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

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0328; Directorate Identifier 2011–NM–259–AD; Amendment 39–17162; AD 2012–16–15]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD was prompted by reports of jamming/malfunctioning of the left-hand engine thrust control mechanism. This AD requires modifying the left-hand engine upper core-cowl. We are issuing this AD to prevent jamming/malfunctioning of the left-hand engine thrust control mechanism, which could lead to loss of control of the airplane.

DATES: This AD becomes effective September 25, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 25, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mazdak Hobbi, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, NY 11590; telephone (516) 228–7330; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 6, 2012 (77 FR 20746). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> There have been several reported incidents of jamming/malfunctioning of the left hand (L/H) engine thrust control mechanism on the affected aeroplanes. The investigation has shown that an improperly stowed or dislodged upper core-cowl-door Hold Open Rod, can impede a Fuel Control Unit (FCU) function by obstructing the movement of the FCU actuating lever arm, hence rendering the L/H engine thrust control inoperable.
>
> Due to the engine's orientation, the subject FCU fouling is limited only to the L/H engine installation on the affected twin engine powered aeroplanes; however the potential hazard of any in-flight engine shut down caused by jammed engine fuel control lever is a safety concern that warrants mitigating action.
>
> In order to help alleviate the possibility of an in-flight engine shut down due to the subject fouling of the FCU lever by the core-cowl-door Hold Open Rod, Bombardier has issued a Service Bulletin (SB) to install a new bracket at the L/H engine upper core-cowl-door location. This [Canadian] directive is issued to mandate the incorporation of the SB 601R–71–033 on the affected aeroplanes.

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 20746, April 6, 2012) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed—except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 20746, April 6, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 20746, April 6, 2012).

Costs of Compliance

We estimate that this AD will affect 601 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $54 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $134,624, or $224 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 20746, April 6, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–16–15 Bombardier, Inc.: Amendment 39–17162. Docket No. FAA–2012–0328; Directorate Identifier 2011–NM–259–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 25, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category; serial numbers 7003 through 7067 inclusive, 7069 through 7990 inclusive, and 8000 through 8112 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 71: Powerplant.

(e) Reason

This AD was prompted by reports of jamming/malfunctioning of the left-hand engine thrust control mechanism. We are issuing this AD to prevent jamming/malfunctioning of the left-hand engine thrust control mechanism, which could lead to loss of control of the airplane.

(f) Compliance

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

(g) Actions

Within 36 months or 6,000 flight hours after the effective date of this AD, whichever occurs first: Modify the left-hand engine upper core-cowl, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–71–033, dated August 24, 2011.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the New York ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer 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.

(i) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–38, dated October 19, 2011; and Bombardier Service Bulletin 601R–71–033, dated August 24, 2011; for related information.

(j) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 601R–71–033, dated August 24, 2011.

(ii) Reserved.

(3) For Bombardier service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 9, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–20172 Filed 8–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 118

[Docket No. FDA–2011–D–0398]

Guidance for Industry: Questions and Answers Regarding the Final Rule, Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a guidance entitled ''Guidance for Industry: Questions and Answers Regarding the Final Rule, Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation.'' The guidance contains questions we have received on the final rule since its publication and responses to those questions, and is intended to assist egg producers and other persons who are covered by the final rule.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Plant and Dairy Food Safety/Office of Food Safety, Center for Food Safety and Applied Nutrition (HFS–315), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nancy Bufano, Center for Food Safety and Applied Nutrition (HFS–316), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1493.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 9, 2009 (74 FR 33030), we issued a final rule requiring shell egg producers to implement measures to prevent *Salmonella* Enteritidis (SE) from contaminating eggs on the farm and from further growth during storage and transportation, and requiring these producers to maintain records concerning their compliance with the final rule and to register with FDA. This final rule became effective September 8, 2009. In the **Federal Register** of July 13, 2011 (76 FR 41157), we made available a draft guidance entitled ''Questions and Answers Regarding the Final Rule, Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation'' and gave interested parties an opportunity to submit comments by September 12, 2011. We have reviewed and evaluated these comments and have modified the guidance where appropriate.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents our current thinking on how to interpret the requirements in the final rule, including questions and answers on compliance dates; coverage; definitions; SE prevention measures; sampling and testing for SE; registration; and compliance and enforcement. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 118.5, 118.6, 118.10, and 118.11 have been approved under OMB control number 0910–0660.

III. Comments

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

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*. Always access an FDA document using the FDA Web site listed previously to find the most current version of the guidance.

Dated: August 13, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–20383 Filed 8–20–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9597]

RIN–1545–BF34

Deductions for Entertainment Use of Business Aircraft; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document corrects the final regulation (TD 9597) that was published in the **Federal Register** on Wednesday, August 1, 2012, (77 FR 45480), relating to the use of business aircraft for entertainment.

DATES: *Effective Date:* This correction is effective on August 21, 2012 and is applicable on August 1, 2012.

FOR FURTHER INFORMATION CONTACT: Michael Nixon (section 274), (202) 622–4930; or Lynne A. Camillo (section 61), (202) 622–6040 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulation (TD 9597) that is the subject of this correction is under section 274 of the Internal Revenue Code.

Need for Correction

As published, TD 9597 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulation (TD 9597) that was the subject of FR Doc. 2012–18693, is corrected as follows:

On page 45480, column 1, under the caption **DATES:** line five, the language ''1.274–9(e), and 1.274–10(h)'' is corrected to read ''1.274–9(e), and 1.274–10(g)''.

LaNita Van Dyke,

Chief, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2012–20436 Filed 8–20–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2011–0551]

RIN 1625–AA00; 1625–AA08

Special Local Regulation and Safety Zone; America's Cup World Series Regattas, San Francisco Bay; San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has established a special local regulation and a safety zone for sailing events scheduled to occur on the waters of San Francisco Bay adjacent to the City of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island. This rule will revise the start time for enforcement on August 26, 2012, to 11:30 a.m. instead of noon. This

change will protect mariners transiting the area from the dangers associated with the sailing events. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective from August 21, 2012, until August 26, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2011–0551. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lieutenant DeCarol Davis, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7443 or email at *D11-PF-MarineEvents@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

APA Administrative Procedure Act
ACRM America's Cup Race Management
DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On July 17, 2012, the Coast Guard published a temporary final rule regulating the on-water activities associated with the ''2012 America's Cup World Series'' regatta scheduled to occur August 21–26, 2012 (77 FR 41902). That rule created a special local regulation and safety zone to be enforced from noon until 5 p.m. on those days.

On August 11, 2012, the Coast Guard received notification from America's Cup Race Management (ACRM) that the race scheduled to occur on August 26, 2012, would begin 30 minutes earlier in order to maintain schedules for television coverage and broadcasting. Regulating on-water activities associated with the regatta during those 30 minutes is necessary to protect the public from the dangers posed by the high speeds of the sailing vessels operating during this media coverage. The time remaining before the scheduled August 26th race does not allow for public comment on this change. Publishing a rule is in the public's interest, however, to provide for the safety of mariners transiting the area and to notify the public of planned on-water activities. The timing of enforcement also was addressed in public comments the Coast Guard received and considered in development of the rule published on July 17, and based on those comments the Coast Guard believes that starting enforcement 30 minutes earlier on one day will not interfere with other waterway uses.

Accordingly, 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.'' For the reasons described above, the Coast Guard finds under 5 U.S.C. 553(b)(B) that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be contrary to the public interest.

Similarly, 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 stated above, delaying the effective date would be contrary to the public interest.

B. Basis and Purpose

Under 33 CFR 100.35, the Coast Guard District Commander has authority to promulgate certain special local regulations deemed necessary to ensure the safety of life on the navigable waters immediately before, during, and immediately after an approved regatta or marine parade. The Commander of Coast Guard District 11 has delegated to the Captain of the Port (COTP) San Francisco the responsibility of issuing such regulations. The COTP also has the authority to establish safety zones under 33 CFR 1.05–1(f) and 165.5.

From August 21–26, 2012, the City of San Francisco plans to host America's Cup World Series regattas as part of a circuit of sailing events being conducted at other U.S. and international venues. On July 17, 2012, the Coast Guard published a temporary final rule establishing a special local regulation and temporary safety zone to govern these events from noon to 5 p.m. (77 FR 41902); however, the events on August 26, 2012, will start earlier to maintain the event's television broadcast schedule. To protect the public during this media coverage, the Coast Guard is revising the enforcement provisions of the July 17 rule to provide for enforcement from 11:30 a.m. until 5 p.m. on August 26, 2012. This change is necessary to ensure the safety of mariners transiting the area from the dangers associated with the sailing events.

C. Discussion of the Temporary Final Rule

The location and restrictions of the special local regulation established at 33 CFR 100.T11–0551A and the safety zone established at 33 CFR 165.T11–0551 remain as they were published on July 17, 2012, and are not changed by this rule. The enforcement periods of both the special local regulation and the safety zone are revised to reflect enforcement from 11:30 a.m. until 5 p.m. on August 26, 2012, instead of from noon until 5 p.m. as originally established. Enforcement on the other program days in 2012 and 2013 is not affected by this rule.

The effect of the special local regulation and temporary safety zone will be to restrict navigation in the vicinity of the America's Cup sailing events. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep mariners and vessels away from the immediate vicinity of the high-speed sailing vessels participating in America's Cup. Movement within marinas, pier spaces, and facilities along the City of San Francisco waterfront is not regulated by this rule.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive

Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this rule restricts navigation on San Francisco Bay, these restrictions will only be in place for an additional 30 minutes on one day, and are limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The 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: Owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the special local regulation and safety zone at times when they are being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time; (ii) vessel traffic may pass safely around the area; (iii) vessel traffic may pass through the area with COTP approval; (iv) recreational vessel operators may use spaces outside of the affected areas; and (v) the maritime public will be advised in advance via Broadcast Notice to Mariners. These measures have been implemented during similar marine events such as Fleet Week and have been successful.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action does not individually or cumulatively have a significant effect on the human environment. A copy of the environmental assessment is available in the docket.

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Parts 100 and 165 as follows:

PART 100—REGATTAS AND MARINE PARADES

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Revise paragraph (b) of § 100.T11–0551A to read as follows:

§ 100.T11–0551A Special Local Regulation; 2012 America's Cup World Series.

* * * * *

(b) *Enforcement Period.* The regulations in this section will be enforced between the hours of noon and 5 p.m. on designated program days between August 21, 2012, and August 25, 2012, and between 11:30 a.m. and 5 p.m. on August 26, 2012. The enforcement period may be curtailed earlier by the Captain of the Port (COTP) or Patrol Commander. Notice of the specific program dates and times will be issued via Broadcast Notice to Mariners and published by the Coast Guard in the Local Notice to Mariners and in the **Federal Register**.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. 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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 4. Effective from August 21, 2012, until August 26, 2012, suspend paragraph (b) of § 165.T11–0551 and add paragraph (d) to read as follows:

§ 165.T11–0551 Safety Zone; America's Cup Sailing Events.

* * * * *

(d) *Location and enforcement period.* A safety zone extends 100 yards around America's Cup Racing Vessels from noon until 5 p.m. on program days between August 21, 2012, and August 25, 2012; from 11:30 a.m. until 5 p.m. on August 26, 2012; and from 11 a.m. until 4 p.m. on program days between July 4, 2013, and September 23, 2013. The enforcement period may be curtailed earlier by the Captain of the Port (COTP) or Patrol Commander. Notice of the specific program dates and times will be issued via Broadcast Notice to Mariners and published by the Coast Guard in the **Federal Register**.

* * * * *

Dated: August 14, 2012.

Cynthia L. Stowe,

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

[FR Doc. 2012–20465 Filed 8–17–12; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0193]

RIN 1625–AA09

Drawbridge Operation Regulation, Atlantic Intracoastal Waterway (AIWW); Wrightsville Beach, NC; Cape Fear and Northeast Cape Fear River; Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs three North Carolina Department of Transportation (NCDOT) bridges: The S.R. 74 Bridge, across the AIWW, mile 283.1 at Wrightsville Beach, NC; the Cape Fear Memorial Bridge across the Cape Fear River, mile 26.8; and the Isabel S. Holmes Bridge across the Northeast Cape Fear River, mile 1.0; both in Wilmington, NC. The modification will alter the dates and times these bridges are allowed to remain in the closed position to accommodate the time and route change of the annual YMCA Tri Span 5K & 10K races.

DATES: This rule is effective September 20, 2012.

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–2012–0193 and are available online by going to *http://www.regulations.gov,* by inserting USCG–2012–0193 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 email Terrance A. Knowles, Environmental Protection Specialist, Fifth Coast Guard District; telephone (757) 398–6587, email *terrance.a.knowles@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:

Table of Acronyms

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

A. Regulatory History and Information

On May 1, 2012 we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), at Wrightsville Beach, NC; Cape Fear and Northeast Cape Fear River, at Wilmington NC'' in the **Federal Register** (77 FR 25652). We received no comments on the published NPRM. No public meeting was requested, and none was held. The current operating schedule for the S.R. 74 Bridge at Wrightsville Beach, NC, the Cape Fear Memorial Bridge and the Isabel S. Holmes Bridge both at Wilmington, NC are located at 33 CFR 117.821(a)(4), 33 CFR 117.822, and 33 CFR 117.829(a), respectively. All three operating regulations were last amended on May 27, 2011 regarding an unrelated issue. There have been no other publications or efforts to reach out to the public in the development of this rule modification because these races are annual races that mariners are familiar with and this rule makes minor adjustments to the times the bridges will be unable to open.

B. Basis and Purpose

The YMCA Tri Span 5K and 10K races are annual events that are held in the Wrightsville Beach and Wilmington, NC areas. Recently, the Wilmington Family YMCA made a permanent change to both the time and route of the events. The races will continue to be held on the second Saturday of July of every year; however, the events will now begin and end an hour earlier (7 a.m. to 9 a.m.) and the race routes will now include the S.R. 74 Bridge. As a result, the Wilmington Family YMCA, on behalf of NCDOT, requested a change to the operating regulations for the S.R. 74 Bridge, the Cape Fear Memorial Bridge, and the Isabel S. Holmes Bridge. This final rule allows the bridges to

remain in the closed position from 7 a.m. to 9 a.m. on the second Saturday of July of every year.

The S.R. 74 Bridge is a double-leaf bascule drawbridge across AIWW, mile 283.1, at Wrightsville Beach, NC. It has a vertical clearance of 20 feet at mean high water in the closed position. The Cape Fear Memorial Bridge is a vertical-lift bridge across the Cape Fear River, mile 26.8, at Wilmington, NC. It has a vertical clearance of 65 feet above mean high water in the closed position. The Isabel S. Holmes Bridge is a double-leaf bascule drawbridge with a vertical clearance of 40 feet at mean high water in the closed position.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided sixty days for review but received no comments on the NPRM. The Coast Guard is amending 33 CFR 117.821(a)(4) for the S.R. 74 Bridge, mile 283.1 at Wrightsville Beach, NC to allow the bridge to remain in the closed position from 7 a.m. to 9 a.m. on the second Saturday of July of every year. The Coast Guard is amending 33 CFR 117.822 and 33 CFR 117.829(a)(4) for the Cape Fear Memorial Bridge and the Isabel S. Holmes Bridge, respectively, to allow the bridges to remain in the closed position from 7 a.m. to 9 a.m. on the second Saturday of July of every year from the current closure times of 8 a.m. to 10 a.m. on the second Saturday of July of every year. The amendments to these operating regulations will allow the bridges to remain in the closed position for the racers of the annual YMCA Tri Span 5K & 10K races to safely cross the bridges. The Coast Guard will issue Local Notices to Mariners and Broadcast Notices to Mariners every year to remind mariners of the annual closures which will allow them to plan their scheduled transits accordingly.

There are no alternative routes available to vessels transiting these waterways. Vessels that can transit under the bridges without an opening may do so at any time. The bridges will be able to open for emergencies.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The changes are expected to have minimal impacts on mariners due to the short duration that the moveable bridges will be maintained in the closed position. The races have been reserved in years past with little to no impact to marine traffic. It is also a necessary measure to facilitate public safety that allows for the orderly movement of participants before, during, and after the races.

2. Impact on Small Entities

Under the Regulatory Flexibility Act of 1980 (RFA), (5 U.S.C. 601–612), as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit any of the effected bridges from 7 a.m. to 9 a.m. on the second Saturday of July of every year. This action will not have a significant economic impact on a substantial number of small entities because the rule adds minimal restrictions to the movement of navigation and mariners who plan their transits in accordance with the scheduled bridge closures can minimize delay. Vessels that can safely transit under the bridges may do so at any time.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have

taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which 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. Revise § 117.821(a)(4) to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Sunset Beach.

(a) * * *

(4) S.R. 74 Bridge, mile 283.1, at Wrightsville Beach, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour; except that from 7 a.m. to 9 a.m. on the second Saturday of July of every year, from 7 a.m. to 11 a.m. on the third and fourth Saturday of September of every year, and from 7 a.m. to 10:30 a.m. on the last Saturday of October of every year or the first or second Saturday of November of every year, the draw need not open for vessels due to annual races.

* * * * *

■ 3. Revise § 117.822 to read as follows:

§ 117.822 Cape Fear River.

The draw of the Cape Fear Memorial Bridge, mile 26.8, at Wilmington need not open for the passage of vessels from 7 a.m. to 9 a.m. on the second Saturday of July of every year, and from 7 a.m. to 11 a.m. on the first or second Sunday of November of every year to accommodate annual races.

■ 4. Revise § 117.829(a)(4) to read as follows:

§ 117.829 Northeast Cape Fear River.

(a) * * *

(4) From 7 a.m. to 9 a.m. on the second Saturday of July of every year, from 12 p.m. to 11:59 p.m. on the last Saturday of October or the first or second Saturday of November of every year, and from 7 a.m. to 11 a.m. on the first or second Sunday of November of every year, the draw need not open for vessels to accommodate annual races.

* * * * *

Dated: August 8, 2012.

Stephen H. Ratti,

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

[FR Doc. 2012–20481 Filed 8–20–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0153(a); FRL–9717–5]

Approval and Promulgation of Implementation Plans; Tennessee; Knoxville; Fine Particulate Matter 2002 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the 1997 annual fine particulate matter ($PM_{2.5}$) 2002 base year emissions inventory portion of the State Implementation Plan (SIP) revision submitted by the State of Tennessee on April 4, 2008. The emissions inventory is part of Tennessee's April 4, 2008, attainment demonstration SIP revision that was submitted to meet the section 172(c) Clean Air Act (CAA or Act) requirements related to the Knoxville nonattainment area for the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS), hereafter referred to as ''the Knoxville Area'' or ''Area.'' The Knoxville nonattainment area is comprised of Anderson, Blount, Knox and Loudon Counties in their entireties and a portion of Roane County that includes the Tennessee Valley Authority's Kingston Fossil Plant. This action is being taken pursuant to section 110 of the CAA.

DATES: This direct final rule is effective on October 22, 2012 without further notice, unless EPA receives relevant adverse comment by September 20, 2012. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0153, by one of the following methods:

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

2. *Email: R4-RDS@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* ''EPA–R04–OAR–2010–0153,'' 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:* 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–2010–0153. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8726. Mr. Wong can be reached via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Analysis of the State's Submittal
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter based on a 3-year average of annual mean $PM_{2.5}$ concentrations. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 annual $PM_{2.5}$ NAAQS based upon air quality monitoring data for calendar years 2001–2003. These designations became effective on April 5, 2005. The Knoxville Area was designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. *See* 40 CFR 81.343.

Designation of an area as nonattainment starts the process for a state to develop and submit to EPA a SIP revision under title I, part D of the CAA. This SIP revision must include, among other elements, a demonstration of how the NAAQS will be attained in the nonattainment area as expeditiously as practicable, but no later than the date required by the CAA. Under CAA section 172(b), a state has up to three years after an area's designation as nonattainment to submit its SIP revision to EPA. For the 1997 annual $PM_{2.5}$ NAAQS, these submittals were due April 5, 2008. *See* 40 CFR 51.1002(a).

On April 4, 2008, Tennessee submitted an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, a 2002 base year emissions inventory and other planning SIP revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Knoxville Area. Subsequently, on June 6, 2012 (77 FR 33360), EPA proposed that the Knoxville Area has attained the 1997 annual $PM_{2.5}$ NAAQS. The proposed determination of attainment is based upon quality-assured and certified ambient air monitoring data for the 2009–2011 period showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. EPA did not receive any comments on the proposed determination and published the final determination on August 2, 2012 (77 FR 45954). In accordance with the final determination of attainment, the requirements for the Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and other planning SIP revisions related to attainment of the standard are suspended, so long as the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c).

EPA notes that a final determination of attainment would not suspend the emissions inventory requirement found in CAA section 172(c)(3), which requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. In today's action, EPA is approving the emissions inventory portion of the attainment demonstration SIP revision submitted by Tennessee on April 4, 2008, as required by section 172(c)(3).

II. Analysis of the State's Submittal

As discussed above, section 172(c)(3) of the CAA requires nonattainment areas to submit a comprehensive, accurate and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such areas. Tennessee selected 2002 as the base year for the emissions inventory per 40 CFR 51.1008(b). Emissions contained in Tennessee's April 4, 2008, SIP revision cover the general source categories of point sources, non-road mobile sources, area sources, and on-

road mobile sources of direct and precursor emissions of $PM_{2.5}$. The precursor emissions included in the 2002 Knoxville Area emissions inventory include nitrogen oxides (NO_X) and sulfur dioxide (SO_2). A detailed discussion of the emissions inventory development can be found in Appendix H of the Tennessee submittal. The table below provides a summary of the annual 2002 emissions of NO_X, SO_2 and direct $PM_{2.5}$ included in the Tennessee submittal.

2002 ANNUAL EMISSIONS FOR THE KNOXVILLE AREA

[Tons per year]

County	Point sources		
	NO_X	SO_2	$PM_{2.5}$
Anderson	17,253	44,692	2,075
Blount	387	4,264	1,684
Knox	2,183	1,303	471
Loudon	2,309	4,221	412
Roane*	25,679	77,571	3,217
	Non-road sources		
Anderson	1,128	69	55
Blount	1,301	127	115
Knox	4,845	425	312
Loudon	1,231	111	62
Roane*	17	2	1
	Area sources		
Anderson	252	271	501
Blount	164	59	718
Knox	175	39	445
Loudon	57	18	334
Roane*	2	2	5
	Mobile sources		
Anderson	3,267	111	46
Blount	2,720	119	41
Knox	19,059	682	284
Loudon	4,273	120	60
Roane*	235	11	3

*Nonattainment portion of Roane County only.

The 172(c)(3) emissions inventory was developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule for all source categories (i.e., point, nonroad mobile, area, and on-road mobile). This inventory often forms the basis of data that are updated with more recent information and data that also are used in the attainment demonstration modeling inventory. Such was the case in the development of the 2002 base year emissions inventory that was submitted in Tennessee's attainment demonstration SIP for the Knoxville Area. The 2002 base year emissions inventory was based on data developed with the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) contractors and submitted by the VISTAS states (i.e., Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia) to the EPA 2002 National Emissions Inventory. Several iterations of the VISTAS 2002 inventories were developed through the VISTAS project for the different emission source categories resulting from revisions and updates to the data. This resulted in the use of version G2 of the updated data to represent the point sources' emissions. Data from many databases, studies and models (e.g., Vehicle Miles Traveled, fuel programs, the NONROAD 2002 model data for commercial marine vessels, locomotives and Clean Air Market Division, etc.) resulted in the inventory submitted in this SIP revision. The VISTAS and Tennessee emissions inventory data were developed according to current EPA emissions inventory guidance titled ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS)'' (August 2005) and ''Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and a quality assurance project plan that was developed through VISTAS and approved by EPA. EPA agrees that the process used to develop this inventory was adequate to meet the requirements of CAA section 172(c)(3) and the implementing regulations.

EPA has reviewed the 2002 base year emissions inventory from Tennessee and determined that it is adequate for the purposes of meeting section 172(c)(3) emissions inventory requirement. Further, EPA has determined that the emissions were developed consistent with the CAA, implementing regulations and EPA guidance for emissions inventories.

III. Final Action

EPA is taking direct final action to approve the 2002 base year emissions inventory portion of the attainment demonstration SIP revision submitted by the State of Tennessee on April 4, 2008. EPA determined that this action is consistent with section 110 of the CAA.

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial revision and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comment be filed. This rule will be effective on October 22, 2012 without further notice unless the Agency receives adverse comment by September 20, 2012. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised this rule will be effective on October 22, 2012 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 22, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 7, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

■ 2. Section 52.2220(e) is amended by adding a new entry for ''Knoxville; 1997 Annual Fine Particulate Matter 2002 Base Year Emissions Inventory'' at the end of the table to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or non-attainment area	State effective date	EPA approval date	Explanation
*	*	*	*	*
Knoxville; 1997 Annual Fine Particulate Matter 2002 Base Year Emissions Inventory.	Anderson, Blount, Knox, and Loudon Counties, and the portion of Roane County that falls within the census block that includes the Tennessee Valley Authority's Kingston Fossil Plant.	04/04/2008	08/21/2012 [Insert citation of publication].	

[FR Doc. 2012–20393 Filed 8–20–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. NHTSA–2011–0152; Notice 2]

Petition for Approval of Alternate Odometer Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of final determination.

SUMMARY: The State of New York (''New York'') has petitioned for approval of alternate odometer requirements. New York's petition, as amended, is granted.

DATES: *Effective Date:* September 20, 2012.

ADDRESSES: New York's petition and comments are available for public inspection at the Docket Management Facility of the U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Marie Choi, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (Telephone: 202–366–1738) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets. You may also review the docket at the address listed above.

I. Introduction

Federal odometer law, which is largely based on the Motor Vehicle Information and Cost Savings Act of 1972 (Cost Savings Act) [1] and Truth in Mileage Act of 1986, as amended

[1] Sec. 401–413, Public Law 92–513, 86 Stat. 961–963.

(TIMA),[2] contains a number of provisions to limit odometer fraud and ensure 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 vehicles unless a valid odometer disclosure statement on the title is signed and dated by the transferor. Titles must also be printed by a 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.

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, New York has petitioned for approval of alternate odometer disclosure requirements. In its initial determination, NHTSA reviewed the statutory background and set out the agency's tentative view on applicable statutory factors governing whether to grant a state's petition. NHTSA determined that New York's initial petition [3] for approval of alternate disclosure requirements did not satisfy Federal odometer law because transfers to out-of-state purchasers involved the issuance of non-secure paper odometer disclosure receipts. *See* 76 FR 65485, Oct. 21, 2011. NHTSA invited public comments.

As part of its comments, New York submitted an amended petition.[4] After careful consideration of comments, NHTSA has made a final determination, which is set forth below.

II. Statutory Background and Purposes

A. Statutory Background

NHTSA reviewed the statutory background of Federal odometer law in its consideration of petitions for approval of alternate odometer disclosure requirements by Virginia, Texas, Wisconsin, Florida, and New York. *See* 74 FR 643, Jan. 7, 2009 (granting Virginia's petition); 75 FR 20925, Apr. 22, 2010 (granting Texas' petition); 76 FR 1367, Jan. 10, 2011 (granting Wisconsin's petition in part); 77 FR 36935, June 20, 2012 (granting Florida's petition in part, and denying Florida's petition in part); *see also* 76 FR 65485, Oct. 21, 2011 (initial determination denying New York's petition). The statutory background of the Cost Savings Act and TIMA, as related to odometer disclosure requirements, other than in the transfer of leased vehicles and vehicles subject to liens where a power of attorney is used, is discussed at length in NHTSA's final determination granting Virginia's petition. 74 FR 643; *see also* 77 FR 36935; 76 FR 48101, Aug. 8, 2011 (addressing leased vehicles and powers of attorney).[5] A brief summary of the statutory background of Federal odometer law follows.

In 1972, Congress enacted the Cost Savings Act to establish safeguards for consumers which prohibited odometer tampering. Among other things, the Cost Savings Act made it unlawful to alter an odometer's mileage, and required written disclosure of odometer mileage in connection with any transfer of ownership of a motor vehicle.[6] However, the Cost Savings Act had a number of shortcomings, which are discussed below.

In 1986, Congress enacted TIMA to address the Cost Savings Act's shortcomings. Congress was specifically concerned with addressing odometer fraud in the commercial market, and noted that used car auctions, distributors, wholesales, dealers, and used car lots of new car dealers often may be directly involved in fraud.[7] TIMA also added a provision to the Cost Savings Act, allowing States to obtain approval for alternate odometer disclosure requirements. Pursuant to Section 408(f) of the Cost Savings Act, as amended by TIMA: 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.* Section 408(a) of the Cost Savings Act was recodified at 49 U.S.C. 32705(a). Sections 408(d) and (e), which were added by TIMA, with subsequent amendments, 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).

B. Statutory Purposes

In our final determinations, after notice and comment, granting the petitions for approval of alternate odometer disclosure requirements of Virginia, Texas, and, in part, Wisconsin and Florida, we identified the statutory purposes of TIMA.[8] 74 FR 643; 75 FR 20925; 76 FR 1367; 77 FR 36935. These purposes are summarized below.[9]

One purpose of TIMA was to ensure that the form of the odometer disclosure precluded odometer fraud. The Cost Savings Act did not require odometer disclosures to be made on a vehicle's title. This created a potential for odometer fraud, because a transferor could easily alter the odometer disclosure or provide a new statement with different mileage.[10] TIMA addressed this shortcoming of the Cost Savings Act by requiring mileage disclosures to be on a vehicle's title instead of a separate document. Titles

[2] Sec. 1–3, Public Law 99–579, 100 Stat. 3309–3311.

[3] New York's Petition for Approval of Alternate Odometer Disclosure Requirements dated September 30, 2010 shall be referred to as the ''initial petition.''

[4] New York's Amended Petition for Approval of Alternate Odometer Disclosure Requirements dated November 8, 2011 shall be referred to as the ''amended petition.''

[5] New York's petition does not address leased vehicles or powers of attorney.

[6] In 1976, Congress amended the odometer disclosure provisions in the Cost Savings Act to provide further protections to purchasers from unscrupulous car dealers. *See* Public Law 94–364, 90 Stat. 981 (1976).

[7] S. Rep. No. 99–47, at 2 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5621.

[8] Any statements which refer to the ''purposes of TIMA'' or a ''purpose of TIMA'' should be interpreted to refer to the purpose of the disclosure required by subsection (d) or (e), as the case may be, as stated in Section 408 of the Cost Savings Act, as amended by TIMA.

[9] New York's amended petition does not pertain to leased vehicles or powers of attorney. Accordingly, the purposes of TIMA addressed below do not address these matters.

[10] *See* S. Rep. No. 99–47, at 2–3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5621–22; H. Rep. No. 99–833, at 33 (1986).

also had to contain space for the seller's attested mileage disclosure.

A second purpose of TIMA was 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 to be issued by the State.[11] This was intended to eliminate or significantly reduce abuses associated with lack of control of the titling process.[12] Prior to TIMA, odometer fraud was facilitated by the ability of transferees to apply for titles without presenting the transferor's title with the disclosure.

Third, TIMA sought to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. Prior to TIMA, titles could be printed through non-secure processes, and could be easily altered or laundered.[13] To address this shortcoming of the Cost Savings Act, TIMA required titles to be printed by means of a secure printing process or protected by other secure processes.[14]

A fourth purpose of TIMA was to create a record of the mileage on vehicles and a paper trail.[15] This would allow consumers to be better informed and provide a mechanism for tracing odometer tampering and prosecuting violators. Under the Cost Savings Act, prior to TIMA, odometer disclosures could be made on pieces of paper and did not have to be submitted with new title applications. TIMA required new applications for title to include the transferor's mileage disclosure statement on the title, creating a permanent record that could easily be checked by subsequent owners or law enforcement officials. This record would provide critical snapshots of the vehicle's mileage at every transfer, which are fundamental links in the paper trail.

Finally, the general purpose of TIMA was to protect consumers by ensuring that they received valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures.[16] The TIMA amendments were directed at resolving shortcomings in the Cost Savings Act.

[11] *See* S. Rep. No. 99–47, at 2–3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5621–22; H. Rep. No. 99–833, at 18, 32 (1986).

[12] *See* S. Rep. No. 99–47, at 2–3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5621–22; Sec. 2, Public Law 99–579, 100 Stat. 3309.

[13] *See* S. Rep. No. 99–47, at 3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5622.

[14] *See* H. Rep. No. 99–833, at 18, 33 (1986).

[15] *See* H. Rep. No. 99–833, at 18, 33 (1986).

[16] *See* Preamble, Public Law 99–579, 100 Stat. 3309.

III. New York's Program

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.

A. Overview of Current New York Transfer/Odometer Disclosure System

In New York, odometer disclosures are currently made on securely printed documents produced by NYSDMV. A Certificate of Title (MV–999), Retail Certificate of Sale (MV–50) (Dealers Re-assignment Form), and/or 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 including unique numbers, along with an area to disclose the odometer reading. 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, the 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 must 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 initial petition, the System would 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 would be required to join the System when they were due for business license renewal. Each licensed New York dealer would be 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 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.[17] The number of users and the level of access for each user would be determined and controlled by the administrator. 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 did not comply with the System recertification prompt, dealership access to the System would be turned off, preventing the dealership from completing any sales transactions. 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.

[17] 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 would have to be different than the last three passwords. Passwords would be stored in the System and encrypted.

2. Using the Proposed System

Under New York's proposal, if a vehicle were 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 (VIN) would automatically be 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 were 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 on dealers making entries into the system, New York's proposed Electronic Vehicle Inventory and Transfer System encompasses only transactions involving dealers.

a. Transactions to and Between New York Dealers

NYSDMV's proposed process for handling vehicle transfers to and between licensed New York dealers would be as follows. When a dealer receives a vehicle (whether from a manufacturer, a customer, or another dealer) and 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 sold 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 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,[18] and would accept or reject the transaction. If the purchasing dealer accepted 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.

b. Transactions Between New York Dealers and Non-New York Dealer Purchasers, Both In-State and Out-of-State

If a vehicle owned by a New York dealer were sold to an in-state or out-of-state retail purchaser, salvage dealer, auction house, or other non-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.

Under the initial proposal (which New York later amended), 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 agreed 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. If the purchaser did not agree with any of the information displayed on the dealer's computer screen,[19] the purchaser could reject the transaction. In that case, the dealer would have to cancel the transaction in the System and resubmit it using the correct information.

New York's initial petition stated that during vehicle registration by a New York purchaser, NYSDMV staff would review the vehicle's data and odometer disclosures on New York's System. NYSDMV staff would compare the information in the System to the information on 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 initial petition stated that the proposed system would show the New York State history for the vehicle, which would help to identify gaps in mileage and ownership.

IV. NHTSA's Initial Determination

In its initial determination, NHTSA restated the statutory purposes of the disclosure required by TIMA as amended. 76 FR 65487. NHTSA discussed New York's petition (*Id.* at 65487–65490) and analyzed whether it was consistent with the statutory purposes (*Id.* at 65490–65492). NHTSA preliminarily denied New York's petition because it was not consistent with certain purposes of the disclosure required by TIMA. Our concerns centered on sales to out-of-state purchasers.

