Unit III. Potentially affected entities may include, but are not limited to:

- Manufacturers (defined by statute to include importers) of one or more of the subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.
- Processors of one or more of the subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of

entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult either technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. See Unit VI. for export notification requirements.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

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

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

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

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. Can I request an opportunity to present oral comments to the agency?

You may submit a request for an opportunity to present oral comments. This request must be made in writing. If such a request is received on or before January 19, 2012, EPA will hold a public meeting on this proposed rule in Washington, DC. This written request must be submitted to the mailing or hand delivery addresses provided under **ADDRESSES**. If such a request is received, EPA will announce the scheduling of the public meeting in a subsequent document in the **Federal Register**. If a public meeting is announced, and if you are interested in attending or presenting oral and/or written comments at the public meeting, you should follow the instructions provided in the subsequent **Federal Register** document announcing the public meeting.

II. Background

A. What action is the agency taking and why?

Congress gave EPA (also referred to as ''Agency'') broad authority to require testing of chemical substances when EPA can establish a minimum level of risk concern for a chemical substance (hazard and exposure are considered), and/or when EPA can establish that there is or may be substantial production and release or exposure of a chemical substance (production volume and exposure are considered). HPV chemical substances often have either significant release or human exposure scenarios that would stimulate EPA interest and support an EPA decision to require testing or to require notification before additional exposures occur. EPA is proposing to regulate 45 HPV chemical substances with either a test rule or a SNUR. EPA is proposing a test rule under TSCA section 4(a)(1)(B) for 23 of these 45 HPV chemical substances and a SNUR under TSCA section 5(a)(2) for the other 22 HPV chemical substances (see Tables A. and B. in Unit III.).

These 45 HPV chemical substances are among the chemical substances that were included in EPA's HPV Challenge Program (hereafter HPV Challenge) initiated in 1998. Of the 2,782 chemical substances originally included in the HPV Challenge, 1,858 were officially sponsored either directly in the HPV Challenge or indirectly through international efforts, although 5 were later withdrawn. Another 416 of the 2,782 chemical substances were removed from the scope of the HPV Challenge for a variety of reasons (*e.g.,* polymers, inorganics, *etc.*). The remaining 508 of the 2,782 chemical substances were termed ''orphans'' because they were not sponsored and there were no other factors that removed the chemical substances from the scope of the HPV Challenge. Of the 508 orphans, 405 are no longer produced at HPV levels. Of the remaining 103 chemical substances, 63 have been included in one of three test rules, or EPA has otherwise received data adequate to meet its needs. The remaining 40, plus the 5 chemical substances whose HPV Challenge sponsorships were withdrawn, are the subject of this proposed test rule and SNUR. For more information on the HPV Challenge go to *http://www.epa.gov/hpv/* or see the **Federal Register** of March 16, 2008 (71 FR 13708) (FRL–7335–2). This action contains the fourth and final test rule in the series and includes the last unsponsored/orphan chemical substances in the HPV Challenge.

The data that EPA seeks through the HPV Challenge is the Screening Information Data Set (SIDS) developed by the Organisation for Economic Co-operation and Development (OECD), of which the United States is a member. SIDS consists of tests for six endpoints (Ref. 1), including acute toxicity, repeated dose toxicity, developmental and reproductive toxicity, genetic toxicity, ecotoxicity, and environmental fate. The six SIDS endpoints provide a minimum, internationally-agreed-upon set of test data for screening HPV chemical substances for human and environmental hazards, and assist EPA and others in making an informed, preliminary judgment about the hazards of HPV chemical substances.

B. What is the agency's authority for taking these actions?

1. *Test rule.* EPA is proposing this test rule under TSCA section 4(a)(1)(B) which directs EPA to require by rule that manufacturers and/or processors of chemical substances and mixtures conduct testing, if the EPA Administrator finds that:

i. A chemical substance or mixture is or will be produced in substantial quantities, and (1) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (2) there is or may be significant or substantial human exposure to such substance or mixture.

ii. There are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such

substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted.

iii. Testing of such substance or mixture with respect to such effects is necessary to develop such data.

2. *SNUR.* Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a SNUN to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use.

C. Applicability of General Provisions

1. *Test rule.* General provisions for test rules appear under 40 CFR part 790 (subparts A, B, C, and E), 40 CFR part 791, 40 CFR part 792, and 40 CFR part 799 (subpart A). 40 CFR part 790, subpart A, describes the scope, purpose, and authority for test rules and consent agreements, provisions for submitting information to the Agency, and the treatment of confidential business information. 40 CFR part 790, subpart B covers the procedures for developing consent agreements and test rules. 40 CFR part 790, subpart C covers the implementation, enforcement, and modification of test rules. This subpart includes information about persons subject to testing and required to submit letters-of-intent to conduct testing and persons who must submit testing exemption applications, and includes information about the submission of study plans and how to modify test standards and schedules if necessary. Subpart E of 40 CFR part 790 provides detailed information about exemptions from test rules. 40 CFR parts 791 and 792 respectively cover provisions for data reimbursement and required good laboratory practice standards. 40 CFR part 799, subpart A, provides additional information on the scope and purpose of the rule, the applicability of the rule, submitting information, test standards, the availability of test guidelines, distinguishing positive and negative results, the effects of non-compliance, chemicals for which the testing reimbursement period has passed, and imports and exports.

Persons who export or intend to export a chemical substance identified in a final test rule are subject to the export notification provisions of TSCA section 12(b). Regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D, notices of export under section 12(b).

2. *SNUR.* General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6 or 7 to control the activities on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

D. What is the agency's ''B Policy''?

TSCA section 2(b) states that it is the policy of the United States that: (1) Adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures; (2) adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment and to take action with respect to chemical substances and mixtures which are imminent hazards; and (3) authority over chemical substances and mixtures should be exercised in such a manner as not to impede unduly or create unnecessary economic barriers to technological innovation while fulfilling the primary purpose of this Act to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment (15 U.S.C. 2601(b)(1)).

TSCA section 4(a)(1)(B) authorizes and requires EPA to issue a test rule for a chemical substance if EPA finds, among other things, that the chemical substance ''is or will be produced in substantial quantities'' and either ''enters or may reasonably be anticipated to enter the environment in substantial quantities'' or ''there is or may be significant or substantial human exposure.''

TSCA, however, does not say what is ''significant'' or ''substantial'' under TSCA section (4)(a)(1)(B). EPA, therefore, published a policy, known as the ''B Policy,'' in 1993 (Ref. 2) for aiding in the determination of when production or environmental release is substantial or when human exposure is either significant or substantial for the purpose of issuing a test rule under TSCA section (4)(a)(1)(B). Under the ''B Policy,'' ''produced in substantial quantities'' generally means manufactured or imported in one million pounds or more per year; a ''substantial environmental release'' is generally either one million pounds per year or ten percent of total manufactured and imported volume, whichever is less; and ''substantial human exposure'' is generally 100,000 or more people in the general population, or 10,000 or more consumers, or 1,000 or more workers.

E. Why is the agency proposing both a test rule and a SNUR?

EPA is proposing these two actions together because the Agency believes the actions are complementary and will best ensure these HPV chemicals are adequately evaluated by the Agency. For example, if EPA receives comments on this proposal sufficient to establish that one of the 23 chemical substances proposed to be regulated under the test rule is not used in a way that meets the substantial exposure criteria, but information received indicates that the chemical substance meets the criteria for the SNUR, EPA intends to include the chemical substance in the final SNUR rather than the test rule, without further public notice and comment. Simply removing such a chemical substance from the test rule in such circumstances, without including it in the SNUR, would not provide a regulatory mechanism for timely notification to EPA in the event of changed circumstances that would likely justify the issuance of a test rule for the chemical substance. Further, if public comment on these proposed actions is sufficient to establish that any of the uses to be covered for the 22 chemical substances proposed in the SNUR are, in fact, on-going, yet such comments also establish that there is already substantial exposure to the chemical substance, EPA intends to review the status of the chemical substance and, as warranted, take appropriate steps to promulgate a test rule rather than a SNUR for the

chemical substance. Unit IV. of this document details the proposed findings to issue a test rule for the 23 chemical substances listed in Table A. and provides additional discussion pertaining to whether the promulgation of a test rule for 22 chemical substances listed in Table B. may be warranted. Unit V. of this document details the proposed findings to issue a SNUR for the 22 chemical substances listed in Table B. and the basis to issue a SNUR for the 23 chemical substances listed in Table A. in the event that public comments provide additional data establishing that, for one or more of such chemical substances, there is no ongoing use in a consumer product and no ongoing use reasonably likely to expose 1,000 or more workers.

F. What are some future considerations?

One of EPA's top priorities is to assure the safety of chemical substances in commerce. Under TSCA, EPA has a primary mission to identify and, where appropriate, control unreasonable risks of manufacturing, processing, distribution in commerce, use, and disposal of chemical substances. It is essential that chemical substance review be supported by information sufficient to allow informed decision making and that information and decisions are of high quality and are widely understandable. As such, EPA continues to collect information from existing sources, to request new and better information where it is determined to be needed, and to make all supporting information publicly available, to the extent permitted under TSCA section 14 and 40 CFR part 2. Open access to information allows individuals, communities, businesses, and governments to make informed decisions and policies that incorporate environmental and health considerations and minimize external and/or unintended harmful impacts. Therefore, EPA intends to continue to focus on filling data needs on priority chemical substances, including high production volume chemical substances. EPA is interested in stakeholder input on a number of issues described in this section. Some specific issues EPA has identified to date follow.

1. *Coordination of simultaneous test rule and SNUR proposals.* In this action, EPA is simultaneously proposing a test rule and SNUR to regulate two sets of chemical substances. EPA believes that this is an efficient way to require submission of test data on chemical substances that meet all of the necessary test rule criteria and (for the latter group of chemical substances) to require submission of advance notification to EPA of use in a consumer product or of any use, or combination of uses, that is reasonably likely to expose 1,000 or more workers. With respect to chemical substances that meet some, but potentially not all test rule criteria, the SNUR also facilitates efficiency by mitigating the need for EPA to continually reevaluate each HPV chemical substance to determine whether exposure potential has changed. EPA is considering issuing further coordinated proposals of test rules and SNURs. This would occur in conjunction with future Inventory Update Reporting (IUR) rule data releases, covering all newly-HPV chemical substances. EPA requests comment on this approach. In September 2011, the IUR was renamed Chemical Data Reporting (CDR) and moved from 40 CFR part 710 subpart C to 40 CFR part 711 (76 FR 50816, August 16, 2011) (FRL–8872–9). For more information on this change go to *http://www.epa.gov/cdr.*

2. *Minimum data set.* For more than 15 years, EPA has used OECD's SIDS to facilitate and standardize the screening of the relatively large number of HPV chemical substances on the TSCA Inventory. EPA requests comment on whether SIDS continues to be the most appropriate data set to screen chemical substances for potential environmental and health hazards. Are additional or different tests also appropriate? Should EPA consider having more than one screening data set depending on the nature of exposures (*e.g.,* a different set of tests for children's exposures or environmental releases)?

3. *Computational toxicology.* The U.S. National Academy of Sciences National Research Council in their 2007 report ''Toxicity Testing in the 21st Century: A Vision and a Strategy'' (Ref. 3) encouraged ''work[ing] towards a transition to new integrative and predictive molecular and computational techniques to enhance efficiency and accuracy and to reduce reliance on animal testing.'' EPA requests suggestions on practical, implementable ways to work toward this goal in its actions under TSCA. Should tools such as ToxCast (at *http://www.epa.gov/comptox/toxcast*) (Ref. 4) be used to prioritize chemical substances and support hazard findings for testing?

III. Chemical Substances Subject to This Action

The 45 chemical substances included in this action are the remaining unsponsored/orphan chemical substances, which have not previously been subject to test rules or other HPV Challenge-related follow-up actions. EPA is proposing to issue a test rule under TSCA section 4(a)(1)(B) for the 23 chemical substances listed in Table A. in this unit and proposing to establish a SNUR under TSCA section 5(a)(2) for the other 22 chemical substances (see Table B. in this unit). Respecting the 23 chemical substances proposed for a section 4(a)(1)(B) test rule (*i.e.,* those in Table A.), in the event that public comments provide additional data respecting any of these chemical substances, establishing that there is no ongoing use in a consumer product and no ongoing use reasonably likely to expose 1,000 or more workers for any such substance, EPA intends to finalize a SNUR for each such chemical substance. Finally, with respect to the 22 chemical substances proposed for a SNUR (*i.e.,* those in Table B.), in the event that public comments provide additional data establishing that there is already substantial exposure to the chemical substance, EPA intends to review the status of the chemical substance and, as warranted, take appropriate steps to promulgate a section 4(a)(1)(B) test rule for the chemical substance. For each of these chemical substances, Tables A. and B. provide the Chemical Abstract (CA) Index Name, Chemical Abstract Service (CAS) Registry Number (CASRN), and 2006 IUR information on production volume, number of workers exposed, and commercial/consumer uses. Substantial worker exposure is deduced from the number of workers reported. Substantial consumer exposure is deduced from production volume and consumer uses if production volume exceeds one million pounds per year and consumer uses are indicated, it is likely that consumer exposure exceeds ten thousand people.

For each of the test rule candidate chemical substances, EPA has used the 2006 IUR information to preliminarily determine that the chemical substance is produced in substantial quantities and that there is substantial human exposure. For each of the significant new use (SNU) candidates, EPA has considered the 2006 IUR information in determining the proposed SNU designations. These findings are discussed further in Unit IV.A.1., Unit V.A., and Ref. 5.

TABLE A—CHEMICAL SUBSTANCES FOR WHICH A TEST RULE IS PROPOSED AND FOR WHICH A SNUR IS BEING CONSIDERED AS AN ALTERNATIVE OPTION

CASRN	CA Index name	2006 IUR production volume (million lbs.)	2006 IUR number of workers exposed	Chemical substance meets the "B finding" criteria of ≥1,000 workers exposed	Commercial/Consumer uses indicated in 2006 IUR	Chemical substance meets the "B finding" criteria of ≥10,000 consumers exposed
56–40–6	Glycine	1 ≤ 10	1,000+	Yes	Other; CBI	Yes.
67–72–1	Ethane, 1,1,1,2,2,2-hexachloro-	1 ≤ 10	1,000+	Yes	None	No.
78–00–2	Plumbane, tetraethyl-	1 ≤ 10	100–999	No	Lubricants, greases and fuel additives.	Yes.
95–14–7	1H-Benzotriazole	1 ≤ 10	100–999	No	Lubricants, greases and fuel additives; metal products; other.	Yes.
118–48–9	2H-3,1-Benzoxazine-2,4(1H)-dione.	10 ≤ 50	100–999	No	Agricultural products (non-pesticidal); other.	Yes.
128–44–9	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, sodium salt (1:1).	1 ≤ 10	100–999	No	Other	Yes.
928–72–3	Glycine, N-(carboxymethyl)-, sodium salt (1:2).	500 ≤ 1,000	1,000+	Yes	None	No.
1809–19–4	Phosphonic acid, dibutyl ester	1 ≤ 10	1,000+	Yes	CBI	Yes.
25377–73–5	2,5-Furandione, 3-(dodecen-1-yl)dihydro-.	1 ≤ 10	1–99	No	Other	Yes.
26544–38–7	2,5-Furandione, dihydro-3-(tetrapropenyl)-.	1 ≤ 10	100–999	No	Lubricants, greases and fuel additives; paints and coatings; not readily obtainable (NRO).	Yes.
27859–58–1	Butanedioic acid,2-(tetrapropenyl)-.	1 ≤ 10	1,000+	Yes	Lubricants, greases and fuel additives; CBI.	Yes.
28777–98–2	2,5-Furandione, dihydro-3-(octadecen-1-yl)-.	10 ≤ 50	100–999	No	Paper products	Yes.
29385–43–1	1H-Benzotriazole, 6(or75)-methyl-.	1 ≤ 10	100–999	No	Lubricants, greases and fuel additives.	Yes.
32072–96–1	2,5-Furandione, 3-(hexadecen-1-yl)dihydro-.	50 ≤ 100	1,000+	Yes	Paper products	Yes.
61789–73–9	Quaternary ammonium compounds, benzylbis(hydrogenated tallow alkyl)methyl, chlorides.	1 ≤ 10	100–999	No	CBI	Yes.
64665–57–2	1H-Benzotriazole, 6(or7)-methyl-, sodium salt.	1 ≤ 10	100–999	No	Other	Yes.
68131–13–5	Naphthenic acids, reaction products with diethylenetriamine.	1 ≤ 10	1,000+	Yes	None	No.
68153–60–6	Fatty acids, tall-oil, reaction products with diethylenetriamine, acetates.	1 ≤ 10	1,000+	Yes	None	No.
68424–85–1	Quaternary ammonium compounds, benzyl-C12-16-alkyldimethyl, chlorides.	1 ≤ 10	1,000+	Yes	Other; CBI	Yes.
68442–77–3	2-Butenediamide, (2E)-, N1,N4-bis[2-(4,5-dihydro-2-nortall-oil alkyl-1H-imidazol-1-yl)ethyl] derivs.	1 ≤ 10	1,000+	Yes	None	No.
68607–28–3	Quaternary ammonium compounds, (oxydi-2,1-ethanediyl)bis[coco alkyldimethyl, dichlorides.	1 ≤ 10	1,000+	Yes	Other	Yes.
68909–18–2	Pyridinium, 1-(phenylmethyl)-, Et Me derivs., chlorides.	1 ≤ 10	1,000+	Yes	Other	Yes.
69834–17–9	Benzene, decylphenoxy-	1 ≤ 10	100–999	No	Soaps and detergents	Yes.