NHTSA stated that New York's alternate disclosure requirements did not meet the third purpose of preventing alternations of disclosure on titles and precluding counterfeit titles through secure processes, because the odometer disclosure statement printed by a New York dealer as part of a sale to a non-New York dealer would not be made by a secure process. *Id.* at 65491. In particular, the receipt that New York proposed using in transactions between New York dealers and out-of state-buyers would be susceptible to alteration and counterfeiting. *Id.*

NHTSA further stated that New York's proposed program would not be

[18] The System would automatically check 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 was 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 could 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.

[19] As with transfers between licensed New York dealers described above, the System would automatically check 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 were lower than what was previously recorded, the transaction would be cancelled.

consistent with the fourth purpose of creating a record of mileage on vehicles and a paper trail in cases where a vehicle would be titled in a state other than New York. *Id.* Unlike the current MV–50 form printed on secure paper with a control number, the receipt that New York proposed using to title vehicles out-of-state would not be printed on secure paper, and could be easily substituted with another document. *Id.* NHTSA stated that the resolution of whether New York's proposed program satisfied the purpose of creating a paper trial turned on the security of the final reassignment document used to obtain title. *Id.*

NHTSA discussed TIMA's overall purpose of protecting consumers by ensuring that they receive valid odometer disclosures representing a vehicle's actual mileage at the time of transfer. NHTSA stated that other than the portions of New York's proposed program related to the security of the odometer disclosure statement in the sale of a vehicle from a licensed New York dealer to an out-of-state buyer, New York's proposal likely would provide more protection for consumers than the current procedure. *Id.* at 65492.

V. Summary of Public Comments

NHTSA received two comments. The first was from the New York Division of Motorist Services (New York).[20] In its comment, New York amends its petition. For transfers to out-of-state buyers, New York states that it will use a secure MV–50 form instead of the two-part paper receipt it initially proposed. The second comment was from the National Auto Auction Association (NAAA).[21] NAAA's comments are largely based on portions of New York's initial petition which New York amended.

A. New York's Comment Amending Its Petition

In its comment, New York first identifies portions of NHTSA's initial determination where NHTSA indicated that New York's program was not consistent with the third, fourth, and overall purposes of the disclosure required by TIMA. New York then amends its petition in a manner which it believes addresses NHTSA's concerns.[22] New York's amendments primarily address transactions between New York dealers and out-of-state purchasers.

1. Transactions Between New York Dealers and Out-of State Purchasers

Initially, New York proposed using the same procedure for out-of-state transfers as in-state transfers. This proposal involved the issuance of a non-secure paper receipt, which would be used to title vehicles outside of New York. As explained in NHTSA's initial decision, the non-secure receipt is problematic. New York amended its petition.

Under New York's amended petition, the first stage of the transaction, where the dealer enters the vehicle's information into the system, is identical to the procedure described in New York's initial petition. However, in a sale of a vehicle to an out-of-state purchaser, the second stage of the transaction is different. New York now proposes that instead of using a two-part paper receipt, the selling dealer would use a secure paper MV–50 (Retail Certificate of Sale) to document the transaction. The dealer would indicate the mileage of the vehicle in the System and also indicate which uniquely numbered MV–50 was used for the transfer. Both parties would sign the MV–50. The dealer would retain one copy of the MV–50, and the purchaser would retain another copy. If the buyer went to title the vehicle outside of New York, the out-of-state department of motor vehicles could use the *Polk Motor Vehicle Registration Manual* and/or a web application to identify that the MV–50 was authentic. A web application would be available to both in-state and out-of-state purchasers, allowing them to verify basic New York State odometer history by entering a vehicle's VIN.

2. Transactions Between New York Dealers and Non-Dealer, In-State Purchasers

New York amends its proposal with respect to transactions between New York purchasers and in-state, non-dealer purchasers only slightly. New York would continue using the two-part sales receipt, but amends its petition to require the two-part sales receipt to contain a statement advising purchasers that the receipt may only be used to register the vehicle in New York State.[23] If the purchaser intended to register the vehicle outside of New York, the dealer would be required to issue a secure paper MV–50 instead of the non-secure two-part receipt.

B. The National Auto Auction Association's Comment

NAAA represents hundreds of auto auctions. NAAA's comments are based on New York's initial petition.

NAAA comments that New York's proposed system creates a potential for odometer fraud and unnecessarily complicates the transfer of vehicles across state lines. NAAA states that the non-secure paper receipt, which is not generated by a secure process and is separate from the original title document, could be altered or counterfeited by an out-of-state buyer. NAAA also argues that the information gaps created by maintaining odometer information in two separate locations (electronically for New York dealers and on paper for everyone else) are a cause for concern. NAAA states that without a complete history of odometer information in one location, it will be difficult for out-of-state purchasers to identify potential odometer fraud. If title information is altered after a purchase is made from a New York dealer, a subsequent purchaser will not be able to ascertain the vehicle's odometer history without both the paper title and access to New York's System. NAAA states that this would be at odds with the purposes of TIMA, and that it could negatively affect interstate commerce and the value of vehicles titled in New York. Finally, NAAA states that New York's proposed system's susceptibility to odometer fraud, the existence of two separate titling processes, and the absence of a complete odometer history once a New York dealer vehicle is sold to a non-New York dealer may dissuade bidders from purchasing New York vehicles at auction. NAAA concludes that New York's system, as proposed, does not adequately address the issues created by the transfer of vehicles to non-New York dealers.

VI. Statutory Purposes

The Cost Savings Act, as amended by TIMA in 1986, contains a specific provision on approval of State alternative odometer disclosure programs. Subsection 408(f)(2) of the Cost Savings Act as amended by TIMA (now recodified at 49 U.S.C. 32705(d)) provides that NHTSA shall approve alternate motor vehicle mileage disclosure requirements submitted by a

[20] Letter from Ida L. Traschen, First Assistant Counsel, State of New York Department of Motor Vehicles, to O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration (''New York's Comment'') (Nov. 8, 2011).

[21] Letter from Bertha M. Phelps, Chair, Legislative and Government Relations Committee, National Auto Auction Association, to O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration (''NAAA's Comment'') (Nov. 21, 2011).

[22] New York attached an Amended Petition for Approval of Alternate Odometer Disclosure Requirements to its comment.

[23] We expect that the sales receipt, along with the information the dealer enters into the System, to contain all of the information required by 49 CFR 580.5.

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. (Subsections 408(d), (e) of the Costs Savings Act, which were amended by TIMA and subsequently amended, were recodified to 49 U.S.C. 32705(b) and (c)).

Neither New York's nor NAAA's comments dispute the relevant Cost Savings Act purposes set forth in NHTSA's initial determination. New York restates and applies the purposes of TIMA to its Amended Petition for Approval of Alternate Odometer Disclosure Requirements. NAAA does not challenge NHTSA's analysis of statutory purposes in the initial determination in its comment.

After careful consideration of the comments, as part of the agency's final determination, we adopt the purposes stated in the initial determination of New York's petition. 76 FR 65487.

VII. NHTSA's Final Determination

Section 408(f)(2) of the Cost Savings Act sets forth the legal standard for approval of state alternate vehicle mileage disclosure requirements: 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) of section 408, as the case may be. In this section, we consider New York's program in light of the purposes of the disclosure required by subsection (d) of section 408,[24] and address New York's and NAAA's comments.

One purpose is to ensure 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.

New York's proposed alternate disclosure requirements satisfy this purpose. Under New York's amended petition, 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 would reside as an electronic record within the System that would 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.

New York's proposal meets the TIMA purpose of ensuring 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 or MV–50 signed by both buyer and seller. The receipt or MV–50—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. 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 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.

A third purpose of TIMA is to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. The agency initially determined that New York's alternate disclosure requirements did not satisfy this purpose. However, in its comment, New York amended its petition. New York's proposal as amended is consistent with the third purpose of the disclosure required by TIMA.

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

[24] Subsection (3) of section 408 involves leased motor vehicles which are not at issue here.

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.

Upon final retail sale of a vehicle to an in-state 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 was not lower than a prior entry, a two-part odometer statement and receipt would 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 accepted 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. Prior to registering and titling the vehicle in the new purchaser's name, NYSDMV's System, which would have the odometer reading, would check the information on the paperwork submitted by the purchaser (i.e. the paper receipt and title) against the information in the System.

Sales to out-of-state purchasers would mirror sales to in-state purchasers up to the point of printing a two-part sales receipt. Instead of a two-part sales receipt, the dealer would use a secure MV–50 form to document the transaction. The MV–50 form is printed using a secure printing process, and each MV–50 form bears a unique identification number. When transferring a vehicle, a dealer would indicate which uniquely numbered MV–50 form was being used for the transfer in the system. Both parties would complete and sign the MV–50, and the dealer and purchaser would each retain a copy of the MV–50. New York controls the distribution and use of MV–50 forms and requires dealers to account for every MV–50 they receive. 15 NYCRR § 78.10. We are satisfied that New York's proposal, as amended, is consistent with the purpose of preventing alterations of disclosures on titles and precluding counterfeit titles through secure processes. New York's amendment of its program from a non-secure paper receipt to the secure MV–50 also addresses concerns raised in NAAA's comment that the paper receipt could be altered or counterfeited by an out-of-state buyer.

A fourth 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. We initially determined that New York's alternate disclosure requirements did not satisfy this purpose. In response, New York amended its petition.

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 would 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 would also be required to 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's VIN for at least ten years, and it would be available to dealers, NYSDMV, and enforcement staff. The System would 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 was lower than a prior odometer disclosure statement. In addition, New York's petition states that it would not issue a title to the buyer unless the disclosures on the foregoing paper documents matched 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, as described in the amended petition, the buyer would be provided with the title used to transfer it initially to a dealer and a MV–50 containing the odometer disclosure. A dealer would be required to annotate the unique MV–50 number from the MV–50 being used for the transaction in New York's System. This would create a paper trail linking the electronic records to the paper MV–50 given to the out-of-state buyer. Both parties would receive a copy of the MV–50, which could be authenticated outside of New York by using a *Polk Motor Vehicle Registration Manual* and/or Web application. Additionally, as described in New York's initial proposal, a Web application would allow both in-state and out-of-state purchasers to verify basic New York State odometer history by entering the vehicle's VIN.

In NHTSA's view, New York's proposed program, as amended, would create a scheme of records equivalent to the current ''paper trail'' that assists law enforcement in identifying and prosecuting odometer fraud. Use of a secure MV–50 form whose unique identification number is recorded in the System adds a level of security that was lacking in New York's initial proposal, as it would be executed in out-of-state transfers. New York could use the MV–50 form to document in-state transfers in lieu of the non-secure paper receipt as well. Accordingly, New York's program as amended is consistent with the fourth purpose of the disclosure required by TIMA.[25]

[25] NAAA commented that New York's proposal would create information gaps because odometer information would be maintained in two separate

Continued

TIMA's overall purpose is to protect consumers by ensuring that they receive valid odometer disclosures representing a vehicle's actual mileage at the time of transfer. New York's proposed alternate disclosure requirements, as amended are consistent with this purpose. New York's proposed alternate disclosure requirements include characteristics that would ensure that representations of a vehicle's actual mileage would be as valid as those found in current paper title transfers and reassignments. 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's) name. Potential buyers could examine the most recent odometer disclosure statement online before purchasing the vehicle. Mileage disclosures made on paper receipts for in-state transfers would be checked against information in the System. Out-of-state transfers would be documented on a secure MV–50 form, which could be verified outside New York, and which would be linked to a particular transaction by a unique MV–50 identification number.

NAAA commented that New York's proposal was susceptible to fraud and that the absence of a complete odometer history would dissuade bidders from purchasing New York vehicles at auction. We note that New York stated in its initial petition that it would make a Web application available to in-state and out-of-state purchasers, which would allow purchasers to verify New York State odometer history by entering a vehicle's VIN.

VIII. Conclusion

For the foregoing reasons, and upon review of the entire record, the agency concludes that New York's proposed alternate disclosure requirements, as amended, are consistent with the purposes of the disclosure required by TIMA and its amendments. NHTSA hereby issues a final determination granting New York's amended petition for requirements that apply in lieu of the federal requirements adopted under section 408(d) of the Cost Savings Act. Other requirements of the Cost Savings Act continue to apply in New York. NHTSA reserves the right to rescind this grant in the event that information acquired after this grant indicates that, in operation, New York's alternate requirements do not satisfy one or more applicable requirements.

Authority: 49 U.S.C. 32705; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: August 14, 2012.

David Strickland,

Administrator.

[FR Doc. 2012–20463 Filed 8–20–12; 8:45 am]

BILLING CODE 4910–59–P

locations—electronically for New York dealers and on paper for everyone else. We do not believe this is a reason to disapprove New York's program. Odometer information is currently maintained in many locations in New York. Each New York dealer keeps records of odometer mileage in vehicles the dealership has transferred in a paper Book of Registry. The proposed changes to New York's program consolidate the Books of Registry maintained by each individual dealer into a single electronic system.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XC160

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; 2012–2013 Accountability Measure and Closure for Gulf King Mackerel in Western Zone

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for commercial king mackerel in the western zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) through this temporary final rule. NMFS has determined that the commercial annual catch limit (ACL) (equal to the commercial quota) for king mackerel in the western zone of the Gulf EEZ will have been reached by August 22, 2012. Therefore, NMFS closes the western zone of the Gulf to commercial king mackerel fishing in the EEZ. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective noon, local time, August 22, 2012, until 12:01 a.m., local time, on July 1, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, 727–824–5305, email: *Susan.Gerhart@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL (commercial quota) for the Gulf migratory group king mackerel in the western zone is 1,180,480 lb (535,457 kg) (76 FR 82058, December 29, 2011), for the current fishing year, July 1, 2012, through June 30, 2013.

Regulations at 50 CFR 622.49(h)(1)(i) and 50 CFR 622.43(a)(3) require NMFS to close the commercial sector for Gulf migratory group king mackerel in the western zone when the ACL (quota) is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on the best scientific information available, NMFS has determined the commercial ACL (commercial quota) of 1,180,480 lb (535,457 kg) for Gulf migratory group king mackerel in the western zone will be reached by August 22, 2012. Accordingly, the western zone is closed effective noon, local time, August 22, 2012, through June 30, 2013, the end of the fishing year to commercial fishing for Gulf group king mackerel. The Gulf group king mackerel western zone begins at the United States/Mexico border (near Brownsville, Texas) and continues to the boundary between the eastern and western zones at 87°31.1′ W. long., which is a line directly south from the Alabama/Florida boundary.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three

persons aboard, including operator and crew.

During the closure, king mackerel from the closed zone, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the western zone of the Gulf to commercial king mackerel fishing constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule implementing the commercial ACL (commercial quota) and the associated requirement for closure of the commercial harvest when the ACL (quota) is reached or projected to be reached has already been subject to notice and comment, and all that remains is to notify the public of the closure.

Additionally, allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the king mackerel because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: August 16, 2012.

James P. Burgess,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–20510 Filed 8–16–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC167

Fisheries of the Exclusive Economic Zone Off Alaska; ''Other Rockfish'' in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of ''other rockfish'' in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2012 total allowable catch of ''other rockfish'' in the Central Regulatory Area of the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 16, 2012, through 2400 hrs, A.l.t., December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 total allowable catch (TAC) of ''other rockfish'' in the Central Regulatory Area of the GOA is 606 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2012 TAC of ''other rockfish'' in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that ''other rockfish'' caught in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of ''other rockfish'' in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 15, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: August 16, 2012.

James P. Burgess,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–20511 Filed 8–16–12; 4:15 pm]

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Proposed Rules

Federal Register
Vol. 77, No. 162
Tuesday, August 21, 2012

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

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1002

[Docket No. CFPB–2012–0032]

RIN 3170–AA26

Equal Credit Opportunity Act (Regulation B)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to amend Regulation B, which implements the Equal Credit Opportunity Act (ECOA), and the official interpretation to the regulation, which interprets the requirements of Regulation B. The proposed revisions to Regulation B would implement an ECOA amendment concerning appraisals that was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). In general, the proposed revisions to Regulation B would require creditors to provide free copies of all written appraisals and valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. The proposal also would require creditors to notify applicants in writing of the right to receive a copy of each written appraisal or valuation at no additional cost.

DATES: Comments must be received on or before October 15, 2012, except that comments on the Paperwork Reduction Act analysis in part VIII of the Supplementary Information must be received on or before October 22, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0032 or RIN 3170–AA26, by any of the following methods:

- *Electronic: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov*. In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: John H. Brolin, Counsel, or William W. Matchneer, Senior Counsel, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC. 20552, at (202) 435–7000.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

In response to the recent mortgage crisis, Congress amended the Equal Credit Opportunity Act (ECOA) to require creditors to automatically provide applicants with a copy of appraisal reports and valuations prepared in connection with certain mortgage loans. The Consumer Financial Protection Bureau (Bureau) is now proposing a rule to implement those changes, which were enacted in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[1] Specifically, the proposed rule would amend the regulations implementing ECOA to:

- Cover applications for credit to be secured by a first lien on a dwelling.
- Require creditors to notify applicants within three business days of receiving an application of their right to receive a copy of written appraisals and valuations developed.
- Require creditors to provide applicants a copy of all written appraisals and valuations promptly after receiving an appraisal or valuation, but in no case later than three business days prior to consummation of the mortgage.
- Permit applicants to waive the timing requirement to receive copies three days prior to consummation. However, applicants who waive the timing requirement must still be given a copy of all written appraisals and valuations at or prior to closing.
- Prohibit creditors from charging additional fees for providing a copy of written appraisals and valuations, but permit creditors to charge applicants a reasonable fee to reimburse the creditor for the cost of the appraisal or valuation unless otherwise required by law.

II. Statutory Background

A. The Equal Credit Opportunity Act

The ECOA [2] makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. ECOA applies to all credit—commercial as well as consumer—without regard to the nature or type of the credit or the creditor.

Historically, section 701(e) of ECOA has provided that a credit applicant has the right to request copies of appraisal reports used in connection with his or her application for mortgage credit. The right to request copies of appraisals was added to ECOA in December 1991 as part of the Federal Deposit Insurance Corporation Improvement Act (FDICIA).[3] The Senate report on FDICIA suggests that one purpose of ECOA section 701(e) was to make it easier for loan applicants to determine whether a

[1] Public Law 111–203, 124 Stat. 1376, section 1474 (2010).

[2] 15 U.S.C. 1691 *et seq.*

[3] Public Law 102–242, 105 Stat. 2236 (1991).

loan was denied due to a discriminatory appraisal.[4]

With the enactment of the Dodd-Frank Act,[5] general rulemaking authority for ECOA transferred from the Board of Governors of the Federal Reserve System (Board) to the Bureau on July 21, 2011. Pursuant to the Dodd-Frank Act and ECOA, as amended, the Bureau published for public comment an interim final rule establishing a new Regulation B, 12 CFR part 1002, implementing ECOA (except with respect to persons excluded from the Bureau's rulemaking authority by section 1029 of the Dodd-Frank Act). 76 FR 79442 (Dec. 21, 2011). This rule did not impose any new substantive obligations but did make technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. The Bureau's Regulation B took effect on December 30, 2011.

B. Dodd-Frank Act Amendments Concerning Appraisals

Congress enacted the Dodd-Frank Act after a cycle of unprecedented expansion and contraction in the mortgage market sparked the most severe U.S. recession since the Great Depression.[6] The Dodd-Frank Act created the Bureau and consolidated various rulemaking and supervisory authorities in the new agency, including the authority to implement ECOA.[7] At the same time, Congress imposed new statutory requirements governing mortgage practices with the intent to restrict the practices that contributed to the crisis and provide additional protections to consumers.

Sections 1471 through 1474 of the Dodd-Frank Act established a number of new requirements for appraisal activities, including requirements relating to appraisal independence, appraisals for higher-risk mortgages, regulation of appraisal management companies, automated valuation models, and providing copies of appraisals and valuations.[8] Many of the Dodd-Frank Act appraisal provisions are required to be implemented through joint rulemakings involving several federal agencies. The amendment to ECOA section 701(e), however, does not require a joint rulemaking. As discussed below, the amendments to section 701(e) overlap with the notice and copy requirements of a Dodd-Frank Act amendment to the Truth in Lending Act (TILA) applicable to higher-risk mortgage loans. The Dodd-Frank Act amendment to TILA, which adds section 129H, is required to be implemented through joint rulemaking. See TILA section 129H(b)(4)(A); 15 U.S.C. 1639h(b)(4)(A).

ECOA Appraisal Requirements

Section 1474 of the Dodd-Frank Act[9] amended ECOA section 701(e) to require that creditors provide copies of appraisals and valuations to loan applicants at no additional cost and without requiring applicants to affirmatively request such copies. Amended ECOA section 701(e) generally provides that:

- A creditor shall furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant's application for a loan that is or would be secured by a first lien on a dwelling. The appraisal documentation must be provided promptly, and in no case later than three days prior to closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn. However, the applicant may waive the timing requirement that such appraisals or valuations be provided three days prior to closing, except where otherwise required by law.
- The creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant, though the creditor may impose a reasonable fee on the applicant to reimburse the creditor for the cost of the appraisal.
- At the time of application, the creditor shall notify applicants in writing of the right to receive a copy of each written appraisal and valuation under ECOA section 701(e).

Amended ECOA section 701(e)(6) defines the term ''valuation'' as including ''any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.''

Higher-Risk Mortgage Appraisal Requirements

On the same day that this proposal is released by the Bureau, the Bureau is also releasing a proposal to implement section 1471 of the Dodd-Frank Act, which added new appraisal requirements for higher-risk mortgages that are subject to joint implementation by the Board, Bureau, Federal Deposit Insurance Corporation (FDIC), Federal Housing Finance Agency (FHFA), National Credit Union Administration (NCUA), and Office of the Comptroller of the Currency, Treasury (OCC). This provision, which is codified in new TILA section 129H(d), contains disclosure requirements that are similar to ECOA section 701(e) in that creditors must provide consumers, at least three days prior to closing, a copy of any appraisal prepared in connection with a higher-risk mortgage. 15 U.S.C. 1639h(c). Creditors must also provide consumers, at the time of the initial mortgage application, a statement that any appraisal prepared for the mortgage is for the creditor's sole use and that the consumer may choose to have a separate appraisal conducted at his or her own expense. *Id.* 1639h(d). Section 1471 of the Dodd-Frank Act defines the term ''higher-risk mortgage'' generally as a residential mortgage loan, other than a reverse mortgage, that is secured by a principal dwelling with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction by a specified percentage. *Id.* 1639h(f).

C. Other Rulemakings

In addition to this proposal and the higher-risk mortgage rulemaking discussed above, the Bureau currently is engaged in six other rulemakings relating to mortgage credit to implement requirements of the Dodd-Frank Act:

- *TILA–RESPA Integration:* On July 9, 2012, the Bureau released a proposed rule and forms combining the TILA mortgage loan disclosures with the Good Faith Estimate (GFE) and settlement statement required under RESPA pursuant to Dodd-Frank Act section 1032(f) as well as sections 4(a) of RESPA and 105(b) of TILA, as amended by Dodd-Frank Act sections 1098 and 1100A, respectively (2012

[4] For additional legislative history on the appraisal provision as originally added by the FDICIA see S. Rep. No. 167, 102d Cong., 1st Sess.; S. Rep. No. 461, 101st Cong. 2d Sess.; 137 Cong. Rec. S2519 (daily ed. February 28, 1991); 136 Cong. Rec. S14592, 14598–99 (daily ed. October 5, 1990).

[5] Public Law 111–203, 124 Stat. 1376, section 1474 (2010).

[6] For more discussion of the mortgage market, the financial crisis, and mortgage origination generally, see the Bureau's 2012 TILA–RESPA Proposal, *available at http://www.consumerfinance.gov/regulations/.*

[7] Sections 1011 and 1021 of title X of the Dodd-Frank Act, the ''Consumer Financial Protection Act,'' Public Law 111–203, sections 1001–1100H, codified at 12 U.S.C. 5491, 5511. The Consumer Financial Protection Act is substantially codified at 12 U.S.C. 5481–5603.

[8] *See* TILA sections 129H and 129E as established by Dodd-Frank Act sections 1471 and 1472, 15 U.S.C. 1639h; sections 1124 and 1125 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) as established by Dodd-Frank Act sections 1473(f)(2), 12 U.S.C. 3353, and 1473(q), 12 U.S.C. 3354; and sections 701(e) of ECOA as amended by Dodd-Frank Act section 1474, 15 U.S.C. 1691(e).

[9] Public Law 111–203, 124 Stat. 1376, section 1474 (2010).

TILA–RESPA Proposal).[10] 12 U.S.C. 2603(a); 15 U.S.C. 1604(b).

• *HOEPA:* On the same day that the Bureau released the 2012 TILA–RESPA Proposal, the Bureau also released a proposal to implement Dodd-Frank Act requirements expanding protections for ''high-cost'' mortgage loans under HOEPA, pursuant to TILA sections 103(bb) and 129, as amended by Dodd-Frank Act sections 1431 through 1433 (2012 HOEPA Proposal).[11] 15 U.S.C. 1602(bb) and 1639.

• *Servicing:* The Bureau is in the process of developing a proposal to implement Dodd-Frank Act requirements regarding force-placed insurance, error resolution, and payment crediting, as well as forms for mortgage loan periodic statements and ''hybrid'' adjustable-rate mortgage reset disclosures, pursuant to sections 6 of RESPA and 128, 128A, 129F, and 129G of TILA, as amended or established by Dodd-Frank Act sections 1418, 1420, 1463, and 1464. The Bureau has publicly stated that in connection with the servicing rulemaking the Bureau is considering proposing rules on reasonable information management, early intervention for troubled and delinquent borrowers, and continuity of contact, pursuant to the Bureau's authority to carry out the consumer protection purposes of RESPA in section 6 of RESPA, as amended by Dodd-Frank Act section 1463. 12 U.S.C. 2605; 15 U.S.C. 1638, 1638a, 1639f, and 1639g.

• *Loan Originator Compensation:* The Bureau is in the process of developing a proposal to implement provisions of the Dodd-Frank Act requiring certain creditors and mortgage loan originators to meet duty of care qualifications and prohibiting mortgage loan originators, creditors, and the affiliates of both from receiving compensation in various forms (including based on the terms of the transaction) and from sources other than the consumer, with specified exceptions, pursuant to TILA section 129B as established by Dodd-Frank Act sections 1402 and 1403. 15 U.S.C. 1639b.

• *Ability to Repay:* The Bureau is in the process of finalizing a proposal issued by the Board to implement provisions of the Dodd-Frank Act requiring creditors to determine that a consumer can repay a mortgage loan and establishing standards for compliance, such as by making a ''qualified mortgage,'' pursuant to TILA section 129C as established by Dodd-Frank Act sections 1411 and 1412 (Ability to Repay Rulemaking). 15 U.S.C. 1639c.

• *Escrows:* The Bureau is in the process of finalizing a proposal issued by the Board to implement provisions of the Dodd-Frank Act requiring certain escrow account disclosures and exempting from the higher-priced mortgage loan escrow requirement loans made by certain small creditors, among other provisions, pursuant to TILA section 129D as established by Dodd-Frank Act sections 1461 and 1462 (Escrows Rulemaking). 15 U.S.C. 1639d.

With the exception of the requirements being implemented in the TILA–RESPA proposal, the Dodd-Frank Act requirements referenced above generally will take effect on January 21, 2013, unless final rules implementing those requirements are issued on or before that date and provide for a different effective date. To provide an orderly, coordinated, and efficient comment process, the Bureau is generally setting the deadlines for comments on this and other proposed mortgage rules based on the date the proposal is issued, instead of the date the notice is published in the **Federal Register**. Because the precise date of publication cannot be predicted in advance, this method will allow interested parties that intend to comment on multiple proposals to plan accordingly and will ensure that the Bureau receives comments with sufficient time remaining to issue final rules by January 21, 2013. However, consistent with the requirements of the Paperwork Reduction Act, the comment period for the proposed analysis under that Act will end 60 days after publication of this notice in the **Federal Register**.

The Bureau regards the foregoing rulemakings as components of a larger undertaking; many of them intersect with one or more of the others. Accordingly, the Bureau is coordinating carefully the development of the proposals and final rules identified above. Each rulemaking will adopt new regulatory provisions to implement the various Dodd-Frank Act mandates described above. In addition, each of them may include other provisions the Bureau considers necessary or appropriate to ensure that the overall undertaking is accomplished efficiently and that it ultimately yields a regulatory scheme for mortgage credit that achieves the statutory purposes set forth by Congress, while avoiding unnecessary burdens on industry.

Thus, many of the rulemakings listed above involve issues that extend across two or more rulemakings. In this context, each rulemaking may raise concerns that might appear unaddressed if that rulemaking were viewed in isolation. For efficiency's sake, however, the Bureau is publishing and soliciting comment on proposed answers to certain issues raised by two or more of its mortgage rulemakings in whichever rulemaking is most appropriate, in the Bureau's judgment, for addressing each specific issue. Accordingly, the Bureau urges the public to review this and the other mortgage proposals identified above, including those previously published by the Board, together. Such a review will ensure a more complete understanding of the Bureau's overall approach and will foster more comprehensive and informed public comment on the Bureau's several proposals, including provisions that may have some relation to more than one rulemaking but are being proposed for comment in only one of them.

III. Outreach and Consumer Testing

The Bureau has conducted consumer testing relating to implementation of ECOA section 701(e) requirements in conjunction with the 2012 TILA–RESPA Proposal. A more detailed discussion of the Bureau's overall testing and form design can be found in the report *Know Before You Owe: Evolution of the Integrated TILA–RESPA Disclosures,* which is available on the Bureau's Web site.[12]

In January 2011, the Bureau contracted with a communication, design, consumer testing, and research firm, Kleimann Communication Group, Inc. (Kleimann), which specializes in consumer financial disclosures. The Bureau and Kleimann developed a plan to conduct qualitative usability testing, consisting of one-on-one cognitive interviews, over several iterations of prototype integrated disclosure forms. Between January and May 2011, the Bureau and Kleimann worked collaboratively on developing a qualitative testing plan, and several prototype integrated forms for the disclosure to be provided in connection with a consumer's application (*i.e.,* a form integrating the RESPA good faith estimate and the early TILA disclosure).[13] The qualitative testing

[10] *Available at http://www.consumerfinance.gov/notice-and-comment/.*

[11] *Id.*

[12] Kleimann Communication Group, Inc., *Know Before You Owe: Evolution of the Integrated TILA–RESPA Disclosures* (July 9, 2012), *http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf.*

[13] This discussion is limited to the testing of the disclosure to be provided in connection with a consumer's application, which is the portion of the testing relevant to the appraisal-related disclosure in proposed § 1002.14(a)(2). As discussed in the supplementary information to the 2012 RESPA–TILA Proposal, the Bureau and Kleimann also tested prototype designs for the integrated

plan developed by the Bureau and Kleimann was unique with respect to qualitative testing performed by other federal agencies in that the Bureau planned to conduct qualitative testing with industry participants as well as consumers. Each round of qualitative testing included at least two industry participants, including lenders from several different types of depository (including credit unions) and non-depository institutions, mortgage brokers, and closing agents.

In addition, the Bureau launched an initiative to obtain public feedback on each round of prototype disclosures at the same time it conducted the qualitative testing of the prototypes, which it titled ''Know Before You Owe.'' [14] This initiative consisted of publishing and obtaining feedback on the prototype designs through an interactive tool on the Bureau's Web site or through posting the prototypes to the Bureau's blog on its Web site and providing an opportunity for the public to email feedback directly to the Bureau.

From May to October 2011, Kleimann and the Bureau conducted a series of five rounds of qualitative testing on revised iterations of integrated disclosure prototype forms. This testing was conducted in five different cities across different U.S. Census regions and divisions: Baltimore, Maryland; Los Angeles, California; Chicago, Illinois; Springfield, Massachusetts; and Albuquerque, New Mexico. After each round, Kleimann analyzed and reported to the Bureau on the results of the testing. Based on these results and feedback received from the Bureau's Know Before You Owe public outreach project, the Bureau revised the prototype disclosure forms for the next round of testing.

As part of the larger Know Before You Owe public outreach project, the Bureau tested two versions of the new appraisal-related disclosures required by both TILA section 129H and ECOA section 701(e).[15] The Bureau believed that it was important to test both appraisal-related disclosures together in order to determine how best to provide these two overlapping but separate disclosures in a manner that would minimize consumer confusion and improve consumer comprehension. Testing showed that consumers tended to find the TILA and ECOA disclosures confusing when they were given together using, in both cases, the specific language set forth in the statute.[16] Consumer comprehension improved when the Bureau developed a slightly longer plain language disclosure that was designed to incorporate the elements of both statutes. Based on the results of that testing, the Bureau has developed the following appraisal disclosure language: ''We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.''

IV. Legal Authority

The Bureau is issuing this proposed rule pursuant to its authority under ECOA, and the Dodd-Frank Act. On July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau all of the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board.[17] The term ''consumer financial protection function'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.'' [18] ECOA and title X of the Dodd-Frank Act are Federal consumer financial laws.[19] Accordingly, the Bureau has authority to issue regulations pursuant to ECOA, as well as title X of the Dodd-Frank Act.

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof[.]'' 12 U.S.C. 5512(b)(1). Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1). 12 U.S.C. 5512(b)(2).

Section 1405(b) of the Dodd-Frank Act provides that, ''[n]otwithstanding any other provision of [title XIV of the Dodd-Frank Act], in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the [Bureau] may, by rule, exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the [Bureau] determines that such exemption or modification is in the interest of consumers and in the public interest.'' 15 U.S.C. 1601 note. Section 1401 of the Dodd-Frank Act, which amended TILA section 103(cc), 15 U.S.C. 1602(cc), generally defines residential mortgage loan as any consumer credit transaction that is secured by a mortgage on a dwelling or on residential real property that includes a dwelling other than an open-end credit plan or an extension of credit secured by a consumer's interest in a timeshare plan. Notably, the authority granted by section 1405(b) applies to ''disclosure requirements'' generally, and is not limited to a specific statute or statutes.

Section 703(a) of ECOA authorizes the Bureau to prescribe regulations to carry out the purposes of ECOA. Section 703(a) further states that such regulations may provide for such adjustments and exceptions for any class of transactions, that in the judgment of the Bureau are necessary or proper to effectuate the purposes of ECOA, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance. 15 U.S.C. 1691b(a). Pursuant to this authority, the Bureau proposes to implement the amended ECOA appraisal provision. 15 U.S.C 1691(e). The proposed rule would amend existing § 1002.14 of Regulation B.

V. Section-by-Section Analysis

Section 1002.14 Rules on Providing Appraisals and Valuations

Overview

This proposal would implement amendments made by the Dodd-Frank Act to ECOA that require, among other things, that creditors provide applicants with free copies of any and all written appraisals and valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. The Bureau is proposing to implement these new requirements through amendments to existing § 1002.14 of Regulation B.

14(a) Providing Appraisals and Valuations

Currently, § 1002.14(a) of Regulation B sets forth the general requirement that

disclosure forms to be provided in connection with the closing of the mortgage loan and real estate transaction. *See* the Bureau's 2012 TILA–RESPA Proposal, *available at http://www.consumerfinance.gov/regulations/*.

[14] *See http://www.consumerfinance.gov/knowbeforeyouowe*.

[15] Kleimann Communication Group, Inc., *Know Before You Owe: Evolution of the Integrated TILA–RESPA Disclosures* 254–256 (July 9, 2012), *http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf*.

[16] *Id.*

[17] Public Law 111–203, 124 Stat. 1376, section 1061(b)(7); 12 U.S.C. 5581(b)(7).

[18] 12 U.S.C. 5581(a)(1).

[19] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include ECOA).

a creditor shall provide a copy of the appraisal report used in connection with an application for credit that is to be secured by a lien on a dwelling. Section 1002.14(a) states that a creditor must comply with either § 1002.14(a)(1), which provides for routine delivery of copies of appraisal reports to an applicant, or § 1002.14(a)(2), which sets forth rules for providing copies of appraisal reports upon request (for creditors that do not choose to routinely provide appraisal reports to applicants). As discussed in more detail below, the Bureau is proposing to amend § 1002.14(a) to implement changes to the appraisal delivery requirements set forth in the Dodd-Frank Act. Because the Dodd-Frank Act amendments to ECOA section 701(e) eliminate the option for a creditor to provide copies of appraisals or valuations only upon written request, the Bureau is proposing to renumber portions of proposed § 1002.14(a) for clarity.

As discussed in more detail below, proposed § 1002.14(a)(1) would set forth the general requirement to provide copies of written appraisals and valuations to applicants for credit to be secured by a first lien on a dwelling, and would set forth the timing and waiver requirements for providing such copies. Proposed § 1002.14(a)(2) would require that a creditor provide a written disclosure of the applicant's right to receive a copy of such written appraisals and valuations. Proposed § 1002.14(a)(3) would prohibit creditors from charging the applicant for providing a copy of written appraisals and valuations, but would permit creditors to require applicants to pay a reasonable fee to reimburse the creditor for appraisals and valuations. Proposed § 1002.14(a)(4) would clarify that the requirements of § 1002.14(a)(1) apply regardless of whether credit is extended or denied, or if the application is incomplete or withdrawn. Proposed § 1002.14(a)(5) would allow for the copies required by § 1002.14(a)(1) to be provided in electronic form. As is discussed in more detail below, proposed § 1002.14(b) would define certain terms used in proposed § 1002.14(a).

Current comment 14(a)(2)(i)–1 addresses the notice requirements if the application subject to § 1002.14 involves more than one applicant. The Bureau is proposing to renumber current comment 14(a)(2)(i)–1 as proposed comment 14(a)–1, and to make a conforming change so that the comment accurately refers to the disclosure about copies of written appraisals and valuations rather than to a notice about the appraisal report. In addition, the proposed comment would be amended to clarify that the comment also applies to the requirement to provide copies of written appraisals and valuations. Accordingly, the proposed comment would clarify that if there is more than one applicant, the notice about the written appraisals and valuations, and the copies of written appraisals and valuations, need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.

14(a)(1) In General

Scope

Consistent with ECOA section 701(e)(1), proposed § 1002.14(a)(1) would require a creditor to provide an applicant a copy of all written appraisals and valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling. The scope of proposed § 1002.14(a)(1) differs in several important respects from current § 1002.14(a). First, consistent with new ECOA section 701(e)(1), the proposed amendments to § 1002.14(a)(1) would broaden scope of the current requirement to provide copies of ''an appraisal report'' to include ''all written appraisals and valuations developed.'' Thus, more types of documents developed to value properties would be covered.

At the same time, the amendments made to ECOA section 701(e)(1) also narrow the types of transactions that are covered by subsection (e). Specifically, the proposed rule would apply to applications for credit to be secured by a first lien on a dwelling. In contrast, current § 1002.14(a) applies to applications for credit secured by a first lien or a subordinate lien on a dwelling. Accordingly, proposed § 1002.14(a)(1) would also add the word ''first'' to § 1002.14(a) to narrow the scope of the proposed rule to cover only loans secured by a first lien on a dwelling, consistent with the Dodd-Frank Act amendments to section 701(e) of ECOA.

Current comments 14(a)–1 and 14(a)–2 clarify the applicability of the appraisal delivery requirements to credit for business purposes and renewals. The proposal would generally retain comments 14(a)–1 and 14(a)–2 (renumbered as comments 14(a)(1)–1 and 14(a)(1)–2), with several conforming and technical changes. Specifically, proposed comment 14(a)(1)–1 would include an updated cross-reference to the definition of ''dwelling'' that, as discussed below, is proposed to be moved to § 1002.14(b)(2). In addition, proposed comment 14(a)(1)–1 would be narrowed to cover only loans secured by a first lien on a dwelling, consistent with proposed § 1002.14(a)(1). Thus, proposed comment 14(a)(1)–1 would provide that § 1002.14(a)(1) covers applications for credit to be secured by a first lien on a dwelling, as that term is defined in § 1002.14(b)(2), whether the credit is business credit (*see* § 1002.2(g)) or consumer credit (*see* § 1002.2(h)).

Proposed comment 14(a)(1)–2 would generally be consistent with current comment 14(a)–2. However, proposed comment 14(a)(1)–2 would use the statutory term ''developed'' provided in new ECOA section 701(e)(1) in place of the term ''obtained'' throughout the comment. Thus, proposed comment 14(a)(1)–2 would provide that § 1002.14(a)(1) applies when an applicant requests the renewal of an existing extension of credit and the creditor develops a new written appraisal or valuation. In addition, the proposed comment would also provide that § 1002.14(a) does not apply when a creditor uses the appraisals or valuations that were previously developed in connection with the prior extension of credit in order to evaluate the renewal request.

The Bureau requests comment on whether additional guidance is needed on the application of the requirements of proposed § 1002.14(a)(1) in the case of renewals for consumer or business purpose transactions.

The Bureau is proposing to adopt a new comment 14(a)(1)-3 that would clarify that for purposes of § 1002.14, a ''written'' appraisal or valuation includes, without limitation, an appraisal or valuation received or developed by the creditor: in paper form (hard copy); electronically, such as by CD or email; or by any other similar media. In addition, the proposed comment clarifies that creditors should look to § 1002.14(a)(5) regarding the provision of copies of appraisals and valuations to applicants via electronic means. The Bureau believes that its proposed interpretation of the term ''written'' best serves the purposes of the statute, because consumers would receive free copies of appraisals and valuations regardless of whether the creditor receives, prepares or stores these materials in paper or electronic form.

Timing

Proposed § 1002.14(a)(1) would clarify that a creditor must provide a copy of each written appraisal or valuation subject to § 1002.14(a)(1) promptly (generally within 30 days of receipt by the creditor), but not later than three business days prior to

consummation of the transaction, whichever is first to occur. This aspect of the proposal implements ECOA section 701(e)(1), which requires that creditors provide the copies of each written appraisal or valuation promptly, but in no case later than three days prior to the closing of the loan. The statute does not define the term ''promptly.'' However, current § 1002.14(a)(2)(ii) states that ''promptly'' means generally within 30 days. For consistency with existing § 1002.14(a)(2)(ii), under proposed § 1002.14(a)(1) the provision of a copy of written appraisals and valuations will generally be considered prompt if the written appraisals and valuations are provided within 30 days of receipt thereof by the creditor. Thus, under the proposed rule a creditor would be required to provide a copy of all appraisals and valuations within 30 days of receipt or three days prior to consummation of the transaction, whichever is first to occur.

In addition, for clarity and to be consistent with other similar regulatory requirements under TILA and RESPA, the proposed rule would use the term ''consummation'' in place of the statutory term ''closing'' and clarify that the statutory term ''days'' means ''business days.''

Waiver

ECOA section 701(e)(2) provides that an applicant may waive the three-day requirement provided in ECOA section 701(e)(1), except where otherwise required in law. The Bureau believes that the ''3 day requirement'' referenced in the statute refers to the timing requirement to provide a copy of an appraisal or valuation three business days prior to closing, as opposed to the general requirement to provide copies of all appraisals and valuations. Specifically, the Bureau believes that a creditor is required to provide a copy of an appraisal or valuation developed promptly (generally within 30 days) even if the application is denied, incomplete, withdrawn, or the applicant waives the three day requirement. In addition, because creditors who order or conduct an appraisal or valuation require it to be completed before consummation of the transaction, the Bureau believes that a creditor should always be required to provide an applicant a copy of written appraisals and valuations by the date of consummation of the transaction. Accordingly, proposed § 1002.14(a)(1) provides that, notwithstanding the other requirements in § 1002.14(a)(1), an applicant may waive the timing requirement to receive a copy of an appraisal or valuation three business days prior to consummation and agree to receive the copy at or before consummation, except as otherwise prohibited by law.

Proposed comment 14(a)(1)–4 would clarify that § 1002.14(a)(1) permits the applicant to waive the timing requirement that written appraisals and valuations be provided no later than three business days prior to consummation if the creditor provides the copy at or before consummation, except as otherwise provided by law. In addition, the proposed comment would provide that an applicant's waiver is effective under § 1002.14(a)(1) if the applicant provides the creditor an affirmative oral or written statement waiving the 3-day timing requirement. Finally, the proposed comment would provide that if there is more than one applicant for credit in the transaction, any applicant may provide the statement.

Delivery Upon Request No Longer Permitted

Section 1474 of the Dodd-Frank Act amended ECOA section 701(e) to mandate that copies of appraisals and valuations be provided regardless of whether the consumer affirmatively requests such copies. Accordingly, for consistency with the statute, the Bureau is proposing to delete current § 1002.14(a)(1) and (a)(2), which permit creditors to choose between the ''routine delivery'' and ''delivery upon request'' methods of complying with the requirements of § 1002.14.

Exemption for Credit Unions Removed

The Board's 1993 Final Rule on Providing Appraisal Reports (1993 Final Rule) provided an exemption from the appraisal delivery requirements in § 1002.14 for credit unions. *See* 58 FR 65657, 65660 (Dec. 16, 1993). In the 1993 Final Rule the Board cited to the legislative history of the 1991 ECOA amendments as the basis for the exemption for credit unions. The reasoning behind this exemption appears to have been that credit unions were already required to comply with substantially similar requirements under the regulations of the National Credit Union Administration (NCUA).[20] The Board also cited to a section of the legislative history noting that Congress intended no change to the NCUA's regulations in adding the requirement to provide appraisals in ECOA.[21]

Under 12 CFR 701.31(c)(5), Federal credit unions are still required to make available to any requesting member/applicant a copy of the appraisal used in connection with that member's real estate-related loan application. However, the Dodd-Frank Act amendments to ECOA section 701(e) substantially alter the requirements on creditors to provide appraisals. Specifically, section 1474 of the Dodd-Frank Act expanded the scope of the requirements of ECOA section 701(e) to require creditors to provide copies of all valuations, and to eliminate the need for applicants to request copies. In addition, neither section 1474 of the Dodd-Frank Act nor the legislative history refers to an exception for credit unions subject to, and complying with, the provisions of the NCUA regulations relating to making appraisals available upon request. Accordingly, as proposed, § 1002.14 would delete the exemption for credit unions in current § 1002.14(b).

The Bureau requests comment on the removal of this exemption and whether there are additional factors the Bureau should take into consideration relating to the application of proposed § 1002.14 to credit unions.

14(a)(2) Disclosure

Consistent with ECOA section 701(e)(5), proposed § 1002.14(a)(2) provides that for applications subject to § 1002.14(a)(1), a creditor shall provide an applicant with a written disclosure, not later than the third business day after the creditor receives an application, of the applicant's right to receive a copy of all written appraisals and valuations developed in connection with such application.

Content

Title XIV of the Dodd-Frank Act added two new appraisal related disclosure requirements for consumers. New section 701(e)(5) of ECOA, which is implemented in this proposed rule provides: ''At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.'' 15 U.S.C. 1691(e)(5). Similarly, section 129H(d) of TILA provides:

[20] *See* 12 CFR 701.31(c)(5) providing that each Federal credit union shall make available, to any requesting member/applicant, a copy of the appraisal used in connection with that member's real estate-related loan application. The appraisal shall be available for a period of 25 months after the applicant has received notice from the Federal credit union of the action taken by the Federal credit union on the real estate-related loan application.

[21] The legislative history to the 1991 ECOA amendments cited to in the Board's 1993 Final Rule on Providing Appraisals notes that the NCUA already requires credit unions to make appraisals available, and that the legislation is not intended to modify those NCUA regulations. *See* S. Rep. No. 102–167, at 90 (102nd Cong. 1st Sess. 1991).

At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant.

15 U.S.C. 1639h(d). In the absence of regulatory action to harmonize the two provisions, creditors would be required to provide two appraisal-related disclosures to consumers for certain loans (*i.e.,* a TILA and an ECOA disclosure for higher-risk mortgage loans secured by a first lien on a consumer's principal dwelling) and just one for others (*i.e.,* an ECOA disclosure for first-lien, dwelling-secured loans that are not higher-risk mortgage loans, or a TILA disclosure for higher-risk mortgage loans secured by a subordinate lien).

The Bureau believes that Congress intended the ECOA and TILA disclosures to work together to provide consumers a better understanding of their rights in the appraisal process. Accordingly, the Bureau is proposing to exercise its authority under section 703(a) of ECOA and section 1405(b) of the Dodd-Frank Act to amend form C–9 in Regulation B to include the language developed to satisfy the new appraisal-related disclosure requirements of both ECOA and TILA. The proposed sample disclosure language differs from the express statutory language provided in section 701(e)(5). However, based on the results of the testing described above, the Bureau believes that the additional explanatory text is necessary to promote consumer comprehension and to reduce any confusion associated with the TILA appraisal notification that will also have to be given to applicants for higher-risk mortgage loans. The Bureau believes this approach will also reduce compliance burden for industry by allowing a single disclosure to satisfy both statutory requirements. Accordingly, the Bureau believes that the proposed sample notice language developed to satisfy the disclosure requirements of both TILA and ECOA serves the interests of consumers, the public, and creditors. The Bureau requests comment on the proposed language and whether additional changes should be made to the text of the notification to further enhance consumer comprehension.

In addition, the Bureau notes that the model language in proposed Form C–9 refers only to appraisals, while proposed § 1002.14(a)(2) refers to ''all written appraisals and valuations.'' The Bureau solicits comment on what, if any, adjustments or clarifications to Form C–9 would be appropriate for creditors that perform valuations rather than, or in addition to, appraisals.

Timing and Method of Delivery

ECOA section 701(e)(5) requires creditors to notify applicants in writing, at the time of application, of the right to receive a copy of each written appraisal and valuation. The Bureau proposes to interpret the phrase ''at the time of application'' to require creditors to provide the ECOA appraisal disclosure no later than three business days after receiving an application. Proposed § 1002.14(a)(2) would require creditors to notify applicants in writing, not later than the third business day after a creditor receives such application, of the right to receive a copy of all written appraisals and valuations developed in connection with such application.

This approach is consistent with the disclosure requirements of TILA and RESPA.[22] Currently, creditors are required to provide disclosures under TILA and RESPA no later than the third business day after receiving a consumer's written application.[23] The Bureau has also proposed as part of the 2012 TILA–RESPA Proposal that the ECOA disclosure be provided as part of the Loan Estimate disclosure to be delivered not later than the third business day after application, to eliminate the need for a separate disclosure.[24]

The Bureau believes this approach is warranted because providing the disclosure to applicants at the same time as other similar disclosures—and possibly as part of a broader integrated disclosure document—would allow consumers to read the notification in context with other important information that must be delivered not later than the third business day after the creditor receives the application. Such an approach could reduce the number of pieces of paper that consumers receive and facilitate compliance by creditors.

The Bureau requests comment on whether providing the disclosure at some other time would be more beneficial to consumers, and how the disclosure should be provided where an application is submitted by phone, fax or electronically. For example, the Bureau solicits comment on whether it would be appropriate to require that creditors provide the disclosure at the same time the application is received, or even as part of the application.

The Bureau also seeks comment on the effective date if the Bureau were to finalize the proposal to include the new appraisal disclosure in the TILA–RESPA Loan Estimate. Because the 2012 TILA–RESPA Proposal likely will not be finalized on the same timeline as this proposal, creditors would likely have to revise their current ECOA disclosures to reflect the new language and distribute the disclosures as standalone forms until such time as the TILA–RESPA integrated disclosures must be provided. The Bureau believes that the burden involved would be modest since the forms are currently typically provided as standalone documents and do not require complicated dynamic systems programming to generate. The Bureau believes it is important for consumers to begin receiving information about their rights under ECOA with respect to receiving copies of appraisals. The Bureau therefore is not proposing to delay implementation of the disclosure requirement, as it is with some other mortgage-related disclosures required by the Dodd-Frank Act that the Bureau is proposing to implement as part of the integrated TILA–RESPA forms.[25] The Bureau seeks comment on the burden and time involved in implementing the proposed revisions to the ECOA notice.

14(a)(3) Reimbursement

Consistent with ECOA sections 701(e)(3) and 701(e)(4), the proposed rule would remove current comment 14(a)(2)(ii)–1, which permits creditors to charge photocopy and postage costs incurred in providing a copy to the applicant. ECOA sections 701(e)(3) and 701(e)(4) address creditors' ability to charge certain fees relating to appraisals and valuations. Section 701(e)(3) affirms that creditors may require applicants to pay reasonable fees to reimburse the creditor for the cost of the appraisal, except where otherwise required in law. Section 701(e)(4) provides that notwithstanding this ability, however, creditors shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

The Bureau interprets the two provisions to permit creditors to charge

[22] *See, e.g.,* 2012 TILA–RESPA Proposal, at 12 CFR 1026.19(e)(1)(iii) (''*Timing.* The creditor shall deliver the disclosures required under paragraph (e)(1)(i) of this section not later than the third business day after the creditor receives the consumer's application.'') *available at http://www.consumerfinance.gov/regulations/.*

[23] *See, e.g.,* 12 CFR 1026.19(a)(1)(i) providing in relevant part that in a mortgage transaction subject to the Real Estate Settlement Procedures Act that is secured by the consumer's dwelling * * * the creditor shall make good-faith estimates of the disclosures required by § 226.18 and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.

[24] 2012 TILA–RESPA Proposal, at 12 CFR 1026.19(e)(1)(iii) and 1026.37(m)(1) *available at http://www.consumerfinance.gov/regulations/.*

[25] *See* 2012 TILA–RESPA Proposal, *available at http://www.consumerfinance.gov/regulations/.*

applicants reasonable fees to reimburse the creditor for costs of the appraisal or valuation itself, but not for photocopying, postage, or similar costs associated with providing one written copy to the applicant. Accordingly, proposed § 1002.14(a)(3) generally implements sections 701(e)(3) and 701(e)(4), and provides additional details for clarity.

In addition, the proposed regulation affirms that creditors may impose fees to reimburse the costs of both valuations and appraisals. Although ECOA section 701(e)(3) does not expressly refer to valuations, the reference to both appraisals and valuations in 701(e)(4) regarding the provision of copies creates ambiguity as to congressional intent. The Bureau believes that there is both consumer and industry benefit to affirming that creditors may charge reasonable fees for reimbursement for all types of property valuations. Absent such clarification, the statutory language might be read as implicitly forbidding creditors from charging reimbursement fees for obtaining valuations, such as broker-price opinions or automated valuation models. The Bureau does not believe that Congress intended such a result, which could create an incentive for creditors to favor full appraisals over less costly forms of valuation that may be equally appropriate in particular circumstances.[26] Such a result would impose needless costs on loan applicants.

To the extent necessary, the Bureau relies on the authority provided in ECOA section 703(a) to provide adjustments and exceptions for any class of transactions in proposing to interpret section 701(e)(3) of ECOA as permitting creditors to charge applicants a reasonable fee to reimburse the creditor for the cost of developing an appraisal or valuation, except as otherwise provided by law. Such an adjustment effectuates the purposes of ECOA by permitting creditors to charge applicants for less costly forms of valuations that may be utilized in certain low dollar value transactions, and then pass those savings on to loan applicants. For example, the Federal banking agencies do not require federally insured financial institutions to obtain an appraisal in low risk real estate-related financial transactions in which the transaction value is $250,000 or less.[27]

Proposed comment 14(a)(3)–1 would provide examples of the specific types of charges that are prohibited under the regulation, such as photocopying fees and postage for mailing a copy of written appraisals or valuations.

Proposed comment 14(a)(3)–2 would clarify that § 1002.14(a)(3) does not prohibit creditors from imposing fees that are reasonably designed to reimburse the creditor for costs incurred in connection with obtaining actual appraisal or valuation services, so long they are not increased to cover the costs of providing documentation under § 1002.14. The Bureau does not read ECOA section 701(e)(3) as an attempt to create a proscriptive rate regime for all valuation-related activities. The Bureau notes that where Congress believed direct regulation of the amount of fees in connection with appraisal activities was required, it specified standards in the Dodd-Frank Act. *See* Dodd-Frank Act section 1472 (requiring under TILA, with regard to residential mortgage loans, that creditors and their agents pay independent appraisers fees that are ''reasonable and customary'' for the market area where the property is located, and specifying various sources for determining whether fees meet the standard). The Bureau does not believe that Congress intended ECOA section 701, which focuses on the provision of documentation to loan applicants rather than the substantive performance of appraisal and valuation services, to function in such a manner. Accordingly, the Bureau believes that sections 701(e)(3) and 701(e)(4) are simply designed to prevent direct or indirect upcharging related to the documentation provision that is the focus of the statute.

To further clarify the statutory language stating that creditors' ability to seek reimbursement for the cost of the appraisal does not apply ''where otherwise required in law,'' proposed comment 14(a)(3)–2 also notes that other sources of law may separately prohibit creditors from charging fees to reimburse the costs of appraisals, and are not overridden by section 701(e)(3). For instance, section 1471 of the Dodd-Frank Act requires creditors to obtain a second interior appraisal in connection with certain higher-risk mortgage loans, but prohibits creditors from charging applicants for the cost of the second appraisal. TILA section 129H(b)(2)(B); 15 U.S.C. 1639h(b)(2)(B).

The Bureau requests comment on the proposed text and whether additional guidance is needed to comply with the requirements of proposed § 1002.14(a)(3).

14(a)(4) Withdrawn, Denied or Incomplete Applications

Consistent with ECOA section 701(e)(1), proposed § 1002.14(a)(4) would provide that the requirements of § 1002.14(a)(1) apply whether credit is extended or denied or if the application is incomplete or withdrawn. This language would expand on the language in current § 1002.14(a)(1), which already requires that creditors using the routine delivery option of compliance provide copies of appraisal reports ''whether credit is granted or denied or the application is withdrawn.'' Specifically, under the proposed rule creditors would also be required to provide copies of appraisals and valuations in situations where an applicant provides only an incomplete application.

14(a)(5) Copies in Electronic Form

Section 1002.4(d)(2) of Regulation B currently provides that the disclosures required to be provided in writing by this part may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The Bureau believes that it is appropriate to allow creditors to provide applicants with copies of written appraisals and valuations in electronic form if the applicant consents to receiving the copies in such form. Accordingly, proposed § 1002.14(a)(5) would provide that the copies of written appraisals and valuations required by § 1002.14(a)(1) may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act.

14(b) Definitions

Proposed § 1002.14(b) would set forth three definitions, discussed below. The Bureau requests comment on whether there are additional terms that should be defined for purposes of this rule, and how best to define those terms in a manner consistent with ECOA section 701(e).

[26] According to estimates for the average cost of an appraisal provided by the U.S. Government Accountability Office (GAO), consumers on average pay $300–450 for full interior appraisal. *See Residential Appraisals: Opportunities to Enhance Oversight of an Evolving Industry* GAO–11–653, pg. 22 (July 2011). Other forms of valuation, however, tend to cost less than appraisals. Broker Price Opinions typically cost $65–125; valuations derived from an automated valuation model typically cost $5–25. *See Id.,* pgs. 17–18; *see also Real Estate Appraisals: Appraisal Subcommittee Needs to Improve Monitoring Procedures*–12–147, pg. 39 (Jan. 2012).

[27] *See, e.g.,* 12 CFR 323.3(a)(1) exempting real estate-related financial transactions with a transaction value of less than $250,000 from the FDIC's rule requiring FDIC insured institutions to obtain an appraisal performed by a State certified or licensed appraiser for all real estate-related financial transactions.

14(b)(1) Consummation

As discussed above, for clarity and to be consistent with other similar regulatory requirements under TILA and RESPA, proposed § 1002.14(a)(1) would use the term ''consummation'' in place of the statutory term ''closing.'' In addition, the proposed rule would define the term ''consummation'' in a manner that mirrors the definition of the term provided in § 1026.2(a)(13) of Regulation Z. 12 CFR 1026.2(a)(13). Accordingly, proposed § 1002.14(b)(1) would define the term ''consummation'' as the time that a consumer becomes contractually obligated on a credit transaction.

Proposed comment 14(b)(1)–1 would clarify that when a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; § 1002.14 does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

Proposed comment 14(b)(1)–2 would clarify that consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement.

14(b)(2) Dwelling

Proposed § 1002-1.14(b)(2) would retain the definition of the term ''dwelling'' in current § 1002.14(c). Specifically, proposed § 1002.14(b)(2) would define the term ''dwelling'' as a residential structure that contains one to four units whether or not that structure is attached to real property. Proposed paragraph (b)(2) further provides that the term ''dwelling'' includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

14(b)(3) Valuation

Consistent with ECOA section 701(e)(6), proposed § 1002.14(b)(3) defines ''valuation'' as any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit. The commentary to the proposed rule would include the list of examples provided in ECOA section 701(e)(6).

Proposed comment 14(b)(3)–1 would amend current comment 14(c)–1 to provide the following examples of valuations:

- A report prepared by an appraiser (whether or not certified and licensed), including written comments and other documents submitted to the creditor in support of the person's estimate or opinion of the property's value.
- A document prepared by the creditor's staff that assigns value to the property, if a third-party appraisal report has not been used.
- An internal review document reflecting that the creditor's valuation is different from a valuation in a third party's appraisal report (or different from valuations that are publicly available or valuations such as manufacturers' invoices for mobile homes).
- Values developed pursuant to a methodology or mechanism required by a government sponsored enterprise, including written comments and other documents submitted to the creditor in support of the estimate of the property's value.
- Values developed by an automated valuation model, including written comments and other documents submitted to the creditor in support of the estimate of the property's value.
- A broker price opinion prepared by a real estate broker, agent, or sales person, including written comments and other documents submitted to the creditor in support of the estimate of the property's value.

The Bureau requests comment on whether this list should include other examples of valuations. In addition, the Bureau requests comments on whether additional clarification is needed about what types of information would not constitute a valuation for purposes of § 1002.14.

The Bureau understands that many documents prepared in the course of a mortgage transaction may contain information regarding the value of a dwelling, but are not themselves a written appraisal or valuation. The Bureau does not believe that consumers would benefit from being given duplicative information concerning written appraisals and valuations. Additionally, it is important for creditors to be able to easily distinguish between documents that must be provided to applicants and those that are not required to be provided. Accordingly, proposed comment 14(b)(3)–2 would amend current comment 14(c)–2 to clarify that not all documents that discuss or restate a valuation of an applicant's property constitute ''written appraisals and valuations'' for purposes § 1002.14(a)(1). In addition, the proposed comment would provide the following list of examples of documents that discuss the valuation of the applicant's property but nonetheless are not ''written appraisals and valuations:''

- Internal documents, that merely restate the estimated value of the dwelling contained in a written appraisal or valuation being provided to the applicant.
- Governmental agency statements of appraised value that are publically available.
- Valuations lists that are publically available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers' invoices for mobile homes.

The Bureau requests comment on whether this list of examples is too broad or whether additional examples should be included and why.

V. Section 1022(b)(2) of the Dodd-Frank Act

In developing the proposed rule, the Bureau has considered potential benefits, costs, and impacts to consumers and covered persons,[28] and has consulted or offered to consult with the Federal banking agencies, FHFA, the Department of Housing and Urban Development, and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The proposed rule would amend Regulation B, which implements the Equal Credit Opportunity Act, and the official interpretation to the regulation, which interprets the requirements of Regulation B. The proposed revisions to Regulation B would implement an Equal Credit Opportunity Act amendment concerning appraisals and other valuations that was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In general, the proposed revisions to Regulation B would require creditors to provide free copies of all written appraisals and valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. The proposal also would require creditors to notify applicants in writing of the right to receive a copy of each written appraisal or valuation at no additional cost.

[28] Specifically, Section 1022(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Act; and the impact on consumers in rural areas.

Section 1022 permits the Bureau to consider the benefits, costs, and impacts of the proposed rule solely compared to the state of the world in which the statute takes effect without an implementing regulation. To provide the public better information about the benefits and costs of the statute, however, the Bureau has chosen to consider the benefits, costs, and impacts of the major provisions of the proposed rule against a pre-statutory baseline (*i.e.,* the benefits, costs, and impacts of the relevant provisions of the Dodd-Frank Act and the regulation combined).[29]

The Bureau has relied on a variety of data sources to analyze the potential benefits, costs, and impacts of the proposed rule. However, in some instances, the requisite data are not available or quite limited. Data with which to quantify the benefits of the proposed rule are particularly limited. As a result, portions of this analysis provide a qualitative discussion of the benefits, costs, and impacts of the proposed rule, relying instead in part on general economic principles to provide insight into these benefits, costs, and impacts.

The primary source of data used in this analysis comes from data collected under the Home Mortgage Disclosure Act (HMDA).[30] Because the latest wave of complete data available is for loans made in calendar year 2010, the empirical analysis generally uses the 2010 market as the baseline. Data from fourth quarter 2010 bank and thrift Call Reports,[31] fourth quarter 2010 credit union call reports from the National Credit Union Administration (NCUA), and de-identified data from the National Mortgage Licensing System (NMLS) Mortgage Call Reports (MCR) [32] for the first and second quarter of 2011 were also used to identify financial institutions and their characteristics. The unit of observation in this analysis is the entity: if there are multiple subsidiaries of a parent company then their originations are summed and revenues are total revenues for all subsidiaries. The Bureau seeks comment on the use of these data sources, the appropriateness to this purpose, and alternative or additional sources of information.

Potential Benefits and Costs to Covered Persons and Consumers

Consumers. Since the proposed rule requires creditors to deliver copies of valuations, including appraisals, to consumers and creditors are explicitly prohibited from charging consumers for these copies, consumers do not bear any direct costs from the proposed rule. The provision of the free copy of the valuation provides consumers with details about the valuation and the condition of the property. Although most consumers receive much of this information from a home inspection and although the appraisal is done for the creditor, each valuation provides the consumer with another independent evaluation. This detailed information may be particularly valuable to the consumer when the appraised value is less than the buyer's offer.[33]

The proposed rule would change the process of obtaining a copy from one where the consumer must request one to one where the copy is given as the default. This would likely result in more consumers obtaining copies of their valuations since, despite low transaction costs, there is evidence that default rules can have significant effects on outcomes in various settings.[34] Consumers who previously may have requested copies of valuations in the absence of the amendment save the time and effort required to make requests.

Individual consumers engage in real estate transactions infrequently, so developing the expertise to value real estate is costly and consumers often rely on experts, such as real estate agents, and list prices to make price determinations. These methods may not lead a consumer to an accurate valuation of a property. For example, there is evidence that real estate agents sell their own homes for significantly more than other houses, which suggests that sellers may not be able to accurately price the homes that they are selling.[35] Other research, this time in a laboratory setting, provides evidence that individuals are sensitive to anchor values when estimating home prices.[36] In such cases, an independent signal of the value of the home should benefit the consumer. Having a professional valuation as a point of reference may help consumers gain a more accurate understanding of the home's value and improve overall market efficiency, relative to the case where the knowledge of true valuations is more limited.[37]

Covered Persons. In the context of the proposed rule, ''covered persons'' includes depository institutions such as banks, credit unions, and thrifts, as well as non-depository lenders such as independent mortgage banks. The Bureau estimates that of the roughly 15,000 depository institutions, just fewer than 12,000 originate mortgage loans. Another 2,500 non-depository institutions engage in real estate credit, based on data from the NMLS MCR. The

[29] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline. The Bureau, as a matter of discretion, has chosen to describe a broader range of potential effects to more fully inform the rulemaking.

[30] The Home Mortgage Disclosure Act (HMDA), enacted by Congress in 1975, as implemented by the Bureau's Regulation C requires lending institutions annually to report public loan-level data regarding mortgage originations. For more information, see *http://www.ffiec.gov/hmda.* It should be noted that not all mortgage lenders report HMDA data. The HMDA data capture roughly 90–95 percent of lending by the Federal Housing Administration and 75–85 percent of other first-lien home loans. Depository institutions (including credit unions) with assets less than $39 million (in 2010), for example, and those with branches exclusively in non-metropolitan areas and those that make no purchase money mortgage loans are not required to report to HMDA. Reporting requirements for non-depository institutions depend on several factors, including whether the company made fewer than 100 purchase money or refinance loans, the dollar volume of mortgage lending as share of total lending, and whether the institution had at least five applications, originations, or purchased loans from metropolitan areas. Robert B. Avery, Neil Bhutta, Kenneth P. Brevoort & Glenn B. Canner, *The Mortgage Market in 2010: Highlights from the Data Reported under the Home Mortgage Disclosure Act,* 97 Fed. Res. Bull., December 2011, at 1, 1 n.2.

[31] Every national bank, State member bank, and insured nonmember bank is required by its primary Federal regulator to file consolidated Reports of Condition and Income, also known as Call Report data, for each quarter. as of the close of business on the last day of each calendar quarter (the report date). The specific reporting requirements depend upon the size of the bank and whether it has any foreign offices. For more information, see *http://www2.fdic.gov/call_tfr_rpts/.*

[32] The Nationwide Mortgage Licensing System is a national registry of non-depository financial institutions including mortgage loan originators. Portions of the registration information are public. The Mortgage Call Report data are reported at the institution level and include information on the number and dollar amount of loans originated, the number and dollar amount of loans brokered.

[33] The value of the information may vary depending on when in the home purchase and loan origination process he or she receives the information.

[34] John Beshears, James Choi, David Laibson, & Brigitte Madrian. ''The Importance of Default Options for Retirement Savings Outcomes: Evidence from the United States.'' Chap. 5 In *Social Security Policy in a Changing Environment,* Jeffrey Brown, Jeffrey Liebman & David A. Wise eds. (Chicago, IL: University of Chicago Press), 169–195. Eric Johnson and Daniel Goldstein. ''Do Defaults Save Lives?'' *Science* 302 (2003) 1338–1139.

[35] Steven Levitt and Chad Syverson. ''Market Distortions When Agents are Better Informed: The Value of Information In Real Estate Transactions.'' The Review of Economics and Statistics 90 no.4 (2008): 599–611.