TABLE B—LIST OF CHEMICAL SUBSTANCES FOR WHICH A SNUR IS PROPOSED AND FOR WHICH A TEST RULE IS BEING CONSIDERED AS AN ALTERNATIVE OPTION

CASRN	CA Index name	2006 IUR production volume (million lbs.)	2006 IUR number of workers exposed	Chemical substance meets the ''B finding'' criteria of ≥ 1,000 workers exposed	Commercial/consumer uses indicated in 2006 IUR	Chemical substance meets the ''B finding'' criteria of ≥ 10,000 consumers exposed
98–16–8	Benzenamine, 3-(trifluoromethyl)-	1 ≤ 10	1–99	No	None	No.
100–53–8	Benzenemethanethiol	1 ≤ 10	1–99	No	None	No.
104–91–6	Phenol, 4-nitroso-	1 ≤ 10	1–99	No	None	No.
110–03–2	2,5-Hexanediol, 2,5-dimethyl-	1 ≤ 10	100–999	No	None	No.
124–63–0	Methanesulfonyl chloride	1 ≤ 10	100–999	No	None	No.
142–30–3	3-Hexyne-2,5-diol, 2,5-dimethyl-	1 ≤ 10	100–999	No	None	No.
460–00–4	Benzene, 1-bromo-4-fluoro-	1 ≤ 10	100–999	No	Not readily obtainable (NRO).	No.
542–92–7	1,3-Cyclopentadiene	1 ≤ 10	1–99	No	None	No.
553–26–4	4,4′-Bipyridine	10 ≤ 50	100–999	No	None	No
8007–45–2	Tar, coal	1 ≤ 10	1–99	No	None	No.
28106–30–1	Benzene, ethenylethyl-	1 ≤ 10	100–999	No	None	No.
35203–06–6	Benzenamine, 2-ethyl-6-methyl-N-methylene-	10 ≤ 50	1–99	No	None	No.
35203–08–8	Benzenamine, 2,6-diethyl-N-methylene-	10 ≤ 50	1–99	No	None	No.
37734–45–5	Carbonochloridothioic acid, S-(phenylmethyl) ester.	1 ≤ 10	100–999	No	None	No.
37764–25–3	Acetamide, 2,2-dichloro-N,N-di-2-propen-1-yl-	1 ≤ 10	1–99	No	None	No.
61789–72–8	Quaternary ammonium compounds, benzyl(hydrogenated tallow alkyl)dimethyl, chlorides.	1 ≤ 10	100–999	No	None	No.
61790–13–4	Naphthenic acids, sodium salts	1 ≤ 10	100–999	No	None	No.
65996–91–0	Distillates (coal tar), upper	1 ≤ 10	100–999	No	None	No.
68308–01–0	Tail gas (petroleum), cracked distillate hydrotreater stripper.	10 ≤ 50	100–999	No	None	No.
68478–20–6	Residues (petroleum), steam-cracked petroleum distillates cyclopentadiene conc., C4-cyclopentadiene-free.	10 ≤ 50	1–99	No	None	No.
68526–82–9	Alkenes, C6-10, hydroformylation products, high-boiling.	1 ≤ 10	100–999	No	NRO	No.
68909–77–3	Ethanol, 2,2′-oxybis-, reaction products with ammonia, morpholine derivs. residues.	1 ≤ 10	100–999	No	None	No.

IV. Proposed Section 4(a)(1)(B) Test Rule and Basis to Also Consider Table B. Chemical Substances for a Section 4(a)(1)(B) Test Rule

A. What are the proposed findings?

1. *Exposure findings.* EPA is proposing to require testing of the chemical substances listed in Table A. based on its preliminary findings under TSCA section 4(a)(1)(B)(i) relating to ''substantial'' production and ''substantial human exposure,'' as well as findings under TSCA sections 4(a)(1)(B)(ii) and (a)(1)(B)(iii) relating to insufficient data and the need for testing. The chemical substances in Table A. are also listed in Table 2. of § 799.5090(j) of the proposed regulatory text along with their CASRNs.

i. *Are these chemical substances produced in substantial quantities?* EPA has made preliminary findings that each of the chemical substances included in this proposed test rule are produced in substantial quantities. In accordance with the ''B policy'' (discussed in Unit II.D.), each of these substances is manufactured (which, as noted in Unit I.A., includes imported) in an amount equal to or greater than 1 million lbs. per year (Ref. 5). These findings are based on information gathered in the 2006 IUR the most recently available compilation of IUR (now CDR) data.

ii. *Are a substantial number of workers exposed to these chemical substances?* EPA has made preliminary findings that the manufacture, processing, and use of 12 of the 23 chemical substances listed in Table A. result or may result in exposure of a substantial number of workers to the chemical substances (Ref. 5).

For chemical substances whose total production volume (manufactured and imported) exceeded 300,000 lbs. at a site during calendar year 2005, manufacturers (which as noted in Unit I.A., includes importers) were required through the 2006 IUR to report the number of potentially exposed workers during industrial processing and use to the extent the information was readily obtainable. Manufacturers of 12 of the 23 chemical substances listed in Table A. reported that more than 1,000 workers or more were potentially exposed to these chemical substances. Based on the threshold values stated in EPA's ''B Policy,'' EPA believes that an exposure of 1,000 workers or more on a routine or episodic basis to a chemical substance or mixture is ''substantial'' as that term is used with reference to ''human exposure'' in TSCA section 4(a)(1)(B)(i). Therefore, EPA's preliminary finding is that there is or may be substantial human exposure (workers) to 12 of these 23 chemical substances.

iii. *Are a substantial number of consumers exposed to these chemical substances?* EPA has made preliminary findings that the manufacture, processing, and use of 18 of the 23 chemical substances listed in Table A. result or may result in exposure of a substantial number of consumers to the chemical substances (Ref. 5).

In addition to worker exposure information, manufacturers of more than 300,000 lbs. of a given chemical substance at a site during calendar year 2005 were required to provide information regarding the commercial and consumer uses of the chemical substance. EPA reviewed the consumer use information reported for the 2006 IUR and carefully considered the nature of those uses. These 18 chemical substances were found to be used in such products as tires, footwear, flooring, bottles, sporting equipment, games, soaps and detergents, and paper products. Based on this review, EPA has preliminarily concluded that the reported consumer uses may result in exposures to at least 10,000 consumers. Based on the threshold values stated in EPA's ''B Policy,'' EPA believes that an exposure of 10,000 consumers or more to a chemical substance is ''substantial'' as that term is used with reference to ''human exposure'' in TSCA section 4(a)(1)(B)(i). Therefore, EPA's preliminary finding is that there is or may be substantial human exposure (consumers) to 18 of these 23 chemical substances.

2. *Are sufficient data available to evaluate these chemical substances?* Under TSCA section 4(a)(1)(B)(ii), EPA has preliminarily determined for the chemical substances in Table A. that there are insufficient data and experience to reasonably determine or predict the effects of the manufacture, distribution in commerce, processing, use, or disposal of these chemical substances, or of any combination of such activities, on human health or the environment.

In developing the testing requirements for chemical substances contained in Table A., EPA searched for available information on chemical/physical properties, environmental fate, ecotoxicity and human health effects, using the data sources outlined in the OECD guidelines found in section 3.1 (Reliability, Relevance and Adequacy) of the ''Manual for the Investigation of HPV Chemicals'' (Ref. 1) such as: The Beilstein Database, Chemical Rubber Company's Handbook of Chemistry and Physics, Hawley's Condensed Chemical Dictionary, Illustrated Handbooks of Physical-Chemical Properties and Environmental Fate for Organic Chemicals, Merck Index, Hazardous Substances Data Bank (HSDB), Toxicology Literature Online (TOXLINE), and the National Technical Information Service (NTIS). EPA also searched for available data as summarized in its HPV Information System (HPVIS) (Ref. 6). When appropriate, the Federal Research In Progress (FEDRIP) database was also searched. Any information that was obtained from these searches was evaluated for data acceptability using the guidelines described on EPA's HPV Challenge Web site (*http://www.epa.gov/hpv*): ''Guidance for Meeting the SIDS Requirements (the SIDS Guide)'' and ''Guidance for Assessing the Adequacy of Existing Data.'' Furthermore, data adequacy and reliability were evaluated using the OECD guidelines which can be found in section 3.1 of the OECD ''Manual for the Investigation of HPV Chemicals'' (Ref. 1). The results of EPA's data adequacy analysis can be found in the HPV4 Data Adequacy Evaluations document (Ref. 7).

Section 799.5090(j) of the proposed regulatory text lists each chemical substance and the SIDS tests for which adequate data are not currently available to the Agency. The Agency preliminarily finds that the existing data for one or more of the SIDS testing endpoints for each of the chemical substances listed in Table 2. in § 799.5090(j) of the proposed regulatory text (*i.e.,* chemical substances in Table A.) are insufficient to enable EPA to reasonably determine or predict the human health and environmental effects resulting from manufacture, distribution in commerce, processing, use, and disposal of these chemical substances.

To the extent that additional studies relevant to the testing proposed in this rulemaking are known to exist, EPA strongly encourages the submission of this information as comments to the proposed rule, including full citations for publications and full copies of unpublished studies. If EPA judges such data to be sufficient, corresponding testing will not be included in the final rule. Commenters may prepare a robust summary (Ref. 8) for each such study to facilitate EPA's review of the full study report or publication.

Persons who believe that adequate information regarding a chemical substance subject to this proposed rule can be developed using a category or the Structure-Activity Relationships (SAR) approach are encouraged to submit appropriate information, along with their rationale substantiating this belief, during the comment period on this proposed rule. If, based on submitted information and other information available to EPA, the Agency agrees, EPA will take such measures as are needed to avoid unnecessary testing in the final rule.

3. *Is testing necessary for these chemical substances?* EPA has also found preliminarily that testing the 23 chemical substances identified in Table A. is necessary to develop the needed data (TSCA section 4(a)(1)(B)(iii)). EPA has not identified any ''additional factors'' as discussed in the ''B Policy'' (Ref. 2, p. 28743) to cause the Agency to use decision making criteria other than those described in the ''B Policy.'' EPA knows of no other means to generate the SIDS data other than the testing proposed in this document, and therefore has preliminarily found that conducting the needed SIDS testing identified for the 23 chemical substances in Table A. is necessary to provide data relevant to a determination of whether the manufacture, processing, and use of the chemical substances does or does not present an unreasonable risk of injury to human health and the environment.

B. What is the basis to also consider chemical substances from Table B. for testing under section 4(a)(1)(B)?

As an alternative to issuing a SNUR, EPA is considering requiring testing of one or more of the chemical substances listed in Table B. EPA will consider this approach based on its preliminary findings under TSCA section 4(a)(1)(B)(i) relating to ''substantial'' production, its further analysis of the factors listed under TSCA sections 4(a)(1)(B)(ii) and (a)(1)(B)(iii) relating to insufficient data and the need for testing and additional data received in public comments. If information received in public comments establishes that consumer uses, or uses that could affect 1,000 workers or more, are already ongoing, then that information may indicate that a SNUR is inappropriate for the particular chemical substance listed in Table B. The same information, however, may prompt EPA to conclude that a test rule is appropriate for such a substance, since evidence of ongoing use may also be evidence of substantial human exposure. If public comments provide the basis to conclude that there is already or may be substantial human exposure to one of the chemical substances in Table B., and there is a basis to make the other findings required under TSCA sections 4(a)(1)(B)(ii) and (a)(1)(B)(iii), then EPA intends to review the status of the chemical substance and, as warranted, take appropriate steps to promulgate a test rule rather than a SNUR for the chemical substance.

EPA has made preliminary findings that each of the chemical substances listed in Table B. are produced in substantial quantities (manufactured, including imported, in an amount equal to or greater than 1 million lbs. per year (Ref. 5)). These findings are based on information gathered in the 2006 IUR

rule. The 2006 data are the most recently available compilation of IUR (now CDR) data.

C. What testing is being proposed in this action and is also being considered for chemical substances in Table B.?

EPA is proposing specific testing and reporting requirements for the chemical substances from Table A. (specified in § 799.5090(j) of the proposed regulatory text) and is also considering the same requirements with respect to the chemical substances listed in Table B. All of the proposed testing requirements are listed in Table 2. in § 799.5090(j) of the proposed regulatory text and consist of a series of test methods covering many of the endpoints in the OECD HPV SIDS testing battery.

EPA's TSCA 799 test guidelines (40 CFR part 799, subparts E and H) have been harmonized with the OECD test guidelines. However, EPA is specifying that the American Society for Testing and Materials International (ASTM International) or the TSCA 799 test guidelines be used rather than OECD test guidelines because the language in the ASTM International standards and the TSCA 799 test guidelines makes clear which steps are mandatory and which steps are only recommended. Accordingly, to comply with the testing being proposed, EPA is proposing that testing must be conducted in accordance with ASTM International or TSCA 799 test guidelines. Note: ASTM issues its test methods under a fixed designation (*e.g.,* E1719); the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last re-approval. A superscript epsilon (e) indicates an editorial change since the last revision or re-approval. Most of the proposed testing requirements for a particular endpoint are specified in one test standard. In the case of certain endpoints, however, any of multiple listed methods could be used. For several of the proposed test standards, EPA has identified and is proposing certain ''special conditions'' as discussed in this unit. The following endpoints and test standards are included in this proposed test rule.

1. *Physical/chemical properties.* Melting Point: ASTM E 324–99 (capillary tube) (Refs. 9 and 10).

Boiling Point: ASTM E 1719–05 (ebulliometry) (Ref. 11). Vapor Pressure: ASTM E 1782–08 (thermal analysis) (Ref. 12). *n*-Octanol/Water Partition Coefficient: Method A (40 CFR 799.6755—shake flask); Method B (ASTM E 1147–92(2005)—liquid chromatography) (Ref. 13); Method C (40 CFR 799.6756—generator column).

Water Solubility: Method A (ASTM E 1148–02—shake flask) (Ref. 14); Method B (40 CFR 799.6784—shake flask); Method C (40 CFR 799.6784—column elution); Method D (40 CFR 799.6786—generator column).

For those chemical substances needing melting points determinations, EPA is proposing that melting points be determined according to ASTM method E 324–99. Although ASTM International indicates on its Web site, *http://www.astm.org/DATABASE.CART/WITHDRAWN/E324.htm,* that ASTM E 324–99 has been withdrawn, ASTM International's withdrawal of the method means only that ASTM International no longer continues to develop and improve the method. It does not mean that ASTM International no longer considers the method to be valid. ASTM International has explained that ASTM E 324–99 was withdrawn because:

> The standard utilizes old, well-developed technology; it is highly unlikely that any additional [changes] and/or modifications will ever be pursued by the E15 [committee]. The time and effort needed to maintain these documents detract from the time available to develop new standards which use modern technology (Ref. 15).

ASTM International still makes the method available for informational purposes and it can still be purchased from ASTM International at the address listed in § 799.5090(h) of the proposed regulatory text.

EPA concludes that ASTM International's withdrawal of ASTM E 324–99 does not have negative implications on the validity of the method, and EPA is proposing that melting points be determined according to ASTM E 324–99.

For those chemical substances that are liquid at room temperature, EPA is proposing a measured freezing point to meet the obligation to report the melting point. Since ASTM E 324–99 (capillary tube) does not specifically include instructions for determining freezing point, EPA is instead proposing to require, for substances which are liquid at room temperature, OECD 102 (melting point/melting range), which includes guidance for determining freezing point (Ref. 10).

For the ''*n*-Octanol/Water Partition Coefficient (log 10 basis)'' and water solubility endpoints, EPA is proposing that certain ''special conditions'' be considered by test sponsors in determining the appropriate test method that would be used from among those included for these endpoints in Table C. of this unit and in Table 3. in § 799.5090(j) of the proposed regulatory text.

For the ''*n*-Octanol/Water Partition Coefficient (log 10 basis)'' endpoint, also known as log K_{ow}, EPA proposes that an appropriate selection be made from among three alternative methods for measuring the chemical substance's *n*-Octanol/Water Partition Coefficient (log 10 basis; ''log K_{ow}''). Prior to determining the appropriate standard to use, if any, to measure the *n*-Octanol/Water Partition Coefficient, EPA is recommending that the log K_{ow} be quantitatively estimated. EPA recommends that the method described in ''Atom/Fragment Contribution Method for Estimating Octanol-Water Partition Coefficients'' (Ref. 16) be used in making such estimation. EPA is proposing that test sponsors must submit with the final study report the underlying rationale for the test standard selected for this endpoint. EPA is proposing this approach recognizing that, depending on the chemical substance's log $K_{ow,}$ one or more test methods may provide adequate information for determining the log K_{ow}, but that in some instances one particular test method may be more appropriate. In general, EPA believes that the more hydrophobic a subject chemical substance is, the less well Method A (40 CFR 799.6755—shake flask) will work and Method B (ASTM E 1147–92(2005)) and Method C (40 CFR 799.6756—generator column) become more suitable, especially Method C. The proposed test methodologies have been developed to meet a wide variety of needs and, as such, are silent on experimental conditions related to pH. Therefore, EPA highly recommends that all required *n*-Octanol/Water Partition Coefficient tests be conducted at pH 7 to ensure environmental relevance.'' Table C. of this unit shows the proposed test standards and log K_{ow} ranges that would determine which tests must be conducted for this endpoint.