[36] Peter Scott and Colin Lizieri. ''Consumer House Price Judgments: New Evidence of Anchoring and Arbitrary Coherence.'' Journal of Property Research 29 no. 1 (2012): 49–68.

[37] For example, in Quan and Quigley's theoretical model where buyers and seller have incomplete information, trades are decentralized, and prices are the result of pairwise bargaining, ''[t]he role of the appraiser is to provide information so that the variance of the price distribution is reduced.'' Daniel Quan and John Quigley. ''Price Formation and the Appraisal Function in Real Estate Markets.'' Journal of Real Estate Finance and Economics 4 (1991): 127–146.

proposed rule codifies the common practice of sending copies of all written appraisals to consumers who obtain loans secured by a first lien on a dwelling. In outreach calls to industry, all respondents reported providing copies of appraisals to borrowers as a matter of course if a loan is originated.[38] In addition, the proposed rule requires that copies of appraisals and valuations be sent in the event that an application is received but does not result in a loan being originated. Note that while the proposed rule prohibits creditors from charging consumers for these copies, the cost of compliance is offset in part by the costs saved by no longer having to respond to consumer requests for copies. Because responding to a request involves querying a loan file, finding the appraisal, and then going through the process of sending copies of valuations to the consumer, the cost of responding to a single consumer request may be higher than the cost of routinely providing a copy of valuations for a given loan.

Under the proposed rule, covered persons would incur the paperwork costs, for a set of applications and originations, of replicating and sending (either electronically or physically) copies of the appraisals and valuations.[39] Based on outreach to industry the Bureau assumes that appraisals and copies of other valuations are currently sent to consumers for 100% of first lien transactions that result in an origination and that copies of appraisals and valuations conducted for applications that do not result in a loan are not sent to consumers. As a result, the paperwork costs result from those applications that do not result in originations. The Bureau also believes that a second appraisal is conducted, and is sent, for any property with a loan size equal to or above $600,000. Further, appraisals are considered to be of inadequate quality 10% of the time, necessitating a second appraisal.

To measure these paperwork costs, counts of originations and applications for reporting depository institutions and credit unions are obtained from the HMDA data; for non-HMDA reporters, counts are imputed using accepted statistical techniques that allow estimates based on the data available in Call reports.[40] Different techniques are used to extrapolate from the applications and originations data available in HMDA for reporting IMBs to the broader set of all IMBs.

Covered persons would also incur some costs in reviewing the proposed rule and in training the relevant employees.[41] To estimate these costs, the number of loan officers who may require training is estimated based on the application or origination estimates.

The total costs from the proposed rule are approximately $14 million or just under $1.70 for each loan originated. The bulk of these costs arise from the paperwork requirements; roughly ten percent results from the one-time review and training costs.

Potential Reduction in Access by Consumers to Consumer Financial Products or Services

Since the proposed rule, which largely codifies existing practice, is limited to relatively low cost clerical tasks and does not require the creditor to obtain any additional goods or services, the proposed rule is not likely to have an appreciable impact on the cost of credit for consumers or on loan volumes.

Impact of the Proposed Rule on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, As Described in Section 1026[42] *and the Impact of the Proposed Rule on Consumers in Rural Areas*

For smaller depository institutions, those with total assets of $10 billion or less, the proposed rule is estimated to cost $4.6 million. Because of their smaller size, fixed training and reviewing costs are spread over fewer applications and originations and as a result, the average cost would increase slightly; for each loan these institutions originate, the cost is estimated to be roughly $1.80.

The Bureau does not anticipate that the proposed rule would have a unique impact on consumers in rural areas.

Additional Analysis Being Considered and Request for Information

In addition to the comment solicited elsewhere in this proposed rule, the Bureau requests commenters to submit data and to provide suggestions for additional data to assess the issues discussed above and other potential benefits, costs, and impacts of the proposed rule. The Bureau also requests comment on the use of the data described above. Further, the Bureau seeks information or data on the proposed rule's potential impact on consumers in rural areas as compared to consumers in urban areas. The Bureau also seeks information or data on the potential impact of the proposed rule on depository institutions and credit unions with total assets of $10 billion or less as described in Dodd-Frank Act section 1026 as compared to depository institutions and credit unions with assets that exceed this threshold and their affiliates.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[43] The Bureau also is subject to certain additional procedures under the RFA involving the

[38] Respondents include a large bank, a trade group of smaller depository institutions, and an independent mortgage bank.

[39] Based on its outreach and research, the Bureau assumes that the average appraisal is 20 pages long and that printing a copy of an appraisal costs $0.10 per page. The Bureau assumes that 84% of appraisals are sent via email, 15.75% of appraisals are sent via the United States Postal Service, and 0.25% of appraisals are sent via courier. Mailing an appraisal is assumed to cost $2.12 based on the cost of first class mail for a 3.7oz letter (20 pages of 20 lb paper weighs 3.2oz with a 0.5oz allowance for an envelope) and requires 5 minutes of loan officer time; sending an appraisal via a courier is assumed to cost $17 ($15 for courier fees and $2 for replication costs) in material costs and 5 minutes of loan officer time; and, sending a copy via email is assumed to cost $0.05 of material cost and 1 minute of loan officer time.

[40] Specifically, Poisson regressions are run projecting loan volumes in these categories on the natural log of the following characteristics available in the Call reports: total 1–4 family residential loan volume outstanding, full-time equivalent employees, and assets. The regressions are run separately for each category of depository institution.

[41] The cost of reviewing the regulation at each institution is assumed to be the time cost of reading and reviewing the regulation, which is assumed to be 3 minutes per page for 9 pages. It is assumed that the regulation is reviewed by one lawyer at each firm, and by one compliance officer at each non-depository institution, two compliance officers at each depository institution over $10 billion in assets, and one half a compliance officer at each smaller DI.

[42] Approximately 50 banks with under $10 billion in assets are affiliates of large banks with over $10 billion in assets and subject to Bureau supervisory authority under Section 1025. However, these banks are included in this discussion for convenience.

[43] For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (''NAICS'') classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[44] An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed rule would amend Regulation B, which implements the Equal Credit Opportunity Act, and the official interpretation to the regulation, which interprets the requirements of Regulation B. The proposed revisions to Regulation B would implement an Equal Credit Opportunity Act amendment concerning appraisals and other valuations that was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In general, the proposed revisions to Regulation B would require creditors to provide free copies of all written appraisals and valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. The proposal also would require creditors to notify applicants in writing of the right to receive a copy of each written appraisal or valuation at no additional cost.

The empirical approach to calculating the impact the proposed regulation has on small entities subject to its requirements utilizes the same data and methodology outlined in the previous section. The analysis that follows focuses on the economic impact of the proposed rule, relative to a pre-statute baseline, for small depository institutions, credit unions and non-depository independent mortgage banks (IMBs).

The Small Business Administration classifies commercial banks, savings institutions, credit unions, and other depository institutions as small if they have assets less than $175 million, and classifies other real estate credit firms as small if they have less than $7 million in annual revenues.[45] All institutions that extend real estate credit secured by a first lien on a dwelling are affected by the proposed rule. As shown below, the vast majority of small banks, thrifts, credit unions, and independent mortgage banks originate such loans.

Of the roughly 17,747 depository institutions, credit unions, and IMBs, 13,106 are below the relevant small entity thresholds. Of these, 9,807 are estimated to have originated mortgage loans in 2010. The Bureau has loan counts for credit unions and HMDA-reporting DIs and IMBs. For IMBs, the Bureau only has data on revenues for 560 of 2515 institutions. In order to estimate the number of these institutions that have less than $7 million in revenues the Bureau uses an accepted statistical techniques (''nearest neighbor matching'') to impute revenues from the MCR.

TABLE 1—COUNTS AND ORIGINATIONS OF CREDITORS BY TYPE

Category	NAICS Code	Total entities	Small entity threshold	Small entities	Entities that originate any mortgage loans [c]	Small entities that originate any mortgage loans [c]
Commercial Banking [a]	522110	6596	$175 million in assets	3764	6362	3597
Savings Institutions [a]	522120	1145	$175 million in assets	491	1138	487
Credit Unions [b]	522130	7491	$175 million in assets	6569	4359	3441
Independent Mortgage Banks [d,e]	522292	2515	$7 million in revenues	2282	2515	2282
Total		17,747		13106	14374	9807

[a] Asset size obtained from December 2010 Call Report Data downloaded from SNL. The institutions in the category savings institutions are all thrifts.

[b] Asset size obtained from December 2010 NCUA Call Reports.

[c] For HMDA reporters, loan counts from HMDA 2010. For institutions that do not report to HMDA, loan counts projected based on call report data fields and counts for HMDA reporters.

[d] NMLS Mortgage Call Report (MCR) for Q1 and Q2 of 2011. All MCR reporters who originate at least one loan or have positive loan amounts are considered to be engaged in real estate credit (instead of purely mortgage brokers).

[e] Revenues were not missing for 560 of the 2515 institutions. For institutions with missing revenue data, values were imputed using nearest neighbor matching of the count of originations and the count of brokered loans.

Although most depository institutions, credit unions, and IMBs are affected by the proposed rule, the burden estimates below show that the proposed rule does not have a significant impact on a substantial number of small entities,. As discussed above, the economic impacts include preparing and sending copies of appraisals and other valuations and the costs of reviewing the rule and training employees.

Consistent with the assumptions in the analysis of the previous section, the Bureau believes, based on its outreach, that currently it is routine business practice for appraisals to be sent to consumers for all first lien transactions that result in an origination and that copies of appraisals and valuations conducted for applications that do not result in a loan are not sent to consumers. The Bureau also believes that a second appraisal is typically conducted, and is sent, for any property with a loan size equal to or above $600,000. Further, appraisals are considered to be of inadequate quality 10% of the time, necessitating a second appraisal.[46]

Under these assumptions, the total costs for small depository institutions and credit unions of providing copies of the appraisals or valuations and any one-time costs for reviewing the regulation and training employees are estimated to be roughly $2.70 per loan originated. For small IMBs, the costs are estimated to be just under $2.00 per loan originated. In both cases, the higher average costs reflect the greater importance of the fixed costs of training for smaller institutions as one-time costs are spread over fewer mortgage originations at these entities. Nevertheless, across all small entities, the costs of the rule amount to a small

[44] 5 U.S.C. 609.

[45] 13 CFR Ch. 1.

[46] All other assumptions regarding costs are the same as those used in the analysis under Section 1022(b)(2). These include the following assumptions regarding wages: Loan officer wages are assumed to $30.66 per hour, lawyer wages are $76.99 per hour, and compliance officer wages are $29.48 per hour. These rates are then increased to reflect that wages represent 67.5% of an employee's total compensation.

faction of a percent of the revenue or profits from origination activity.[47]

Certification

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on the analysis above and requests any relevant data.

VII. Paperwork Reduction Act

A. Overview

The Bureau's information collection requirements contained in this proposed rule, and identified as such, have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (Paperwork Reduction Act or PRA). Under the PRA, the Bureau may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number.

The title of this information collection is ECOA Appraisal Proposal. The frequency of response is on-occasion. The proposed rule would amend 12 CFR Part 1002, Equal Credit Opportunity (Regulation B). Regulation B currently contains collections of information approved by OMB. The Bureau's OMB control number for Regulation B is 3170–0013 (Equal Credit Opportunity Act (Regulation B) 12 CFR 1002). As described below, the proposed rule would amend the collections of information currently in Regulation B.

The information collection in the proposed rule would be required to provide benefits for consumers and would be mandatory. Because the Bureau does not collect any information under the proposed rule, no issue of confidentiality arises. The likely respondents would be certain businesses, for-profit institutions, and nonprofit institutions that are creditors under Regulation B.

Under the proposed rule, the Bureau generally would account for the paperwork burden for the following respondents pursuant to its enforcement/supervisory authority: insured depository institutions with more than $10 billion in total assets, their depository institution affiliates, and certain non-depository institutions. The Bureau and the FTC generally both have enforcement authority over non-depository institutions subject to Regulation B. Accordingly, the Bureau has allocated to itself half of its estimated burden to non-depository institutions. Other Federal agencies, including the FTC, are responsible for estimating and reporting to OMB the paperwork burden for the institutions for which they have enforcement/supervision authority. They may, but are not required to, use the Bureau's burden estimation methodology.

Using the Bureau's burden estimation methodology, the total estimated burden for the roughly 14,000 creditors subject to the proposed rule, including Bureau respondents, would be approximately 173,000 hours of ongoing burden annually and 20,000 hours in one-time burden. Since creditors already provide consumers copies of appraisals if a loan closes, the Bureau assumes that there are no required software or information technology upgrades associated with implementing the rule, because all of the actions required by the rule are already practiced by the affected institutions. The Bureau expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size, complexity, and practices of the respondent.

B. Information Collection Requirements

The information collection requirements in the proposed rule would be the provision of certain appraisals and other valuations to consumers. Under the proposed rule, copies of all appraisals and other valuations conducted in connection with an application for a loan to be secured by a first lien must be furnished to applicants free of charge within 3 days of application, and these copies may be delivered physically or electronically. Currently, ECOA requires that free copies be provided upon request. From outreach, the Bureau learned that it is customary to send consumers a copy of all valuations if the loan closes, but firms differed in their practices of sending out copies of valuations for loans that did not close.[48] Therefore, the Bureau considers the incremental paperwork burden the cost of reviewing the rule, staff training, and the cost of sending out copies of appraisals and other valuations to consumers who apply for loans that do not close, but reach the stage where an appraisal or other valuation is conducted.

C. Summary of Estimated Burden for CFPB Respondents

The total annualized on-going burden for the depository institutions and credit unions with more than $10 billion in assets (including their depository affiliates) that originate mortgage loans is estimated to be roughly 74,500 hours and the annualized ongoing burden for all non-depository institutions that originate mortgage loans is estimated to be 47,800 hours. These respondents are estimated to incur an additional 5,800 hours and 4,600 hours in one-time burden, respectively. As discussed previously, for purposes of the PRA analysis under this proposed rule, the Bureau would assume roughly 23,900 on-going burden hours and 2,300 one-time hours for the non-depository institutions.[49]

D. Comments

Comments are specifically requested concerning: (i) Whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (ii) the accuracy of the estimated burden associated with the proposed collections of information; (iii) how to enhance the quality, utility, and clarity of the information to be collected; and (iv) how to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology. All comments will become a matter of public record. Comments on the collection of information requirements should be sent to the Office of Management and Budget (OMB), Attention: Desk Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, DC 20503, or by the Internet to *http://oira_submission@omb.eop.gov,* with copies to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by the Internet to *CFPB_Public_PRA@cfpb.gov.*

VIII. Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to the text of the regulation and official interpretation. New language is shown inside ►bold-faced arrows◄, while

[47] Industry experts estimate that gross revenues per loan are approximately 3% of origination amount. The MBA's Mortgage Bankers Performance Report reports that in the 4th quarter of 2010 IMBs and subsidiaries reported that total production operating expenses were $4,930 per loan, average profits were $1,082 per loan, and average loan balance was $208,319.

[48] Outreach conversations included a large bank, a trade group of smaller depository institutions, and an independent mortgage bank.

[49] There may be a small additional burden for privately insured credit unions estimated to originate mortgages. The Bureau will assume half of the burden these institutions.

language that would be deleted is set off with [bold-faced brackets].

List of Subjects in 12 CFR Part 1002

Aged, Banks, Banking, Civil rights, Consumer protection, Credit, Credit unions, Discrimination, Fair lending, Marital status discrimination, National banks, National origin discrimination, Penalties, Race discrimination, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau of Consumer Financial Protection proposes to amend 12 CFR part 1002 and the Official Interpretations, as follows:

PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

1. The authority citation for part 1002 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1691b.

2. Revise § 1002.14 to read as follows:

§ 1002.14 Rules on providing [appraisal reports] ► appraisals and valuations ◄.

(a) *Providing appraisals ► and valuations ◄.* ►(1) *In general.* ◄ A creditor shall provide ►an applicant ◄a copy of [an appraisal report used] ►all written appraisals and valuations developed ◄in connection with an application for credit that is to be secured by a ►first ◄lien on a dwelling. [A creditor shall comply with either paragraph (a)(1) or (a)(2) of this section.] ►A creditor shall provide a copy of each such written appraisal or valuation promptly (generally within 30 days of receipt by the creditor), but not later than three business days prior to consummation of the transaction, whichever is first to occur. Notwithstanding the foregoing, an applicant may waive the right to receive a copy three business days prior to consummation and agree to receive the copy at or before consummation, except where otherwise prohibited by law. ◄

[(1) *Routine delivery.* A creditor may routinely provide a copy of an appraisal report to an applicant (whether credit is granted or denied or the application is withdrawn).

(2) *Upon request.* A creditor that does not routinely provide appraisal reports shall provide a copy upon an applicant's written request.

(i) *Notice.* A creditor that provides appraisal reports only upon request shall notify an applicant in writing of the right to receive a copy of an appraisal report. The notice may be given at any time during the application process but no later than when the creditor provides notice of action taken under § 1002.9 of this part. The notice shall specify that the applicant's request must be in writing, give the creditor's mailing address, and state the time for making the request as provided in paragraph (a)(2)(ii) of this section.

(ii) *Delivery.* A creditor shall mail or deliver a copy of the appraisal report promptly (generally within 30 days of receipt by the creditor) after the creditor receives an applicant's request, receives the report, or receives reimbursement from the applicant for the report, whichever is last to occur. A creditor need not provide a copy when the applicant's request is received more than 90 days after the creditor has provided notice of action taken on the application under § 1002.9 of this part or 90 days after the application is withdrawn.]

►(2) *Disclosure.* For applications subject to paragraph (a)(1) of this section, a creditor shall provide an applicant with a written disclosure, not later than the third business day after the creditor receives an application, of the applicant's right to receive a copy of all written appraisals and valuations developed in connection with such application.

(3) *Reimbursement.* A creditor shall not charge an applicant for providing a copy of written appraisals and valuations as required under this section, but may require applicants to pay a reasonable fee to reimburse the creditor for the cost of the appraisal or valuation unless otherwise provided by law.

(4) *Withdrawn, denied, or incomplete applications.* The requirements set forth in paragraph (a)(1) of this section apply whether credit is extended or denied or if the application is incomplete or withdrawn.

(5) *Copies in electronic form.* The copies required by § 1002.14(a)(1) may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). ◄

[(b) *Credit unions.* A creditor that is subject to the regulations of the National Credit Union Administration on making copies of appraisal reports available is not subject to this section.]

[(c)] ►(b) ◄ *Definitions.* For purposes of paragraph (a) of this section[, the term dwelling] ►:

(1) *Consummation.* The term ''consummation'' means the time that a consumer becomes contractually obligated on a credit transaction.

(2) *Dwelling.* The term ''dwelling'' ◄ means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home. [The term *appraisal report* means the document(s) relied upon by a creditor in evaluating the value of the dwelling.]

►(3) *Valuation.* The term ''valuation'' means any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit. ◄

3. Appendix C to part 1002 is amended by revising the sixth sentence in first paragraph, and sample Form C–9 is revised to read as follows:

Appendix C to Part 1002—Sample Notification Forms

1. This Appendix contains ten sample notification forms. Forms C–1 through C–4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under §§ 1002.9(a)(1) and (2)(i) of this part. Form C–5 is a notice of disclosure of the right to request specific reasons for adverse action under §§ 1002.9(a)(1) and (2)(ii). Form C–6 is designed for use in notifying an applicant, under § 1002.9(c)(2), that an application is incomplete. Forms C–7 and C–8 are intended for use in connection with applications for business credit under § 1002.9(a)(3). Form C–9 is designed for use in notifying an applicant of the right to receive a copy of [an appraisal] ►appraisals and valuations ◄ under § 1002.14. Form C–10 is designed for use in notifying an applicant for nonmortgage credit that the creditor is requesting applicant characteristic information.

* * * * *

Form C–9—Sample Disclosure of Right to Receive a Copy of [an Appraisal] ►*Appraisals and Valuations* ◄.

[You have the right to a copy of the appraisal report used in connection with your application for credit. If you wish a copy, please write to us at the mailing address we have provided. We must hear from you no later than 90 days after we notify you about the action taken on your credit application or you withdraw your application.

[In your letter, give us the following information:]]

►We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close.

You can pay for an additional appraisal for your own use at your own cost. ◄

* * * * *

4. Supplement I to part 1002 is amended by revising Section 1002.14 to read as follows:

Supplement I to Part 1002—Official Interpretations

* * * * *

►*Section 1002.14—Rules on Providing* [*Appraisal Reports*]►*Appraisals and Valuations*◄

14(a) *Providing appraisals*► *and valuations*◄.

►1. *Multiple applicants.* If there is more than one applicant the written disclosure about written appraisals and valuations, and the copies of written appraisals and valuations, need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.

14(a)(1) In general.◄

1. *Coverage.* This section covers applications for credit to be secured by a ►first ◄lien on a dwelling, as that term is defined in [§ 1002.14(c)]►§ 1002.14(b)(2)◄, whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, [a loan to finance a child's education]►a loan to purchase a home◄).

2. *Renewals.* [This section]►Section 1002.14(a)(1)◄ applies when an applicant requests the renewal of an existing extension of credit and the creditor [obtains]►develops◄ a new [appraisal report]►written appraisal or valuation◄. This section does not apply when a creditor uses the [appraisal report]►written appraisals and valuations◄ that were previously [obtained]► developed in connection with the prior extension of credit in order◄ to evaluate the renewal request.

►3. *Written.* For purposes of § 1002.14, a ''written'' appraisal or valuation includes, without limitation, an appraisal or valuation received or developed by the creditor in paper form (hard copy); electronically, such as CD or email; or by any other similar media. But *see* § 1002.14(a)(5) regarding the provision of copies of appraisals and valuations to applicants via electronic means.

4. *Waiver.* Section 1002.14(a)(1) permits the applicant to waive the timing requirement that written appraisals and valuations be provided no later than three business days prior to consummation if the creditor provides the copy at or before consummation, except where otherwise prohibited by law. An applicant's waiver is effective under § 1002.14(a) if the applicant provides the creditor an affirmative oral or written statement waiving the 3-day timing requirement. If there is more than one applicant for credit in the transaction, any applicant may provide the statement.◄

[*14(a)(2)(i) Notice.*

1. Multiple Applicants. When an applicant that is subject to this section involves more than one applicant, the notice about the appraisal report need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.]

[*14(a)(2)(ii) Delivery.*]►14(a)(3) *Reimbursement.*◄

[1. Reimbursement. Creditors may charge for photocopy and postage costs incurred in providing a copy of the appraisal report, unless prohibited by State or other law. If the consumer has already paid for the report—for example, as part of an application fee—the creditor may not require additional fees for the appraisal (other than photocopy and postage costs).]

►1. *Photocopy, postage, or other costs.* Creditors may not charge for photocopy, postage or other costs incurred in providing a copy of a written appraisal or valuation in accordance with this section.

2. *Reasonable fee for reimbursement.* The regulation does not prohibit creditors from imposing fees that are reasonably designed to reimburse the creditor for costs incurred in connection with obtaining appraisal or valuation services, so long they are not increased to cover the costs of providing documentation under § 1002.14. However, creditors may not impose fees for reimbursement of the costs of an appraisal where otherwise provided by law. For instance, TILA prohibits a creditor from charging a consumer a fee for the performance of a second appraisal if the second appraisal is required under TILA section 129H(b)(2) (15 U.S.C. 1639h(b)(2)).◄

[*14(c)*]*14(b)*◄ *Definitions.*

►*14(b)(1) Consummation.*

1. *State law governs.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; § 1002.14 does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

2. *Credit v. sale.* Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement.

14(b)(3) Valuation.◄

1. [*Appraisal reports.* Examples of appraisal reports are:]► *Examples of valuations.* Examples of valuations include:◄

i. A report prepared by an appraiser (whether or not licensed or certified), including written comments and other documents submitted to the creditor in support of the appraiser's estimate or opinion of the property's value.

ii. A document prepared by the creditor's staff that assigns value to the property, if a third-party appraisal report has not been used.

iii. An internal review document reflecting that the creditor's valuation is different from a valuation in a third party's appraisal report (or different from valuations that are publicly available or valuations such as manufacturers' invoices for mobile homes).

►iv. Values developed pursuant to a methodology or mechanism required by a government sponsored enterprise, including written comments and other documents submitted to the creditor in support of the estimate of the property's value.

v. Values developed by an automated valuation model, including written comments and other documents submitted to the creditor in support of the estimate of the property's value.

vi. A broker price opinion prepared by a real estate broker, agent, or sales person, including written comments and other documents submitted to the creditor in support of the estimate of the property's value.◄

2. *Other* [*reports*]►*documentation*◄. [The term ''appraisal report'' does not cover all documents relating to the value of the applicant's property.]►Not all documents that discuss or restate a valuation of an applicant's property constitute ''written appraisals and valuations'' for purposes of § 1002.14(a).◄ Examples of [reports not covered are:]►documents that discuss the valuation of the applicant's property but nonetheless are not ''written appraisals and valuations'' include:◄

i. Internal documents, [if a third-party appraisal report was used to establish the value of the property]►that merely restate the estimated value of the dwelling contained in a written appraisal or valuation being provided to the applicant◄.

ii. Governmental agency statements of appraised value ►that are publically available◄.

iii. Valuations lists that are publicly available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers' invoices for mobile homes.

Dated: August 14, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–20422 Filed 8–17–12; 4:15 pm]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

[Docket No. CFPB–2012–0036]

Electronic Fund Transfers; Intent To Make Determination of Effect on State Laws (Maine and Tennessee)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of intent to make preemption determination.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing notice of its intent to consider and address requests received to determine whether certain provisions in the laws of Maine and Tennessee relating to unclaimed gift cards are inconsistent with and preempted by the requirements of the Electronic Fund Transfer Act and Regulation E.

DATES: Comments must be received on or before October 22, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0036, by any of the following methods:

• *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

All submissions must include the agency name and docket number for this notice. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Gregory Evans or Courtney Jean, Counsels, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Electronic Fund Transfer Act (EFTA), as amended by the Credit Card Accountability and Responsibility and Disclosure Act of 2009, and as implemented by the Bureau's Regulation E, authorizes the Bureau to consider and address requests received to determine whether any inconsistency exists between the EFTA and State law ''relating to,'' among other things, ''expiration dates of gift certificates, store gift cards, or general-use prepaid cards.'' [1] Regulation E provides that State law is inconsistent with the requirements of the EFTA and Regulation E if, among other things, the State law ''*requires or permits* a practice or act prohibited by the federal law.'' [2] If the State law is inconsistent, Federal law will preempt the State law only to the extent of the inconsistency.[3] Furthermore, Federal law will not preempt a State law if the State law affords consumers greater protection than the Federal law.[4] The EFTA and Regulation E provide that the Bureau shall make a preemption determination upon its own motion, or upon the request of any State, financial institution, or other interested party.[5]

The Bureau has received three requests for determinations as to whether provisions in the EFTA and Regulation E relating to gift card expiration dates preempt unclaimed property law provisions in Maine, Tennessee, and New Jersey relating to gift cards.[6] The New Jersey request has been rendered moot by a subsequent change in State law.[7] Therefore, the Bureau intends to issue a final determination in response only to the Maine and Tennessee requests after further considering the relevant provisions of Federal and State law as set forth below, as well as any comments received in response to this notice.[8]

II. The EFTA and Regulation E

Regulation E, which implements the EFTA, generally prohibits any person from selling or issuing a gift certificate, store gift card, or general-use prepaid card with an expiration date unless, among other things, the expiration date for the underlying funds is at least the later of (i) five years after the date the card was issued (or, in the case of a reloadable card, five years after the date that funds were last loaded onto the card) or (ii) the card's expiration date, if any.[9] In addition, under the EFTA and Regulation E, such a card generally may not expire unless the terms of expiration are disclosed on the card.[10]

III. States' Unclaimed Property Laws as Applied to Gift Cards

General. States' unclaimed property laws set forth specific periods of time after which custody of particular categories of unclaimed personal property transfers from the entity holding that property to the State for safekeeping. In some States, unclaimed gift cards are one such category of property. The Supreme Court has articulated rules of priority that determine which State is entitled to claim unclaimed intangible property. Such property is transferred presumptively to the State of the last known address of the property owner. If that State does not provide for the transfer of the category of property at issue, or if the property owner's address is unknown, then custody is transferred to the State of incorporation of the entity that is obligated to make payment on the property.[11] The Bureau understands that, when the address of a gift card owner (*i.e.,* the gift card recipient) is unknown, unclaimed gift card funds typically transfer to the State of incorporation of the entity that issued the gift card.

Maine's Unclaimed Property Statute. Section 1953 of Maine's Uniform Unclaimed Property Act (the Maine Act) provides that a gift obligation or stored-value card is presumed abandoned two years after December 31 of the year in which the obligation arose or the most recent transaction involving the obligation or stored-value card occurred, whichever is later, including the initial issuance and any subsequent addition of value to the obligation or stored-value card.[12] A business (*e.g.,* a gift card issuer) that has issued gift cards that Maine presumes to be abandoned as of the end of a calendar year must report

[1] 15 U.S.C. 1693q; 12 CFR 1005.12(b). In this notice, these three categories are referred to collectively as ''gift cards.''

[2] 12 CFR 1005.12(b) (emphasis added).

[3] 15 U.S.C. 1693q.

[4] *Id.*

[5] *Id.;* 12 CFR 1005.12(b).

[6] The requests relating to New Jersey's and Tennessee's laws came from payment card industry representatives. Maine's Office of the State Treasurer submitted a request relating to Maine's law to the Board of Governors of the Federal Reserve System. The Board did not respond to Maine's request before the Board's powers and duties relating to consumer financial protection functions transferred to the Bureau on July 21, 2011. The Bureau thus inherited responsibility for responding to Maine's pending request. The Maine, Tennessee, and New Jersey requests are available for public inspection and copying, subject to the Bureau's rules on disclosure of records and information. *See* 12 CFR Part 1070.

[7] The New Jersey request sought a determination as to whether Federal law preempted the application to gift cards of New Jersey's unclaimed property law, which deemed gift cards abandoned after two years of nonuse. On June 29, 2012, however, New Jersey amended its unclaimed property law to lengthen the period after which a gift card would be presumed abandoned from two years to five years. Given the intervening amendment to State law, the Bureau views the New Jersey request as moot and does not intend to issue a response.

[8] The Bureau issues this notice pursuant to the authority granted to it by section 922 of the EFTA, 15 U.S.C. 1693q; Regulation E, 12 CFR 1005.12(b); and sections 1022(a) and 1022(b)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5512(a), (b)(1).

[9] 15 U.S.C. 1693*l*–1(c)); 12 CFR 1005.20(e). Certain categories of cards—notably gift certificates that are issued in paper form only and reloadable cards that are not marketed or labeled as gift cards or gift certificates—are exempt from the expiration date and other gift card provisions in the EFTA. *See* 15 U.S.C. 1693l–1(a)(2)(D); 12 CFR 1005.20(b). The Bureau's preemption determination would not apply to any such categories of cards.

[10] 15 U.S.C. 1693l–1(c)); 12 CFR 1005.20(e).

[11] *See Delaware* v. *New York,* 507 U.S. 490 (1993).

[12] 33 M.R.S. § 1953 (2011). The terms ''gift obligation'' and ''stored value card'' are defined in detail in the Maine Act and may differ in some respects from the terms ''gift certificates, store gift cards, or general-use prepaid cards'' as used in the EFTA. *Id.* § 1952. Under the Maine Act, ''prefunded bank cards,'' which generally include cards issued by a financial organization and usable at multiple merchants, are deemed abandoned after three years of non-use. *Id.* § 1953.

and transfer the gift card funds to Maine by May 1 of the following year.[13] Maine thereafter assumes custody of and responsibility for the unclaimed gift cards, and the Maine Act states that the gift card issuer is relieved of all liability arising thereafter with respect to the property.[14] A business that has transferred unclaimed gift card funds to Maine may elect to make payment to the apparent owner of the card (*i.e.,* may honor the gift card) and may request reimbursement by filing an affidavit with the State.[15] The Bureau understands that, if an issuer were to decline to honor the gift card, the consumer could attempt to reclaim his or her property by submitting an unclaimed property claim form to the Office of the State Treasurer of Maine. To properly submit an effective claim, the consumer would need to determine that Maine is the appropriate State to contact, which might not be obvious if the consumer lives and uses the card in another State. Based on outreach, the Bureau understands that Maine collects approximately $2.6 million per year in funds relating to unclaimed gift cards.

Tennessee's Unclaimed Property Statute. Section 66–29–135 of Tennessee's Uniform Disposition of Unclaimed (Personal) Property Act (the Tennessee Act) provides that a ''gift certificate'' [16] issued in the ordinary course of an issuer's business is presumed abandoned if it remains unclaimed by the owner upon the earlier of: (1) The expiration date of the certificate; or (2) two years from the date the certificate was issued.[17] A gift certificate is exempt from the Tennessee Act if the issuer of the certificate does not impose a dormancy charge and when the gift certificate (1) conspicuously states that the gift certificate does not expire; (2) bears no expiration date; or (3) states that any expiration date is not applicable in Tennessee.[18] An issuer of gift certificates that Tennessee presumes to be abandoned as of the end of a calendar year must report and transfer the gift certificate funds to Tennessee by May 1 of the following year.[19] Tennessee thereafter assumes custody and responsibility for the unclaimed gift certificates, and the issuer is relieved of all liability arising thereafter with respect to the property.[20] A business that has transferred unclaimed gift certificate funds to Tennessee may elect to honor the gift certificate and may request reimbursement by filing a request with the State.[21] The Bureau understands that, if an issuer were to decline to honor the gift certificate, the consumer could attempt to reclaim the funds by submitting an unclaimed property claim form to the Tennessee Department of Treasury. As is true for Maine, to properly submit an effective claim, the consumer would need to determine that Tennessee is the appropriate State to contact, which might not be obvious if the consumer lives and uses the gift certificate in another State. The Bureau does not have precise data concerning the amount of money that Tennessee collects each year in funds relating to unclaimed gift certificates. Given the limited card types that appear to be subject to Tennessee's law, however, the Bureau believes that the amount is likely to be relatively small.

IV. Request for Comment

Pursuant to the EFTA, the Bureau intends to consider and address the requests received to determine whether the application of Maine's and Tennessee's unclaimed property statutes to gift cards is inconsistent with the EFTA and Regulation E. In making its determination, the Bureau will consider whether Maine's and Tennessee's statutes may afford consumers greater protection than Federal law. The Bureau invites interested persons to submit comment on all or any aspects of this notice.

Maine's and Tennessee's laws presume gift cards to be ''abandoned'' and release businesses from the obligation to honor the gift cards during a time period when, pursuant to Federal law, consumers should be able to use the cards. The Bureau seeks public comment on whether there is any inconsistency between these provisions of state law and the expiration date provisions of the EFTA and Regulation E and, if so, on the nature of the inconsistency. As a related matter, the Bureau solicits public comment on whether and how gift card issuers can comply with both Federal and State law, for example by honoring unclaimed cards and requesting reimbursement from Maine or Tennessee.