TABLE C—TEST REQUIREMENTS FOR THE *n*-OCTANOL/WATER PARTITION COEFFICIENT ENDPOINT

Testing category	Test requirements and references	Special conditions
Physical/chemical properties	*n*-Octanol/water partition coefficient (log 10 basis) or log K_{ow}: The appropriate log K_{ow} test, if any, would be selected from those listed in this column—see special conditions in the adjacent column. Method A: 40 CFR 799.6755 (shake flask) Method B: ASTM E 1147–92 (2005) (liquid chromatography) Method C: 40 CFR 799.6756 (generator column)	*n*-Octanol/water partition coefficient or log K_{ow}: Which method is required, if any, is determined by the test substance's estimated log K_{ow} as follows: log K_{ow} < 0: no testing required. log K_{ow} range 0–1: Method A or B. log K_{ow} range > 1–4: Method A or B or C. log K_{ow} range > 4–6: Method B or C. log K_{ow} > 6: Method C. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted at pH 7.

For the ''Water Solubility'' endpoint, EPA proposes an appropriate selection be made from among four alternative methods for measuring that endpoint. The test method used, if any, would be determined by first quantitatively estimating the test substance's water solubility. One recommended method for estimating water solubility is described in ''Improved Method for Estimating Water Solubility from Octanol/Water Partition Coefficient'' (Ref. 17). EPA is also proposing that test sponsors be required to submit in the final study report the underlying rationale for the test standard selected for this endpoint. The proposed test methodologies have been developed to meet a wide variety of needs and, as such, are silent on experimental conditions related to pH. Therefore, EPA proposes that all required water solubility tests be conducted starting at pH 7 to ensure environmental relevance. The estimated water solubility ranges that EPA is proposing for use in selecting an appropriate proposed test standard are shown in Table D. of this unit.

TABLE D—TEST REQUIREMENTS FOR THE WATER SOLUBILITY ENDPOINT

Testing category	Test requirements and references	Special conditions
Physical/chemical properties	Water solubility: The appropriate method to use, if any, to test for water solubility would be selected from those listed in this column—see special conditions in the adjacent column Method A: ASTM E 1148–02 (Re-approved 2008) (shake flask) Method B: 40 CFR 799.6784 (shake flask) Method C: 40 CFR 799.6784 (column elution) Method D: 40 CFR 799.6786 (generator column)	Water solubility: Which method is required, if any, would be determined by the test substance's estimated water solubility. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted starting at pH 7. > 5,000 milligrams/liters (mg/L): Method A or B. > 10 mg/L–5,000 mg/L: Method A, B, C, or D. > 0.001 mg/L—10 mg/L: Method C or D. ≤ 0.001 mg/L: No testing required.

2. *Environmental fate and pathways.* Ready Biodegradation: Method A—ASTM E 1720–01(Reapproved 2008) (Sealed vessel CO_2 production test) (Ref. 18); Method B—International Organization for Standardization (ISO) 14593 (CO_2 headspace test) (Ref. 19); Method C— ISO 7827 (Method by analysis of dissolved organic carbon (DOC)) (Ref. 20); Method D—ISO 9408 (Determination of oxygen demand in a closed respirometer) (Ref. 21); Method E—ISO 9439 (Carbon dioxide evolution test) (Ref. 22); Method F—ISO 10707 (Closed bottle test) (Ref. 23); Method G—ISO 10708 (Two-phase closed bottle test) (Ref. 24).

For the ''Ready Biodegradation'' endpoint, EPA proposes an appropriate selection be made from among seven alternative methods for measuring the chemical substance's ready biodegradability. For most test substances, EPA considers Method A (ASTM E 1720–01) and Method B (ISO 14593) to be generally applicable, cost effective, and widely accepted internationally. However, any test method used will depend on the physical and chemical properties of the test substance, including its water solubility. An additional document, ISO 10631 (Ref. 25), provides guidance for selection of an appropriate test method for a given test substance considering the substance's physical and chemical properties. EPA is also proposing that test sponsors be required to submit in the final study report the underlying rationale for the test standard selected for this endpoint.

3. *Aquatic toxicity.* Test Group 1: Acute toxicity to fish (ASTM E 729–96 (2007)) (Ref. 26); Acute toxicity to Daphnia (ASTM E 729–96(2007)) (Ref. 26); and Toxicity to plants (algae) (ASTM E 1218–04e1) (Ref. 27). Test

Group 2: Chronic toxicity to Daphnia (ASTM E 1193–97 (2004)) (Ref. 28); and Toxicity to plants (algae) (ASTM E 1218–04e1) (Ref. 27).

For the ''Aquatic Toxicity'' endpoint, the OECD HPV SIDS Program recognizes that, for certain chemical substances, acute toxicity studies are of limited value in assessing the chemical substance's aquatic toxicity. This issue arises when considering chemical substances with high log K_{ow} values. In such cases, toxicity is unlikely to be observed over the duration of acute toxicity studies because of reduced uptake and the extended amount of time required for such chemical substances to reach steady state or toxic concentrations in the test organism. For such situations, the OECD HPV SIDS Program recommends use of chronic toxicity testing in Daphnia in place of acute toxicity testing in fish and Daphnia. EPA is proposing that the aquatic toxicity testing requirement be determined based on the test chemical substance's measured log K_{ow} as determined by using the approach outlined in this unit in the discussion of ''*n*-Octanol/Water Coefficient,'' and in Table 3. in § 799.5090(j) of the proposed regulatory text. For test chemical substances determined to have a log K_{ow} of less than 4.2, one or more of the following tests (described as ''Test Group 1'' in Table 3. in § 799.5090(j) of the proposed regulatory text) are proposed: Acute toxicity to fish (ASTM E 729–96 (2007)); Acute toxicity to Daphnia (ASTM E 729–96 (2007)); and Toxicity to plants (algae) (ASTM E 1218–04e1). For test chemical substances determined to have a log K_{ow} that is greater than or equal to 4.2, one or both of the following tests (described as ''Test Group 2'' in Table 3. in § 799.5090(j) of the proposed regulatory text) are proposed: Chronic toxicity to Daphnia (ASTM E 1193–97 (2004)) and Toxicity to plants (algae) (ASTM E 1218–04e1). As outlined in Unit IV.C.3. and in § 799.5090(j) of the proposed regulatory text, depending on the testing proposed in Test Group 1, the Test Group 2 chronic Daphnia test may substitute for either or both the acute fish toxicity test and the acute Daphnia test.

Using SAR, a log K_{ow} of 4.2 corresponds with a fish bioconcentration factor (BCF) of about 1,000 (Refs. 17, 29, and 30). A chemical substance with a fish BCF value of 1,000 or more is characterized as having a tendency to accumulate in living organisms relative to the concentration of the chemical substance in the surrounding environment (Ref. 30). For the purposes of this proposed rule, EPA's use of a log K_{ow} equal to or greater than 4.2 (which corresponds with a fish BCF value of 1,000) is consistent with the approach taken in the Agency's Final Policy Statement under TSCA section 5 entitled ''Category for Persistent, Bioaccumulative, and Toxic New Chemical Substances'' (Ref. 31). EPA has also used a measured BCF that is equal to or greater than 1,000 or, in the absence of bioconcentration data, a log P [same as log K_{ow}] value equal to or greater than 4.3 to help define the potential of a new chemical substance to cause significant adverse environmental effects (''Significant New Use Rules; General Provisions For New Chemical Follow-Up'' under TSCA sections 5 and 26(c) (Ref. 32; see also 40 CFR 721.3)). EPA considers the difference between the log K_{ow} of 4.3 cited in the 1989 **Federal Register** document (Ref. 32) and the log K_{ow} value of 4.2 cited in this proposed TSCA section 4 test rule to be negligible.

EPA recognizes that in some circumstances, acute aquatic toxicity testing (Test Group 1) may be relevant for certain chemical substances having a log K_{ow} equal to or greater than 4.2. Chemical substances that are dispersible in water (*e.g.,* surfactants, detergents, aliphatic amines, and cationic dyes) may have log K_{ow} values greater than 4.2 and may still be acutely toxic to aquatic organisms. For any chemical substance listed in Table 3. in § 799.5090(j) of the proposed regulatory text for which a test sponsor believes that an alternative to the log K_{ow} threshold of 4.2 is appropriate, the test sponsor may request a modification of the test standard in the final rule as described in 40 CFR 790.55. Based upon the supporting rationale provided by the test sponsor, EPA may allow an alternative threshold or method to be used for determining whether acute or chronic aquatic toxicity testing must be performed for a specific test substance. EPA is soliciting public comment on this approach as well as other alternative approaches in this area.

4. *Mammalian toxicity—acute.* Acute Inhalation Toxicity (rat): Method A (40 CFR 799.9130). Acute Oral Toxicity (rat): Method B (ASTM E 1163–98(2002) (Ref. 33) or 40 CFR 799.9110(d)(1)(i)(A)).

For the ''Mammalian Toxicity—Acute'' endpoint, EPA is proposing that certain special conditions such as the chemical substance's physical/chemical properties or physical state be considered in determining the appropriate test method from among those included for this endpoint in Table 3. in § 799.5090(j) of the proposed regulatory text. The OECD HPV SIDS Program recognizes that, for most chemical substances, the oral route of administration will suffice for this endpoint. However, consistent with the approach taken under the voluntary HPV Challenge, EPA is proposing that, for test chemical substances that are gases at room temperature (25 °C), the acute mammalian toxicity study be conducted using inhalation as the exposure route (described as Method A (40 CFR 799.9130) in Table 3. in § 799.5090(j) of the proposed regulatory text). In the case of a potentially explosive test chemical substance, care must be taken to avoid the generation of explosive concentrations. For all other chemical substances (*i.e.,* those that are either liquids or solids at room temperature), EPA is proposing that acute toxicity testing be conducted via oral administration using an ''Up/Down'' test method (described as Method B (ASTM E 1163–98 (2002) or 40 CFR 799.9110(d)(1)(i)(A)) in Table 3. in § 799.5090(j) of the proposed regulatory text). Consistent with the voluntary HPV Challenge, EPA is proposing to allow the use of the Neutral Red Uptake (NRU) basal cytotoxicity assay to select the starting dose for the acute oral toxicity test (Refs. 34 and 35). This test is included as a Special Condition in Table 3. in § 799.5090(j) of the proposed regulatory text. A document developed by National Institutes of Health/National Institute of Environmental Health Sciences (NIH/NIEHS) provides guidance on how to use the NRU assay to estimate a starting dose for an acute oral toxicity test (Ref. 36). Recent versions of the standardized protocols for the NRU assay are available at the NIEHS/Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) Web site, *http://iccvam.niehs.nih.gov/methods/acutetox/invitrocyto/invcyt_proto.htm* (Refs. 34, 35, and 37).

Dermal toxicity testing is not proposed in this rulemaking, and the Agency does not intend to include any dermal toxicity testing in any TSCA section 4 HPV SIDS rulemakings.

5. *Mammalian toxicity—genotoxicity.* Gene Mutations. Bacterial Reverse Mutation Test (*in vitro*): 40 CFR 799.9510 Chromosomal Damage.

In Vitro Mammalian Chromosome Aberration Test (40 CFR 799.9537), or the *In Vivo* Mammalian Bone Marrow Chromosomal Aberration Test (rodents: Mouse (preferred species), rat, or Chinese hamster) (40 CFR 799.9538), or the *In Vivo* Mammalian Erythrocyte Micronucleus Test (sampled in bone marrow) (rodents: Mouse (preferred species), rat, or Chinese hamster) (40 CFR 799.9539).

Persons who would be required to conduct testing for chromosomal damage are encouraged to use *in vitro* genetic toxicity testing (*i.e.,* the Mammalian Chromosome Aberration Test) to generate the needed genetic toxicity screening data, unless known chemical properties preclude its use. These could include, for example, physical chemical properties or chemical class characteristics. A primary focus of both the voluntary HPV Challenge and this proposed rule is to implement this program in a manner consistent with the OECD HPV SIDS Program and as part of a larger international activity with global involvement. This proposed approach provides the same degree of flexibility as that which currently exists under the OECD HPV SIDS testing program (Ref. 1). A person subject to this rule who uses one of the *in vivo* methods instead of the *in vitro* method to address this end-point would be required to submit to EPA in the final report a rationale for conducting that alternate test.

6. *Mammalian toxicity—repeated dose/reproduction/developmental.* Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9365. Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9355. Repeated Dose 28-Day Oral Toxicity Study: 40 CFR 799.9305.

For the ''Mammalian Toxicity—Repeated Dose/Reproduction/Developmental'' endpoint, EPA recommends the use of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9365) as the test of choice. EPA recognizes, however, that there may be reasons to test a particular chemical substance using both the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9355) and the Repeated Dose 28-Day Oral Toxicity Study (40 CFR 799.9305) instead of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9365). With regard to such cases, EPA is proposing that a person subject to this rule, who uses the combination of the Reproduction/Developmental Toxicity Screening Test and the Repeated Dose 28-Day Oral Toxicity Study in place of the Combined Repeated Dose Toxicity Study with Reproduction/Developmental Toxicity Screen would be required to submit to EPA in the final study reports a rationale for conducting these alternate tests.

Certain of the chemical substances for which Mammalian Toxicity—Repeated Dose/Reproduction/Developmental testing is proposed may be used solely as ''closed system intermediates,'' as described in the EPA guidance document developed for the voluntary HPV Challenge (Ref. 38). As described in that guidance, such chemical substances may be eligible for a reduced testing battery which substitutes a developmental toxicity study for the SIDS requirement to address repeated dose (*e.g.,* subchronic), reproductive, and developmental toxicity. In other words, since only the developmental toxicity study would be conducted for those chemical substances that qualify for a reduced testing battery, repeated dose (*e.g.,* subchronic) and reproductive studies would not be conducted. At the present time, EPA does not have sufficient information to know with any degree of certainty which if any of the chemical substances that are listed in the proposed regulatory text are solely closed system intermediates as defined in the voluntary HPV Challenge guidance document (Ref. 38). Persons who believe that a chemical substance fully satisfies the terms outlined in the guidance document are encouraged to submit appropriate information along with their comments on this proposed rule which substantiate this belief. If, based on submitted information and other information available to EPA, the Agency believes that a chemical substance is considered likely to meet the requirements for use solely as a closed system intermediate, EPA would not address any developmental toxicity testing needs in this proposed rule.

D. When would any testing imposed by this proposed rule begin?

The testing requirements contained in this proposed rule are not effective until and unless the Agency issues a final test rule. Based on the effective date of the final test rule, which is typically 30 days after the publication of a final rule in the **Federal Register**, the test sponsor may plan the initiation of any required testing as appropriate to submit the required final report by the deadline indicated in § 799.5090(i) of the proposed regulatory text.

E. How would the studies proposed under this test rule be conducted?

Persons required to comply with the final rule would have to conduct the necessary testing in accordance with the testing and reporting requirements established in the regulatory text of the final rule, with 40 CFR part 790—Procedures Governing Testing Consent Agreements and Test Rules (except for paragraphs (a), (d), (e), and (f) of § 790.45; § 790.48; paragraph (a)(2) and paragraph (b) of § 790.80; paragraph (e)(1) of § 790.82; and § 790.85), and with 40 CFR part 792—Good Laboratory Practice Standards.

F. What forms of chemical substances would be tested under this rule?

EPA is proposing two distinct approaches for identifying the specific chemical substances that would be tested under a final rule originating from this proposed rule, the application of which would depend on whether the chemical substance is considered to be a ''Class 1'' or a ''Class 2'' chemical substance. First introduced when EPA compiled the TSCA Chemical Substance Inventory, the term Class 1 chemical substance refers to a chemical substance having a chemical composition that consists of a single chemical species (not including impurities) that can be represented by a specific, complete structure diagram. By contrast, a Class 2 chemical substance has a composition that cannot be represented by a specific, complete chemical structure diagram, because such a substance generally contains two or more different chemical species (not including impurities). Table 2. in § 799.5090(j) of the proposed regulatory text identifies the listed chemical substances as either Class 1 or Class 2 chemical substances.

EPA is proposing that, for the Class 1 chemical substances that are listed in this proposed rule, the test chemical substance have a purity of 99% or greater. EPA has generally applied this standard of purity to the testing of Class 1 chemical substances in the past under TSCA section 4(a) testing actions, except for chemical substances where it has been shown that such purity is unattainable. EPA is soliciting comment on whether a purity level of 99% or greater cannot be attained for any of the Class 1 chemical substances listed in this proposed rule. For the Class 2 chemical substances that are listed in this proposed rule, EPA is proposing that the test chemical substance be any representative form of the chemical substance, to be defined by the test sponsor(s).

EPA solicits comment on the proposed alternative approach to the testing of Class 2 chemical substances included in this proposed rule.

G. Who would be required to test under this rule?

1. *Would I be subject to this rule*? If this proposed rule becomes final, you would be subject to the final rule and may be required to test if you manufacture (which is defined by statute to include import) or process, or intend to manufacture or process, one or more chemical substances listed in this

proposed rule during the time period described in this unit. However, if you do not know or cannot reasonably ascertain that you manufacture or process a listed test rule chemical substance (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you would not be subject to the rule for that listed chemical substance.

2. *When would my manufacture or processing (or my intent to do so) cause me to be subject to this rule?* You would be subject to this rule if you manufacture or process, or intend to manufacture or process, a chemical substance listed in the rule at any time from the effective date of the final test rule to the end of the test data reimbursement period. The term ''reimbursement period'' is defined at 40 CFR 791.3(h) and may vary in length for each substance to be tested under a final TSCA section 4(a) test rule, depending on what testing is required and when testing is completed.

3. *Would I be required to test if I were subject to the rule?* It depends on the nature of your activities. All persons who would be subject to this TSCA section 4(a) test rule, which, unless otherwise noted in the regulatory text, incorporates EPA's generic procedures applicable to TSCA section 4(a) test rules (contained within 40 CFR part 790), would fall into one of two groups, designated here as Tier 1 and Tier 2. Persons in Tier 1 (those who would have to initially comply with the final rule) would either submit to EPA letters of intent to conduct testing, conduct this testing, and submit the test data to EPA, or apply to and obtain from EPA exemptions from testing. Addresses of the EPA Document Control Office where this information should be sent are found in this document under **ADDRESSES**.

Persons in Tier 2 (those who would not have to initially comply with the final rule) would not need to take any action unless they are notified by EPA that they are required to do so (because, for example, no person in Tier 1 had submitted a letter of intent to conduct testing). Note that both persons in Tier 1 who obtain exemptions and persons in Tier 2 would nonetheless be subject to providing reimbursement to persons who actually conduct the testing.

4. *Who would be in Tier 1 and Tier 2?* All persons who would be subject to the final rule are considered to be in Tier 1 unless they fall within Tier 2. Table E. of this unit describes who is in Tier 1 and Tier 2.

TABLE E—PERSONS SUBJECT TO THE RULE: TIER 1 AND TIER 2

Tier 1 (persons initially required to comply)	Tier 2 (persons not initially required to comply)
Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture, a test rule chemical substance, and who are not listed under Tier 2.	A. Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture a test rule chemical substance solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring chemical substance (as defined at 40 CFR 710.4(b)); —As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kilograms (kg) (1,100 lbs.) annually (as described at 40 CFR 790.42(a)(4)); or —In small quantities solely for research and development (R & D) (as described at 40 CFR 790.42(a)(5)). B. Persons who process (as defined at TSCA section 3(10)) or intend to process a test rule substance (see 40 CFR 790.42(a)(2)).

Under 40 CFR 790.2, EPA may establish procedures for specific test rules that differ from the generic procedures governing TSCA section 4(a) test rules in 40 CFR part 790. For purposes of this proposed rule, EPA is proposing to establish certain requirements that differ from those under 40 CFR part 790.

In this proposed test rule, EPA has configured the tiers in 40 CFR 790.42 as in previous HPV test rules (Refs. 39, 40, and 41). In addition to processors, manufacturers of less than 500 kg (1,100 lbs.) per year (''small-volume manufacturers''), and manufacturers of small quantities for research and development (''R&D manufacturers''), EPA has added the following persons to Tier 2: Byproduct manufacturers, impurity manufacturers, manufacturers of naturally occurring chemical substances, manufacturers of non-isolated intermediates, and manufacturers of components of Class 2 chemical substances. The Agency took administrative burden and complexity into account in determining who was to be in Tier 1 in this proposed rule. EPA believes that those persons in Tier 1 who would conduct testing under this proposed rule, when finalized, would generally be large manufacturers of chemical substances who, in the experience of the Agency, have traditionally conducted testing or participated in testing consortia under previous TSCA section 4(a) test rules.

The Agency also believes that byproduct manufacturers, impurity manufacturers, manufacturers of naturally occurring chemical substances, manufacturers of non-isolated intermediates, and manufacturers of components of Class 2 chemical substances historically have not themselves participated in testing or contributed to reimbursement of those persons who have conducted testing. EPA understands that these manufacturers may include persons for whom the marginal transaction costs involved in negotiating and administering testing arrangements are deemed likely to raise the expense and burden of testing to a level that is disproportional to the additional benefits of including these persons in Tier 1. Therefore, EPA does not believe that the likelihood of the persons proposed to be added to Tier 2 actually conducting the testing is sufficiently high to justify burdening these persons with Tier 1 requirements (*e.g.,* submitting requests for exemptions). Nevertheless, these persons, along with all other persons in Tier 2, would be subject to reimbursement obligations to persons who actually conduct the testing.

TSCA section 4(b)(3)(B) requires all manufacturers and/or processors of a

chemical substance to test that chemical substance if EPA has made findings under TSCA sections 4(a)(1)(A)(ii) or (a)(1)(B)(ii) for that chemical substance, and issued a TSCA section 4(a) test rule requiring testing. However, practicality must be a factor in determining who is subject to a particular test rule. Thus, persons who do not know or cannot reasonably ascertain that they are manufacturing or processing a chemical substance subject to this proposed rule, *e.g.,* manufacturers or processors of a chemical substance as a trace contaminant who are not aware of and cannot reasonably ascertain these activities, would not be subject to the rule. See § 799.5090(b)(2) of the proposed regulatory text.

5. *Who is in the Tier 2 subdivisions?* The Agency is proposing to prioritize which persons in Tier 2 would be required to perform testing, if needed. Specifically, the Agency is proposing that Tier 2 entities be subdivided into:

i. Tier 2A—manufacturers, *i.e.,* those who manufacture, or intend to manufacture, a test rule chemical substance solely as one or more of the following: A byproduct, an impurity, a naturally occurring chemical substance, a non-isolated intermediate, a component of a Class 2 chemical substance, in amounts less than 1,100 lbs. annually, or in small quantities solely for research and development.

ii. Tier 2B—processors, *i.e.,* those who process, or intend to process, a test rule chemical substance (in any form). The terms ''process'' and ''processor'' are defined by TSCA sections 3(10) and 3(11), respectively.

If the Agency needs testing from persons in Tier 2, EPA would seek testing from persons in Tier 2A before proceeding to Tier 2B. It is appropriate to require manufacturers in Tier 2A to submit letters of intent to test or exemption applications before processors are called upon because the Agency believes that testing costs are traditionally passed by manufacturers along to processors, enabling them to share in the costs of testing (Ref. 42). In addition, as stated by EPA in the Data Reimbursement rule, ''[t]here are [typically] so many processors [of a given test rule chemical substance] that it would be difficult to include them all in the technical decisions about the tests and in the financial decisions about how to allocate the costs'' (Ref. 43).

6. *When would it be appropriate for a person who would be required to comply with the rule to apply for an exemption rather than to submit a letter of intent to conduct testing?* You may apply for an exemption if you believe that the required testing will be performed by another person (or a consortium of persons formed under TSCA section 4(b)(3)(A)). Procedures relating to exemptions are in 40 CFR 790.80 through 790.99, and § 799.5090(c)(2), (c)(5), (c)(7), and (c)(11) of the proposed regulatory text. In this proposed rule, EPA would not require the submission of equivalence data (*i.e.,* data demonstrating that your chemical substance is equivalent to the chemical substance actually being tested) as a condition for approval of your exemption. Therefore, 40 CFR 790.82(e)(1) and 40 CFR 790.85 would not apply to this proposed rule.

7. *What would happen if I submitted an exemption application?* If EPA has received a letter of intent to test from another source or has received (or expects to receive) the test data that would be required under this rule, the Agency may conditionally approve your exemption application under 40 CFR 790.87.

The Agency would terminate conditional exemptions if a problem occurs with the initiation, conduct, or completion of the required testing, or with the submission of the required data to EPA. EPA may then require you to submit a notice of intent to test or an exemption application. See 40 CFR 790.93 and § 799.5090(c)(8) of the proposed regulatory text for details on submitting this notice. In addition, the Agency would terminate a conditional exemption if no letter of intent to test has been received from persons required to comply with the rule. See, *e.g.,* § 799.5090(c)(6) of the proposed regulatory text. Note that the provisions at 40 CFR 790.48(b) have been incorporated into the regulatory text of this proposed rule; thus, persons subject to the final rule are not required to comply with 40 CFR 790.48 itself (see § 799.5090(c)(4)–(c)(7) and § 799.5090(d)(3) of the proposed regulatory text). Persons who obtain exemptions or receive them automatically would nonetheless be subject to providing reimbursement to persons who do actually conduct the testing, as described in Unit IV.G.4.

8. *What would my obligations be if I were in Tier 2?* If you are in Tier 2, you would be subject to the rule and you would be responsible for providing reimbursement to persons in Tier 1. The obligation to provide reimbursement is not affected by placement in Tier 2A or Tier 2B. Concerning testing, if you are in Tier 2, you are considered to have an automatic conditional exemption. You would not need to submit a letter of intent to test or an exemption application unless you are notified by EPA that you are required to do so. As previously noted, Tier 2A manufacturers would be notified to test before Tier 2B processors.

If a problem occurs with the initiation, conduct, or completion of the required testing, or with the submission of the required data to EPA, the Agency may require you to submit a notice of intent to test or an exemption application. See 40 CFR 790.93 and § 799.5090(c)(10) of the proposed regulatory text.

In addition, you would need to submit a notice of intent to test or an exemption application if: i. no manufacturer in Tier 1 has notified EPA of its intent to conduct testing; and ii. EPA has published a **Federal Register** document directing persons in Tier 2 to submit to EPA letters of intent to conduct testing or exemption applications. See § 799.5090(c)(4), (c)(5), (c)(6), and (c)(7) of the proposed regulatory text. EPA is not aware of any circumstances in which test rule Tier 1 entities have sought reimbursement from Tier 2 entities either through private agreements or by soliciting the involvement of the Agency under the reimbursement regulations at 40 CFR part 791.

9. *What would happen if no one submitted a letter of intent to conduct testing*? EPA anticipates that it will receive letters of intent to conduct testing for all of the tests specified and chemical substances included in the final rule. However, in the event it does not receive a letter of intent for one or more of the tests required by the final rule for any of the chemical substances in the final rule within 30 days after the publication of a **Federal Register** document notifying Tier 2 processors of the obligation to submit a letter of intent to conduct testing or to apply for an exemption from testing, EPA would notify all manufacturers and processors of the chemical substance of this fact by certified letter or by publishing a **Federal Register** document specifying the test(s) for which no letter of intent has been submitted. This letter or **Federal Register** document would additionally notify all manufacturers and processors that all exemption applications concerning the test(s) have been denied, and would give them an opportunity to take corrective action. If no one has notified EPA of its intent to conduct the required testing of the chemical substance within 30 days after receipt of the certified letter or publication of the **Federal Register** document, all manufacturers and processors subject to the final rule with respect to that chemical substance who are not already in violation of the final

rule would be in violation of the final rule.

10. *What are the reimbursement procedures?* In the past, persons subject to test rules have independently worked out among themselves their respective financial contributions to those persons who have actually conducted the testing. However, if persons are unable to agree privately on reimbursement, they may take advantage of EPA's reimbursement procedures at 40 CFR part 791, promulgated under the authority of TSCA section 4(a). These procedures include: The opportunity for a hearing with the American Arbitration Association; publication by EPA of a document in the **Federal Register** concerning the request for a hearing; and the appointment of a hearing officer to propose an order for fair and equitable reimbursement. The hearing officer may base his or her proposed order on the production volume formula set out at 40 CFR 791.48, but is not obligated to do so. Under this proposed rule, amounts manufactured as impurities would be included in production volume (40 CFR 791.48(b)), subject to the discretion of the hearing officer (40 CFR 791.40(a)). The hearing officer's proposed order may become the Agency's final order, which is reviewable in Federal court (40 CFR 791.60).

H. What reporting requirements would be required under this test rule?

For each test for each chemical substance, you would be required to submit a study plan 90 days after the effective date of the final rule and a final report for a specific test by the deadline indicated as the number of months after the effective date of the final rule, which would be shown in § 799.5090(i) of the regulatory text. Addresses of the EPA Document Control Office where this information should be sent are found in this document under **ADDRESSES**.

I. What would I need to do if I cannot complete the testing required by the final rule?

A company who submits a letter of intent to test under the final rule and who subsequently anticipates difficulties in completing the testing by the deadline set forth in the final rule may submit a modification request to the Agency, pursuant to 40 CFR 790.55. EPA will determine whether modification of the test schedule is appropriate, and may first seek public comment on the modification.

J. Would there be sufficient test facilities and personnel to undertake the testing proposed under this test rule?

EPA's most recent analysis of laboratory capacity (Ref. 44) indicates that available test facilities and personnel would adequately accommodate the testing proposed in this rule.

K. Might EPA seek further testing of the chemical substances in this proposed test rule?

If EPA determines that it needs additional data regarding any of the chemical substances included in this proposed rule, the Agency would seek further health and/or environmental effects testing for these chemical substances. Should the Agency decide to seek such additional testing via a test rule, EPA would initiate a separate action for this purpose.

V. Proposed TSCA Section 5(a)(2) SNUR and Basis To Potentially Add One or More Chemical Substances From Table A. to the SNUR

EPA has preliminarily determined that each of the 45 substances listed in Tables A. and B. in Unit III. is produced in substantial quantities (≥1 million lbs./yr) and made preliminary findings that there may be substantial human exposure to 23 of these substances. However, for 22 of the 45 chemical substances, the Agency does not currently have exposure information that would adequately support such findings under TSCA section 4(a)(1)(B). For those remaining 22 chemical substances (*i.e.,* Table B.), EPA is proposing to establish significant new use reporting and recordkeeping requirements under TSCA section 5(a)(2) that would require EPA notification prior to worker or consumer exposures rising to substantial levels.

A. What are the rationale and objectives for taking this action?

1. *Rationale.* Each of the chemical substances included in Table B. is produced in substantial quantities. EPA considered the factors set out in TSCA section 5(a)(2) and the longstanding use of the exposure thresholds in the ''B Policy'' (see Unit V.B.) to determine that manufacturers and processors of any of these chemical substances should be required to notify EPA if exposure to any of these chemical substances is expected to increase significantly. Accordingly, the significant new uses are: Any use in a consumer product, and any use or combination of uses that is reasonably likely to expose 1,000 or more workers at a single corporate entity (defined as the aggregate of all of the domestic facilities owned or operated by an individual corporation). The SNUR facilitates efficiency by mitigating the need for EPA to continually reevaluate each HPV chemical substance to determine whether exposure potential has increased so that there is or may be substantial human exposure. EPA recognizes, however, that the proposed SNU designation would not encompass every new use that could potentially give rise to significant or substantial human exposure.

Consistent with EPA's past practice for issuing SNURs under TSCA Section 5(a)(2), EPA's decision to propose a SNUR for a particular chemical use need not be based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use. Rather, the Agency's action is based on EPA's determination that if the use begins or resumes, it may present a risk that EPA should evaluate before the manufacturing or processing for that use begins. Since the new use does not currently exist, deferring a detailed consideration of potential risks or hazards related to that use is an effective use of resources. If a person decides to begin manufacturing or processing the chemical for the use, the notice to EPA allows EPA to evaluate the use according to the specific parameters and circumstances surrounding that intended use.

2. *Objectives.* Under TSCA section 5(a)(1)(B), any person intending to manufacture, import, or process any of these chemical substances for one or more of the designated SNUs would be required to notify EPA with a SNUN before that activity begins. EPA would then have an opportunity to review and evaluate data submitted in a SNUN and, if warranted pursuant to TSCA sections 5(e), 5(f), 6 or 7, EPA would be able to regulate prospective manufacturers (which, as noted in Unit I.A., includes importers) or processors of the chemical substances before the designated SNUs of the chemical substance occurs.

B. How were the significant new uses determined?

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a SNU must be made after consideration of all relevant factors including:

1. The projected volume of manufacturing and processing of a chemical substance.

2. The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.

3. The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

4. The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors, the statute authorizes EPA to consider any other relevant factors. To determine what would constitute a SNU of the chemical substances listed in Table B. and of the chemical substances listed in Table A., EPA considered the section 5(a)(2) factors, as well as EPA's 1993 ''B Policy'' (Ref. 2), discussed in Unit II.D.

For the first section 5(a)(2) factor, production volume, EPA considered the fact that all 22 of the chemical substances in Table B., and all 23 of the chemical substances in Table A., have been produced in substantial amounts, *i.e.,* volumes above one million lbs./year. EPA would expect that increased or expanded use of these chemical substances could correspond to a further increase in annual production volume and thereby increase exposures.

Next, EPA considered the extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance. Current IUR information available to EPA indicates that all but 2 of the 22 chemical substances in Table B. are used solely for industrial purposes. For the remaining two chemical substances in Table B., EPA could find no evidence of any ongoing consumer uses. With respect to these 22 chemical substances (*i.e.,* Table B.), any use in consumer products would likely result in new consumer exposures to these chemical substances. These potential new users could be exposed via pathways different from industrial users, and consumers may be less likely to use, or have access to, appropriate protective equipment (*e.g.* gloves or respirators) than industrial users. An expansion into use in consumer products may also include new environmental releases, deliberate or accidental (*e.g.,* consumers may dispose of a chemical substance by pouring it down a storm drain or household sink).