The Bureau further seeks comment on whether Maine's and Tennessee's unclaimed property statutes as applied to gift cards afford consumers greater protection than Federal law. For example, the Bureau notes that, once the funds corresponding to a consumer's unclaimed gift card transfer to Maine or Tennessee, those funds presumably are protected from the risk of loss in the event that an issuer later files for bankruptcy. Unclaimed gift cards that have transferred to Maine or Tennessee also should be protected from any inactivity fees that might otherwise be assessed on an unused card, to the extent permitted by Federal or State law.[22] Finally, a consumer would have an indefinite opportunity to attempt to reclaim his or her unclaimed gift card funds from the State and, if successful, might be entitled to receive cash from the State, rather than the right to obtain merchandise.

On the other hand, if unclaimed gift card funds were transferred to Maine or Tennessee after two years of non-use, and if issuers were not required to honor the card, then a consumer might

[13] *Id.* § 1958. Under Maine's law, only sixty percent of the gift obligation's or stored-value card's face value is reportable as unclaimed property. *Id.* § 1953. In addition, a gift card sold on or after December 31, 2011, is not presumed abandoned if it was among those sold by an issuer that sold no more than $250,000 in gift cards during the preceding calendar year. *Id.*

[14] *Id.* § 1961.

[15] *Id.*

[16] Pursuant to Tennessee's Consumer Protection Act, the term ''gift certificate'' excludes prepaid telephone calling cards and prepaid cards usable at multiple, unaffiliated merchants or at automated teller machines (*i.e.,* ''open-loop'' gift cards). Tenn. Code Ann. § 47–18–127(e) (2012). In this discussion of Tennessee's statute, ''gift certificate'' refers to the concept as used in Tennessee law. Aside from the exclusion for ''open-loop'' gift cards and prepaid telephone calling cards, the Bureau believes that ''gift certificate'' for purposes of Tennessee law generally includes gift cards and other similar electronic devices. However, the Tennessee definition of ''gift certificate'' may differ in some respects from that used in the EFTA.

[17] *Id.* § 66–29–135.

[18] *Id.*

[19] *Id.* § 66–29–113. The amount presumed abandoned is the price paid by the purchaser, except that for gift certificates issued after December 31, 1996, and redeemable in merchandise only, the amount presumed abandoned is sixty percent of the purchase price. *Id.* § 66–29–135. The Bureau notes that a Tennessee trial court held in 2001 that Tennessee law requires transfer only of the right to claim merchandise by using the gift card (i.e., not transfer of funds). *Service Merchandise Co.* v. *Adams,* No. 97–2782–III, 2001 WL 34384462 (Tenn. Ch. Ct. June 29, 2001). The statute nevertheless appears to require the transfer of funds.

[20] *Id.* § 66–29–116.

[21] *Id.*

[22] Pursuant to the EFTA and Regulation E, inactivity fees or other service charges generally may not be assessed on gift cards unless there has been no activity on the gift card during the 12-month period ending on the date on which the fee is imposed. 15 U.S.C. 1693*l*–1; 12 CFR 1005.20(d). State laws may protect unused gift cards from inactivity fees for longer periods or indefinitely. For example, Maine law provides that fees or charges may not be imposed on gift obligations or stored-value cards, except that the issuer may charge a transaction fee for the initial issuance and for each occurrence of adding value to an existing gift obligation or card. 33 M.R.S. § 1953. Under Tennessee law, inactivity fees or other service charges are prohibited for two years after a gift certificate is issued. Tenn. Code Ann. § 47–18–127(b). Based on industry outreach, the Bureau understands that inactivity fees are rare in today's market, particularly for closed-loop cards (*i.e.,* cards usable only at a particular merchant or group of merchants).

only be able to redeem his or her property by submitting an unclaimed property claim form to the State. At a minimum, a consumer first would need to determine that the card should still have been usable, and then would need to determine which State to contact to reclaim funds corresponding to the unclaimed gift card. As discussed above, when an issuer has no record of the gift card owner's name, unused funds for the card will transfer to the State of incorporation of the gift card issuer. Thus, for example, a consumer who purchases and uses in New York a gift card that was issued by a company incorporated in Maine or Tennessee may be required to contact Maine or Tennessee, rather than New York, to attempt to claim funds that have transferred to the State. It is not clear, however, how the consumer would know to do this. In addition, the consumer would be required to spend time and perhaps money completing and submitting any required claim form(s), as well as to wait perhaps several weeks or months to receive his or her property. Finally, the Bureau understands that Maine's and Tennessee's existing processes for claiming unclaimed property generally rely on property owners' names and addresses. It may be difficult for gift card owners to locate and successfully claim their property under those processes, particularly if gift card issuers do not know, and thus do not report to the State, the names of the consumers who own the unclaimed cards (*i.e.,* the gift card recipients).

The Bureau notes that at least one judicial decision has weighed the relative benefits to consumers of the EFTA and Regulation E and States' unclaimed property laws as applied to gift cards. In January 2012, the U.S. Court of Appeals for the Third Circuit upheld a decision by the U.S. District Court for the District of New Jersey that declined to preliminarily enjoin the application to gift cards of New Jersey's unclaimed property law, which at the time presumed gift cards abandoned after two years of non-use.[23] The District Court concluded, and the Third Circuit agreed, that the plaintiffs were unlikely to prove that Federal law preempted New Jersey's unclaimed gift card law. The Third Circuit identified certain benefits of New Jersey's law that, in the court's view, weighed in favor of a conclusion that New Jersey's law was more protective of consumers than the EFTA and Regulation E.[24] Specifically, once New Jersey received unclaimed gift card funds, it would have held them for consumers indefinitely (*i.e.,* not merely for the minimum five years required under Federal law). In addition, a consumer who submitted a successful claim for his or her funds would have received cash back from the State, as opposed to a card solely redeemable for goods or services.[25] The Bureau notes that the court reached its conclusion in the absence of any specific guidance or determination from the Board of Governors of the Federal Reserve System or from the Bureau.

As noted, the Bureau invites public comment on all or any aspects of this notice, including on the application of Maine's and Tennessee's unclaimed property laws to gift cards, on the nature of any inconsistency between those laws and the expiration date provisions of the EFTA and Regulation E, and on whether Maine's and Tennessee's laws afford consumers greater protection than Federal law. After the close of the comment period, the Bureau will analyze any comments received, conduct any further analysis that may be required, and will publish a notice of final action in the **Federal Register**.

Dated: August 16, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–20531 Filed 8–20–12; 8:45 am]

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[23] *See N.J. Retail Merchants Ass'n* v. *Sidamon-Eristoff,* 669 F.3d 374 (3d Cir. 2012), *reh'g denied* (3d Cir. Feb. 24, 2012).

[24] *Id.*

[25] *Id.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0855; Directorate Identifier 2011–NM–136–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The existing AD currently requires repetitive inspections to detect cracking of the lower corners of the door frame and cross beam of the forward cargo door, and corrective actions if necessary. The existing AD also requires eventual modification of the outboard radius of the lower corners of the door frame and reinforcement of the cross beam of the forward cargo door, which would constitute terminating action for the existing repetitive inspections. Since we issued that AD, we have received additional reports of fatigue cracking in the radius of the lower frames and in the lower number 5 cross beam of the forward cargo door. This proposed AD would revise the compliance times for the preventive modification; add certain inspections for cracks in the number 5 cross beam of the forward cargo door; and add inspections of the number 4 cross beam if cracks are found in the number 5 cross beam, and corrective actions if necessary. For certain airplanes, this proposed AD would also add a one-time inspection for airplanes previously modified or repaired, and a one-time inspection of the reinforcement angle for excessive shimming or fastener pull-up, and corrective actions if necessary. We are proposing this AD to prevent fatigue cracking of the lower corners of the door frame and number 5 cross beam of the forward cargo door, which could result in rapid depressurization of the airplane.

DATES: We must receive comments on this proposed AD by October 5, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6450; fax: (425) 917–6590; email: *alan.pohl@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–2012–0855; Directorate Identifier 2011–NM–136–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://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On March 31, 2000, we issued AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That AD requires repetitive inspections to detect cracking of the lower corners of the door frame and cross beam of the forward cargo door, and corrective actions, if necessary. That AD also requires eventual modification of the outboard radius of the lower corners of the door frame and reinforcement of the cross beam of the forward cargo door, which would constitute terminating action for the repetitive inspections. That AD resulted from reports indicating that fatigue cracks were detected in the lower corners of the door frame and cross beam of the forward cargo door. We issued that AD to prevent fatigue cracking of the lower corners of the door frame and cross beam of the forward cargo door, which could result in rapid depressurization of the airplane.

Actions Since AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000) Was Issued

Since we issued AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), we have received additional reports of fatigue cracking in the radius of the lower frames and in the Web of the number 5 lower cross beam of the forward cargo door. One report was of a rapid loss of cabin pressure during descent, as a result of a door crack. Other reports indicated improper nesting when installing the aft reinforcement angle during accomplishment of the modification specified in Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994; and Boeing Alert Service Bulletin 737–52A1100, Revision 3, dated July 20, 2000.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011; and Boeing Special Attention Service Bulletin 737–52–1149, dated December 11, 2003. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov*.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000). This proposed AD would also require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.'' Related investigative actions include inspecting the number 4 cross beam on the forward cargo door for cracking if cracking is found on the number 5 cross beam, a one-time high frequency eddy current inspection for cracking of the lower corner frame, and a one-time inspection of the reinforcement angle. Corrective actions include the following: Installing a preventive modification, replacing the frame and repairing any cracking, repairing or replacing the number 5 cross beam, and replacing the reinforcement angle.

Explanation of Changes Made to Existing Requirements

The compliance times required by AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), are specified in flight cycles on the airplane. However, the compliance times in the new actions specified in the revised service information are specified in door flight cycles, which are flight cycles accumulated on the forward cargo doors. These doors are interchangeable between airplanes and they are often interchanged. Since the unsafe condition stems from the total flight cycles accumulated on the door and not on the airplane itself, this proposed AD will specify door flight cycles for the new compliance times.

We have changed all references to a ''detailed visual inspection'' in the retained requirements of the existing AD to a ''detailed inspection'' in this proposed AD.

Boeing Commercial Airplanes has received an ODA. We have revised the retained requirements of the existing AD to delegate the authority to approve an alternative method of compliance for any repair required by this proposed AD to the Boeing Commercial Airplanes ODA rather than a Designated Engineering Representative (DER).

We have included Note 2 of the restated requirements of AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), in paragraph (h) of this proposed AD. Note 3 of the restated requirements of AD 2000–07–06 is no longer applicable and has been removed from this proposed AD. These changes do not add any additional burden on the public with regard to the restated requirements of the existing AD.

We have added Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, to paragraph (i)(2) of this AD as the source of service information for accomplishing the preventive modification and the reinforcement modification.

Differences Between the Proposed AD and the Service Information

Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

• In accordance with a method that we approve; or

• Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Changes to Existing AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000) Format

This proposed AD would retain all requirements of AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000). Since AD 2000–07–06 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2000–07–06, Amendment 39-11660 (65 FR 19302, April 11, 2000)	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (g)
paragraph (b)	paragraph (h)
paragraph (c)	paragraph (i)
paragraph (d)	paragraph (j)

Explanation of Change to Costs of Compliance

Since issuance of AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified labor rate.

Costs of Compliance

We estimate that this proposed AD affects 581 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections retained from AD 2000–07–06, Amendment 39-11660 (65 FR 19302, April 11, 2000).	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle.	$49,385 per inspection cycle.
Modification retained from AD 2000–07–06.	18 work-hours × $85 per hour = $1,530.	$1,865	$3,395	$1,972,495.
Inspections, new proposed action	9 work-hours × $85 per hour = $765.	$0	$765	$444,465.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Modification	84 work-hours × $85 per hour = $7,140	$12,395	$19,535

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

Authority for This Rulemaking

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

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

Regulatory Findings

We have 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 that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD)

2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), and adding the following new AD:

The Boeing Company: Docket No. FAA–2012–0855; Directorate Identifier 2011–NM–136–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by October 5, 2012.

(b) Affected ADs

This AD supersedes AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000).

(c) Applicability

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by additional reports of fatigue cracking in the radius of the lower frames and in the lower number 5 cross beam of the forward cargo door. We are issuing this AD to prevent fatigue cracking of the lower corners of the door frame and number 5 cross beam of the forward cargo door, which could result in rapid depressurization of the airplane.

(f) Compliance

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

(g) Retained High Frequency Eddy Current (HFEC) Initial/Repetitive Inspections

This paragraph restates the requirements of paragraph (a) of AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), with revised service information. Within 1 year or 4,500 flight cycles after May 16, 2000 (the effective date of AD 2000–07–06), whichever occurs later, perform an HFEC inspection to detect cracking of the lower corners (forward and aft) of the door frame of the forward cargo door, in accordance with Boeing 737 Nondestructive Test (NDT) Manual, D6–37239, Part 6, Section 51–00–00, Figure 4, dated August 5, 1997, or April 5, 2007, or Figure 23, dated August 5, 1997 or April 5, 2004, as applicable.

(1) If no cracking is detected, repeat the HFEC inspection thereafter at intervals not to exceed 4,500 flight cycles, until the requirements of paragraph (i) of this AD have been accomplished.

(2) If any cracking is detected during any inspection required by paragraph (g) of this AD, prior to further flight, accomplish the requirements of paragraphs (g)(2)(i) and (g)(2)(ii) of this AD, which constitute terminating action for the repetitive inspections required by paragraph (g)(1) of this AD.

(i) Accomplish the requirements of paragraph (g)(2)(i)(A) or (g)(2)(i)(B) of this AD, and install a cross beam repair and reinforcement modification of the cross beam, in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

(A) Repair the door frame of the forward cargo door in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make such findings. For a repair or modification method to be approved by the Manager, Seattle ACO, as required by this paragraph, and paragraphs (g)(2)(ii), (h)(2), (h)(3)(ii), and (i)(2) of this AD, the Manager's approval letter must specifically reference this AD.

(B) Replace the door frame of the forward cargo door with a new door frame, in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

(ii) Modify the repaired or replaced door frame of the forward cargo door, in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings.

Note 1 to paragraphs (g), (h), (i), and (j) of this AD: Accomplishment of Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994, does not supersede the requirements of AD 90–06–02, Amendment 39–6489 (55 FR 8372, March 7, 1990).

(h) Retained Initial Detailed Inspection and Repetitive Inspections

This paragraph restates the requirements of paragraph (b) of AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000). Within 1 year or 4,500 flight cycles after May 16, 2000 (the effective date of AD 2000–07–06), whichever occurs later, perform a detailed inspection to detect cracking of the cross beam (i.e., upper and lower chord and Web sections) of the forward cargo door, in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994. For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 4,500 flight cycles until the requirements of paragraph (i) of this AD have been accomplished.

(2) If any cracking is detected on the lower chord section of the cross beam during any inspection required by paragraph (h) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings.

(3) If any cracking is detected on any area excluding the lower chord section of the cross beam (i.e., upper chord and Web section) during any inspection required by paragraph (h) of this AD, prior to further flight, accomplish the requirements of paragraph (h)(3)(i) or (h)(3)(ii) of this AD, as applicable, which constitutes terminating action for the repetitive inspections required by paragraph (h)(1) of this AD.

(i) For airplanes with line numbers 1 through 1231: Install a cross beam repair and preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame, in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

(ii) For airplanes with line numbers 1232 and subsequent: Install a cross beam repair and preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame, in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings.

(i) Retained Terminating Action

This paragraph restates the requirements of paragraph (c) of AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), with revised service information. Within 4 years or 12,000 flight cycles after May 16, 2000 (the effective date of AD 2000–07–06), whichever occurs later: Install the preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame and the reinforcement modification of the cross beam of the forward cargo door, in accordance with paragraph (i)(1) or (i)(2) of this AD, as applicable. Accomplishment of paragraph (i)(1) or (i)(2) of this AD, as applicable, constitutes terminating action for the repetitive inspections required by paragraphs (g)(1) and (h)(1) of this AD.

(1) For airplanes with line numbers 1 through 1231: Accomplish the preventative modification and the reinforcement modification, in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

(2) For airplanes with line numbers 1232 and subsequent: Accomplish the preventative modification and the reinforcement modification, in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings; or in accordance with Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011. As of the effective date of this AD, use only Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated

February 14, 2011, to accomplish the modifications required by this paragraph.

(j) Retained Action for Airplanes on Which Modifications Were Accomplished Previously

This paragraph restates the requirements of paragraph (d) of AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000). For all airplanes on which modifications of the forward lower corner of the door frame and the cross beam of the forward cargo door were accomplished in accordance with Boeing Service Bulletin 737–52–1100, dated August 25, 1988, or Revision 1, dated July 20, 1989; or in accordance with the requirements of AD 90–06–02, Amendment 39–6489 (55 FR 8372, March 7, 1990): Within 4 years or 12,000 flight cycles after May 16, 2000 (the effective date of AD 2000–07–06), whichever occurs later, install the reinforcement modification of the aft corner of the door frame of the forward cargo door, in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994. Accomplishment of such modification constitutes terminating action for the repetitive inspections required by paragraphs (g)(1) and (h)(1) of this AD.

(k) New Inspections and Corrective Actions

Except as provided by paragraphs (m)(1) and (m)(2) of this AD: At the applicable time specified in paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, do the inspections required by paragraphs (k)(1) and (k)(2) of this AD, as applicable. Do all applicable related investigative and corrective actions before further flight, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011; except as required by paragraph (m)(3) of this AD. Accomplishment of the inspections required by paragraph (k) of this AD terminates the requirements of the repetitive inspections required by paragraphs (g)(1) and (h)(1) of this AD. If any cracking is found in the number 4 cross beam, before further flight, repair in accordance with Boeing Special Attention Service Bulletin 737–52–1149, dated December 11, 2003.

Note 2 to paragraph (k) of this AD: Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, refers to Boeing Special Attention Service Bulletin 737–52–1149, dated December 11, 2003, as an additional source of guidance for the inspection for cracks of the number 4 cross beam.

(1) For airplanes identified in Tables 1 and 2 of paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011: Do a one-time HFEC inspection of the applicable location for cracks, in accordance with the Work Instructions, Part I, of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011.

(2) For airplanes identified in Table 3 of paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011: Do a one-time general visual inspection of the reinforcement angle for excessive shimming or fastener pull-up, in accordance with the Work Instructions, Part III, of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011.

(l) No Supplemental Structural Inspections Required by This AD

(1) The supplemental structural inspections specified in Table 4 of paragraph 1.E., ''Compliance,'' and Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, are not required by this AD.

(2) The supplemental structural inspections specified in Table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, may be used in support of compliance with section 121.1109(c)(2) or 129.109(c)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(c)(2)). The corresponding actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, are not required by this AD.

(m) Exceptions to Certain Service Information

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, specifies a compliance time relative to the Revision 5 issue date of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Table 1, ''Condition'' column of Paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, specifies ''airplanes without either the repair or modification accomplished in accordance with previous releases of this service bulletin,'' the corresponding condition in this AD is for ''airplanes on which either a repair or modification was not accomplished before the effective date of this AD.''

(3) Where Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, specifies to contact Boeing for certain actions: Before further flight, do the repair using a method approved in accordance with the procedures specified in paragraph (n)(1) of this AD.

(n) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously in accordance with AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), are approved as AMOCs for the corresponding requirements of this AD.

(o) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone (425) 917–6450; fax (425) 917–6590; email *alan.pohl@faa.gov.*

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

Issued in Renton, Washington, on August 13, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–20470 Filed 8–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0856; Directorate Identifier 2012–NM–093–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; Model 767–200, –300, –300F, and –400ER series airplanes; and Model 777–200, –200LR, –300, and –300ER series airplanes. This proposed

AD was prompted by reports of burned Boeing Material Specification (BMS) 8–39 urethane foam, and a report from the airplane manufacturer that airplanes were assembled with seals throughout various areas of the airplane (including flight deck and cargo compartments) made of BMS 8–39 urethane foam, a material with fire-retardant properties that deteriorate with age. This proposed AD would require replacing seals made of BMS 8–39 urethane foam in certain areas of the airplane. We are proposing this AD to prevent the failure of urethane seals to maintain sufficient Halon concentrations in the cargo compartments to extinguish or contain fire or smoke, and to prevent penetration of fire or smoke in areas of the airplane that are difficult to access for fire and smoke detection or suppression.

DATES: We must receive comments on this proposed AD by October 5, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, 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.
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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 (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Eric M. Brown, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6476; fax: 425–917–6590; email: *Eric.M.Brown@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0856; Directorate Identifier 2012–NM–093–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://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of burned BMS 8–39 urethane foam insulation on two Model 767–200 series airplanes. The airplane manufacturer has also notified us that certain Model 747, 767, and 777 airplanes were assembled with seals throughout various areas of the airplane (including flight deck and cargo compartments) made of BMS 8–39 urethane foam. The fire retardants in BMS 8–39 urethane foam are mixed into, but are not chemically connected with, the remaining components of the foam. The fire-retardant properties of BMS 8–39 urethane foam deteriorate with age (5 to 10 years). This, along with dust, dirt, and other carbon particulate contamination of the urethane foam, adds an available fuel source for a potential fire. Once ignited, the deteriorated foam emits noxious smoke, does not self-extinguish, and drips droplets of liquefied urethane, which can further propagate a fire. Deteriorated BMS 8–39 urethane foam seals in a cargo compartment also compromise the Halon retention and smoke/fire-blocking capabilities of the cargo compartment. These conditions, if not corrected, could result in failure of urethane seals to maintain sufficient Halon concentrations in the cargo compartments to extinguish or contain fire or smoke, and could result in penetration of fire or smoke in areas of the airplane that are difficult to access for fire and smoke detection or suppression.

Other Relevant Rulemaking

We issued the following ADs to require reworking certain air distribution ducts in the environmental control system (ECS) wrapped with BMS 8–39 or Aeronautical Materials Specifications (AMS) 3570 urethane foam insulation. These ADs resulted from reports from the airplane manufacturer that airplanes were assembled with duct assemblies in the ECS wrapped with BMS 8–39 urethane foam insulation, a material with fire-retardant properties that deteriorate with age, and reports of duct assemblies in the ECS with burned BMS 8–39 urethane foam insulation. We issued these ADs to prevent a potential electrical arc from igniting the BMS 8–39 urethane foam insulation on the duct assemblies of the ECS, which could propagate a small fire and lead to a larger fire that might spread throughout the airplane through the ECS.

- AD 2008–02–16, Amendment 39–15346 (73 FR 4061, January 24, 2008), applicable to certain Model 767–200 and 767–300 series airplanes.
- AD 2010–14–01, Amendment 39–16344 (75 FR 38007, July 1, 2010), applicable to certain Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400F, 747SR, and 747SP series airplanes.
- AD 2012–02–09, Amendment 39–16932 (77 FR 5996, February 7, 2012), for certain Model 737–100, –200, –200C, and –300 series airplanes.

Relevant Service Information

We reviewed the following Boeing service bulletins:

- For Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes: Boeing Special Attention Service Bulletin 747–25–3381, Revision 1, dated May 17, 2012. This service bulletin describes procedures for replacing BMS 8–39 urethane foam seals with either BMS 8–371 insulation foam or BMS 1–68 silicone foam rubber seals. (The required actions depend on requirements for use and location of the BMS 8–39 urethane foam in the airplane.) Procedures for the replacement include, for some airplanes, doing a general visual

inspection of the airplane sidewalls for air baffles, and of the BMS 8–39 urethane foam for penetrations (*e.g.,* wire penetrations). The replacement is to be done in the following areas of the airplane (depending on airplane configuration):

- Main deck system tube/wire foam seals (left/right sidewalls)
- Main deck foam air seal (left/right sidewalls)
- Main deck air baffle foam (left/right sidewalls)
- Main deck ceiling panel foam strip
- Forward and aft cargo system tube/wire foam seal
- Flight deck overheard electrical equipment panel/structure and overhead drip-shield foam
- E1/E2 rack wire integration unit cover assemblies
- For Model 767–200, –300, –300F, and –400ER series airplanes: Boeing Special Attention Service Bulletin 767–25–0381, dated August 19, 2010. This service bulletin describes procedures for doing a general visual inspection for BMS 8–39 urethane foam for certain airplanes, covering the BMS 8–39 foam with cargo liner joint sealing tape in certain areas, replacing certain BMS 8–39 foam pads with Nomex felt in certain areas, and replacing BMS 8–39 urethane foam seals with either BMS 8–371 insulation foam or BMS 1–68 silicone foam rubber seals. (The required actions depend on requirements for use and location of the BMS 8–39 urethane foam in the airplane.) The actions are to be done in the following areas of the airplane (depending on airplane configuration):
  - Forward and aft cargo compartments
  - Flight deck
  - Crown area (foam pad to be replaced with Nomex felt)
  - Over wing escape hatch (corner seals)
- For Model 777–200, –200LR, –300, and –300ER series airplanes: Boeing Special Attention Service Bulletin 777–25–0362, dated August 19, 2010. This service bulletin describes procedures for replacing BMS 8–39 urethane foam seals with BMS 1–68 silicone foam rubber seals in the forward and aft cargo compartments of the airplane.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 694 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement for Model 747 airplanes, depending on airplane configuration (165 airplanes).	Up to 432 work-hours × $85 per hour = $36,720.	Up to $6,162	Up to $42,882	Up to $7,075,530.
Replacement for Model 767 airplanes, depending on airplane configuration (399 airplanes).	Up to 72 work-hours × $85 per hour = $6,120.	Up to $3,967	Up to $10,087	Up to $4,024,713.
Replacement for Model 777 airplanes (130 airplanes).	16 work-hours × $85 per hour = $1,360.	$1,038	$2,398	$311,740.

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),

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0856; Directorate Identifier 2012–NM–093–AD.

(a) Comments Due Date

We must receive comments by October 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, as identified in Boeing Special Attention Service Bulletin 747–25–3381, Revision 1, dated May 17, 2012.

(2) Model 767–200, –300, –300F, and –400ER series airplanes, as identified in Boeing Special Attention Service Bulletin 767–25–0381, dated August 19, 2010.

(3) Model 777–200, –200LR, –300, and –300ER series airplanes, as identified in Boeing Special Attention Service Bulletin 777–25–0362, dated August 19, 2010.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by reports of burned Boeing Material Specification (BMS) 8–39 urethane foam, and a report from the airplane manufacturer that airplanes were assembled with seals throughout various areas of the airplane (including flight deck and cargo compartments) made of BMS 8–39 urethane foam, a material with fire-retardant properties that deteriorate with age. We are issuing this AD to prevent the failure of urethane seals to maintain sufficient Halon concentrations in the cargo compartments to extinguish or contain fire or smoke, and to prevent penetration of fire or smoke in areas of the airplane that are difficult to access for fire and smoke detection or suppression.

(f) Compliance

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

(g) BMS 8–39 Urethane Foam Seal Replacements

Within 72 months after the effective date of this AD, do the actions specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, as applicable.

(1) For Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes: Replace the BMS 8–39 urethane foam seals (including doing a general visual inspection of the airplane sidewalls for air baffles, and of the BMS 8–39 urethane foam for penetrations (e.g., wire penetrations)) with BMS 8–371 insulation foam or BMS 1–68 silicone foam rubber seals, as applicable, in accordance with the Accomplishment Instructions and Appendix A, as applicable, of Boeing Special Attention Service Bulletin 747–25–3381, Revision 1, dated May 17, 2012.

(2) For Model 767–200, –300, –300F, and –400ER series airplanes: Perform a general visual inspection for the presence of BMS 8–39 urethane foam, cover the BMS 8–39 foam with cargo liner joint sealing tape in certain areas, replace certain BMS 8–39 foam pads with Nomex felt in certain areas, and replace BMS 8–39 urethane foam seals with BMS 8–371 insulation foam or BMS 1–68 silicone foam rubber seals, as applicable, in accordance with the Accomplishment Instructions and Appendix A, as applicable, of Boeing Special Attention Service Bulletin 767–25–0381, dated August 19, 2010.

(3) For Model 777–200, –200LR, –300, and –300ER series airplanes: Replace BMS 8–39 urethane foam seals with BMS 1–68 silicone foam rubber seals in the forward and aft cargo compartments of the airplane, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0362, dated August 19, 2010.

(h) Credit for Previous Actions

For Groups 4 and 5 airplanes, as identified in Boeing Special Attention Service Bulletin 747–25–3381, Revision 1, dated May 17, 2012: This paragraph provides credit for the actions required by paragraph (g)(1) of this AD, if those actions were done before the effective date of this AD using Boeing Special Attention Service Bulletin 747–25–3381, dated August 19, 2010.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a BMS 8–39 urethane foam seal on any airplane.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

(1) For more information about this AD, contact Eric M. Brown, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6476; fax: 425–917–6590; email: *Eric.M.Brown@faa.gov*.

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

Issued in Renton, Washington, on August 9, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–20473 Filed 8–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0857; Directorate Identifier 2011–NM–244–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD was prompted by a report of an approximate 8-inch crack found in the fuselage skin under the aft drain mast. This proposed AD would require a detailed inspection for cracking and corrosion of the channel and fillers adjacent to the drain mast bolts, an inspection to determine the location of the bonding strap, a measurement of the washers under the drain mast bolts, and related investigative actions and repair if necessary. We are proposing this AD to detect and correct cracking in the fuselage skin and internal support structure, which could result in uncontrolled decompression of the airplane.

DATES: We must receive comments on this proposed AD by October 5, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0857; Directorate Identifier 2011–NM–244–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://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received a report of an aft drain mast found loose on a Model 737–400 series airplane with approximately 30,500 total flight cycles. Further investigation revealed the fuselage skin and surrounding back-up structure were cracked. An 8-inch crack common to the fuselage skin was hidden under the drain mast. The crack was likely caused by incorrect installation of the drain mast. A drain mast that is not installed correctly can cause cracks in the fuselage skin and the internal support structure. The skin cracks cannot be seen because they are hidden by the drain mast. This condition, if not corrected, could result in uncontrolled decompression of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011.

For airplanes identified as Group 1 in Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011, this service bulletin describes procedures for doing a detailed inspection for cracking and corrosion of the channel and fillers adjacent to the drain mast bolts, an inspection to determine the location of the bonding strap, a measurement of the washers under the drain mast bolts, and related investigative actions and repair if necessary. Related investigative actions include removing the drain mast and doing a high frequency eddy current (HFEC) and detailed inspection for cracking and corrosion of the skin, channel, and fillers. This service bulletin also specifies contacting Boeing for repair instructions and doing the repair.

For airplanes identified as Group 2 in Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011, this service bulletin specifies contacting Boeing for inspection and repair instructions and doing the actions.

The compliance time for the inspection is within 120 days, and before further flight for the repair.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011, specifies to contact the manufacturer for instructions on how to inspect and repair certain conditions, but this proposed AD would require that those actions be accomplished in one of the following ways:

• In accordance with a method that we approve; or

• Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 612 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspection, bonding strap inspection, washer measurement.	4 work-hours × $85 per hour = $340	$0	$340	$208,080

We estimate the following costs to do certain necessary conditional actions that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Drain mast removal, HFEC and detailed inspections, and drain mast installation.	5 work-hours × $85 per hour = $425	$0	$425

We have received no definitive data that would enable us to provide a cost estimate for the repair specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0857; Directorate Identifier 2011–NM–244–AD.

(a) Comments Due Date

We must receive comments by October 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of an approximate 8-inch crack found in the fuselage skin under the aft drain mast. We are issuing this AD to detect and correct cracking in the fuselage skin and internal support structure, which could result in uncontrolled decompression of the airplane.

(f) Compliance

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

(g) Inspection and Repair

(1) For airplanes identified as Group 1 airplanes in Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011: At the times specified in paragraph 1.E. ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011, do the actions specified in paragraphs (g)(1)(i), (g)(1)(ii), and (g)(1)(iii) of this AD, and do all related investigative actions and repair, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011, except as required by paragraph (h) of this AD. Related investigative actions and repairs must be done before further flight. If the drain mast is found to be installed correctly, no further action is required by this paragraph.

(i) Do a detailed inspection for cracking and signs of corrosion of the channel and the fillers adjacent to the drain mast bolts.

(ii) Inspect the bonding strap for the correct location.

(iii) Measure the diameter and thickness of the washers under the drain mast bolts.

(2) For airplanes identified as Group 2 airplanes in Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011: Within 120 days after the effective date of this AD, inspect and repair, as required, using a method approved in accordance with the procedures specified in paragraph (i) of this AD. Repairs must be done before further flight.

(h) Exception

(1) Where Paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011, specifies a compliance time after the original issue date of Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) For airplanes identified as Group 1 airplanes in Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011: If any cracking or sign of corrosion is found during any inspection required by this AD, and Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011, specifies to contact Boeing for appropriate action, before further flight, repair the crack or sign of corrosion using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager

of the local flight standards district office/certificate holding district office.

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

(j) Related Information

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

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

Issued in Renton, Washington, on August 8, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–20476 Filed 8–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0384; Airspace Docket No. 12–ANM–9]

Proposed Amendment of Class D and Class E Airspace; Lewiston, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is issuing a SNPRM for the notice of proposed rulemaking (NPRM) of June 4, 2012, in order to elicit comments addressing increasing further the controlled Class E airspace area at Lewiston-Nez Perce County Airport, Lewiston, ID. The NPRM proposed a modification of Class D airspace, and Class E airspace extending upward from 700 feet above the surface and 1,200 feet above the surface, and an adjustment to the geographic coordinates. This SNPRM would further enlarge the Class E airspace 1,200 feet above the surface area to enhance safety in the Lewiston-Nez Pearce County Airport, Lewiston, ID area.

DATES: Comments must be received on or before October 5, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0384; Airspace Docket No. 12–ANM–9, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On June 4, 2012, the FAA published a NPRM to modify Class D airspace, and Class E airspace extending upward from 700 feet above the surface at Lewiston-Nez Perce County Airport, Lewiston, ID (77 FR 32921). Also the geographic coordinates of the airport and navigation aids would be adjusted in the respective Class D and Class E airspace areas. The comment period closed July 19, 2012. The FAA received one comment from the National Business Aviation Association (NBAA).

The NBAA recommended making the Class E airspace area extending upward from 1,200 feet above the surface larger by lowering some of the adjacent Class E airspace, which begins from between 10,000 Mean Sea Level (MSL) and 14,500 MSL, for aircraft safety. The FAA found merit in this comment, and, therefore, proposes the additional Class E airspace area, extending upward from 1,200 feet above the surface, be made larger. The FAA seeks comments on this SNPRM.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0384 and Airspace Docket No. 12–ANM–9) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0384 and Airspace Docket No. 12–ANM–9''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Supplemental Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by further increasing the Class E airspace area extending upward from 1,200 feet above the surface at Lewiston-Nez Perce County Airport, Lewiston, ID, to accommodate aircraft using RNAV (GPS) standard instrument approach procedures at the airport. As stated in the NPRM, the geographic coordinates of the airport, the Nez Perce VOR/DME, and the Lewiston-Nez Perce ILS Localizer navigation aids, would be updated to coincide with the FAA's aeronautical database for the respective Class D airspace and Class E airspace areas. This action would enhance the safety and management of IFR operations at the airport.