With respect to the chemical substances listed in Table A., EPA has information indicating that ongoing use of certain of these chemical substances already involves the exposure of 10,000 or more consumers. If public comment on this proposal is accompanied by additional information that contradicts the information upon which EPA has based its preliminary conclusions (*i.e.,* less than 10,000 consumers are exposed), that information could potentially also establish that there are no ongoing uses of the chemical substance in consumer products. If EPA concludes, on the basis of public comments, that there is an inadequate basis to issue a test rule for the chemical substance, it would also conclude, as a general matter, that there is an adequate basis to issue a SNUR for the chemical substance. In such a case, EPA intends to incorporate the chemical substance into the final SNUR without further opportunity for public notice and comment. EPA believes that the commencement of consumer uses of the chemical substances in Table A. (if such uses are not currently ongoing) would be a SNU of the chemical substances. This is because potential new users could be exposed via pathways different from industrial users, and may be less likely to use appropriate protective equipment (*e.g.* gloves or respirators) than industrial users. An expansion into use in consumer products may also include new environmental releases (*e.g.,* consumers may dispose of a chemical substance by pouring it down a storm drain or household sink).

EPA also considered the extent to which a use increases the magnitude and duration of human or environmental exposure to a chemical substance. Commencement of a chemical substance's use in a consumer product would increase the amount and time that consumers were exposed to the chemical substance. In determining substantial consumer exposure, EPA considered the production volume and consumer uses. If production volume exceeds one million pounds per year and consumer uses are indicated, it is likely that consumer exposure exceeds the substantial threshold of ten thousand people as defined by the ''B Policy.'' EPA has reached this conclusion with respect to the chemical substances in Table B. and the chemical substances in Table A. (to the extent that use of the chemical substances in Table A. in consumer products is not already ongoing).

EPA also considered how the number of workers exposed (as reported under the IUR rule) might change if use of a chemical substance changed or expanded. For example, the commencement of additional new uses may increase the total production volume of a chemical substance, thereby increasing the magnitude and duration of exposure for industrial workers. None of the 22 chemical substances listed in Table B. are known to meet the ''B Policy'' threshold for substantial worker exposure (≥1,000 workers) at this time. However, if exposure were to increase such that 1,000 or more workers at a single corporate entity were reasonably likely to be exposed, EPA believes that the increased exposure would be a significant change. In this context, ''single corporate entity'' refers to the aggregate of all of the domestic facilities owned or operated by an individual corporation. Therefore, the SNUR notification requirements would be triggered 90 days before the sum of all potentially exposed workers at domestic facilities comprising the single corporate entity was expected to reach 1,000 workers or more.

With respect to the chemical substances listed in Table A., EPA has information that ongoing use of certain of these chemical substances already involves the exposure of 1,000 or more workers. If EPA concludes, on the basis of public comments, that there is no basis to issue a test rule for such chemical substance then it would also conclude, as a general matter, that there is an adequate basis to issue a SNUR for the chemical substance. In such a case, EPA intends to incorporate the chemical substance into the final SNUR without further opportunity for public notice and comment. Chemical substances from Table A., like the chemical substances from Table B., are high production volume chemical substances. If exposure to a Table A. chemical substance were to increase such that 1,000 or more workers at a single corporate entity were to become reasonably likely to be exposed, EPA believes that the increased exposure would be a significant change.

With respect to the chemical substances in Tables A. and B., EPA also considered the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of these chemical substances in determining what would be a SNU. Given the production volume of these chemical substances, any change in these methods or practices could affect human or environmental exposures, but the lack of available toxicity data, and of more detailed information about existing methods and practices, hampers EPA's ability to more fully consider this fourth factor.

Finally, EPA considered the ''B Policy.'' Since 1993, EPA has used the production, exposure, and release benchmarks in the ''B Policy'' for making TSCA section 4 test rule findings. EPA has also considered and incorporated the production, worker, and consumer exposure benchmarks in the selection of chemical substances to be included and development of the SNUs included in today's proposed action. These chemical substances have already been in production at high

volumes, and at least some workers are exposed. EPA is proposing to incorporate certain ''B Policy'' exposure thresholds into its rationale for the proposed SNUs because they are clear numeric criteria that have been used to determine substantial human exposure since 1993. They have provided a clear threshold—well understood by EPA, industry, and other stakeholders—of levels of worker or consumer exposure that are important under TSCA. EPA is interested in receiving comment concerning use of the ''B Policy'' in this context.

C. What were the alternatives to proposing this SNUR?

Before proposing this SNUR, EPA considered promulgating a TSCA section 8(a) reporting rule. Under a TSCA section 8(a) rule, EPA could, among other things, generally require persons to report information to the Agency when they intend to manufacture, import, or process a listed chemical substance for a specific use or any use. However, if EPA were to require reporting under TSCA section 8(a) instead of TSCA section 5(a), EPA would not have the opportunity to assess the risk of the new use prior to commencement of that activity, or, if warranted, to take immediate follow-up regulatory action under TSCA sections 5(e) or 5(f) to prohibit or limit the activity before it begins.

D. What would be the applicability of the final rule to uses occurring before the effective date of the final rule?

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a SNU as of the date of publication of the proposed rule rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements, because a person could defeat the SNUR by initiating the proposed SNU before the rule became final, and then argue that the use was ongoing as of the effective date of the final rule. Thus, persons who, after publication of the proposed SNUR, begin commercial manufacture, import, or processing of the chemical substance(s) listed in Table B. for a use proposed in this action for a SNU would have to cease any such activity before the effective date of the rule if and when finalized. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA has promulgated provisions to allow persons to comply with SNURs before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), that person would be considered to have met the requirements of the final SNUR for those activities.

E. Do test data and other information have to be submitted?

TSCA section 5 does not require developing any particular test data before submission of a SNUN, except where the chemical substance is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)), or when a chemical substance is included on the list described under section 5(b)(4). Unless submission of data is required under section 4 or 5(b)(4), persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (40 CFR 721.25). However, as a general matter, EPA recommends that SNUN submitters include data that would permit a reasoned evaluation of risks posed by the chemical substance during its manufacture, import, processing, use, distribution in commerce, or disposal. EPA encourages persons to consult with the Agency before submitting a SNUN. As part of this optional pre-notice consultation, EPA would discuss specific data it believes may be useful in evaluating a significant new use. SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) to prohibit or limit activities associated with this chemical substance.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on:

1. Human exposure and environmental releases that may result from the significant new uses of the chemical substances.

2. Potential benefits of the chemical substances.

3. Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

F. How do I submit a SNUN?

EPA recommends that submitters consult with the Agency prior to submitting a SNUN to discuss what data may be useful in evaluating a SNU. Discussions with the Agency prior to submission can afford ample time to conduct any tests that might be helpful in evaluating risks posed by the substance. According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted to EPA, on EPA Form No. 7710–25 in accordance with the procedures set forth in 40 CFR 721.25 and 40 CFR 720.40.

EPA published a final rule on January 6, 2010 (75 FR 773) (FRL–8794–5), that established standards and requirements for the use of the electronic-PMN (e-PMN) software and EPA's Central Data Exchange (CDX) to electronically submit these notices. The Agency is introducing electronic reporting via CDX using the e-PMN in three phases over a two-year period. The effective date of the rule was April 6, 2010. Until April 6, 2011, submissions were permitted via CDX, optical disc, or paper. After April 6, 2011, paper submissions are no longer being accepted. After April 6, 2012, all submissions will be required to be submitted electronically via CDX. Regardless of the delivery method, EPA requires that all submissions be generated using the new e-PMN software. For additional information and instructions go to: *http://www.epa.gov/opptintr/newchems/epmn/epmn-index.htm.* Until April 6, 2012, SNUNs may still be mailed to the Environmental Protection Agency, OPPT Document Control Office (7407M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001.

G. What are the recordkeeping requirements?

EPA is proposing that persons subject to this proposed SNUR be required to maintain several records in addition to those required by 40 CFR 721.40 (persons required to submit a SNUN must retain documentation of information contained in that SNUN). EPA is proposing to require manufacturers and processors to maintain the records described in 40 CFR 721.125 (a), (b), and (c) in this SNUR. Section 721.125(a) requires records documenting manufacture and importation volume and dates; § 721.125(b) documents volumes purchased in the U.S. by processors, the names and addresses of suppliers, and the dates of purchase; and § 721.125(c) requires records documenting the names and addresses (including shipment destination address, if different) of all persons outside the site of manufacture, importation, or processing to whom the manufacturer, importer, or processor directly sells or transfers the chemical

substance, the date, and the quantity of each sale or transfer. These records would help EPA to determine compliance with the SNUR.

VI. Export Notification Requirements

Test rule: Any person who exports, or intends to export, one of the chemical substances contained in this proposed test rule in any form (*e.g.,* as byproducts, impurities, components of Class 2 chemical substances, *etc.*) will be subject to the export notification requirements in TSCA section 12(b)(1) and at 40 CFR part 707, subpart D, but only after the final rule is issued and only if the chemical substance is contained in the final rule. Export notification is generally not required for articles, as provided by 40 CFR 707.60(b). Section 12(b) of TSCA states, in part, that any person who exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under TSCA section 4 must notify the EPA Administrator of such export or intent to export. The EPA Administrator in turn will notify the government of the importing country of the availability of data.

VII. Economic Impacts

A. What would be the economic impacts of the proposed test rule?

EPA has prepared an economic assessment entitled ''Economic Analysis for the Proposed High Production Volume Challenge Chemicals Test Rule—Fourth Group of Chemicals'' (Ref. 45), a copy of which has been placed in the docket for this proposed rule. This economic assessment evaluates the potential for significant economic impacts as a result of the testing that would be required by this proposed rule. The analysis covers 23 chemical substances. The total social cost of providing test data on the 23 chemical substances that were evaluated in this economic analysis is estimated to be $7.72 million assuming an average cost scenario. Total costs of compliance to industry are estimated at $7.65 million (Ref. 45).

While legally subject to this test rule, processors of a subject chemical substance would be required to comply with the requirements of the final rule only if they are directed to do so by EPA as described in § 799.5090(c)(5) and (c)(6) of the proposed regulatory text. EPA would only require processors to test if no person in Tier 1 has submitted a notice of its intent to conduct testing, or if under 40 CFR 790.93, a problem occurs with the initiation, conduct, or completion of the required testing or the submission of the required data to EPA. Because EPA has identified at least one manufacturer in Tier 1 for each subject chemical substance, the Agency assumes that, for each chemical substance in this proposed rule, at least one such person will submit a letter of intent to conduct the required testing and that person will conduct such testing and will submit the test data to EPA. Because processors would not need to comply with the proposed rule initially, the economic assessment does not address processors.

Compliance costs include costs of testing and administering the testing, as well as reporting costs. In addition, they include the estimated cost of the TSCA section 12(b) export notification requirements, which, under the final rule, would be required for the first export to a particular country of a chemical substance subject to the final rule, estimated to range from $27.50 per notice to $86.99 per notice (Ref. 45). These export notification requirements (included in the total and annualized cost estimates) that would be triggered by the final rule are expected to have a negligible impact on exporters.

The potential for adverse economic impact as a result of the rule is expected to be higher for smaller businesses. Smaller businesses are less likely to have additional revenue sources to cover the compliance costs. Therefore, the Agency compared the costs of compliance to company sales for small businesses. EPA estimates that there are 25 small entities that would be affected by this proposed rule. Of these, EPA estimates that there is no small business for which the cost impact of the testing exceeds 1 percent of the company's revenue. EPA believes, on the basis of these calculations, that the proposed testing of the chemical substances presents a low potential for adverse economic impact for the majority of chemical substances.

The benefits resulting from this proposed test rule are discussed qualitatively in the ''Economic Analysis for the Proposed High Production Volume Challenge Chemicals Test Rule-Fourth Group of Chemicals'' (Ref. 45). EPA believes that the net benefits of this proposed rule are positive, but quantification of the benefits of the proposed rule would require more specific information about use patterns and preferences than is available.

B. What would be the economic impacts of the proposed SNUR?

1. *SNUNs.* EPA has evaluated the potential costs of establishing SNUR reporting and recordkeeping requirements for potential manufacturers, importers, and processors of the chemical substance included in this proposed rule. While most businesses are subject to a $2,500 user fee required by 40 CFR 700.45(b)(2)(iii), small businesses with an annual sales of less than $40 million when combined with those of the parent company (if any) are subject to a reduced user fee of $100 (40 CFR 700.45(b)(1)). The costs of submission of SNUNs will not be incurred by any company unless a company decides to pursue a SNU as defined in this proposed SNUR. However there are limited costs associated with the recordkeeping requirements required by this SNUR, whether or not a SNUN is submitted. Furthermore, while the expense of a notice and the uncertainties of possible EPA regulation may discourage certain innovations, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value. EPA's complete economic analysis is available in the public docket for this proposed rule (Ref. 46).

2. *Export notification.* Under section 12(b) of TSCA and the implementing regulations at 40 CFR part 707, subpart D, exporters must notify EPA if they export or intend to export a chemical substance or mixture for which, among other things, a rule has been proposed or promulgated under TSCA section 5. For persons exporting a chemical substance the subject of a proposed or final SNUR, a one-time notice must be provided for the first export or intended export to a particular country. The total costs of export notification will vary by chemical substance, depending on the number of required notifications (*i.e.,* the number of countries to which the chemical substance is exported). Although EPA estimates that an exporting company making notifications may need to prepare 12 notifications per year at a cost of $78.56 each, EPA is unable to make any estimate of the likely number of export notifications for the chemical substances covered in this proposed SNUR (Ref. 46).

VIII. Request for Public Comment

EPA is interested in stakeholder input on a number of issues in this action as well as future actions on high production volume chemical substances.

1. In this document, EPA is proposing either a test rule or SNUR to regulate a given set of chemical substances. EPA believes that this is an efficient way to require submission of test data on chemical substances that meet all of the necessary exposure criteria and require submission of a notification to EPA if

and when additional exposure criteria are met. The SNUR also facilitates efficiency by mitigating the need for EPA to continually reevaluate each HPV chemical substance to determine whether conditions have changed so as to increase potential exposure. EPA is considering proposing further combined test rules/SNURs in conjunction with future CDR data releases, covering all newly-HPV chemical substances. EPA requests comment on this approach.

2. EPA is proposing to incorporate the ''B Policy'' worker exposure threshold into the proposed SNU designations because it is a clear, numeric criterion that has been used to determine substantial human exposure since 1993. EPA is interested in receiving comment concerning use of the ''B Policy'' in this context.

3. EPA solicits comment on whether any of the chemical substances proposed for the SNUR are already being manufactured or processed for one of the significant new uses listed in Unit V., and should consequently be included in the test rule. Analogously, EPA solicits comment on whether any of the chemical substances proposed for the test rule are no longer used in applications that meet the substantial human exposure finding described in the ''B Policy'' and should consequently be included in the SNUR.

4. EPA solicits comment on whether any of the chemical substances proposed for the test rule or the SNUR should be subject to neither a test rule nor a SNUR. EPA requests comment on this topic so as to confirm or refute the Agency's general expectation that either a SNUR or a test rule is warranted for each chemical substance listed in Tables A. and B. of Unit III. EPA's general expectation is as follows: If additional information indicates that a test rule is not warranted for a particular chemical substance listed in Table A. because particular uses are not ongoing, EPA generally anticipates that such information would indicate that a SNUR is warranted instead. Conversely, if additional information indicates that a SNUR is not warranted for a particular chemical substance listed in Table B. because particular uses are already ongoing, EPA generally anticipates that such information would indicate that a test rule is warranted instead.

5. EPA solicits comment on whether there is a better alternative to proposing the SNUR trigger of ≥1000 workers exposed at a single corporate entity. The test rule findings are based on ≥1000 workers exposed at the national level. EPA asks for comment on whether there is an approach that would reduce the discrepancy between the corporate level for the SNUR and national level for the test rule.

6. EPA solicits comment respecting relevant trends in production volume for the chemical substances proposed to be subject to either a test rule or a SNUR. EPA is especially interested in such trend information in the case that a commenter believes that neither a test rule nor a SNUR is warranted for a chemical substance because the chemical substance currently has an overall production volume of less than 1 million lbs. per year. Because production volume may vary from year to year, EPA does not believe that the mere fact that the most recent annual production volume is less than 1 million pounds would necessarily establish that a test rule is not warranted (and such information would not by itself suggest that a SNUR is unwarranted, since substantial production is not a required finding for SNURs). More detailed comments, distinguishing a long-term decline in production volume from a short-term dip, would be especially helpful to the Agency in evaluating any comments that current production volumes are too low to warrant the regulatory action proposed.

7. As described in Unit IV.B., to the extent that EPA learns that consumer uses, or uses that could affect 1,000 workers or more, are already ongoing for a chemical substance listed in Table B., it intends to evaluate whether taking steps to promulgate a test rule for the chemical substance is warranted. To assist the Agency in such circumstances, EPA solicits comment respecting the sufficiency of the available data and the need for additional testing on the chemical substances in Table B., consistent with the standards set forth in TSCA sections 4 (a)(1)(B)(ii) and (a)(1)(B)(iii).

8. The U.S. National Academy of Sciences National Research Council in their 2007 report ''Toxicity Testing in 21st Century: A Vision and a Strategy'' encouraged ''work[ing] towards a transition to new integrative and predictive molecular and computational techniques to enhance efficiency and accuracy and to reduce reliance on animal testing.'' EPA requests suggestions on practical, implementable ways to work toward this goal in its actions under TSCA. Should tools such as ToxCast (*http://www.epa.gov/ncct/toxcast/*) be used to prioritize chemical substances and support hazard findings for testing in the future?