Class D and E airspace designations are published in paragraphs 5000, 6002, 6004 and 6005, respectively, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Lewiston-Nez Perce County Airport, Lewiston, ID.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM ID D Lewiston, ID [Modified]

Lewiston-Nez Perce County Airport, ID
(Lat. 46°22′28″ N., long. 117°00′55″ W.)

That airspace extending upward from the surface to and including 3,900 feet MSL within a 4.1-mile radius of the Lewiston-Nez Perce County Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM ID E2 Lewiston, ID [Modified]

Lewiston-Nez Perce County Airport, ID
(Lat. 46°22′28″ N., long. 117°00′55″ W.)

Within a 4.1-mile radius of the Lewiston-Nez Perce County Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Area.

* * * * *

ANM ID E4 Lewiston, ID [Modified]

Lewiston-Nez Perce County Airport, ID
(Lat. 46°22′28″ N., long. 117°00′55″ W.)
Nez Perce VOR/DME
(Lat. 46°22′54″ N., long. 116°52′10″ W.)
Lewiston-Nez Perce ILS Localizer
(Lat. 46°22′27″ N., long. 117°01′54″ W.)

That airspace extending upward from the surface within 2.7 miles each side of the Lewiston-Nez Perce ILS localizer course extending from the 4.1-mile radius of the airport to 14 miles east of the airport and within 3.5 miles each side of the Nez Perce VOR/DME 266° radial extending from the 4.1-mile radius of the airport to 13.1 miles west of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM ID E5 Lewiston, ID [Modified]

Lewiston-Nez Perce County Airport, ID
(Lat. 46°22′28″ N., long. 117°00′55″ W.)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 46°33′00″ N., long. 117°38′00″ W.; to lat. 46°31′30″ N., long 117°14′00″ W.; to lat. 46°40′00″ N., long. 116°48′00″ W.; to lat. 46°26′00″ N., long. 116°26′00″ W.; to lat. 46°13′00″ N., long. 116°30′00″ W.; to lat. 46°14′00″ N., long. 116°35′00″ W.; to lat. 46°06′00″ N., long. 116°47′00″ W.; to lat. 46°17′00″ N., long. 116°49′00″ W.; to lat. 46°18′00″ N., long 117°00′00″ W.; to lat. 46°17′30″ N., long. 117°22′00″ W.; to lat. 46°10′30″ N., long. 117°26′30″ W.; to lat. 46°12′00″ N., long. 117°36′00″ W.; thence to the point of origin; that airspace extending upward from 1,200 feet above the surface within a 62-mile radius of the Lewiston-Nez Perce County Airport, and within 24 miles each side of the 056° bearing of the airport, extending from the 62-mile radius to 92 miles northeast of the airport.

Issued in Seattle, Washington, on August 14, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–20536 Filed 8–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0648; Airspace Docket No. 12–ANM–19]

Proposed Amendment of Class E Airspace; Pullman, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Pullman/Moscow Regional Airport, Pullman, WA. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Pullman/Moscow Regional Airport, Pullman, WA. Also, the Pullman navigation aid would be removed from the airspace designation. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before October 5, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0648; Airspace Docket No. 12–ANM–19, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0648 and Airspace Docket No. 12–ANM–19) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0648 and Airspace Docket No. 12–ANM–19''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E surface airspace and Class E airspace extending upward from 700 feet above the surface at Pullman/Moscow Regional Airport, Pullman, WA. Controlled airspace is necessary to accommodate aircraft using the RNAV (GPS) standard instrument approach procedures at Pullman/Moscow Regional Airport, Pullman, WA. This action would enhance the safety and management of aircraft operations at the airport. Also, for clarity, the Pullman VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME) would be removed from the regulatory text.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Pullman/Moscow Regional Airport, Pullman, WA.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM WA E2 Pullman, WA [Modified]

Pullman/Moscow Regional Airport, WA
(Lat. 46°44′38″ N., long. 117°06′35″ W.)

Within a 4-mile radius of Pullman/Moscow Regional Airport, and within 1.7 miles each side of the Pullman/Moscow Regional Airport 046° bearing extending from the 4-mile radius to 8 miles northeast of the airport, and within 1.7 miles each side of the Pullman/Moscow Regional Airport 227° bearing extending from the 4-mile radius to 6 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM WA E5 Pullman, WA [Modified]

Pullman/Moscow Regional Airport, WA
(Lat. 46°44′38″ N., long. 117°06′35″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Pullman/Moscow Regional Airport, and within 1.7 miles each side of the Pullman/Moscow Regional Airport 229° bearing extending from the 10-mile radius to 13 miles southwest of the airport, and that airspace bounded by a line beginning at the intersection of the 10-mile radius of the airport and the Pullman/Moscow Regional Airport 307° bearing to the intersection of the of the 23-mile radius of the airport and the Pullman/Moscow Regional Airport 328° bearing extending clockwise within a 23-mile radius of the Pullman/Moscow Regional Airport; thence to the intersection of the 23-mile radius of the airport and the Pullman/Moscow Regional Airport 064° bearing of the airport to the intersection of the 10-mile radius of the airport and the Pullman/Moscow Regional Airport 066° bearing of the airport; thence to the point of origin. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 46°46′00″ N., long. 117°51′00″ W.; to lat. 47°06′00″ N., long. 117°29′00″ W.; to lat. 47°10′00″ N., long. 117°13′00″ W.; to lat. 47°07′00″ N., long. 116°50′00″ W.; to lat. 46°57′00″ N., long. 116°28′00″ W.; to lat. 46°38′00″ N., long. 116°41′00″ W.; to lat. 46°31′00″ N., long. 116°23′00″ W., to lat. 46°12′00″ N., long. 116°25′00″ W.; to lat. 46°19′00″ N., long. 116°57′00″ W.; to lat. 46°24′00″ N., long. 117°30′00″ W.; thence to the point of origin.

Issued in Seattle, Washington, on August 14, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–20543 Filed 8–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 97, 121, 125, 129, and 135

[Docket No. FAA–2011–1082]

Proposed Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN); Disposition of Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; disposition of comments.

SUMMARY: On December 15, 2011, the FAA published a **Federal Register** Notice (76 FR 77939) requesting comments on the FAA's plans for providing PBN services, and particularly the transition from the current Very High Frequency Omnidirectional Ranges (VOR) and other legacy navigation aids (NAVAIDS) to Area Navigation (RNAV)-based airspace and procedures. This action responds to the public comments the FAA received.

ADDRESSES: You may review the public docket for this notice (Docket No. FAA–2011–1082) at the Docket Management Facility at DOT Headquarters in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the public docket on the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Joyner, AJM–324, Program Management Organization, Navigation Program Engineering, Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 20591: telephone 202–493–5721.

SUPPLEMENTARY INFORMATION:

Summary of the December 15, 2011 FRN

The FAA sought comments on the proposed transition of the U.S. National Airspace System (NAS) navigation infrastructure to enable PBN as part of the NextGen. The FAA plans to transition from defining airways, routes and procedures using VOR and other legacy NAVAIDs, to a NAS based on RNAV everywhere and Required Navigation Performance (RNP) where beneficial. RNAV and RNP capabilities will primarily be enabled by the Global Positioning System (GPS) and the Wide Area Augmentation System (WAAS). The FAA plans to retain an optimized network of Distance Measuring Equipment (DME) facilities and a Minimum Operational Network (MON) of VOR facilities to ensure safety and support continued operations in high and low altitude en route airspace over the Conterminous United States (CONUS) and in terminal airspace at the Core 30 airports. The FAA is also conducting research on non-GPS based Alternate Positioning, Navigation and Timing (APNT) solutions that would enable further reduction of VORs below that of the MON.

In addition, the FAA plans to satisfy any new requirements for Category I (CAT I) instrument landing operations with WAAS Localizer Performance with Vertical guidance (LPV) procedures. A network of existing Instrument Landing Systems (ILSs) will be sustained to provide alternative approach and landing capabilities to support continued recovery and dispatch of aircraft during GPS outages.

This transition is consistent with the FAA's NextGen Implementation Plan (NGIP), NAS Enterprise Architecture (NASEA), and other documentation. More information is available on the

FAA's NextGen Web site at *http://www.faa.gov/nextgen* and the NASEA Web site at *https://nasea.faa.gov*.

Discussion of Comments Received

Summary

The FAA received 330 comments on the FRN. Commenters include aircraft manufacturers, airline operators, individuals, and associations representing users, airports and several federal, state and local government organizations. Most comments were supportive of the evolution of the NAS to an RNAV based system, but a significant number of commenters were concerned about reliance on GPS and WAAS related to possible impacts of interference or disruption, as well as the requirements and costs of avionics. A number of commenters were concerned about loss of approach services at specific airports in the event of discontinuation of service from specific VOR facilities. A substantial number of the comments (185) received were from individuals concerned about noise and environmental impact in the New York metropolitan area. Some reflected concerns about aircraft emissions and flight paths used by helicopters. These comments have been forwarded to the FAA Eastern Region for action.

Discussion

The FAA has reviewed all the comments received in response to the FRN and plans to proceed with the strategy as outlined in the FRN. The FAA is developing an initial VOR MON Plan, which will be publicly available when it is sufficiently matured. Development of this Plan will harmonize with development of a national Concept of Operations (CONOPS) supporting navigation and positioning in the NAS as it evolves from conventional navigation to PBN. When completed, this CONOPS will also be publicly available.

As part of the coordination process, the FAA plans to develop a schedule showing the requisite activities associated with the discontinuance of VOR services. These activities will include timely notification for individual facilities and airspace and procedure redesign.

Comment #1: Several commenters (International Air Traffic Association (IATA), Boeing Commercial Airplanes, National Association of State Aviation Officials (NASAO), Aircraft Owners and Pilots Association (AOPA), Department of Defense (DoD), and Airlines For America (A4A)) expressed interest in being included in the working group that the FRN indicated would be formed to complete the details of VOR discontinuance. Some airlines commented that they would like to be consulted on the policy.

FAA Response: The FAA will convene a working group that will engage aviation industry stakeholders and other members of the public for input once the Program has reached a sufficient level of maturity conducive to working group.

Comment #2: NASAO commented that planning the transition to NextGen PBN well in advance would be beneficial to the FAA and the state government aviation agencies.

FAA Response: The FAA's VOR MON plan is proceeding to support transition to NextGen PBN in accordance with the NASEA. The NGIP, FRN and NASEA, all publicly available via FAA Web sites, are integral to the transition of the NAS to PBN operations.

Comment #3: The Nebraska Department of Aviation (DoA) recommended that VORs remain available as a viable means for air navigation while the services to support NextGen PBN be provided for users that can obtain benefits from them during a transition.

FAA Response: The VOR MON will remain in place during the PBN transition.

Comment #4: Nebraska state-owned VORs, similar to the FAA inventory of Second Generation VORs, are maintained by the State, who reports there have been no problems with support cost or availability of parts.

FAA Response: VOR facilities not owned or operated by the FAA are not being considered for discontinuance.

Comment #5: Operators that fly outside the United States desired clarification on the GNSS reference to be used.

FAA Response: The FRN used the terms GPS and WAAS, the specific U.S. implementations of the GNSS and Space Based Augmentation System (SBAS) described in ICAO Annex 10. Other countries have, or are building systems that implement these standards, such as Europe's GNSS (Galileo) and SBAS (European Geostationary Navigation Overlay Service (EGNOS)). Since the U.S. does not make regulatory determinations on navigation systems allowed in other countries, the U.S. cannot authorize use of GPS in other countries. The FAA is responsible for determining which services are adequate for operations in the U.S. NAS, and has, to date, only approved the use of the U.S. GPS and WAAS, and Russia's Globalnaya Navigatsionnaya Sputnikovaya Sistema (GLONASS) on a supplemental basis. The U.S. is working with other GNSS providers to assure that their signals may be used to improve performance in the U.S. when those signals become available. Plans for navigation services will continue to use specific references (e.g., GPS and WAAS) and policies will be updated as additional constellations are approved for use in the U.S. The ability of avionics to use different GNSS constellations and services depends both on the authorized equipment available for specific aircraft and the type of systems the operators decided with which to equip their aircrafts. It also depends on what avionics manufacturers decide to develop. FAA's plans for navigation services will continue to use the ''GPS'' and ''WAAS'' terms so that it is clear that the U.S. is referring to U.S. systems/services for the U.S. NAS. Text describing this reasoning will be included in future documents to help ensure clarity.

Comment #6: Some users stated that they either will not equip with GPS avionics or will not be flying in airspace that requires ADS–B. The Nebraska DoA stated that many pilots and users do not plan to equip aircraft with GPS and that instructors will still require students to learn VOR navigation.

FAA Response: Pilots may continue to use VORs that remain in the MON or fly under Visual Flight Rules (VFR) in non-ADS–B airspace. Instructors will still teach VOR navigation.

Comment #7: Operators and some aircraft and equipment manufacturers stated that they did not intend to equip with WAAS because (1) WAAS service is not provided in many parts of the world outside the United States, and (2) many air carrier aircraft are equipped with avionics that allow at least RNAV, if not some level of RNP, and they do not believe WAAS provides benefits commensurate with the added complexity and cost involved with equipage.

FAA Response: WAAS avionics (Technical Standard Order (TSO)-C145/146) with suitable other avionics, such as Flight Management Systems (FMS) support LPV and Lateral Navigation/Vertical Navigation (LNAV/VNAV) terminal procedures and lower minima instrument approaches that are not available to users equipped with non-augmented GPS (TSO–C129 and C196) avionics. Pilots may continue to use non-augmented GPS or other RNAV capabilities as described in FAA advisory circulars AC 90–100, AC 90–101, AC 90–105, AC 90–107 and other directives.

Comment #8: Federal Express stated that the FRN described implementation of PBN based on GPS and WAAS

backed up by a minimum network of VORs and DMEs, which it stated would require equipage of aircraft with avionics that is not offered by major airline airframe manufacturers.

FAA Response: While the FAA intends to reduce the VOR infrastructure to a MON, it will maintain an optimized DME network to support RNAV operations throughout the NAS. In the NextGen timeframe, an optimized DME network could be used to support APNT.

Comment #9: The DoD was concerned about discontinuation of service from all types of ground based navigation aids. The concept and planning described in the FRN does not contemplate discontinuation of service from all ground based navigation aids. It describes the considerations for determining the discontinuation of service by VOR ground based navigation aids. Where the VOR functionality is collocated with DME or DME and UHF azimuth equipment (which is the Tactical Air Navigation or TACAN), the FRN only addresses the VOR service and not these other services.

FAA Response: The MON described in the FRN is a network of VORs only, and does not include TACAN. Retention of DMEs and the DME function provided via TACAN is desirable because of the large proportion of the air carrier fleet that uses DME/DME or DME/DME/Inertial Reference Unit (IRU) for RNAV. Any national discontinuation of DME or TACAN service is separate from the VOR MON, not a part of this activity, and not contemplated in the near future.

Comment #10: Some organizations (IATA, United Air Lines, FedEx, Honeywell, Thales, and A4A) expressed concern about the future of ILSs and other vertically guided approaches, in particular at 14 CFR Part 139 airports serving air carriers.

FAA Response: The FAA has no current plans to remove ILSs, but most new vertically guided approach requirements using Facilities and Equipment funding will be fulfilled with LPV approaches. ILS can continue to be approved under Airport Improvement Program (AIP) funding. While LPVs will receive increasing emphasis for projects funded under the AIP, the needs of users for ILS equipment will be considered in the determination of the types of approach navigation installed under the AIP. It is envisioned that many air carrier runways at major airports will continue to be supported by ILS (in addition to LPV). Additionally, the FAA plans to continue to develop LNAV/VNAV approaches, which can be flown by GPS-equipped aircraft with barometric vertical navigation and by WAAS-equipped aircraft to qualified runways used by air carrier aircraft. RNP approaches will be developed where beneficial, and GLS approaches will be developed as appropriate at airports with access to GBAS equipment.

APNT

The FAA's NextGen Alternate PNT (APNT) program ensures that alternate PNT services will be available to support flight operations, maintain safety, minimize economic impacts from GPS outages within the NAS and support air transportation's timing needs. APNT will be an alternative for all users. Avionics equipage is a major consideration. APNT requirements will be met with the optimum use of existing avionics. The current plan is for APNT equipage to be optional.

Comment #11: The airline industry voiced support for an increase in DME to provide additional coverage for DME–DME navigation provided by modern Flight Management Systems (FMS).

FAA Response: The FAA concurs. Current planning is for implementation of the new DME sites beginning in 2014. The FAA goal is to have complete DME–DME coverage enroute at FL 180 and above throughout CONUS and in the terminal area of large airports in the CONUS.

Comment #12: The airline industry was concerned about a statement in the FRN that seemed to indicate that WAAS was required for ADS–B.

FAA Response: WAAS is not required for ADS–B. Other methods of meeting the performance requirements are being investigated. ADS–B implementation in international operations will require use of regionally or globally available services.

Comment #13: IATA stated implementation of any new technology should be driven by coordinated operational requirements of stakeholders. The International Civil Aviation Organization PBN Manual (Document 9613) was cited by IATA in describing the steps that must be followed in implementing PBN, and states the FAA may not have followed the described process. IATA then related the plan described in the FRN to the ADS–B Out regulations at 14 CFR 91.225 and 91.227 and the implied SBAS mandate and provides comments on the implementation and the requirements that it states are very different from European requirements to obtain the same performance with simpler equipage. IATA states they do not support use of any SBAS systems such as WAAS and desires to be consulted on revision of the VOR MON and alternate positioning, navigation and timing and systems, such as eLORAN, Galileo and others. IATA does not support the use of LPV approaches as a universal solution and requires an adequate number of precision approaches be maintained to provide capacity without GNSS. IATA states GBAS and Baro VNAV approaches should be published to complement LPV approaches at airports used by international carriers. IATA does not want PBN levels to be specified that require augmentation unless they are operationally required.

FAA Response: FAA will engage stakeholders via the working group in implementing the MON. PBN transition strategy is currently being developed within the FAA. The FAA will not mandate WAAS. PBN can be achieved by multiple means, such as DME/DME and ILS. GBAS is currently in the Research & Development phase.

Comment #14: Boeing Commercial Airplanes was concerned about the interpretation text for the operational requirements for two independent systems (reference 14 CFR 121.349, 125.203, 129.17 and 135.165). Specifically, they questioned the statement that the requirements for a second navigation system apply to the entire set of equipment needed to achieve the navigation capability, not just the individual components. They are concerned that this statement could be interpreted as requiring dual independent navigation computers. Additionally, they state that existing, certified multi-sensor navigation systems under AC 20–130A can meet the proposed policy requirements.

FAA Response: The text does not imply the need for dual independent navigation computers. The text instead emphasizes the need for independence of the navigation systems and their components to ensure that there will be no potential single point of failure or event that could cause the loss of the ability to navigate along the intended route or proceed safely to a suitable diversion airport. The interpretation of this requirement as applied to an aircraft approved for multi-sensor navigation and equipped with a single FMS is that the aircraft must maintain an ability to navigate or proceed safely in the event that any one component of the navigation system fails, including the FMS. Retaining an FMS-independent VOR capability would satisfy the requirement, even as the NAS is transitioned to the MON. This interpretation corresponds to the advisory wording in AC 20–130A.

Comment #15: The Maryland Aviation Administration (MAA) expressed concern about current GPS equipage rates.

FAA Response: Though approximately 19 percent of all general aviation aircraft are equipped with aviation-qualified GPS, most aircraft that actually file IFR flight plans are typically equipped with GPS. Specifically, more than 72% of aircraft that filed at least two IFR flight plans in 2011 filed with an equipment code indicating they had IFR GPS receivers on board. Of aircraft that filed more than 100 IFR flight plans in a year the rate was above 97%. While it may be the case that a significant number of aircraft flying VFR are not equipped with GPS, the purpose of the VOR system is to provide navigation for aircraft flying IFR, not VFR. VFR traffic is permitted to use hand-held and non-IFR certified GPS equipment for situational awareness as an aid to navigation and often use pilotage and dead reckoning navigation. While the VORs retained in the MON will support VFR aircraft operations, their purpose is clearly to support those aircraft operating under IFR.

Comment #16: Two commenters (the Nebraska DoA and Thales) were concerned over the impact that a reduction in VORs would have on training and training requirements.

FAA Response: The current training standards for the FAA emphasize VORs as the primary navigation source. The transition to NextGen will require that the FAA shift emphasis from VOR navigation to satellite-based navigation by changing training syllabi and the PTS. However, some emphasis will need to remain on VOR and ILS to ensure that pilots can navigate using these systems in the event of a GPS outage. These considerations will be included in the FAA's plan for discontinuance of VORs. Additionally, transfer of FAA-owned VORs not selected to be in the MON to operation under non-Federal ownership for training may be considered on a case-by-case basis.

Comment #17: The Nebraska DoA and Thales were also concerned with airport infrastructure requirements resulting from development of RNAV or RNP approaches.

FAA Response: FAA airport infrastructure requirements resulting from instrument approaches are published in FAA Advisory Circular 150/5300–13. Because airport infrastructure upgrades may be required for the attainment of lowest instrument approach minima, collaboration with local and state officials will be accomplished during the approach development process. For example, development of an LPV approach could not be accomplished if the required runway length were not available. However, if a decision was made in collaboration with local and state officials, to extend the runway, then an LPV could be reconsidered.

Comment #18: United Air Lines and GE Aviation expressed concern on the use of GPS approach capability by air carriers at alternate airports.

FAA Response: Current FAA policy allows operators of aircraft equipped with WAAS to plan for RNAV (GPS) approaches to the LNAV line of minima at their alternate. Furthermore, the FAA is currently investigating what requirements will be necessary to allow un-augmented GPS (TSO–C129/–C129a, TSO–C196/–C196a) equipped aircraft to plan for RNAV (GPS) or RNAV (RNP) approaches at alternate airports.

Comment #19: Several commenters expressed concern that the navigation transition strategy as outlined in the FRN is indirectly requiring certain types of equipage, specifically GPS or WAAS equipage.

FAA Response: The FAA is committed to the use of performance-based operations in the NAS. They remain the optimal way to both enable technological advances while maintaining safety, efficiency and consistency. Therefore, it is not the intention of the FAA to limit operational approvals to specific technologies or to force retrofit navigation solutions on current operators with legacy equipment. VOR navigation will continue to be a viable option for airspace users for the near future. Once the FAA completes implementation of the VOR MON, VOR navigation will still serve the NAS, albeit in a less robust fashion than today. Early publication of transition considerations and planning will allow users to consider long-term equipage strategies for their aircraft. Operators are encouraged to continue to seek approvals for the use of navigation equipment that was emphasized in the FRN, e.g. DME/DME/IRU, GPS, and WAAS. The FAA will continue to work with industry to advance new technologies not yet matured, e.g., GBAS and APNT. Additionally, the FAA will continue to work with our international partners on global strategies for multi-constellation/multi-frequency GNSS solutions.

Comment #20: AOPA and the National Business Aviation Association (NBAA) both expressed support for direct routing and avoiding excessive implementation of additional T and Q routes.

FAA Response: In the NextGen environment, T and Q routes increase capacity and efficiency while maintaining safety by minimizing impact to air traffic control. T and Q routes allow controllers to safely manage air traffic during peak periods and to ensure predictable transitions between busy traffic areas. T and Q routes overlaid on existing airways defined by VORs could mitigate potential impacts to the discontinuance of VOR navigation services.

Comment #21: Comments from military and general aviation expressed interest in participating in VOR discontinuation planning.

FAA Response: As stated in the FRN, ''The FAA will convene a working group that will develop a candidate list of VORs for discontinuance using relevant operational, safety, cost and economic criteria. As part of the process, this working group will engage aviation industry stakeholders and other members of the public for input.'' Detailed planning for the implementation of the MON is still under development. As the program planning process is further developed, the FAA will solicit input from government and industry stakeholders before the VORs selected for the MON are finalized.

Comment #22: Several commenters (MAA, Boeing Commercial Airplanes, United Air Lines, AOPA, Thales and DoD) indicated that an overall plan is necessary and requested more detail on the MON. MAA commented that without a national plan for discontinuation, the removal of specific VORs from service might be premature. They believed that several VORs in Maryland are currently planned for discontinuance and they suggested that the discontinuation of specific facilities should be considered on both a regional and national level using analysis to identify costs and benefits in a more holistic manner to make the consideration of facilities objective and consistent.

FAA Response: The FAA has not developed a final list of VORs that will be included in the MON. The FAA is developing objective criteria, which will be applied consistently both nationally and regionally to help identify those VOR facilities that will remain operational. A specific overall national CONOPS and discontinuance plan are being developed to support this effort. The draft CONOPS and draft discontinuance plan will be presented to stakeholders, and the FAA will

engage stakeholders in the discontinuance process.

Comment #23: Military and airline industry commenters expressed concern with the FAA plan to establish the VOR MON by January 1, 2020.

FAA Response: This date coincides with the January 1, 2020 mandate for ADS–B equipage. Once aircraft are equipped with ADS–B, it is assumed that they will be equipped with GPS as well, since currently GPS is the only known position source that can satisfy the NIC/NAC/SIL requirements of ADS–B. At that time, the VOR MON will serve as the required GPS backup for non DME–DME equipped aircraft in the event of a GPS outage. By January 1, 2020, the VOR MON will provide sufficient VOR coverage to enable aircraft to fly VOR-to-VOR either through the GPS outage or to a safe landing.

Comment #24: A number of operators, service providers and equipment manufacturers were concerned about the level of reliance on GPS expressed in the FRN in light of possible interference with the GPS service. Interference on a regular basis from government testing and training was specifically identified, as was possible widespread interference from licensed operators as well as unintentional interference from a variety of human and natural sources. There remains a concern among users that GPS is susceptible to interference and VORs should remain as a cost effective reliable means of navigation.

FAA Response: U.S. National policy recognizes the vulnerability of GPS signals, from both human and natural sources, and requires operations reliant on GPS position, navigation, and timing (PNT) for safety, security, or significant economic benefit to have sufficient backups in place. The FAA has operated and will continue to operate GPS-independent systems to fulfill this requirement, such as ILS, DME, and VOR. As the NAS transitions to NextGen, there is also a requirement to move from conventional facility based navigation to point-to-point navigation using PBN, a role that the airways supported by VORs cannot support. The FAA will continue to operate a subset of the current VOR facilities in a MON to support those aircraft not equipped with GPS-independent RNAV capability, while developing an RNAV-capable APNT system to fulfill this role in the future. DoD Interference with GPS: The FAA recognizes the need for DoD elements as part of their mission to operate and conduct training in a GPS-denied environment. Both the FAA and DoD are committed to working together to ensure that the DoD mission will not impact the FAA's mission to operate a safe and efficient NAS. DoD GPS interference testing is fully coordinated with the FAA and prior to testing, the FAA issues a Notice to Airmen (NOTAM) that describes the potential extent of interference and the timeframe in which it might occur. During testing the FAA maintains direct communications with DoD at all times and can have tests suspended in the event of any impact to NAS operations. Today, aircraft with non-GPS RNAV avionics are not impacted by this interference, and in the future, all APNT-equipped aircraft will similarly be unaffected.

Comment #25: Comments were received relative to several specific VORs with reasons for their specific retention. In the case of the Wichita, KS VOR (ICT), it was stated that the facility is needed for testing and airworthiness demonstration of new manufactured aircraft by a number of companies in the area.

FAA Response: While a VOR signal is necessary for this activity, it is not necessary that the service be provided by a FAA owned VOR, whose purpose under the MON will be to ensure safe operations in the event of a GPS outage. A non-Federal VOR, owned by an airport authority, state instrumentality or private entity could also perform this function. In cases where individuals/organizations have an interest in maintaining a specific VOR service, the VOR could be transferred to and operated under agreement with the FAA as a non-federal facility.

Comment #26: Thales expressed a concern over how the VOR MON will support non-GPS aircraft and GPS aircraft during GPS interference if a key MON VOR is down for maintenance.

FAA Response: In determining the VORs that will make up the MON, consideration will be given to the availability and continuity of navigation service expected from each facility. The VOR MON's purpose, a non-PBN backup in the event of a GPS outage, will be considered in making this determination. An element of this consideration will be the availability of non-GPS dependent surveillance services that would allow air traffic to provide services in the event of both a GPS and individual VOR service outage. Additionally, the equipage rate of IFR traffic with IFR GPS is significant and expected to be near 100% as we approach the year 2020 ADS–B mandate. While possible to fly IFR using the VOR MON, the increased distance of the VOR-only route as compared to using RNAV navigation will likely be highly undesirable. This will further drive GPS equipage.

Comment #27: The DoD stated concern on the cost of transition versus benefits for their fleet of aircraft.

FAA Response: The NAS' transition to NextGen is a national priority, in which the FAA plays an important role in concert with other Federal agencies and the aviation community. The transition to PBN as enabling capability for NextGen is a key part of the NGIP. Additionally, the considerations of the military in transitioning a 14,600 aircraft fleet and operating practices to RNAV/RNP stated in comments to the public docket appear to include the notion that TACAN services from VORTAC facilities will be terminated when VOR service is discontinued. This is not the case. The military also desires the FAA to retain VOR and TACAN service for specific enroute and terminal locations and procedures as the military aircraft fleet equipage and operating procedures evolve.

The FAA notes that there is historic precedent for the transition to a single national system—specifically the establishment of VORs and associated airways, DME, and ILS in the 1950s. At that time the military did not want to equip with VOR or ILS in tactical aircraft due to weight and space constraints, stating that Non-Directional Beacons (NDB) and four course ranges for enroute navigation and ground controlled approach (GCA) for landing was sufficient pending implementation of TACAN. The military also wanted to evolve to use TACAN because of weight/size and operational advantages over VOR and to include their implementation of DME, rather than the civil DME standard. The civil community, particularly airlines, wanted VOR for improved accuracy and usability over four course ranges and NDBs with ILS for approaches. In the end the NDBs and four course ranges were retained until military aircraft and operating practices transitioned to TACAN, the military DME standard was adopted for all DMEs and ILS was standardized for approaches, though the military continued GCA approaches, particularly for tactical aircraft.

The transition to RNAV/RNP may be undertaken economically for military aviation by retaining TACAN as a system, discontinuing only specific facilities on an individual basis; incorporating military use considerations for identifying VOR service for discontinuation in enroute and terminal environments; designating special use airspace and other military usage features with RNAV references as well as TACAN or VOR rho/theta and

distance references; and retaining ILS at current sites with installation of new ILSs by military where needed in lieu of LP and LPV.

* * * * *

Issued in Washington, DC, on August 14, 2012.

Lansine Toure,

Acting Manager, Navigation Programs.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 39

RIN 3038–AD47

Clearing Exemption for Swaps Between Certain Affiliated Entities

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is proposing a rule to exempt swaps between certain affiliated entities within a corporate group from the clearing requirement (the ''inter-affiliate clearing exemption'' or the ''proposed exemption'') under Section 2(h)(1)(A) of the Commodity Exchange Act (''CEA''). The Commission also is proposing rules that detail specific conditions counterparties must satisfy to elect the proposed inter-affiliate clearing exemption, as well as reporting requirements for affiliated entities that avail themselves of the proposed exemption. The Commission has finalized a rule that addresses swaps that are subject to the end-user exception. Counterparties to inter-affiliate swaps that qualify for the end-user exception would be able to elect to not clear swaps pursuant to the end-user exception or the proposed rule. The proposed rule does not address swaps that an affiliate enters into with a third party that are related to inter-affiliate swaps that are subject to the end-user exception. The Commission intends separately to propose a rule addressing swaps between an affiliate and a third party where the swaps are used to hedge or mitigate commercial risk arising from inter-affiliate swaps for which the end-user exception has been elected.

DATES: Comments must be received on or before September 20, 2012.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD47, by any of the following methods:

- *The agency's Web site, at: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. ''Inter-affiliate Clearing Exemption'' must be in the subject field of responses submitted via email, and clearly indicated on written submissions. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC regulation 145.9.[1]

Throughout this proposed rulemaking, the Commission requests comment in response to specific questions. For convenience, the Commission has numbered each of these comment requests. The Commission asks that, in submitting responses to these requests, commenters identify the specific number of each request to which their comments are responsive.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of a submission from www.cftc.gov that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Gloria Clement, Assistant General Counsel, (202) 418–5122, *gclement@cftc.gov,* Office of General Counsel; Jonathan Lave, Associate Director, Exchange & Data Repository, (202) 418–5983, *jlave@cftc.gov,* and Alexis Hall-Bugg, Attorney-Advisor, (202) 418–6711, *ahallbugg@cftc.gov,* Division of Market Oversight; Warren Gorlick, Supervisory Attorney-Advisor, (202) 418–5195, *wgorlick@cftc.gov,* and Anuradha Banerjee, Attorney-Advisor, (202) 418–5661, *abanerjee@cftc.gov,* Office of International Affairs; Theodore Kneller, Attorney-Advisor, (202) 418–5727, *tkneller@cftc.gov,* Division of Enforcement; Elizabeth Miller, Attorney-Advisor, (202) 418–5985, *emiller@cftc.gov,* Division of Swap Dealer and Intermediary Oversight; Esen Onur, Research Economist, (202) 418–6146, *eonur@cftc.gov,* Office of the Chief Economist; and Jolanta Sterbenz, Counsel, (202) 418–6639, *jsterbenz@cftc.gov,* Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

I. Background

A. Clearing Requirement for Swaps

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'' or ''DFA'').[2] Title VII of the Dodd-Frank Act amended the CEA,[3] and established a new regulatory framework for swaps. The legislation was enacted to reduce systemic risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Imposing clearing and trade execution requirements on standardized derivative products; (2) creating rigorous recordkeeping and data reporting regimes with respect to swaps, including real-time public reporting; and (3) enhancing the Commission's rulemaking and enforcement authorities over all registered entities, intermediaries, and swap counterparties subject to the Commission's oversight.

Section 723 of the Dodd-Frank Act added section 2(h) to the CEA, which establishes a clearing requirement for swaps.[4] The new section makes it unlawful for any person to engage in a swap, if the Commission determines such swap is required to be cleared, unless the person submits the swap for clearing to a registered derivatives clearing organization (''DCO'') (or a DCO that is exempt from registration).[5] The

[1] 17 CFR 145.9. Commission regulations may be accessed through the Commission's Web site, *http://www.cftc.gov.*

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[3] 7 U.S.C. 1 *et seq.* (2006).

[4] CEA section 2(h)(1)(A), 7 U.S.C. 2(h)(1)(A).

[5] *See* CEA section 2(h)(1)(A), 7 U.S.C. 2(h)(1)(A). The CEA's clearing requirement states that, ''[i]t shall be unlawful for any person to engage in a swap unless that person submits such swap for

Continued

CEA, however, permits exceptions and exemptions to the clearing requirement.

A person may elect not to clear certain swaps if such person qualifies for an exception under CEA section 2(h)(7) and the Commission regulations issued in connection therewith (the ''end-user exception'').[6] To summarize the principal components of the end-user exception, for a swap to qualify, a counterparty to the swap electing the exception must (i) not be a ''financial entity,'' as defined in CEA section 2(h)(7)(C)(i) or qualify for an exemption from that defined term under section 2(h)(7)(D),[7] or through a Commission-issued exemption under CEA sections 2(h)(7)(C)(ii)[8] or 4(c)[9] and (ii) be using the swap to hedge or mitigate commercial risk. The Commission has determined to exempt certain small banks, savings associations, farm credit institutions, and credit unions under section 2(h)(7)(C)(ii) of the CEA from the definition of ''financial entity.''[10]

Importantly, a counterparty to an inter-affiliate swap that qualifies for both the end-user exception and the inter-affiliate exemption may elect not to clear the inter-affiliate swap under either the end-user exception or the inter-affiliate exemption. As such, the Commission believes that the rule proposed in this rulemaking may not be necessary for the vast majority of inter-affiliate swaps involving a non-financial entity or a small financial institution because the end-user exception can be elected for those swaps. Accordingly, it is likely the proposed rule will be used for inter-affiliate swaps between two financial entities that do not qualify for the end-user exception or for swaps involving a non-financial entity that do not qualify for the end-user exception because the swaps do not hedge or mitigate commercial risk.

Finally, CEA section 4(c)(1), described in more detail below, grants the Commission general exemptive powers.[11] Pursuant to that authority, the Commission has proposed a rule that would allow cooperatives meeting certain conditions to elect not to submit for clearing certain swaps subject to a clearing requirement.[12]

B. Swaps Between Affiliated Entities

Except as provided with respect to certain financing affiliates as noted above, CEA section 2(h) does not provide any specific exception to swaps entered into by affiliates that are subject to a clearing requirement (''inter-affiliate swaps'').[13] Inter-affiliate swaps that are hedged by back-to-back or matching book swaps entered into with third parties may pose risks to the financial system if the inter-affiliate swaps are not properly risk managed thereby raising the likelihood of default on the outward facing swaps. Furthermore, there could be systemic risk implications if an affiliate used by the corporate group to trade outward facing swaps (commonly referred as centralized treasury or conduit affiliates) has large positions and defaulted on obligations arising from inter-affiliate swaps if such swaps are hedged with third-party swaps.[14] Such a default could harm third-party swap counterparties, and potentially, financial markets as a whole, if the treasury/conduit affiliate was unable to satisfy third-party obligations as a consequence of the default.

A number of commenters in a variety of Commission rulemakings have recommended that the Commission adopt an exemption to the clearing requirement for inter-affiliate swaps.[15] Some commenters claimed that inter-affiliate swaps offer significant benefits with substantially less risk than swaps between unaffiliated entities. They contended that inter-affiliate swaps enable a corporate group to aggregate its risks on a global basis in one entity through risk transfers between affiliates. Commenters also described varying structures through which corporate groups entered into inter-affiliate swaps and manage risks.

Prudential Financial, Inc. (''PFI''), stated that it employs a ''conduit'' structure where separate legal entities are commonly owned by PFI.[16] Under this structure, PFI uses one affiliate to directly face the market as a ''conduit'' to hedge the net commercial and financial risk of the various operating affiliates within PFI. PFI contended that the use of a conduit diminishes the demands on PFI's financial liquidity, operational assets, and management resources, because ''affiliates within PFI avoid having to establish independent relationships and unique infrastructure to face the market.'' Moreover, PFI explained that its conduit facilitates the netting of its affiliates' trades (*e.g.,* where one affiliate hedges floating rates while another hedges fixed rates). PFI stated that this conduit structure effectively reduces the overall risk of PFI and its affiliates, and it allows PFI to manage fewer outstanding positions with external market participants.[17]

In a letter to Congress, the Coalition for Derivatives End-Users (''CDEU'') asserted that inter-affiliate swaps do not create external counterparty exposure and, therefore, pose none of the systemic or other risks that the clearing requirement is designed to protect against.[18] Thus, in CDEU's view, the

clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under this Act if the swap is required to be cleared.''

[6] CEA section 2(h)(7)(A), 7 U.S.C. 2(h)(7)(A). CEA section 2(h)(7)(A) provides an elective exception to the clearing requirement to any counterparty to a swap that is not a financial entity, is using the swap to hedge or mitigate commercial risk, and notifies the Commission how it generally meets the financial conditions associated with entering into non-cleared swaps. The Commission issued the end-user exception in a rulemaking entitled, ''End-User Exception to the Clearing Requirement for Swaps,'' 77 FR 42560, July 19, 2012 (final).

[7] CEA section 2(h)(7)(D), 7 U.S.C. 2(h)(7)(D).

[8] CEA section 2(h)(7)(C)(ii), 7 U.S.C. 2(h)(7)(C)(ii) (''The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions * * *'').

[9] CEA section 4(c), 7 U.S.C. 6(c).

[10] ''End-User Exception to the Clearing Requirement for Swaps,'' 77 FR 42560, July 19, 2012 (*see* § 39.6(d)).

[11] Section 4(c)(1) of the CEA empowers the Commission to exempt any transaction or class of transactions, including swaps, from certain CEA provisions, such as the clearing requirement.

[12] ''Clearing Exemption for Certain Swaps Entered into by Cooperatives,'' 77 FR 41940, July 17, 2012.

[13] For the purposes of this proposed rulemaking, ''inter-affiliate swaps'' refers to swaps between ''affiliates,'' as that term is defined in proposed § 39.6(g)(1): ''[c]ounterparties to a swap * * * may elect not to clear a swap with an affiliate if one party directly or indirectly holds a majority ownership interest in the other, or if a third party directly or indirectly holds a majority interest in both, based on holding a majority of the equity securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership.'' *See infra* pt. II.B.1 for further discussion.

[14] There does not appear to be a common definition of a ''treasury affiliate'' or a ''conduit affiliate.'' For purposes of this proposed rulemaking, a treasury/conduit affiliate (or structure) is an affiliate that enters into inter-affiliate swaps and enters into swaps with third parties that are related to such inter-affiliate swaps on a back-to-back or aggregate basis.

[15] The Commission notes that comment letters to other proposed rulemakings under Title VII of the Dodd-Frank Act are not part of the administrative record for this rulemaking unless specifically cited herein.

[16] Prudential Financial, Inc. comment letter to the proposed rulemaking, ''Further Definition of 'Swap Dealer,' 'Security-Based Swap Dealer,' 'Major Swap Participant,' 'Major Security-Based Swap Participant' and 'Eligible Contract Participant,' '' 75 FR 80147, Dec. 21, 2010.

[17] J.P. Morgan commented that the most efficient way to manage risk is often at one entity and on a portfolio level. This way all the risk for the corporate group resides in one entity. J.P. Morgan maintained that this reduces market risk at each legal entity and can reduce risk on a group level because offsetting positions held by different members of the group can be aggregated to mitigate the overall risk of the portfolio. J.P. Morgan asserted that portfolio risk management enables regulators to more easily assess the net risk position on a group level rather than piecing together data from separate affiliates to reconstruct the actual risk profile of the group. J.P. Morgan comment letter to the proposed rulemaking, ''Process for Review of Swaps for Mandatory Clearing,'' 75 FR 67277, Nov. 2, 2010.

[18] Coalition for Derivatives End-Users comment letter for H.R. 2682, H.R. 2779, and H.R. 2586 (Mar. 23, 2012).

imposition of required clearing on inter-affiliate swaps would not reduce systemic risk. CDEU also commented that a conduit or treasury structure is beneficial because it centralizes trade expertise and execution in a single or limited number of entities. Finally, CDEU claimed that a treasury or conduit structure benefits affiliates because they can enjoy their parents' corporate credit ratings and associated pricing benefits.

These comments suggest that swaps entered into between corporate affiliates, if properly risk-managed, may be beneficial to the operation of the corporate group as a whole. They indicate that inter-affiliate swaps may improve a corporate group's risk management internally and allow the corporate group to use the most efficient means to effectuate swaps with third parties. While the Commission recognizes these potential benefits of inter-affiliate swaps, the Commission is also taking into account the systemic risk repercussions of inter-affiliate swaps as it considers and proposes an exemption to the CEA's clearing requirement applicable to those inter-affiliate swaps.

II. Inter-Affiliate Clearing Exemption Under CEA Section 4(c)(1)

A. The Commission's Section 4(c)(1) Authority

Section 4(c)(1) of the CEA empowers the Commission to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transactions, including swaps, from any of the provisions of the CEA (subject to exceptions not relevant here).[19] In enacting CEA section 4(c)(1), Congress noted that the goal of the provision ''is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.'' [20] Observant of that objective, the Commission has determined preliminarily that it would be appropriate to exempt inter-affiliate swaps from the clearing requirement in CEA section 2(h) under certain terms and conditions. The proposed exemption, however, would not extend to swaps that affiliates entered into with third parties.

The primary benefit of clearing is the reduction of counterparty risk. The Commission notes commenters' assertions that there is less counterparty risk associated with inter-affiliate swaps than swaps with third parties to the extent that affiliated counterparties internalize each other's counterparty risk because they are members of the same corporate group. This internalization can be demonstrated by the example of a swap entered into between affiliates A and B that are majority owned by the same person.[21] If affiliate A fails to perform, then affiliate B would be harmed. However, affiliate A also may be harmed if (1) B's harm adversely impacts the profits of A and B's corporate group [22] or (2) A's failure to perform drives the group into bankruptcy, because, for instance, B has entered into a swap with a third party and B is unable to perform as a consequence of A's failure to perform. The potential harm to A for failing to perform is greater than the harm A would experience if B was not a majority-owned affiliate. Accordingly, A internalizes B's counterparty risk and A has a greater economic incentive to perform than if B were a third party.

The Commission does not believe there is significantly reduced counterparty risk with respect to swaps between affiliates that are not majority-owned by the same person because there is less economic feedback. If A is a majority-owned affiliate and B is a minority-owned affiliate, then any harm that B experiences as a consequence of A's failure to perform is likely to have a less adverse impact on the profits of A's corporate group than if B was a majority-owned affiliate. In addition, the Commission believes that B's failure to perform would be significantly less likely to drive A's corporate group into bankruptcy than if B were majority-owned.

On the basis of reduced counterparty risk, the Commission has determined preliminarily that inter-affiliate swap risk may not need to be mitigated through clearing, but can be reduced through other means. The Commission also believes at the proposal stage that exempting inter-affiliate swaps would enable corporations to structure their groups so that corporate risk is concentrated in one entity—whether it be at a treasury- or conduit-type affiliate, or at the parent company.[23] The Commission recognizes there may be advantages for the corporate group and regulators if risk is appropriately managed and controlled on a consolidated basis and at a single affiliate. Based upon the comments received, the Commission understands that some corporate groups use this type of structure.

The Commission, nevertheless, believes that uncleared inter-affiliate swaps could pose risk to corporate groups and market participants, generally. Uncleared inter-affiliate swaps also may pose risk to other market participants, and therefore the financial system, if the treasury/conduit affiliate enters into swaps with third parties that are related on a back-to-back or matched book basis with inter-affiliate swaps. To continue the above example, if A's failure to perform (for whatever reason) makes it impossible for B to meet its third-party swap obligations, then those third parties would be harmed and risk could spread into the marketplace. However, A's risk of nonperformance is less than it would be if B were a third party to the extent A internalizes B's counterparty risk.

To address these concerns, the Commission is proposing rules that would exempt inter-affiliate swaps from clearing if certain conditions are satisfied. First, the proposed exemption would be limited to swaps between majority-owned affiliates whose financial statements are reported on a consolidated basis. Second, the proposed rules would require the following: Centralized risk management, documentation of the swap agreement, variation margin payments (for financial entities), and satisfaction of reporting requirements. In addition, the exemption would be limited to swaps between U.S. affiliates, and swaps between a U.S. affiliate and a foreign affiliate located in a jurisdiction with a comparable and comprehensive clearing regime or the non-United States counterparty is otherwise required to clear the swaps it enters into with third

[19] Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1), provides, in pertinent part, that:

In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person * * *) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section * * * either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this Act.

By issuing a proposed exemptive rule, the Commission also is exercising its general rulemaking authority under CEA section 8a(5), 7 U.S.C. 12a(5).

[20] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213 (''4(c) Conf. Report'').

[21] The meaning of ''majority-owned'' is set forth and discussed in part B1.

[22] A's corporate group is the group that contains the person with a majority ownership interest of A. Similarly, B's corporate group is the group that contains the person with a majority ownership interest of B.

[23] Treasury/conduit affiliates, for example, often enter into swaps with third parties that hedge aggregate inter-affiliate swap risk. The aggregation is based on risk correlations. If those correlations break down, then the treasury/conduit affiliate may no longer be able to satisfy its third-party swap obligations.

parties in compliance with United States law or does not enter into swaps with third parties. Additionally, the Commission notes that the proposed exemption does not limit the applicability of any CEA provision or Commission regulation to any person or transaction except as provided in the proposed rulemaking. These conditions will be discussed in further detail below.

Request for Comments

Q1. The Commission requests comment on whether it should exercise its authority under CEA section 4(c).

Q2. Do inter-affiliate swaps pose risk to the corporate group? If so, what risk is posed? In particular, do inter-affiliate swaps pose less risk to a corporate group than swaps with third parties? If so, why is that the case?

Q3. Do inter-affiliate swaps pose risk to the third parties that have entered into swaps that are related to the inter-affiliate swaps? If so, what risk is posed?

Q4. Would the proposed exemption promote responsible economic or financial innovation and fair competition?

Q5. Would the proposed exemption promote the public interest?

Q6. Inter-affiliate swaps that do not meet the conditions to the proposed exemption would be subject to the clearing requirement under CEA section 2(h)(1)(A) and, potentially, the trade execution requirement under CEA section 2(h)(8) as well. What would be the costs and benefits of imposing the trade execution requirement on these inter-affiliate swaps? Should the Commission exempt some or all inter-affiliate swaps from the trade execution requirement regardless of whether the conditions to the proposed inter-affiliate clearing exemption are met?

B. Proposed Regulations

1. Proposed § 39.6(g)(1): Definition of Affiliate Relationship

Under proposed § 39.6(g)(1), the inter-affiliate clearing exemption would only be available for swaps between majority-owned affiliates. As explained above, the Commission believes there is reduced counterparty risk with respect to such swaps. Under the proposed rule, affiliates would be majority-owned if one affiliate directly or indirectly holds a majority ownership interest in the other affiliate, or if a third party directly or indirectly holds a majority ownership interest in both affiliates and the financial statements of both affiliates are reported on a consolidated basis. A majority-ownership interest would be based on holding a majority of the equity securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership.[24]

The Commission is not proposing to extend the exemption to affiliates that are related on a minority-owned basis. As explained above, the Commission does not believe there is significantly reduced counterparty risk with respect to swaps between such affiliates. The Commission also believes it is important for the proposed inter-affiliate clearing exemption to be harmonized with foreign jurisdictions that have or are developing comparable clearing regimes consistent with the 2009 G–20 Leaders' Statement.[25] For example, the European Parliament and Council of the European Union have adopted the European Market Infrastructure Regulation (''EMIR'').[26] Subject to the relevant provisions, technical standards, and regulations under EMIR, certain derivatives transactions between parent and subsidiary entities, could be exempt from its general clearing requirement.

Request for Comments

Q7. The Commission requests comments on all aspects of the Commission's proposed requirement that the inter-affiliate clearing exemption be available to majority-owned affiliates.

Q8a. Should the Commission consider requiring a percentage of ownership greater than majority ownership to qualify for the inter-affiliate clearing exemption?

Q8b. If so, what percentage should be used and what are the benefits and burdens of such ownership requirements?

Q8b. Should the Commission require a 100% ownership threshold for the inter-affiliate clearing exemption? Would a 100% ownership threshold reduce counterparty risk and protect minority owners better than the proposed threshold. Are there other means to lessen risk to minority owners, such as consent?

Q9. Should the Commission consider an 80% ownership threshold based on section 1504 of the Internal Revenue Code, which establishes an 80% voting and value test for an affiliate group.[27] In light of the potential benefits from centralized risk management in an affiliated group, would an 80% threshold sufficiently reduce overall risk to financial system

2. Proposed § 39.6(g)(2)(i): Both Counterparties Must Elect the Inter-Affiliate Clearing Exemption

The Commission believes that affiliates within a corporate group may make independent determinations on whether to submit an inter-affiliate swap for clearing. Ostensibly, each affiliate may reach different conclusions regarding the appropriateness of clearing. Given this possibility, proposed § 39.6(g)(2)(i) would require that both counterparties elect the proposed inter-affiliate clearing exemption (each, an ''electing counterparty'').

Request for Comments

Q10. Would this requirement create any operational issues?

3. Proposed § 39.6(g)(2)(ii): Swap Documentation

The Commission understands that affiliates may enter into swaps with

[24] The affiliate status required by proposed § 39.6(g)(1) to elect the proposed exemption is based on and functionally equivalent to the definition of majority-owned affiliates in recently adopted CFTC regulation 1.3(ggg)(6)(i).

[25] In 2009, the G20 Leaders declared that, ''[a]ll standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest.'' G20 Leaders' Final Statement at Pittsburgh Summit: Framework for Strong, Sustainable and Balanced Growth (Sept. 29, 2009).

[26] *See* Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC Derivatives, Central Counterparties and Trade Repositories, 2012 O.J. (L 201) available at *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF.*

[27] The Internal Revenue Service allows a business conglomerate to file consolidated tax returns if the parent company and its subsidiaries meet a relationship test that is outlined in 26 U.S.C. 1504(a)(2):

(a) Affiliated group defined for purposes of this subtitle—

(1) In general. The term ''affiliated group'' means—

(A) 1 or more chains of corporations connected through stock ownership with a common parent corporation which is a corporation, but only if—

(B) (i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other corporations, and

(ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.

(2) 80-percent voting and value test The ownership of stock of any corporation meets the requirements of this paragraph if it—

(A) possesses at least 80 percent of the total voting power of the stock of such corporation, and

(B) has a value equal to at least 80 percent of the total value of the stock of such corporation.

(3) Stock not to include certain preferred stock

For purposes of this subsection, the term ''stock'' does not include any stock which—(A) is not entitled to vote,

(B) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent,

(C) has redemption and liquidation rights which do not exceed the issue price of such stock (except for a reasonable redemption or liquidation premium), and

(D) is not convertible into another class of stock.

each other with little documentation about the terms and conditions of the swaps. The Commission is concerned that without proper documentation affiliates would be unable to effectively track and manage risks arising from inter-affiliate swaps or offer sufficient proof of claim in the event of bankruptcy. This could create challenges and uncertainty that could adversely affect affiliates, third party creditors, and potentially the financial system. The Commission also is concerned about transparency should there be a need for an audit or enforcement proceeding.

Proposed § 39.6(g)(2)(iii) would address these concerns by requiring affiliates to enter into swaps with a swap trading relationship document.[28] The proposed rule would require the document to be in writing and to include all terms governing the trading relationship between the affiliates, including, without limitation, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, governing law, valuation, and dispute resolution procedures.[29] The Commission believes this requirement would not be onerous because affiliates should be able to use a master agreement to document most of the terms of their inter-affiliate swaps.

Request for Comments

Q11. The Commission requests comment as to the burden or cost of the proposed rule requiring documentation of inter-affiliate swaps.

Q12. The Commission also requests comment as to whether its risk tracking and management and proof-of-claim concerns could be addressed by other means of documentation.

Q13. The Commission requests comment as to whether the Commission should create a specific document template. Should the industry do so?

4. Proposed § 39.6(g)(2)(iii): Centralized Risk Management

Proposed § 39.6(g)(2)(iii) would require inter-affiliate swaps to be subject to a centralized risk management program reasonably designed to monitor and manage the risks associated with the inter-affiliate swaps. As noted in Part I.B. above, inter-affiliate swaps may pose risk to third parties if risks are not properly managed. Accordingly, to encourage prudent risk management, the proposed inter-affiliate clearing exemption would be conditioned on a corporate group's evaluation, measurement and control of such risks. The Commission anticipates that the program would be implemented and run by the parent company or the treasury/conduit affiliate, but the rule provides flexibility to determine how best to satisfy this requirement.[30]

The Commission understands that some groups that use inter-affiliate swaps, particularly large financial entities, already have a centralized risk management program.[31] Indeed, several commenters—*e.g.,* SIFMA and ISDA—supported centralized risk management and claimed that centralized risk management for inter-affiliate swaps ''would be compromised'' by a clearing requirement.[32] CDEU also commented that inter-affiliate swaps are beneficial because they allow swaps with third parties to be traded at a treasury-type structure which contains risk management expertise.[33] Based on comments received, the Commission believes that the proposed rule is in line with industry practice. Proposed § 39.6(g)(2)(iii) also is in harmony with similar requirements under EMIR, which would require under certain circumstances for both counterparties to intra-group transactions to be ''subject to an appropriate centrali[z]ed risk evaluation, measurement and control procedures. * * *''[34]

Request for Comments

Q14. The Commission requests comments that explain how current centralized risk management programs operate.

Q15. The Commission requests comment on whether it should promulgate additional regulations that set forth minimum standards for a centralized risk management program. If so, what should those standards be? Is there a consistent industry practice which could be observed?

Q16. Is the proposed rule in line with industry practice?

5. Proposed § 39.6(g)(2)(iv): Variation Margin

Proposed § 39.6(g)(2)(iv) would require that variation margin be collected for swaps between affiliates that are financial entities, as defined in CEA section 2(h)(7)(C), in compliance with the proposed variation margin requirements set forth in proposed § 39.6(g)(3).[35] Variation margin is an essential risk-management tool. A well-designed variation margin system protects both parties to a trade. It serves both as a check on risk-taking that might exceed a party's financial capacity and as a limitation on losses when there is a failure. Variation margin entails marking open positions to their current market value each day and transferring funds between the parties to reflect any change in value since the previous time the positions were marked.[36] This process prevents uncollateralized exposures from accumulating over time and thereby reduces the size of any loss resulting from a default should one occur. Required margining also might cause parties to more carefully consider the risks involved with swaps and manage those risks more closely over time. The Commission believes, at this stage, that inter-affiliate swap risk may be mitigated through variation margin and notes that requiring variation margin for inter-affiliate swaps is being discussed by international regulators working on harmonizing regulations governing swap clearing.

The Commission understands that a number of financial entities currently

[28] For swap dealers and major swap participants, these issues are addressed in the swap trading relationship documentation rules proposed by the Commission in § 23.504. *See* ''Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants,'' 76 FR 6715, Feb. 8, 2011. The proposed rule requires that if one or more of the parties to the swap for which the inter-affiliate exemption is elected is a swap dealer or major swap participant, then that party shall comply with § 23.504 for that swap. Swap dealers and major swap participants that comply with that provision would also satisfy the proposed requirements.

[29] The requirements of the swap trading relationship document are informed by proposed CFTC regulation 23.504(b)(1). *See* ''Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants,'' 76 FR 6715, Feb. 8, 2011.

[30] The Commission has adopted risk management rules for swap dealers and major swap participants in § 23.600. *See* ''Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants,'' 77 FR 20128, 20173–75, April 3, 2012 (final rule). The rule requires that if one or more of the parties to the swap for which the inter-affiliate exemption is elected is a swap dealer or major swap participant, then that party shall comply with § 23.600 for that swap. Swap dealers and major swap participants that comply with that provision will also satisfy the proposed requirements.

[31] *See, e.g.,* Letter from SIFMA and ISDA submitted to the Commission on their own initiative (May 14, 2012).

[32] *Id.*

[33] *See* 3/23/23 Letter from CDEU.

[34] *See* EMIR Article 3, paragraphs 1 and 2. EMIR identifies factors necessary to establish a transaction as an intra-group transaction.

[35] Discussed in pt. II.B.8., below.

[36] Variation margin is distinguished from initial margin, which is intended to serve as a performance bond against potential future losses. If a party defaults, the other party may use initial margin to cover most or all of any loss that may result between the time the default occurs and when the non-defaulting party replaces the open position.

post variation margin for their inter-affiliate swaps. According to SIFMA and ISDA, ''[t]he posting of variation margin limiting the impact of market movements upon the respective positions of the affiliated parties now occurs routinely in financial groups and its imposition on affiliates who transact directly with affiliated swap dealers (SDs) or major swap participants (MSPs) should not be unduly disruptive.'' [37] The Commission has proposed rules requiring certain financial entities to pay and collect variation and initial margin for uncleared swaps entered into with other financial entities.[38]

The proposed requirement would not apply to 100% commonly-owned and commonly-guaranteed affiliates, provided that the common guarantor is also under 100% common ownership. As discussed above, the risk of an inter-affiliate swap may be mitigated through the posting of variation margin. The Commission believes that when the economic interests of two affiliates are both (i) fully aligned and (ii) a common guarantor bears the ultimate risk associated swaps entered into with a third party, non-affiliated counterparty, the posting of variation margin does not substantially mitigate the risk of an inter-affiliate swap. This exception is intended to apply to swaps between two wholly-owned subsidiaries of a common parent or in instances where one affiliate is wholly owned by the other.

The first of the conditions required to claim the exception to the requirement under proposed regulation 39.6(g)(2)(iv) to post variation margin relates to complete common ownership. When two affiliates are owned by the same owner or one is wholly owned by the other, the underlying owners are the same and the economic interests of the two affiliates are aligned.[39] In such circumstances, the two affiliates are subject to the control of a common owner or common set of owners.[40]

A person would not be able to claim 100 percent ownership for the purposes of this provision based on a contingent right or obligation, by contract or otherwise, to take ownership of the equity interest in the affiliate by purchase or otherwise.[41] Conversely, structures in which a person owns 100 percent of the equity but has an obligation or right, by contract or otherwise, to give up, by sale or otherwise, all or a portion of that equity interest would not meet the 100 percent ownership test. Such contingent or residual rights evidence a less than complete responsibility for the affiliate, including its swap obligations, that the 100 percent ownership and guaranty provision is intended to require. Under such circumstances, the interests of the owner and the affiliate are not fully aligned. The second condition requires the existence of a common guarantor. When two affiliates share a common guarantor that is under the same common ownership, the Commission believes that the risk created by a swap with a non-affiliated third party is ultimately borne by the enterprise (which is defined by an alignment of economic interests). To provide an example, assume that A and B are guaranteed wholly-owned subsidiaries of X. B enters into a swap with non-affiliated third party T. B then enters into a back-to-back swap (mirroring the risk created in the swap with T) with A (i.e., an inter-affiliate swap). In this scenario, the risk associated with the swap with T is effectively borne by X and therefore ultimately borne by the enterprise. In such circumstances therefore the inter-affiliate swap does not create new risks for the enterprise, rather, it allocates the risk from one wholly-owned subsidiary to another. The posting of variation margin here would not substantially mitigate the risk of the inter-affiliate swap because the inter-affiliate swap itself does not create new risks for the enterprise.

Request for Comments

Q17a. The Commission requests comment as to whether it should promulgate regulations that set forth minimum standards for variation margin. If so, what should those standards be?

Q17b. The Commission requests comment as to whether it should promulgate regulations that set forth minimum standards for initial margin. If so, what should those standards be?

Q17c. The Commission requests comment as to whether it should promulgate regulations that set forth minimum standards for both initial and variation margin for inter-affiliate swaps. If so, what should those standards be?

Q17d. The Commission's proposed rule ''Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants''—17 CFR Part 23—would require initial and variation margin for certain swaps that are not cleared by a registered designated clearing organization. Should inter-affiliate swaps that are not subject to the clearing requirement of CEA section 2(h)(1)(A) be subject to the margin requirements as set out in proposed Part 23 or otherwise?

Q18. The Commission requests comment on the costs and benefits of requiring variation margin for inter-affiliate swaps, both in general and specifically, regarding corporate groups that do not currently transfer variation margin in respect of inter-affiliate swaps.

Q19. The Commission requests comment on whether 100% commonly-owned affiliates sharing a common guarantor—that is, a guarantor that is also 100% commonly owned—should be exempt from the requirement to transfer variation margin. Please explain the impact on the corporate group, if any, if the described affiliates are required to transfer variation margin.

Q20a. Should any other categories of entities or corporate groups, such as non-swap dealers and non-major swap participants, be exempt from the variation margin requirement for their inter-affiliate swaps? If so, which categories and why?

Q20b. Should the Commission limit the variation margin requirements to those inter-affiliate swaps for which at least one counterparty is a swap dealer, major swap participant, or financial entity, as defined in paragraph (g)(6) of the proposed rule text, that is subject to prudential regulation?

Q21. The Commission requests comment as to whether it should eliminate the proposed exemption's variation margin condition for swaps between 100% owned affiliates.

Q22. The Commission requests comment as to whether it should eliminate the proposed exemption's

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[37] *See, e.g.,* 5/14/12 Letter from SIFMA and ISDA.

[38] The Commission does not propose that variation margin posted in respect of inter-affiliate swaps be required to be held in a segregated account or be otherwise unavailable for use and rehypothecation by the counterparty holding such variation margin.

[39] In contrast, if two affiliates do not have the same owners, the potential exists that the two affiliates may have differing economic interests. *See* also *Copperweld* v. *Independence Tube*—467 U.S. 752 (1984) at 771 (''The coordinated activity of a parent and its wholly owned subsidiary must be viewed as that of a single enterprise for purposes of § 1 of the Sherman Act. A parent and its wholly owned subsidiary have a complete unity of interest. Their objectives are common, not disparate, and their general corporate objectives are guided or determined not by two separate corporate consciousnesses, but one.'').

[40] Under such circumstances, the two affiliates are subject to common control, in actuality or potentially—i.e., the common owner could assert full control when one or both affiliates cease to act in the common owner's best interest.

[41] For example, if a financial entity established a trust, partnership, corporation or other type of entity, and sells the equity interests therein to investors, but retains the right to call, repurchase, or otherwise take control of the equity interest, or has a contingent obligation to call, repurchase or otherwise take control of the equity interest, such right or obligation would not be sufficient to constitute ownership of the affiliate for purposes of this provision.

variation margin condition for swaps between 80% owned affiliates.

Q23. The Commission requests comment on whether all types of financial entities identified in CEA section 2(h)(7)(C) should be subject to the variation margin requirement. Should entities that are part of a commercial corporate group and are financial entities solely because of CEA section 2(h)(7)(C)(i)(VIII) be excluded from such requirement? Why?

6. Proposed § 39.6(g)(2)(v): Both Affiliates Must Be Located in the United States or in a Country With a Comparable and Comprehensive Clearing Regime or the Non-United States Counterparty Is Otherwise Required To Clear Swaps With Third Parties in Compliance With United States Law or Does Not Enter Into Swaps With Third Parties

The Commission is proposing to limit the inter-affiliate clearing exemption to inter-affiliate swaps between two U.S.-based affiliates or swaps where one affiliate is located abroad in a jurisdiction with a comparable and comprehensive clearing regime or the non-United States counterparty is otherwise required to clear swaps with third parties in compliance with United States law or does not enter into swaps with third parties. The limitation in § 39.6(g)(2)(v) is designed to address the Commission's concerns about risk and to deter evasion as directed by CEA section 2(h)(4)(A).

Under section 2(h)(4)(A), the Commission must prescribe rules necessary to prevent evasion of the clearing requirement.[42] The Commission is concerned that an inter-affiliate clearing exemption could enable entities to evade the clearing requirement through trades, for example, with affiliates that are located in foreign jurisdictions that do not have a comparable and comprehensive clearing regime. Informed in part by certain relevant intra-group transactions provisions under EMIR,[43] proposed § 39.6(g)(2)(v) would require that both affiliates be U.S. persons or one of the affiliates is a U.S. person and the other affiliate is domiciled in a non-U.S. jurisdiction with a comparable and comprehensive regulatory regime for swap clearing or the non-United States counterparty is otherwise required to clear swaps with third parties in compliance with United States Law or does not enter into swaps with third parties.[44]

The Commission recognizes that there may be a legitimate reason for an inter-affiliate swap where one affiliate is located in a country that does not have a comparable clearing regime. However, the Commission believes that financial markets may be at risk if the foreign affiliate enters into a related third-party swap that would be subject to clearing were it entered into in the United States, but is not cleared. On balance, the Commission believes that the risk of evasion and the systemic risk associated with uncleared swaps necessitates that the exemption be limited to swaps between affiliates located in the United States or in foreign countries with comparable clearing regimes or the non-United States counterparty is otherwise required to clear swaps with third parties in compliance with United States law or does not enter into swaps with third parties.

Request for Comments

Q24a. The Commission requests comment on proposed § 39.6(g)(2)(v). Is the proposed condition that both affiliates must be located in the United States or in a country with a comparable and comprehensive clearing jurisdiction or the non-United States counterparty is otherwise required to clear swaps with third parties or does not enter into swaps with third parties a necessary and appropriate means of reducing risk and evasion concerns related to inter-affiliate swaps? If not, how should these concerns be addressed?

Q24b. Should the Commission limit the inter-affiliate clearing exemption to foreign affiliates that only enter into inter-affiliate swaps if such foreign affiliates are not located in a jurisdiction with a comparable and comprehensive clearing requirement or are otherwise required to clear swaps with third parties in compliance with United States?

Q24c. Should the Commission limit the inter-affiliate clearing exemption to foreign affiliates that enter into swaps with third parties on an occasional basis if such foreign affiliates are not located in a jurisdiction with a comparable and comprehensive clearing requirement or are otherwise required to clear swaps with third parties in compliance with United States. What would constitute an occasional basis? For example, would once a year be an appropriate time frame?

Q25. The Commission requests comment on (1) the prevalence of cross-border inter-affiliate swaps and the mechanics of moving swap-related risks between U.S. and non-U.S. affiliates for risk management and other purposes (including an identification of such purposes); (2) the risk implications of cross-border inter-affiliate swaps for the U.S. markets; and (3) specific means to address the risk issues potentially presented by cross-border inter-affiliate swaps.

Q26. The Commission recently adopted anti-evasion provisions relating to cross-border swap activities in its new rule 1.6.[45] To what extent are the risk issues potentially presented by cross-border inter-affiliate swaps addressed by the anti-evasion provisions in rule 1.6?

Q27. The Commission also is considering an alternative condition to address evasion. That condition would require non-U.S. affiliates to clear all swap transactions with non-U.S. persons, provided that such transactions are related to inter-affiliate swaps which would be subject to a clearing requirement if entered into by two U.S. persons.[46] Should the Commission adopt such a condition? Would such a condition help enable the Commission to ensure that the proposed inter-affiliate clearing exemption is not abused or used to evade the clearing requirement? Are there any other means to prevent evasion of the clearing requirement or abuse of the proposed inter-affiliate clearing exemption that the Commission should adopt?

7. Proposed § 39.6(g)(2)(vi): Notification to the Commission

As explained in more detail below, the Commission has preliminarily determined that it must receive certain

[42] *See* CEA section 2(h)(4)(A), 7 U.S.C. 2(h)(4)(A). Additionally, CEA section 6(e)(4)–(5) states that any DCO, SD, or MSP may be subject to double civil monetary penalties should they evade the clearing requirement, among other things. The relevant CEA sections state, ''that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) shall be liable for a civil monetary penalty twice the amount otherwise available for a violation of section 2(h).'' *See* CEA section 6(e)(4)–(5), 7 U.S.C. 9a(4)–(5).