9. EPA solicits comments which identify existing data that may meet the requirements of studies under the proposed test rule. To the extent that data relevant to the testing specified in the proposed rule are known to exist, EPA strongly encourages the submission of this information as comments to the proposed rule. Data submitted to EPA to meet the requirements of testing under the proposed rule must be in the form of full copies of unpublished studies or full citations of published studies, and may be accompanied by a robust summary (Ref. 8). To the extent that studies required under the proposed rule are currently available, and the data are judged sufficient by EPA, testing for the endpoint/chemical substance combination will not be required in the final test rule based on this proposed rule.

10. Persons who believe that adequate information regarding a chemical substance subject to the proposed test rule can be developed using a category or the SAR approach are encouraged to submit appropriate information, along with their rationale substantiating this belief, during the comment period on the proposed rule.

11. EPA solicits comment on the proposed test rule approaches for Class 1 and Class 2 chemical substances. Should each Class 1 chemical substance be tested at a purity of 99% or more? Should the proposed test substance purity for Class 1 chemical substances be applied to any Class 2 chemical substances? Should the proposed approach for testing Class 2 chemical substances (*i.e.,* that a representative sample of each Class 2 chemical substance be tested) be applied to any Class 1 chemical substances?

12. For more than 15 years, EPA has used OECD's SIDS to facilitate and standardize the screening of the relatively large number of chemical substances on the TSCA Inventory. EPA requests comment on whether SIDS continues to be the most appropriate data set to screen chemical substances for potential environmental and health hazards and whether EPA should consider other data sets in the event of any future test rule on new HPV chemical substances. Are additional or different tests also appropriate? Should EPA consider having more than one screening data set depending on the nature of exposures, *e.g.,* a different set of tests for children's exposures or environmental releases?

13. At the present time, EPA does not have sufficient information to know with any degree of certainty which if any of the chemical substances that are listed in the proposed regulatory text are solely closed system intermediates as defined in the voluntary HPV Challenge guidance document (Ref. 38). Persons who believe that a chemical substance

fully satisfies the terms outlined in the guidance document are encouraged to submit appropriate information along with their comments on this proposed rule which substantiate this belief.

IX. Materials in the Docket

As indicated under **ADDRESSES**, a docket has been established for this proposed rule under docket ID number EPA–HQ–OPPT–2010–0520. The following is a listing of the documents that have been placed in the docket for this proposed rule. The docket includes information considered by EPA in developing this proposed rule, including the documents listed in this unit, which are physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not physically located in the docket, please consult either technical person listed under **FOR FURTHER INFORMATION CONTACT**. The docket is available for review as specified under **ADDRESSES**.

1. OECD Secretariat. Manual for the Investigation of HPV Chemicals. OECD Programme on the Co-Operative Investigation of High Production Volume Chemicals. Paris, France. December, 2009. Available on-line at: *http://www.oecd.org/document/7/0,3746,en_2649_34379_1947463_1_1_1_1,00.html.*
2. EPA. TSCA section 4(a)(1)(B) Final Statement of Policy; Criteria for Evaluating Substantial Production, Substantial Release, and Substantial or Significant Human Exposure; Notice. **Federal Register** (58 FR 28736, May 14, 1993).
3. U.S. National Academy of Sciences, National Research Council. ''Toxicity Testing in the 21st Century: A Vision and a Strategy.'' 2007. Available on-line at: *http://dels.nas.edu/resources/static-assets/materials-based-on-reports/reports-in-brief/Toxicity_Testing_final.pdf.*
4. EPA. National Center for Computational Toxicology. ToxCast™. 2007. *http://www.epa.gov/ncct/toxcast/.*
5. EPA. OPPT. Testing of Certain High Production Volume Chemicals-4 (Exposure Findings Supporting Information). Prepared by OPPT, Economics, Exposure and Technology Division. March, 2011.
6. EPA. OPPT. High Production Volume Chemical Data Information System (HPVIS). Data from HPVIS on 23 HPV chemicals. June 2011.
7. EPA. OPPT. Risk Assessment Division. HPV4 Data Adequacy Evaluations. 2010.
8. EPA. OPPT. Draft Guidance on Developing Robust Summaries. October 22, 1999. Available on-line at: *http://www.epa.gov/chemrtk/pubs/general/robsumgd.htm.*
9. ASTM International. Standard Test Method for Relative Initial and Final Melting Points and the Melting Range of Organic Chemicals. ASTM E 324–99. 1999.
10. OECD. Guideline for the Testing of Chemicals: Melting Point/Melting Range. OECD 102. July 27, 1995.
11. ASTM International. Standard Test Method for Vapor Pressure of Liquids by Ebulliometry. ASTM E 1719–05. 2005.
12. ASTM International. Standard Test Method for Determining Vapor Pressure by Thermal Analysis. ASTM E 1782–03 (2008).
13. ASTM International. Standard Test Method for Partition Coefficient (*n*-Octanol/Water) Estimation by Liquid Chromatography. ASTM E 1147–92 (2005).
14. ASTM International. Standard Test Method for Measurements of Aqueous Solubility. ASTM E 1148–02 (2008).
15. ASTM International. Question about ASTM E 324. E-mail from Diane Rehiel, ASTM, to Greg Schweer, CITB, CCD, OPPT, EPA. September 15, 2004.
16. Meylan, W.M. and Howard, P.H. Atom/Fragment Contribution Method for Estimating Octanol-Water Partition Coefficients. *Journal of Pharmaceutical Sciences.* Vol. 84(1):83–92. 1995.
17. Meylan, W.M., Howard, P.H., and Boethling, R.S. Improved Method for Estimating Water Solubility From Octanol/Water Partition Coefficient. *Environmental Toxicology and Chemistry.* Vol. 15(2):100–106. 1996.
18. ASTM International. Standard Test Method for Determining Ready, Ultimate, Biodegradability of Organic Chemicals in a Sealed Vessel CO_2 Production Test. ASTM E 1720–01. (Reapproved 2008).
19. ISO. Water quality—Evaluation of ultimate aerobic biodegradability of organic compounds in aqueous medium—Method by analysis of inorganic carbon in sealed vessels (CO_2 headspace test). ISO 14593. 1999.
20. ISO. Water quality—Evaluation in an aqueous medium of the ''ultimate'' aerobic biodegradability of organic compounds—Method by analysis of dissolved organic carbon (DOC). ISO 7827. 1994.
21. ISO. Water quality—Evaluation of ultimate aerobic biodegradability of organic compounds in aqueous medium by determination of oxygen demand in a closed respirometer. ISO 9408. 1999.
22. ISO. Water quality—Evaluation of ultimate aerobic biodegradability of organic compounds in aqueous medium—Carbon dioxide evolution test. ISO 9439. 1999.
23. ISO. Water quality—Evaluation in an aqueous medium of the ''ultimate'' aerobic biodegradability of organic compounds—Method by analysis of biochemical oxygen demand (closed bottle test). ISO 10707. 1994.
24. ISO. Water quality—Evaluation in an aqueous medium of the ultimate aerobic biodegradability of organic compounds—Determination of biochemical oxygen demand in a two-phase closed bottle test (available in English only). ISO 10708. 1997.
25. ISO. Water quality—Guidance for the preparation and treatment of poorly water-soluble organic compounds for the subsequent evaluation of their biodegradability in an aqueous medium. ISO 10631. 1995.
26. ASTM International. Standard Guide for Conducting Acute Toxicity Tests on Test Materials with Fishes, Macroinvertebrates, and Amphibians. ASTM E 729–96 (2007).
27. ASTM International. Standard Guide for Conducting Static Toxicity Tests with Microalgae. ASTM E 1218–04e1. 2004.
28. ASTM International. Standard Guide for Conducting Daphnia magna Life-Cycle Toxicity Tests. ASTM E 1193–97 (2004).
29. Veith, G.D. and Kosian, P. Estimating bioconcentration potential from Octanol/Water Partition Coefficients, in Physical Behavior of PCBs in the Great Lakes (MacKay, Paterson, Eisenreich, and Simmons, eds.), Ann Arbor Science, Ann Arbor, MI. 1982.
30. Bintein, S.; DeVillers, J.; and Karcher, W. Nonlinear dependence of fish bioconcentration on *n*-Octanol/Water Partition Coefficient. *SAR and QSAR in Environmental Research.* Vol. 1, pp. 29–39. 1993.
31. EPA. Category for Persistent, Bioaccumulative, and Toxic New Chemical Substances; Notice. **Federal Register** (64 FR 60194, November 4, 1999) (FRL–6097–7). Available online at: *http://www.epa.gov/oppt/newchems/pubs/pbtpolcy.htm.*
32. EPA. Significant New Use Rules; General Provisions for New Chemical Follow-Up; Final Rule. **Federal Register** (54 FR 31298, July 27, 1989).
33. ASTM International. Standard Test Method for Estimating Acute Oral Toxicity in Rats. ASTM E 1163–98 (2002).
34. NIEHS 2003b. Test Method Protocol for the BALB/c 3T3 Neutral Red Uptake Cytotoxicity Test, a Test for Basal Cytotoxicity for an *in vitro* Validation Study—Phase III. NTP/NICEATM. November 4, 2003. Available online at: *http://iccvam.niehs.nih.gov/methods/acutetox/invidocs/phIIIprot/3t3phIII.pdf.*
35. NIEHS 2003c. Test Method Protocol for the NHK Neutral Red Uptake Cytotoxicity Test, a Test for Basal Cytotoxicity for an *in vitro* Validation Study—Phase III. NTP/NICEATM. November 4, 2003. Available online at: *http://iccvam.niehs.nih.gov/methods/acutetox/invidocs/phIIIprot/nhkphIII.pdf.*
36. NIEHS 2001b. Guidance Document on Using *In Vitro* Data to Estimate *In Vivo* Starting Doses for Acute Toxicity. NIH Publication No. 01–4500. August 2001. Available online at: *http://iccvam.niehs.nih.gov/methods/acutetox/inv_cyto_guide.htm.*
37. NIEHS 2003a. Test Method Protocol for Solubility Determination, *in vitro*

Cytotoxicity Validation Study—Phase III. National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM). September 24, 2003. Available online at: *http://iccvam.niehs.nih.gov/methods/acutetox/invidocs/phIIIprot/solphIII.pdf.*

38. EPA. OPPT. Guidance for Testing Closed System Intermediates for the HPV Challenge Program (Draft) (March 17, 1999). Available online at: *http://www.epa.gov/oppt/chemrtk/pubs/general/closed9.htm.*
39. EPA. Testing of Certain High Production Volume Chemicals; Final Rule. **Federal Register** (71 FR 13708, March 16, 2006) (FRL–7335–2).
40. EPA. Testing of Certain High Production Volume Chemicals; Second Group of Chemicals; Proposed Rule. **Federal Register** (73 FR 43314, July 24, 2008) (FRL–8373–9).
41. EPA. Proposed Test Rule for the Testing of Certain High Production Volume Chemicals; Third Group of Chemicals. **Federal Register** (75 FR, February 25, 2010) (FRL–9116–2).
42. EPA. Toxic Substances; Test Rule Development and Exemption Procedures; Interim Final Rule. **Federal Register** (50 FR 20652, May 17, 1985).
43. EPA. Toxic Substances Control Act; Data Reimbursement; Final Rule. **Federal Register** (48 FR 31786, July 11, 1983).
44. EPA. Analysis of Laboratory Capacity to Support U.S. EPA Chemical Testing Program Initiatives. Economic and Policy Analysis Branch. Washington, DC. October 28, 2010.
45. EPA. OPPT. Economic Analysis for the Proposed High Production Volume Challenge Chemicals Test Rule—Fourth Group of Chemicals. Prepared by the Economic and Policy Analysis Branch, Economics, Exposure and Technology Division. August 15, 2011.
46. EPA. OPPT. Economic Analysis of the Significant New Use Rule for High Production Volume Chemical Substances. Prepared by the Economic and Policy Analysis Branch, Economics, Exposure and Technology Division. May 26, 2011.

X. Statutory and Executive Order Reviews

A. Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993) and 13563, entitled (76 FR 3821, January 21, 2011).

B. Paperwork Activities

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires approval by the Office of Management and Budget (OMB) under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register,** are listed in 40 CFR part 9, and included on the related collection instrument, or form, if applicable.

As defined by PRA and 5 CFR 1320.3(b), ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

For this rulemaking, the paperwork activities are addressed in 3 parts, based on the separate activities.

1. *Paperwork activities related to testing.* The proposed testing in this rulemaking does not impose any new or amended paperwork collection requirements that would require additional review and/or approval by OMB under the PRA. Although the activities are approved, OMB has specified that the additional burden associated with a new test rule is not covered by the ICR until the final rule is effective. The information collection requirements contained in TSCA section 4 test rules have already been approved by OMB under PRA, and have been assigned OMB control number 2070–0033 (EPA ICR No. 1139). In the context of developing a new test rule, the Agency must determine whether the total annual burden covered by the approved ICR needs to be amended to accommodate the burden associated with the new test rule. If so, the Agency must submit an Information Correction Worksheet (ICW) to OMB and obtain OMB approval of an increase in the total approved annual burden in the OMB inventory. The Agency's estimated burden for this proposed test rule is provided in the economic analysis (Ref. 45).

The standard chemical substance testing program involves the submission of letters of intent to test (or exemption applications), study plans, semi-annual progress reports, test results, and some administrative costs. For this proposed rule, EPA estimates the public reporting burden for all 23 chemical substances is 38,000 hours (average cost scenario). EPA assumes that industry will form a ''task force'' or panel to coordinate testing where appropriate. A consortium represents all the manufacturers of a chemical substance. EPA estimates 23 consortia for the proposed rule; with an estimated burden per consortium of 2,000 hours (rounded) (Ref. 45).

2. *Paperwork activities related to SNUNs.* The information collection requirements related to the proposed SNUR have already been approved by OMB pursuant to the PRA under OMB control number 2070–0038 (EPA ICR No. 1188). This action does not impose any burden requiring additional OMB approval.

If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average 91.68 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN. In addition, depending on whether or not an entity submits a SNUN, EPA has estimated the burden of the associated recordkeeping requirements (Ref. 46).

3. *Paperwork activities related to export notifications.* The information collection activities related to export notification under TSCA section 12(b)(1) are already approved under OMB control number 2070–0030 (EPA ICR No. 0795). This proposed rule does not propose any new or changes to the export notification requirements, and is not expected to result in any substantive changes in the burden estimates for EPA ICR No. 0795 that would require additional review and/or approval by OMB.

The estimated burden of the information collection activities related to export notification is estimated to average 1 burden hour for each chemical substance/country combination for an initial notification and 0.5 hours for each subsequent notification (Ref. 46). In estimating the total burden hours approved for the information collection activities related to export notification, the Agency has included sufficient burden hours to accommodate any export notifications that may be required by the Agency's issuance of final chemical substance test rules. As such, EPA does not expect to need to request an increase in the total burden hours approved by OMB for export notifications.

Comments are requested on the Agency's need for this information, the

accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments to EPA as part of your overall comments on this proposed rule in the manner specified under **ADDRESSES**. In developing the final rule, the Agency will address any comments received regarding the information collection requirements contained in this proposed rule.

C. Small Entity Impacts

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* after considering the potential economic impacts of this proposed rule on small entities, the Agency hereby certifies that this proposed rule would not have a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of each of the economic analyses for this proposed rule (Refs. 45 and 46), which are summarized in Unit VII., and copies of which are available in the docket for this proposed rule. The following is a brief summary of the factual basis for this certification.

Under RFA, 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 in accordance with RFA as:

- A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.
- 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.
- A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Based on the industry profile that EPA prepared as part of the economic analysis for this proposed rule (Ref. 45), EPA has determined that this proposed rule is not expected to impact any small not-for-profit organizations or small governmental jurisdictions. As such, the Agency's analysis presents only the estimated potential impacts on small business.

For this rulemaking, EPA considered the potential impact on small entities associated with the proposed testing, SNU notifications, and export notifications.

1. *Potential small entity impacts related to the proposed testing.* Two factors are examined in EPA's small entity impact analysis (Ref. 45) in order to characterize the potential small entity impacts of the proposed testing on small business:

- The size of the adverse economic impact (measured as the ratio of the cost to sales or revenue).
- The total number of small entities that experience the adverse economic impact.

Section 601(3) of RFA establishes as the default definition of ''small business'' the definition used in section 3 of the Small Business Act, 15 U.S.C. 632, under which SBA establishes small business size standards (13 CFR 121.201). For this proposed rule, EPA has analyzed the potential small business impacts using the size standards established under this default definition. The SBA size standards, which are primarily intended to determine whether a business entity is eligible for government programs and preferences reserved for small businesses (13 CFR 121.101), ''seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation.'' (13 CFR 121.102(b)). See section 632(a)(1) of the Small Business Act. In analyzing potential impacts, RFA recognizes that it may be appropriate at times to use an alternate definition of small business. As such, section 601(3) of RFA provides that an agency may establish a different definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment. Even though the Agency has used the default SBA definition of small business to conduct its analysis of potential small business impacts for this proposed rule, EPA does not believe that the SBA size standards are generally the best size standards to use in assessing potential small entity impacts with regard to TSCA section 4(a) test rules.

The SBA size standard is generally based on the number of employees an entity in a particular industrial sector may have. For example, in the chemical substance manufacturing industrial sector (*i.e.,* NAICS code 325 and NAICS code 324110), approximately 98% of the firms would be classified as small businesses under the default SBA definition. The SBA size standard for 75% of this industry sector is 500 employees, and the size standard for 23% of this industry sector is either 750, 1,000, or 1,500 employees. When assessing the potential impacts of test rules on chemical substance manufacturers, EPA believes that a standard based on total annual sales may provide a more appropriate means to judge the ability of a chemical substance manufacturing firm to support chemical substance testing without significant costs or burdens.

EPA is currently determining what level of annual sales would provide the most appropriate size cutoff with regard to various segments of the chemical substance industry usually impacted by TSCA section 4(a) test rules, but has not yet reached a determination. As stated in this unit, therefore, the factual basis for the RFA determination for this proposed rule is based on an analysis using the default SBA size standards. Although EPA is not currently proposing to establish an alternate definition for use in the analysis conducted for this proposed rule, the analysis for this proposed rule also presents the results of calculations using a standard based on total annual sales (40 CFR 704.3). EPA is interested in receiving comments on whether the Agency should consider establishing an alternate definition for small business to use in the small entity impact analyses for future TSCA section 4(a) test rules and what size cutoff may be appropriate.

SBA has developed 6-digit NAICS code-specific size standards based on employment thresholds. These size standards range from 500 to 1,500 employees for the various 6-digit NAICS codes that are potentially affected (Ref. 45). For a conservative estimate of the number of small businesses affected by the HPV rules, the Agency uses an employment threshold of less than 1,500 employees for all businesses regardless of the NAIC-specific threshold to determine small business status (Ref. 45).

For each manufacturer of the 23 chemical substances covered by the proposed testing, the parent company (ultimate corporate entity or UCE) was identified and sales and employment data were obtained for companies where data was publicly available. The search determined that there were 59 affected UCEs. Sales data could be found for 52 of these UCE's and employment data could be found for 57 of these UCEs. Two companies could not be classified as small or large because there were no employment data available (Ref. 45).

Parent company sales data were collected to identify companies that qualified as a ''small business'' for purposes of RFA analysis. Based on the SBA size standard applied (1,500 employees or less), 25 companies (42.4%) were identified as small (Ref. 45).

The potential significance of the proposed testing's impact on small businesses was analyzed by examining

the number of small entities that experienced different levels of costs as a percentage of their sales. Small businesses were placed in the following categories on the basis of cost-to sales ratios: Less than 1%, greater than 1%, and greater than 3%. This analysis was conducted under both a least and average cost scenario (Ref. 45).

Of the 25 businesses designated as small business, none had cost-to-sales ratios of greater than 1% and 3% under both the least and average cost scenarios. For the chemical substances where sales data were unavailable, EPA used the median revenue of all other small businesses equal to $2.56 million. The costs for these companies were estimated to be well below 1% of this sales level. Given these results, the Agency has determined that there is not a significant economic impact on a substantial number of small entities as a result of the proposed testing, if finalized (Ref. 45).

2. *Potential small entity impacts related to the SNUR.* A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN, there are no costs associated with the SNUN until it is submitted. However there are limited costs associated with the recordkeeping requirements required by this SNUR, whether or not a SNUN is submitted. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be.

EPA's experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average less than 10 notices per year. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN (see Unit VII.), are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR is not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was also provided to the Chief Counsel for Advocacy of the Small Business Administration (Ref. 46).

3. *Potential small entity impacts related to export notifications.* The estimated cost of the TSCA section 12(b)(1) export notification, which, as a result of the final rule, would be required for the first export to a particular country of a chemical substance subject to the final rule, is estimated to be $85.70 for the first time that an exporter must comply with TSCA section 12(b)(1) export notification requirements, and $26.86 for each subsequent export notification submitted by that exporter (Refs. 45 and 46). EPA has concluded that the costs of TSCA section 12(b)(1) export notification would have a negligible impact on exporters of the chemical substances in the final rule, regardless of the size of the exporter.

Any comments regarding the potential adverse economic impacts that this action may impose on small entities, or regarding whether the Agency should consider establishing an alternate definition of small business to be used for analytical purposes for future test rules and what size cutoff may be appropriate, should be submitted to the Agency in the manner specified under **ADDRESSES**.

D. Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. It is estimated that the total aggregate costs of this proposed rule to the private sector, which are summarized in Unit VII., would be $7.65 million. The total annualized costs of this proposed rule to the private sector are estimated to be $2.71 and $2.92 million using a 3% and 7% discount rate over 3 years (average cost scenario).

In addition, since EPA does not have any information to indicate that any State, local, or Tribal government manufactures or processes the chemical substances covered by this action such that the final rule would apply directly to State, local, or Tribal governments, EPA has determined that this proposed test rule and SNUR would not significantly or uniquely affect small governments. Accordingly, this proposed rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Federalism

Under Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have ''federalism implications'' because they will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the executive order. This proposed rule would establish testing and recordkeeping requirements that apply to manufacturers (including importers) and processors of certain chemical substances. Because EPA has no information to indicate that any State or local government manufactures or processes the chemical substances covered by these actions, this proposed test rule and SNUR is not expected to affect any State or local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Indian Tribal Government Implications

Under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 9, 2000), EPA has determined that this proposed rule does not have Tribal implications because it will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in the Executive Order. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Protection of Children

This proposed rule is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because the rulemaking does not establish an environmental standard intended to mitigate health or safety risks, will not have an annual effect on the economy of $100 million or more, nor does it otherwise have a disproportionate effect on children. This proposed rule would establish testing, notification and recordkeeping requirements that apply to manufacturers (including importers) and processors of certain chemical substances. The development of data about those chemical substances can subsequently be used to assist the Agency and others in determining

whether the chemical substances in this proposed rule present potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks.

H. Effect on Energy Supply, Distribution, or Use

This proposed 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), because it is not a significant regulatory action under Executive Order 12866.

I. Technical Standards

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The proposed test rule involves technical standards because it proposes to require the use of particular test methods. If the Agency makes findings under TSCA section 4(a), EPA is required by TSCA section 4(b) to include specific standards or test methods that are to be used for the development of the data required in the test rules issued under TSCA section 4. For some of the testing that would be required by the final rule, EPA is proposing the use of voluntary consensus standards issued by ASTM International and ISO which evaluate the same type of toxicity as the TSCA 799 test guidelines and OECD test guidelines, where applicable. Copies of the 17 ASTM International and ISO standards referenced in the proposed regulatory text at § 799.5090(h) have been placed in the docket for this proposed rule. You may obtain copies of the ASTM International standards from the American Society for Testing and Materials International, 100 Bar Harbor Dr., West Conshohocken, PA 19428–2959, and copies of the ISO standards from the International Organization for Standardization, Case Postale, 56 CH–1211 Geneve 20 Switzerland. In the final rule, EPA intends to seek approval from the Director of the Federal Register for the incorporation by reference of the ASTM International and ISO standards used in the final rule in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

EPA is not aware of any potentially applicable voluntary consensus standards which evaluate partition coefficient (*n*-octanol/water) generator column, water solubility (column elution and generator column), acute inhalation toxicity, bacterial reverse mutations, *in vivo* mammalian bone marrow chromosomal aberrations, combined repeated dose with reproductive/developmental toxicity screen, repeated dose 28-day oral toxicity screen, or the reproductive developmental toxicity screen which could be considered in lieu of the TSCA 799 test guidelines, 40 CFR 799.6756, 799.6784, 799.6786, 799.9130, 799.9510, 799.9538, 799.9365, 799.9305, and 799.9355, respectively, upon which the test standards in this proposed rule are based.

The Agency invites comment on the potential use of voluntary consensus standards in this proposed rule, and, specifically, invites the public to identify potentially applicable consensus standard(s) and to explain why such standard(s) should be used here.

J. Environmental Justice

This proposed rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities that require special consideration by the Agency under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). The Agency believes that the information collected under this proposed test rule, if finalized, will assist EPA and others in determining the potential hazards and risks associated with the chemical substances covered by this proposed test rule. Although not directly impacting environmental justice-related concerns, this information will enable the Agency to better protect human health and the environment, including in low-income and minority communities.

List of Subjects

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Laboratories, Reporting and recordkeeping requirements.

Dated: September 28, 2011.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. Add § 721.10228 to subpart E to read as follows:

§ 721.10228 High production volume challenge program chemical substances.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified in Table 1. are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

TABLE 1—LIST OF CHEMICAL SUBSTANCES INCLUDED IN THE SNUR

Chemical abstract service registry number (CASRN)	Chemical abstract (CA) index name
98–16–8	Benzenamine, 3-(trifluoromethyl)-.
100–53–8	Benzenemethanethiol.
104–91–6	Phenol, 4-nitroso-.
110–03–2	2,5-Hexanediol, 2,5-dimethyl-.
124–63–0	Methanesulfonyl chloride.
142–30–3	3-Hexyne-2,5-diol, 2,5-dimethyl-.
460–00–4	Benzene, 1-bromo-4-fluoro-.
542–92–7	1,3-Cyclopentadiene.

TABLE 1—LIST OF CHEMICAL SUBSTANCES INCLUDED IN THE SNUR—Continued

Chemical abstract service registry number (CASRN)	Chemical abstract (CA) index name
553–26–4	4,4′-Bipyridine.
8007–45–2	Tar, coal.
28106–30–1	Benzene, ethenylethyl-.
35203–06–6	Benzenamine, 2-ethyl-6-methyl-N-methylene-.
35203–08–8	Benzenamine, 2,6-diethyl-N-methylene-.
37734–45–5	Carbonochloridothioic acid, S-(phenylmethyl) ester.
37764–25–3	Acetamide, 2,2-dichloro-N,N-di-2-propen-1-yl-.
61789–72–8	Quaternary ammonium compounds, benzyl(hydrogenated tallow alkyl)dimethyl, chlorides.
61790–13–4	Naphthenic acids, sodium salts.
65996–91–0	Distillates (coal tar), upper.
68308–01–0	Tail gas (petroleum), cracked distillate hydrotreater stripper.
68478–20–6	Residues (petroleum), steam-cracked petroleum distillates cyclopentadiene conc., C4-cyclopentadiene-free.
68526–82–9	Alkenes, C6–10, hydroformylation products, high-boiling.
68909–77–3	Ethanol, 2,2′-oxybis-, reaction products with ammonia, morpholine derivs. residues.

(2) The significant new uses are:

(i) Use in a consumer product.

(ii) Any use, or combination of uses, that is reasonably likely to expose 1,000 or more workers at a single corporate entity (defined as the aggregate of all of the domestic facilities owned or operated by an individual corporation).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), and (c) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

PART 799—[AMENDED]

3. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

4. Add § 799.5090 to subpart D to read as follows:

§ 799.5090 Chemical testing requirements for certain high production volume chemicals; fourth group of chemicals.

(a) *What substances will be tested under this section?* Table 2. in paragraph (j) of this section identifies the chemical substances that must be tested under this section. For the chemical substances identified as ''Class 1'' chemical substances in Table 2. in paragraph (j) of this section, the purity of each chemical substance must be 99% or greater, unless otherwise specified in this section. For the chemical substances identified as ''Class 2'' chemical substances in Table 2. in paragraph (j), a representative form of each chemical substance must be tested. The representative form selected for a given Class 2 chemical substance should meet industry or consensus standards where they exist.

(b) *Am I subject to this section?* (1) If you manufacture (including import) or intend to manufacture, or process or intend to process, any chemical substance listed in Table 2. in paragraph (j) of this section at any time from the effective date of the final rule to the end of the test data reimbursement period as defined in 40 CFR 791.3(h), you are subject to this section with respect to that chemical substance.

(2) If you do not know or cannot reasonably ascertain that you manufacture or process a chemical substance listed in Table 2. in paragraph (j) of this section during the time period described in paragraph (b)(1) of this section (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you are not subject to this section with respect to that chemical substance.

(c) *If I am subject to this section, when must I comply with it?* (1)(i) Persons subject to this section are divided into two groups, as set forth in Table 1. of this paragraph: Tier 1 (persons initially required to comply) and Tier 2 (persons not initially required to comply). If you are subject to this section, you must determine if you fall within Tier 1 or Tier 2, based on Table 1. of this paragraph.

TABLE 1—PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2

Persons initially required to comply with this section (Tier 1)	Persons not initially required to comply with this section (Tier 2)
Persons not otherwise specified in column 2 of this table that manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section.	Tier 2A. Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring substance (as defined at 40 CFR 710.4(b)); —As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 chemical substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kg (1,100 lbs.) annually (as described at 40 CFR 790.42(a)(4)); or —For research and development (as described at 40 CFR 790.42(a)(5)).

TABLE 1—PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2—Continued

Persons initially required to comply with this section (Tier 1)	Persons not initially required to comply with this section (Tier 2)
	Tier 2B. Persons who process (as defined at TSCA section 3(10)) or intend to process a chemical substance included in this section (see 40 CFR 790.42(a)(2)).

(ii) Table 1. of paragraph (c)(1)(i) of this section expands the list of persons in Tier 2, that is those persons specified in 40 CFR 790.42(a)(2), (a)(4) and (a)(5), who, while legally subject to this section, must comply with the requirements of this section only if directed to do so by EPA under the circumstances set forth in paragraphs (c)(4), (c)(5), (c)(6), (c)(7), and (c)(10) of this section.

(2) If you are in Tier 1 with respect to a chemical substance listed in Table 2. in paragraph (j) of this section, you must, for each test required under this section for that chemical substance, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than 30 days after the effective date of the final rule.

(3) If you are in Tier 2 with respect to a chemical substance listed in Table 2. in paragraph (j) of this section, you are considered to have an automatic conditional exemption and you will be required to comply with this section with regard to that chemical substance only if directed to do so by EPA under paragraphs (c)(5), (c)(7), or (c)(10) of this section.

(4) If no person in Tier 1 has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in Table 2. in paragraph (j) of this section within 30 days after the effective date of the final rule, EPA will publish a **Federal Register** document that would specify the test(s) and the chemical substance(s) for which no letter of intent has been submitted and notify manufacturers in Tier 2A of their obligation to submit a letter of intent to test or to apply for an exemption from testing.

(5) If you are in Tier 2A (as specified in Table 1. in paragraph (c) of this section) with respect to a chemical substance listed in Table 2. in paragraph (j) of this section, and if you manufacture, or intend to manufacture, this chemical substance as of [*date 30 days after date of publication of the final rule in the* ***Federal Register***], or within 30 days after publication of the **Federal Register** document described in paragraph (c)(4) of this section, you must, for each test specified for that chemical substance in the document described in paragraph (c)(4) of this section, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than 30 days after publication of the **Federal Register** document described in paragraph (c)(4) of this section.

(6) If no manufacturer in Tier 1 or Tier 2A has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in Table 2. in paragraph (j) of this section within 30 days after the publication of the **Federal Register** document described in paragraph (c)(4) of this section, EPA will publish another **Federal Register** document that would specify the test(s) and the chemical substance(s) for which no letter of intent has been submitted, and notify processors in Tier 2B of their obligation to submit a letter of intent to test or to apply for an exemption from testing.

(7) If you are in Tier 2B (as specified in Table 1. in paragraph (c) of this section) with respect to a chemical substance listed in Table 2. in paragraph (j) of this section, and if you process, or intend to process, this chemical substance as of [*date 30 days after date of publication of the final rule in the* ***Federal Register***], or within 30 days after publication of the **Federal Register** document described in paragraph (c)(6) of this section, you must, for each test specified for that chemical substance in the **Federal Register** document described in paragraph (c)(6) of this section, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than 30 days after publication of the **Federal Register** document described in paragraph (c)(6) of this section.

(8) If no manufacturer or processor has notified EPA of its intent to conduct one or more of the tests required by this section for any of the chemical substances listed in Table 2. in paragraph (j) of this section within 30 days after the publication of the **Federal Register** document described in paragraph (c)(6) of this section, EPA will notify all manufacturers and processors of those chemical substances of this fact by certified letter or by publishing a **Federal Register** document specifying the test(s) for which no letter of intent has been submitted. This letter or **Federal Register** document will additionally notify all manufacturers and processors that all exemption applications concerning the test(s) have been denied, and will give the manufacturers and processors of the chemical substance(s) an opportunity to take corrective action.

(9) If no manufacturer or processor has notified EPA of its intent to conduct one or more of the tests required by this section for any of the chemical substances listed in Table 2. in paragraph (j) of this section within 30 days after receipt of the certified letter or publication of the **Federal Register** document described in paragraph (c)(8) of this section, all manufacturers and processors subject to this section with respect to that chemical substance who are not already in violation of this section will be in violation of this section.

(10) If a problem occurs with the initiation, conduct, or completion of the required testing or the submission of the required data with respect to a chemical substance listed in Table 2. in paragraph (j) of this section, under the procedures in 40 CFR 790.93 and 790.97, EPA may initiate termination proceedings for all testing exemptions with respect to that chemical substance and may notify persons in Tier 1 and Tier 2 that they are required to submit letters of intent to test or exemption applications within a specified period of time.

(11) If you are required to comply with this section, but your manufacture or processing of, or intent to manufacture or process, a chemical substance listed in Table 2. in paragraph (j) of this section begins after the applicable compliance date referred to in paragraphs (c)(2), (c)(5), or (c)(6) of this section, you must either submit a letter of intent to test or apply to EPA for an exemption. The letter of intent to test or the exemption application must be received by EPA no later than the day you begin manufacture or processing.

(d) *What must I do to comply with this section?* (1) To comply with this section you must either submit to EPA a letter of intent to test, or apply to and

obtain from EPA an exemption from testing.

(2) For each test with respect to which you submit to EPA a letter of intent to test, you must conduct the testing specified in paragraph (h) of this section and submit the test data to EPA.

(3) You must also comply with the procedures governing test rule requirements in part 790 of this chapter, as modified by this section, including the submission of letters of intent to test or exemption applications, the submission of study plans prior to testing, the conduct of testing, and the submission of data; 40 CFR part 792—Good Laboratory Practice Standards; and this section. The following provisions of 40 CFR part 790 do not apply to this section: Paragraphs (a), (d), (e), and (f) of § 790.45; § 790.48; paragraph (a)(2) and paragraph (b) of § 790.80; paragraph (e)(1) of § 790.82; and § 790.85.

(e) *If I do not comply with this section, when will I be considered in violation of it?* You will be considered in violation of this section as of one day after the date by which you are required to comply with this section.

(f) *How are EPA's data reimbursement procedures affected for purposes of this section?* If persons subject to this section are unable to agree on the amount or method of reimbursement for test data development for one or more chemical substances included in this section, any person may request a hearing as described in 40 CFR part 791. In the determination of fair reimbursement shares under this section, if the hearing officer chooses to use a formula based on production volume, the total production volume amount will include amounts of a chemical substance produced as an impurity.

(g) *Who must comply with the export notification requirements?* Any person who exports, or intends to export, a chemical substance listed in Table 2. in paragraph (j) of this section is subject to 40 CFR part 707, subpart D.

(h) *How must I conduct my testing?* The tests that are required for each chemical substance are indicated in Table 2. in paragraph (j) of this section. The test methods that must be followed are provided in Table 3. in paragraph (j) of this section. You must proceed in accordance with these test methods as required according to Table 3. in paragraph (j) of this section, or as appropriate if more than one alternative is allowed according to Table 3. in paragraph (j) of this section.

(i) *Reporting requirements.* A final report for each specific test for each subject chemical substance must be received by EPA by [*date 13 months after the effective date of publication of the final rule in the* ***Federal Register***] unless an extension is granted in writing pursuant to 40 CFR 790.55. A robust summary of the final report for each specific test may be submitted electronically in addition to and at the same time as the final report. The term ''robust summary'' is used to describe the technical information necessary to adequately describe an experiment or study and includes the objectives, methods, results, and conclusions of the full study report which can be either an experiment or in some cases an estimation or prediction method. Guidance for the compilation of robust summaries is described in a document entitled ''Draft Guidance on Developing Robust Summaries'' which is available on-line at: *http://www.epa.gov/chemrtk/pubs/general/robsumgd.htm.*

(j) *Designation of specific chemical substances and testing requirements.* The chemical substances identified by chemical substance name, Chemical Abstract Service Registry Number (CASRN), and class in Table 2. of this paragraph must be tested in accordance with the requirements designated in Tables 2. and 3. of this paragraph, and the requirements described in 40 CFR part 792—Good Laboratory Practice Standards.

TABLE 2—CHEMICAL SUBSTANCES AND TESTING REQUIREMENTS

Chemical abstract service registry number (CASRN)	Chemical abstract (CA) index name	Class	Required tests (see Table 3. of this section)
56–40–6	Glycine	1	A3
67–72–1	Ethane, 1,1,1,2,2,2-hexachloro-	1	C6
78–00–2	Plumbane, tetraethyl-	1	A4, A5, C6, E2
95–14–7	1H-Benzotriazole	1	A3, C6, F1
118–48–9	2H-3,1-Benzoxazine-2,4(1H)-dione	1	A3, A4, A5, C3, E1, E2, F1
128–44–9	1,2–Benzisothiazol-3(2H)-one, 1,1-dioxide, sodium salt (1:1)	1	A2, A3, A4, A5, C1, F1
928–72–3	Glycine, N-(carboxymethyl)-, sodium salt (1:2)	1	A1, A3, A4, A5, B
1809–19–4	Phosphonic acid, dibutyl ester	1	A1, A4, C1, E1, E2, F1
25377–73–5	2,5-Furandione, 3-(dodecen-1-yl)dihydro-	1	A1, A2, A3, A4, A5, B, C1, D, E2, F1
26544–38–7	2,5-Furandione, dihydro-3-(tetrapropenyl)-	1	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
27859–58–1	Butanedioic acid, 2-(tetrapropenyl)-	1	A1, A2, A3, A4, A5, C1, D, E1, E2, F1
28777–98–2	2,5-Furandione, dihydro-3-(octadecen-1-yl)-	1	A2, A3, A4, A5, C1, D, E1, E2, F1
29385–43–1	1H-Benzotriazole, 6(or 7)-methyl-	1	A3, A4, A5, E2, F1
32072–96–1	2,5-Furandione, 3-(hexadecen-1-yl)dihydro-	1	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
61789–73–9	Quaternary ammonium compounds, benzylbis(hydrogenated tallow alkyl)methyl, chlorides.	2	A3
64665–57–2	1H-Benzotriazole, 6(or 7)-methyl-, sodium salt	1	A1, A3, A4, A5, E1, E2, F1,
68131–13–5	Naphthenic acids, reaction products with diethylenetriamine	2	C1, D, E1, E2, F1
68153–60–6	Fatty acids, tall-oil, reaction products with diethylenetriamine, acetates	2	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
68424–85–1	Quaternary ammonium compounds, benzyl-C12–16-alkyldimethyl,chlorides.	1	A1, A2, A3
68442–77–3	2-Butenediamide, (2E)-, N1,N4-bis[2-(4,5-dihydro-2-nortall-oil alkyl-1H-imidazol-1-yl)ethyl] derivs.	2	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
68607–28–3	Quaternary ammonium compounds, (oxydi-2,1-ethanediyl)bis[coco alkyldimethyl, dichlorides.	2	A1, A2, A3, A4, A5,

TABLE 2—CHEMICAL SUBSTANCES AND TESTING REQUIREMENTS—Continued

Chemical abstract service registry number (CASRN)	Chemical abstract (CA) index name	Class	Required tests (see Table 3. of this section)
68909–18–2	Pyridinium, 1-(phenylmethyl)-, Et Me derivs., chlorides	2	A1, A2, A3, A4, A5, C1, D, E1, E2, F1
69834–17–9	Benzene, decylphenoxy-	1	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1

TABLE 3—KEY TO THE TEST REQUIREMENTS DENOTED BY ALPHANUMERIC SYMBOLS IN TABLE 2

Testing category	Test symbol	Test requirements and references	Special conditions
Physical/chemical properties.	A	1. Melting Point: ASTM E 324–99 (capillary tube), if a Freezing Point: Organisation for Economic Co-operation and Development (OECD) 102 (melting point/melting range). 2. Boiling Point: ASTM E 1719–05 (ebulliometry). 3. Vapor Pressure: ASTM E 1782–03 (thermal analysis).	
Physical/chemical properties (continued).	A	4. *n*-Octanol/Water Partition Coefficient (log 10 basis) or log K_{ow}: (see special conditions for the log K_{ow} test requirement and select the appropriate method to use, if any, from those listed in this column). Method A: 40 CFR 799.6755 (shake flask). Method B: ASTM E 1147–92(2005) (liquid chromatography). Method C: 40 CFR 799.6756 (generator column)	*n*-Octanol/Water Partition Coefficient or log K_{ow}: Which method is required, if any, is determined by the test substance's estimated[1] log K_{ow} as follows: log K_{ow} <0: no testing required. log K_{ow} range 0–1: Method A or B. log K_{ow} range > 1–4: Method A or B or C. log K_{ow} range > 4–6: Method B or C. log K_{ow} > 6: Method C. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted at pH 7.
		5. Water Solubility: (See special conditions for the water solubility test requirement and select the appropriate method to use, if any, from those listed in this column). Method A: ASTM E 1148–02 (shake flask) Method B: 40 CFR 799.6784 (shake flask) Method C: 40 CFR 799.6784 (column elution) Method D: 40 CFR 799.6786 (generator column)	Water Solubility: Which method is required, if any, is determined by the test substance's estimated[2] water solubility. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted starting at pH 7. > 5,000 mg/L: Method A or B. > 10 mg/L–5,000 mg/L: Method A, B, C, or D. > 0.001 mg/L–10 mg/L: Method C or D. ≤ 0.001 mg/L: No testing required.
Environmental fate and pathways—ready biodegradation.	B	For B, consult ISO 10631 for guidance, and choose one of the methods listed in this column: 1. ASTM 1720–01 (sealed vessel CO_2 production test) or 2. ISO 14593 (CO_2 headspace test) or 3. ISO 7827 (analysis of DOC) or 4. ISO 9408 (determination of oxygen demand in a closed respirometer) or 5. ISO 9439 (CO_2 evolution test) or 6. ISO 10707 (closed bottle test) or 7. ISO 10708 (two-phase closed bottle test).	Which method is required, if any, is determined by the test substance's physical and chemical properties, including its water solubility. ISO 10631 provides guidance for selection of an appropriate test method for a given test substance. Test sponsors must provide in the final study report the underlying rationale for the method selected.
Aquatic toxicity	C1	For C1, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—see special conditions. Test Group 1 for C1: 1. Acute Toxicity To Fish: ASTM E 729–96 (2007). 2. Acute Toxicity To Daphnia: ASTM E 729–96 (2007). 3. Toxicity To Plants (Algae): ASTM E 1218–04^{e1}. Test Group 2 for C1: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97 (2004) 2. Toxicity To Plants (Algae): ASTM E 1218–04^{e1}.	The following are the special conditions for C1, C2, C3, C4, C5, and C7 testing; there are no special conditions for C6. Which test group is required is determined by the test substance's measured log K_{ow} as obtained under Test Category A, or using an existing measured log K_{ow}.[3] If log K_{ow} <4.2: Test Group 1 is required. If log K_{ow} ≥ 4.2: Test Group 2 is required.

TABLE 3—KEY TO THE TEST REQUIREMENTS DENOTED BY ALPHANUMERIC SYMBOLS IN TABLE 2—Continued

Testing category	Test symbol	Test requirements and references	Special conditions
	C2	For C2, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—See special conditions. Test Group 1 for C2: 1. Acute Toxicity To Daphnia: ASTM E 729–96 (2007). 2. Toxicity To Plants (Algae): ASTM E 1218–04e1 Test Group 2 for C2: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97 (2004). 2. Toxicity To Plants (Algae): ASTM E 1218–04e1.	
	C3	For C3, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—see special conditions. Test Group 1 for C3: 1. Acute Toxicity To Fish: ASTM E 729–96 (2007). 2. Toxicity To Plants (Algae): ASTM E 1218–04e1. Test Group 2 for C3: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97 (2004). 2. Toxicity To Plants (Algae): ASTM E 1218–04e1.	
	C4	For C4, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—see special conditions. Test Group 1 for C4: 1. Acute Toxicity To Fish: ASTM E 729–96 (2007). 2. Acute Toxicity To Daphnia: ASTM E 729–96 (2007). Test Group 2 for C4: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97 (2004).	
	C5	For C5, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—see special conditions. Test Group 1 for C5: 1. Acute Toxicity To Daphnia: ASTM E 729–96 (2007). Test Group 2 for C5: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97 (2004).	
	C6	Toxicity To Plants (Algae): ASTM E 1218–04e1.	
	C7	For C7, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—see special conditions. Test Group 1 for C7: 1. Acute Toxicity To Fish: ASTM E 729–96 (2007). Test Group 2 for C7: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97 (2004).	
Mammalian toxicity—acute	D	See special conditions for this test requirement and select the method that must be used from those listed in this column. Method A: Acute Inhalation Toxicity (rat): 40 CFR 799.9130. Method B: either: 1. Acute (Up/Down) Oral Toxicity (rat): ASTM E 1163–98 (2002) or 2. Acute (Up/Down) Oral Toxicity (rat): 40 CFR 799.9110(d)(1)(i)(A).	Which testing method is required is determined by the test substance's physical state at room temperature (25 °C). For those test substances that are gases at room temperature, Method A is required; otherwise, use either of the two methods listed under Method B. In Method B, 40 CFR 799.9110(d)(1)(i)(A) refers to the OECD 425 Up/Down Procedure.[4] Estimating starting dose for Method B: Data from the neutral red uptake basal cytotoxicity assay[5] using normal human keratinocytes or mouse BALB/c 3T3 cells may be used to estimate the starting dose.
Mammalian toxicity—genotox-icity.	E1	Bacterial Reverse Mutation Test *(in vitro):* 40 CFR 799.9510.	None.

TABLE 3—KEY TO THE TEST REQUIREMENTS DENOTED BY ALPHANUMERIC SYMBOLS IN TABLE 2—Continued

Testing category	Test symbol	Test requirements and references	Special conditions
	E2	Conduct any one of the following three tests for chromosomal damage: *In vitro* Mammalian Chromosome Aberration Test: 40 CFR 799.9537 or Mammalian Bone Marrow Chromosomal Aberration Test (*in vivo* in rodents: Mouse (preferred species), rat, or Chinese hamster): 40 CFR 799.9538 or Mammalian Erythrocyte Micronucleus Test [sampled in bone marrow] (*in vivo* in rodents: mouse (preferred species), rat, or Chinese hamster): 40 CFR 799.9539.	Persons required to conduct testing for chromosomal damage are encouraged to use the *in vitro* Mammalian Chromosome Aberration Test (40 CFR 799.9537) to generate the needed data unless known chemical properties (*e.g.,* physical/chemical properties, chemical class characteristics) preclude its use. A subject person who uses one of the *in vivo* methods instead of the *in vitro* method to address a chromosomal damage test requirement must submit to EPA a rationale for conducting that alternate test in the final study report.
Mammalian toxicity—repeated dose/reproduction/developmental.	F1	Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9365. or Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9355 and Repeated Dose 28-Day Oral Toxicity Study in rodents: 40 CFR 799.9305.	Where F1 is required, EPA recommends use of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9365). However, there may be valid reasons to test a particular chemical substance using both 40 CFR 799.9355 and 40 CFR 799.9305 to fill Mammalian Toxicity—Repeated Dose/Reproduction/Developmental data needs. A subject person who uses the combination of 40 CFR 799.9355 and 40 CFR 799.9305 in place of 40 CFR 799.9365 must submit to EPA a rationale for conducting these alternate tests in the final study reports. Where F2 or F3 is required, no rationale for conducting the required test need be provided in the final study report.
	F2	Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9355.	
	F3	Repeated Dose 28-Day Oral Toxicity Study in rodents: 40 CFR 799.9305.	

[1] EPA recommends, but does not require, that log K_{ow} be quantitatively estimated prior to initiating this study. One method, among many similar methods, for estimating log K_{ow} is described in the article entitled *Atom/Fragment Contribution Method for Estimating Octanol-Water Partition Coefficients*) by W.M. Meylan and P.H. Howard in the *Journal of Pharmaceutical Sciences.* 84(1):83–92. January 1992. This reference is available under docket ID number EPA–HQ–OPPT–2010–0520 at the EPA Docket Center, Rm. 3331 in the EPA West Building located at 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

[2] EPA recommends, but does not require, that water solubility be quantitatively estimated prior to initiating this study. One method, among many similar methods, for estimating water solubility is described in the article entitled *Improved Method for Estimating Water Solubility From Octanol/Water Partition Coefficient* by W.M. Meylan, P.H. Howard, and R.S. Boethling in *Environmental Toxicology and Chemistry*. 15(2):100–106. 1996. This reference is available under docket ID number EPA–HQ–OPPT–2010–0520 at the EPA Docket Center, Rm. 3331 in the EPA West Building located at 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

[3] Chemical substances that are dispersible in water may have log Kow values greater than 4.2 and may still be acutely toxic to aquatic organisms. Test sponsors who wish to conduct Test Group 1 studies on such chemical substances may request a modification to the test standard as described in 40 CFR 790.55. Based upon the supporting rationale provided by the test sponsor, EPA may allow an alternative threshold or method be used for determining whether acute or chronic aquatic toxicity testing be performed for a specific substance.

[4] The OECD 425 Up/Down Procedure, revised by OECD in December 2001, is available under docket ID number EPA–HQ–OPPT–2010–0520 at the EPA Docket Center, Rm. 3331 in the EPA West Building located at 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

[5] The neutral red uptake basal cytotoxicity assay, which may be used to estimate the starting dose for the mammalian toxicity-acute endpoint, is available under docket ID number EPA–HQ–OPPT–2010–0520 at the EPA Docket Center, Rm. 3331 in the EPA West Building located at 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

(k) *Effective date.* This section is effective on [*date 30 days after date of publication of the final rule in the* ***Federal Register***].

[FR Doc. 2011–26894 Filed 10–20–11; 8:45 am]

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H.R. 771/P.L. 112–38
To designate the facility of the United States Postal Service located at 1081 Elbel Road in Schertz, Texas, as the ''Schertz Veterans Post Office''. (Oct. 12, 2011; 125 Stat. 399)

H.R. 1632/P.L. 112–39
To designate the facility of the United States Postal Service located at 5014 Gary Avenue in Lubbock, Texas, as the ''Sergeant Chris Davis Post Office''. (Oct. 12, 2011; 125 Stat. 400)

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