[43] *See, generally,* EMIR Articles 3, 4, 11, 13.

[44] For example, a counterparty located in a country that does not have a comparable clearing regime may be required to clear swaps with third parties in compliance with United States law if it meets the definition of a ''conduit'' as described in the Commission's proposed interpretive guidance and policy statement entitled, ''Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act,'' 77 FR 41214, July 12, 2012.

[45] Rule 1.6 was included in the Commission's ''Product Definitions'' rulemaking, which was adopted jointly with the SEC. *See* ''Further Definition of 'Swap,' 'Security-Based Swap,' and 'Security-Based Swap Agreement;' Mixed Swaps; Security-Based Swap Agreement Recordkeeping,'' 77 FR 39626 (July 23, 2012).

[46] The Commission has proposed separately interpretative guidance on certain entity-level and transaction-level requirements imposed by Title VII of Dodd-Frank for cross-border swaps. *See* Proposed Interpretive Guidance and Policy Statement entitled, ''Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act,'' 77 FR 41214 (July 12, 2012).

information to effectively regulate inter-affiliate swaps. Proposed § 39.6(g)(2)(vi) would require one of the counterparties to an inter-affiliate swap to comply with the reporting requirements set forth in § 39.6(g)(4.).

8. Proposed § 39.6(g)(3): Variation Margin Requirements

Proposed § 39.6(g)(3) would set forth the requirements for transferring variation margin. Proposed § 39.6(g)(3)(i) would require that if both counterparties to the swap are financial entities, each counterparty shall pay and collect variation margin for each inter-affiliate swap for which the proposed exemption is elected. Proposed § 39.6(g)(3)(ii) would require that the swap trading relationship document set forth and describe the methodology to be used to calculate variation margin with sufficient specificity to allow the counterparties, the Commission, and any appropriate prudential regulator to calculate the margin requirement independently. The Commission believes that the proposed rule would help ensure that affiliates have a written methodology. The proposed rule also would allow affiliates to manage their risks more effectively throughout the life of the swap and to avoid disputes regarding issues such as valuation.[47]

9. Proposed § 39.6(g)(4): Reporting Requirements

Pursuant to CEA section 4r,[48] uncleared swaps must be reported to a Swap Data Repository (''SDR''), or to the Commission if no repository will accept such information, by one of the counterparties (the ''reporting counterparty'').[49] In addition to any general reporting requirements applicable under other applicable rules to a particular type of entity that is an affiliate or to the inter-affiliate swap, proposed § 39.6(g)(4) would implement reporting requirements specifically for uncleared inter-affiliate swaps.[50] Proposed § 39.6(g)(4)(i) would require the reporting counterparty to affirm that both counterparties to the inter-affiliate swap are electing not to clear the swap and that both counterparties meet the requirements in proposed § 39.6(g)(1)–(2). Besides alerting the Commission of the election, the information would help ensure that each counterparty is aware of, and satisfies the definitions and conditions set forth in proposed § 39.6(g)(1)–(2).

Proposed § 39.6(g)(4)(ii)–(iii) would require the reporting counterparty to provide certain information, unless such information had been provided in a current annual filing pursuant to proposed § 39.6(g)(5). Proposed § 39.6(g)(4)(ii) would require the reporting counterparty to submit information regarding how the financial obligations of both counterparties are generally satisfied with respect to uncleared swaps. The information is valuable because it would provide the Commission a more complete view of the risk characteristics of uncleared swaps. The information also would enhance the Commission's efforts to identify and reduce potential systemic risk.

Proposed § 39.6(g)(4)(iii) would implement CEA section 2(j) for purposes of the inter-affiliate exemption.[51] That CEA section places a prerequisite on issuers of securities registered under section 12 of the Securities Exchange Act of 1934 (''Exchange Act'') [52] or required to file reports under Exchange Act section 15(g) [53] (''electing SEC Filer'') that elect exemptions from the CEA's clearing requirement under section 2(h)(1)(A). CEA section 2(j) requires that an appropriate committee of the electing SEC Filer's board or governing body review and approve its decision to enter into swaps subject to the clearing exemption.

Proposed § 39.6(g)(4)(iii)(A) would require an electing SEC Filer to notify the Commission of its SEC Filer status by submitting its SEC Central Index Key number. This information would enable the Commission to cross-reference materials filed with the relevant SDR with information in periodic reports and other materials filed by the electing SEC Filer with the U.S. Securities and Exchange Commission (''SEC''). In addition, proposed § 39.6(g)(4)(iii)(B) would require the counterparty to report whether an appropriate committee of its board of directors (or equivalent governing body) has reviewed and approved the decision to enter into the inter-affiliate swaps that are exempt from clearing.[54] If both affiliates/counterparties are electing SEC Filers, both counterparties would have to report the additional information in proposed § 39.6(g)(4)(iii).

Finally, proposed § 39.16(g)(5) would permit counterparties to provide the information listed in proposed (g)(4)(ii)–(iii) on an annual basis in anticipation of electing the inter-affiliate clearing exemption for one or more swaps. Any such reporting under this paragraph would be effective for inter-affiliate swaps entered into within 365 days following the date of such reporting. During the 365-day period, the affiliate would be required to amend the information as necessary to reflect any material changes to the reported information. In addition, the Commission anticipates that for most corporate groups, affiliates would submit identical annual reports.

Request for Comments

Q28. The Commission requests comment on whether affiliates would submit identical annual reports for most corporate groups.

Q29a. The Commission requests comment as to whether reporting counterparties that would not report to an SDR should be subject to swap-by-swap reporting requirements? Should the Commission allow such entities to report all information on an annual basis? Please provide any information as to the number of reporting counterparties that would be affected by such a rule change.

Q29b. The Commission requests comment as to whether different sized entities should be subject to the proposed reporting requirements or the reporting requirements for affiliates that elect the end-user exception, as applicable. If different sized entities should not be subject to such reporting requirements, please explain why. Alternatively, should the Commission

[47] For further discussion on the concept of variation margin for uncleared swaps, *see* proposed rulemaking, ''Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,'' 76 FR 27621, Feb. 12, 2011.

[48] CEA section 4r; 7 U.S.C. 6r.

[49] *See* CEA sections 2(a)(13) (reporting of swaps to SDRs) and 4r (reporting alternatives for uncleared swaps); 7 U.S.C. 2(a)(13) and 7 U.S.C. 6r.

[50] *See* ''Swap Data Recordkeeping and Reporting Requirements,'' 77 FR 2136, Jan. 13, 2012 (''Swap Data Recordkeeping and Reporting''). Regulation 45.11 contemplates that this information may be delivered to the Commission directly in limited circumstances when a SDR is not available. 77 FR at 2168. When permitted, such delivery would also meet the proposed inter-affiliate clearing exemption reporting requirement.

[51] 7 U.S.C. 2(j), in pertinent part:

Exemptions from the requirements of subsection (h)(1) to clear a swap and subsection (h)(8) to execute a swap through a board of trade or swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o) only if an appropriate committee of the issuer's board or governing body has reviewed and approved its decision to enter into swaps that are subject to such exemptions.

[52] 15 U.S.C. 78l.

[53] 15 U.S.C. 78o.

[54] For example, a board resolution or an amendment to a board committee's charter could expressly authorize such committee to review and approve decisions of the electing person not to clear the swap being reported. In turn, such board committee could adopt policies and procedures to review and approve decisions not to clear swaps, on a periodic basis or subject to other conditions determined to be satisfactory to the board committee.

allow phased compliance for different sized entities?

III. Consideration of Costs and Benefits

A. Introduction

Section 15(a) of the CEA [55] requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) factors.

Prior to the passage of the Dodd-Frank Act, swaps were not required to be cleared. In the wake of the financial crisis of 2008, Congress adopted the Dodd-Frank Act, which, among other things, amends the CEA to impose a clearing requirement for swaps.[56] This clearing requirement is designed to reduce counterparty risk associated with swaps and, in turn, mitigate the potential systemic impact of such risk and reduce the risk that such swaps could cause or exacerbate instability in the financial system.[57] In amending the CEA, however, the Dodd-Frank Act preserved the Commission's authority to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transactions, including swaps, from select provisions of the CEA.[58] For reasons explained above,[59] the Commission proposes to exercise its authority under CEA section 4(c)(1) to exempt inter-affiliate swaps—that is, swaps between majority-owned affiliates—from the Section 2(h)(1)(A) clearing requirement.

In the discussion that follows, the Commission considers the costs and benefits of the proposed inter-affiliate exemption to the public and market participants generally. The Commission also separately considers the costs and benefits of the conditions placed on affiliates that would elect the proposed exemption: (1) Swap trading relationship documentation, which would require affiliates to document in writing all terms governing the trading relationship; (2) centralized risk management and variation-margin requirements, which would require affiliates to subject the swap to centralized risk management and to post variation margin; and (3) reporting requirements, which would require counterparties to advise an SDR, or the Commission if no SDR is available, that both counterparties elect the inter-affiliate clearing exemption and to identify the types of collateral used to meet financial obligations. In addition to the foregoing reporting requirements, counterparties that are issuers of securities registered under Section 12 of the Securities Exchange Act of 1934 or those that are required to file reports under Section 15(d) of that Act, would be required to identify the SEC central index key number and confirm that an appropriate committee of board of directors has approved of the affiliates' decision not to clear a swap. The rule also would permit affiliates to report certain information on an annual basis, rather than swap-by-swap.

Finally, the inter-affiliate clearing exemption would require one of the following four conditions be satisfied for each affiliate: The affiliate is located in the United States; the affiliate is located in a jurisdiction with a comparable and comprehensive clearing requirement; the affiliate is required to clear all swaps it enters into with non-affiliated counterparties; or the affiliate does not enter into swaps with non-affiliated counterparties.

B. Proposed Baseline

The Commission's proposed baseline for consideration of the costs and benefits of this proposed exemption are the costs and benefits that the public and market participants (including potentially eligible affiliates) would experience in the absence of this regulatory action. In other words, the proposed baseline is an alternative situation in which the Commission takes no action, meaning that potentially eligible affiliates would be required to comply with the clearing requirement. More specifically, under the CEA, as amended by the Dodd-Frank Act, and Commission regulations (finalized or future) inter-affiliate swaps will be subject to a clearing requirement and, depending on whether the affiliate is an SD, MSP, or eligible contract participant, a variety of record-keeping and reporting requirements. In such a scenario, the public and market participants, including corporate affiliates transacting swaps with each other, would experience the costs and benefits related to clearing and complying with Commission regulations under parts 23, 45, and 46.[60] The proposed exemption would alter these costs and benefits. For example, among other things, the public and market participants would not experience the full benefits related to clearing or satisfying all the requirements under parts 23, 45, and 46. At the same time, affiliates electing the exemption would likely incur lower costs for two reasons. First, the cost of variation margin is significantly less than the cost of clearing.[61] Second, the costs of satisfying the reporting requirements under the proposed exemption would be less than the costs associated with satisfying all of the requirements under parts 23, 45, and 46.

The Commission also considers the regulatory landscape as it existed before the Dodd-Frank Act's enactment. Entities that transacted inter-affiliate swaps within a corporate group were neither subject to a clearing requirement nor compelled to comply with regulatory requirements, including requirements to record and report inter-affiliate swaps. Thus, measured against a pre-Dodd-Frank Act reference point, affiliates that avail themselves of the proposed exemption would experience incremental costs and benefits occasioned by compliance with the conditions for exercising the proposed exemption.

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[55] 7 U.S.C. 19(a).

[56] *See* Section 2(h)(1) of the CEA, 7 U.S.C. 2(h)(1).

[57] When a bilateral swap is moved into clearing, the clearinghouse becomes the counterparty to each of the original participants in the swap. This standardizes counterparty risk for the original swap participants in that they each bear the same risk attributable to facing the clearinghouse as counterparty. In addition, clearing mitigates counterparty risk to the extent that the clearinghouse is a more creditworthy counterparty relative to those that each participant in the trade might have otherwise faced. Clearinghouses have demonstrated resilience in the face of past market stress. Most recently, they remained financially sound and effectively settled positions in the midst of turbulent events in 2007–2008 that threatened the financial health and stability of many other types of entities.

[58] Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1). CEA section 4(c)(1) is discussed in greater detail above in part II.A.

[59] *See* pt.II.A.

[60] *See, e.g.,* costs and benefits discussion in the following rulemakings: ''Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants,'' 77 FR 20128, 20194, Apr. 3, 2012; ''Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties,'' 77 FR 9803, 9804, Feb. 17, 2012; ''Swap Data Record Keeping and Reporting Requirements,'' 77 FR 2136, 2171, Jan. 13, 2012; ''Opting Out of Segregation,'' 66 FR 20740, 20743, Apr. 25, 2001; ''Swap Data Recordingkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps,'' 77 FR 35200, Jun. 12, 2012.

[61] The cost of clearing includes posting initial and variation margin.

In the discussion that follows, where reasonably feasible, the Commission endeavors to estimate quantifiable dollar costs. The benefits of the proposed exemption, as well as certain costs, however, are not presently susceptible to meaningful quantification. Where it is unable to quantify, the Commission discusses proposed costs and benefits in qualitative terms.

C. Costs

1. To Market Participants and the Public

As discussed above, inter-affiliate swaps—though possessing a lesser degree of counterparty risk than swaps transacted between non-affiliated counterparties—are not risk-free. As evidenced in the 2008 financial crisis, counterparty swap risk, transmitted systemically, can exact a heavy cost on market participants as well as the public. Thus, unconditionally exempting inter-affiliate swaps from the clearing requirement would come with a cost of increased risk that clearing is intended to contain. This includes the risk that the failure of one party to perform under the terms of a swap transaction would cause the counterparty to be unable to perform under the terms of swaps it had entered into with other counterparties, thereby causing a cascading series of non-performance throughout the financial system. Clearing both reduces this risk of non-performance and promotes confidence throughout the financial system that the failure of one firm will not lead to a systemic crisis, thereby lessening the chance of such a crisis or the need for the federal government to intervene to prevent any such failures. Accordingly, the Commission does not propose an unconditional, blanket exemption. Rather, the Commission proposes an exemption with conditions carefully tailored to offset the narrower, counterparty-risk profile that inter-affiliate swaps present relative to all swaps generally. Based on the expectation that for the subset of inter-affiliate swaps covered by this proposed exemption these conditions are capable of closely approximating the risk protections that clearing provides to swaps more generally, the Commission foresees no significant additional risk cost from the proposed exemption.

2. To Potentially Eligible Entities

The proposed rule is exemptive and would provide potentially eligible affiliates with relief from the clearing requirement and attendant Commission regulations. As with any exemptive rule or order, the proposed rule is permissive, meaning that potentially eligible affiliates are not required to elect it. Accordingly, the Commission assumes that an entity would rely on the proposed exemption only if the anticipated benefits warrant the costs. Here, the proposed inter-affiliate clearing exemption identifies three categories of conditions that an eligible affiliate must satisfy to elect the proposed exemption: documentation, risk management, and reporting. The Commission believes that a person would have to incur costs to satisfy these conditions. The Commission also believes that an affiliate would elect the exemption only if these costs are less than the costs that an affiliate would incur should it decide not to elect the exemption.

Regarding the documentation condition, the Commission believes that affiliates electing the exemption (other than SDs/MSPs satisfying the swap documentation condition and risk-management conditions by satisfying the requirements of regulations 23.504 and 23.600, respectively) would likely incur costs to develop a standardized document to comply with the proposed § 39.6(g)(2)(ii) requirement that all terms governing the trading relationship be in writing.[62] The Commission estimates that affiliates could pay a law firm for up to 30 hours of work at $495 per hour to modify an ISDA master agreement, resulting in a one-time cost of $15,000, and there may be additional costs related to revising documentation to address a particular swap. All salaries in these calculations are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry. Annual wages were converted to hourly wages assuming 1,800 work hours per year and then multiplying by 5.35 to account for bonuses, firm size, employee benefits and overhead. Unless otherwise stated, the remaining wage calculations used in this proposed rule also are derived from this source and modified in the same manner. The Commission, however, is unable to estimate such costs with greater specificity because it is unable to estimate the frequency of, and costs associated with modifying a swap agreement.

Affiliates also would incur costs related to signing swap documents and retaining copies. The Commission believes that affiliates would incur less than $1,000 per year for such activities. The Commission notes, however, that these estimates may overstate the actual costs because it expects that affiliates within a corporate group would be able to share legal-drafting and record-retention costs, as well as labor costs.

The second category of conditions concerns risk management. Affiliates electing the proposed exemption would have to subject inter-affiliate swaps to centralized risk management, which would include variation margin.[63] To meet the centralized-risk-management condition under § 39.16(g)(2)(iii), some affiliates may have to create a risk management system.[64] To do so, affiliates would have to purchase equipment and software to adequately evaluate and measure inter-affiliate swap risk. The Commission believes that such costs could be possibly as high as $150,000. For example, these costs might include purchasing a computer network at approximately $20,000; purchasing personal computers and monitors for 15 staff members at approximately $30,000; purchasing software at approximately $20,000; purchasing other office equipment, such as printers, at approximately $5,000. The total would amount to $75,000. There also might be installation and unexpected costs that could increase up-front costs to approximately $150,000. In addition to these start-up costs, there could be ongoing costs. The Commission estimates that centralized risk management could require up to ten full-time staff at an average salary of $150,000 per year.[65] Finally, a data subscription for price and other market data may have to be purchased at cost of up to $100,000 per year.

Proposed § 39.6(g)(2)(iv) would require counterparties to post variation margin in compliance with proposed § 39.6(g)(3)'s documentation and other

[62] For a discussion of the costs and benefits incurred by swap dealers and major swap participants that must satisfy requirements under § 23.504, see ''Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants,'' 76 FR 6715, 6724–25, Feb. 8, 2011 (proposed rule).

[63] For a discussion of the costs and benefits incurred by swap dealers and major swap participants that must satisfy requirements under § 23.600, see ''Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants,'' 77 FR 20128, 20173–75, April 3, 2012 (final rule).

[64] As pointed out above, industry commenters underscored the fact that many corporate groups that currently use inter-affiliate swaps have centralized-risk-management procedures in place.

[65] This average annual salary is based on 15 senior credit risk analysts only. The Commission appreciates that an affiliate would likely choose to employ different positions as well, such as risk management specialists at $130,000 per year, and computer supervisors at $140,000. But for the purposes of this estimate, the Commission has assumed salaries at the high end for risk management professionals.

requirements. The Commission believes that companies may have to hire attorneys and financial analysts to develop and document the variation margin methodology to comply with this rule, resulting in a one-time cost of $29,000 per entity electing the proposed exemption. This estimate assumes up to 100 hours of financial analyst time at an average cost of $208 per hour, and up to 20 hours of compliance attorney time at an average cost of $390 per hour.

The Commission also believes that affiliates would incur certain costs to comply with the proposed § 39.16(g)(2)(iv) condition to post variation margin. The Commission anticipates that affiliates would have to hire up to three people at an average salary of $150,000 per year to estimate the price of inter-affiliate swaps and to manage variation margin payments between affiliates. In addition, the Commission expects that companies would have to purchase equipment and software to estimate the price of inter-affiliate swaps and to subscribe to a data service. However, the Commission anticipates that such costs also would be incurred to satisfy the centralized risk management condition in proposed § 39.6(g)(2)(iii). Finally, affiliates would have to incur the opportunity costs associated with posting collateral to cover variation margin.[66]

The third category of conditions involves reporting requirements. Proposed § 39.6(g)(4) would require affiliates to report specific information to an SDR or to the Commission if no SDR would accept such information. Proposed § 39.16(g)(4)(i) would require notice reporting on a swap-by-swap basis that two affiliates are electing the exemption and that they both meet the requirements in proposed § 39.6(g)(1)–(2). The Commission believes that each counterparty may spend 15 seconds to two minutes per swap entering a notice of election of the exemption into the reporting system. The hourly wage for a compliance attorney is $390, resulting in a per transaction cost of $1.63-$13.00.

Affiliates would incur costs to satisfy the conditions that the reporting party (1) identify how the affiliates expect to meet the financial obligations associated with their uncleared swap as required under proposed § 39.6(g)(4)(ii), and (2) provide the information required under proposed § 39.6(g)(4)(iii) if either electing affiliate is an SEC Filer. Affiliates may decide to report this information on either a swap-by-swap or annual basis, and the costs would vary depending on the reporting frequency. Regarding the financial information in proposed § 39.6(g)(4)(ii)-(iii), the Commission believes that it may take the reporting counterparty up to 10 minutes to collect and submit the information for the first transaction, and one to five minutes to collect and submit the information for subsequent transactions with that same counterparty. The hourly wage for a compliance attorney is $390 resulting in a cost of $65.00 for complying with proposed § 39.6(g)(4)(ii)–(iii) for the first inter-affiliate swap, and a cost range of $6.50–$32.50 for complying with proposed § 39.6(g)(4)(ii)–(iii) for subsequent inter-affiliate swaps.

The Commission anticipates that companies electing not to clear would have established reporting systems to comply with other Commission rules regarding swap reporting. However, all reporting counterparties likely would need to modify their reporting systems to accommodate the additional data fields required by this rule. The Commission estimates that those modifications would create a one-time programming expense of approximately one to ten burden hours per affiliate. The Commission estimates that the hourly wage for a senior programmer is $341, which means that the one-time, per entity cost for modifying reporting systems would likely be between $341 and $3,410.

An affiliate that does not function as the reporting counterparty may need to communicate information to the reporting counterparty after the swap is entered. That information could include, among other things, whether the affiliate has filed an annual report pursuant to proposed § 39.6(g)(5) and information to facilitate any due diligence that the reporting counterparty may conduct. These costs would likely vary substantially depending on how frequently the affiliate enters into swaps, whether the affiliate undertakes an annual filing, and the due diligence that the reporting counterparty chooses to conduct. The Commission estimates that a non-reporting affiliate would incur annually between five minutes and ten hours of compliance attorney time to communicate information to the reporting counterparty. The hourly wage for a compliance attorney is $390, translating to an aggregate annual cost for communicating information to the reporting counterparty of between $33 to $3,900.

The Commission expects a proportion of affiliates would choose to file an annual report pursuant to proposed § 39.6(g)(5). The annual filing option may be less costly than swap-by-swap reporting. The Commission estimates that it would take an average of 30 to 90 minutes to complete and submit this filing. The average hourly wage for a compliance attorney is $390, translating to an aggregate annual cost for submitting the annual report of between $195 to $585.

The Commission anticipates that SDRs and the Commission also would bear costs associated with the proposed reporting conditions. SDRs would be required to add or edit reporting data fields to accommodate information reported by affiliates electing the inter-affiliate clearing exemption.[67] Similarly, the Commission would need to create a reporting system for affiliates electing the exemption should there be no available SDR.

Finally, the rule would impose a limitation on those affiliates electing the inter-affiliate clearing exemption. Namely, the inter-affiliate clearing exemption would require one of the following four conditions be satisfied for each affiliate: the affiliate is located in the United States; the affiliate is located in a jurisdiction with a comparable and comprehensive clearing requirement; the affiliate is required to clear all swaps it enters into with non-affiliated counterparties; or the affiliate does not enter into swaps with non-affiliated counterparties. This limitation would impose no additional cost over not providing the exemption. However, as compared to the state of regulation that existed pre-Dodd-Frank Act, this condition would impose the costs of clearing for those inter-affiliate swaps that occur in countries without a clearing regime comparable to the United States.

D. Benefits

The CEA does not require the Commission to issue an exemption to the clearing requirement for inter-affiliate swaps. Section 4(c)(1) of the CEA, however, provides the Commission with authority to exempt certain entities and types of transactions from CEA obligations. The statutory section requires that the Commission consider two objectives when it decides to issue an exemption: (1) The promotion of responsible economic or financial innovation, and (2) the promotion of fair competition.

The Commission believes there are benefits to exempting swaps between certain affiliated entities. For example,

[66] The opportunity cost of posting collateral is the highest return an affiliate would have earned by investing that collateral instead of using it to cover variation margin under similar conditions.

[67] *See generally,* ''Swap Data Recordkeeping and Reporting Requirements,'' 77 FR 2137 at 2176–2193, Jan. 13, 2012 (for costs and benefits incurred by SDRs).

as explained above,[68] a number of commenters stated that clearing swaps through treasury or conduit affiliates enables entities to more efficiently and effectively manage corporate risk.

The Commission also is considering the previously-discussed comments that an exemption is appropriate because inter-affiliate swaps pose reduced counterparty risk relative to swaps with third parties.[69] The Commission remarks that this proposition is more likely to hold true provided that the terms and conditions of the swaps are the same. The Commission believes that inter-affiliate swap risk may be appropriately managed, in lieu of clearing, through the proposed conditions that affiliates would be required to satisfy to elect the proposed exemption. It has considered the benefits of each of these conditions. The Commission believes that the first category—documentation of the swap trading relationship between affiliates—would benefit affiliates and the overall financial system. Specifically, the Commission believes that requiring documentation of inter-affiliate swaps in a swap confirmation would help ensure that affiliates have proof of claim in the event of bankruptcy. As explained earlier, insufficient proof of claim could create challenges and uncertainty at bankruptcy that could adversely affect affiliates and third party creditors. Also, though not a documentation condition, the proposed exemption would require that the affiliates would be able to elect this exemption for their inter-affiliate swaps if one of the following four conditions is satisfied for each affiliate: The affiliate is located in the United States; the affiliate is located in a jurisdiction with a comparable and comprehensive clearing requirement; the affiliate is required to clear all swaps it enters into with non-affiliate counterparties; or the affiliate does not enter into swaps with non-affiliate counterparties. This limitation should help mitigate systemic risk attributable to affiliates who, subsequent to conducting inter-affiliate swaps, transact uncleared, market-facing (*i.e.,* not inter-affiliate) swaps in a jurisdiction without a clearing regime comparable to the United States.

The Commission recognizes that there may be a legitimate reason for inter-affiliate swaps where one affiliate is located in a country that does not have a comparable clearing regime or the non-United States counterparty is otherwise required to clear swaps with third parties. However, the Commission believes that the corporate group and financial markets may be at risk if the foreign affiliate is free to enter into a related, uncleared swap with a third party that would be subject to clearing were it entered into in the United States. On balance, the Commission believes that the risk associated with uncleared swaps necessitates that the proposed exemption be limited to swaps between affiliates located in the United States or in foreign countries with comparable clearing regimes or the non-United States counterparty is otherwise required to clear swaps with third parties or the affiliates do not enter into swaps with third parties.

Centralized-risk management and variation margin are also beneficial conditions. The requirement that an inter-affiliate swap be subject to centralized-risk management is beneficial because it is intimately connected to the variation-margin condition. Centralized-risk management establishes appropriate measurements and procedures so that affiliates can mitigate the amount being concentrated in a single treasury or conduit-type affiliate. Moreover, the Commission believes that proper risk management benefits the public by reducing risk and the losses related to defaults.

The requirement that affiliates post variation margin should protect both parties to a trade by ensuring that each party to the swap has the financial wherewithal to meet the obligations of the swap. Variation margin also would serve as a resource that could reduce losses to a counterparty when there is a default. Overall, the variation-margin condition would benefit each affiliate and the financial system, at large, by increasing the security of affiliate positions.

The final category of conditions, reporting certain information about inter-affiliate swaps, should enhance the level of transparency associated with inter-affiliate swaps activity, afford the Commission new insights into the practices of affiliates that engage in inter-affiliate swaps, and help the Commission and other appropriate regulators identify emerging or potential risks. In short, the overall benefit of reporting would be a greater body of information for the Commission to analyze with the goal of identifying and reducing systemic risk.

E. Costs and Benefits as Compared to Alternatives

The Commission considered several alternatives to the proposed rulemaking. For instance, the Commission could have: (1) Chosen not to propose an inter-affiliate clearing exemption; (2) proposed an alternative definition of affiliate; or (3) decided not to place certain conditions on those electing the inter-affiliate clearing exemption. The Commission, however, has proposed what it considers a measured approach—in terms of the implicated costs and benefits of the exemption—given its current understanding of inter-affiliate swaps.

First, the Commission considered not exempting inter-affiliate swaps from the clearing requirement. Without an exemption, inter-affiliate swaps subject to a clearing requirement would have to be cleared. This alternative was not favored by the Commission because the Commission believes that there are considerable benefits of exempting inter-affiliate swaps from clearing to the market, as discussed in detail above. In addition, while the Commission does not believe inter-affiliate swaps are riskless, the Commission is considering comments that inter-affiliate swaps pose less risk than swaps with third parties because of reduced counterparty risk and therefore risk-reducing conditions may be a satisfactory alternative to clearing for these swaps. Commenters in other rulemakings as discussed above recognized implicitly risk concerns by sharing that some corporate groups manage inter-affiliate risk via centralized risk management programs that include variation-margin calculations. Consequently, it would not be prudent to exempt inter-affiliate swaps categorically from the CEA's clearing requirement without conditions that address inter-affiliate swap risk.

Second, the Commission also considered ownership requirements of greater than, and lesser than majority ownership.[70] Increasing the ownership requirement would reduce the number of affiliates that could benefit from the exemption.[71] At the same time, a higher ownership threshold for affiliates could help protect minority owners and reduce counterparty risk and risk to third parties who have entered into swaps that are related to inter-affiliate swaps.

Nevertheless, the Commission believes that any benefit from an ownership requirement of greater than majority ownership, in the form of reduced counterparty risk, would not be

[68] See pt. I.B. for in-depth discussion of relevant comments regarding inter-affiliate swaps and the advantages of such treasury or conduit structures.

[69] See pt. II.A.

[70] See pt. II.B.1 for further discussion and other requests for comment on this issue.

[71] In the Paperwork Reduction Act, the Commission points out that it does not possess sufficient information to estimate the number of affiliates, even majority-owned, that might avail themselves of the proposed inter-affiliate clearing exemption.

substantial due to the risk mitigation conditions such as centralized risk management programs that are being proposed with majority ownership. The Commission welcomes comments as to the costs and benefits of an increased ownership requirement.

Similarly, the Commission considered an ownership requirement of less than majority ownership. While a reduction in the ownership requirement would allow more affiliates to benefit from the exemption, it would also considerably increase the counterparty risk in the market. The Commission welcomes comments as to the costs and benefits of a decreased ownership requirement.

Finally, the Commission considered not requiring each condition—*i.e.,* swap trading relationship documentation; centralized risk management that includes variation margin; or reporting. In other words, the Commission could have proposed an inter-affiliate clearing exemption with fewer or no conditions. Because there is no indication at this stage that inter-affiliate swaps are riskless, the Commission proposed conditions. The Commission's views on the costs and benefits of each condition are discussed above. The Commission invites comments as to the costs and benefit of each condition.

F. Consideration of CEA Section 15(a) Factors

1. Protection of Market Participants and the Public

In deciding to propose the inter-affiliate clearing exemption, the Commission assessed how to protect affiliated entities, third parties in the swaps market, and the public. The Commission sought to ensure that in the absence of a clearing requirement the risks presented by uncleared inter-affiliate swaps would be minimized should there be significant losses to one affiliate counterparty or a default of one of the affiliate counterparties. Toward that end, the Commission proposed that affiliates eligible to elect the proposed exemption must execute swap trading relationship documentation; post variation margin as part of a centralized-risk management process; and report specific information to an SDR, or to the Commission if no SDR would accept the information. As explained in this cost-benefit section, these conditions serve multiple objectives that ultimately protect market participants and the public.

For instance, the documentation requirement would reduce uncertainties where affiliates incur significant swaps-related losses or where there is a defaulting affiliate. Because the documentation would be in writing, the Commission expects that there would be less contractual ambiguity should disagreements between affiliates arise. The proposed condition that an inter-affiliate swap be subject to a centralized risk management program reasonably designed to monitor and manage risk would help mitigate the risks associated with inter-affiliate swaps. As noted throughout this proposed rulemaking, inter-affiliate swap risk could adversely impact third parties who enter into swaps that are related to an inter-affiliate swap. In addition, if inter-affiliate swap risk is not carefully monitored, there could be greater probability that an adverse financial event could lead to bankruptcy, which could harm market participants and the public overall. Similarly, the proposed condition that affiliated counterparties post variation margin should help to prevent unrealized losses from accumulating over time and thereby reduce both the chance of default and the size of any default should one occur. In turn, this should lessen the likelihood and extent of harm to third parties that enter into swaps that are related to inter-affiliate swaps.

The proposed reporting obligations would help the Commission monitor compliance with the proposed inter-affiliate clearing exemption. For example, an affiliate that also is an SEC Filer must receive a governing board's approval for electing the proposed exemption. It cannot act independently. In the Commission's opinion, the reporting conditions promote accountability and transparency, offering another public safeguard by keeping the Commission informed.

2. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

Exempting swaps between majority-owned affiliates within a corporate group from the clearing requirement would promote efficiency by reducing overall clearing costs for eligible counterparties. The Commission is also considering comments that the proposed exemption would increase the efficiency and financial integrity of markets because it would enable corporate groups to clear swaps through their treasury or conduit affiliates. As explained above,[72] commenters in other rulemakings have stated that clearing swaps through treasury or conduit affiliates enables affiliates and corporate groups to more efficiently and effectively manage corporate risk.

Certain provisions of the proposed rule, such as the requirements that inter-affiliate swaps be subject to centralized risk management, that affiliates post variation margin, and that certain information be reported, also would discourage abuse of the exemption. Together, these conditions would promote the financial integrity of swap markets and financial markets as a whole.

3. Price Discovery

Under Commission regulation 43.2, a ''publicly reportable swap transaction,'' means, among other things, ''any executed swap that is an arm's length transaction between two parties that results in a corresponding change in the market risk position between the two parties.'' [73] The Commission does not consider non-arms-length swaps as contributing to price discovery in the markets.[74] Given that inter-affiliate swaps as defined in this proposed rulemaking are generally not arm's length transactions, the Commission does not anticipate the proposed inter-affiliate clearing exemption would have any effect on price discovery.[75]

4. Sound Risk Management Practices

As a general rule, the Commission believes that clearing swaps is a sound risk management practice. But, in proposing the inter-affiliate clearing exemption, the Commission has assessed the risks of inter-affiliate swaps, and proposes that it can impose alternative, sound risk-management practices for these particular swaps in the form of conditions. In other words, a prudent use of the Commission's exemptive authority would include proposing an exemption that requires affiliates to manage risks appropriately.[76] In this case, the specific

[72] See pt. I.B. for in-depth discussion of relevant comments regarding inter-affiliate swaps and the advantages of such treasury or conduit structures.

[73] 17 CFR 43.2. *See also* ''Real-Time Public Reporting of Swap Transaction Data,'' 77 FR 1182, Jan. 9, 2012 (Real-Time Reporting).

[74] Transactions that fall outside the definition of ''publicly reportable swap transaction''—that is, they are not arms-length—''do not serve the price discovery objective of CEA section 2(a)(13)(B).'' Real-Time Reporting, 77 FR at 1195. *See also Id.* at 1187 (discussion entitled ''Swaps Between Affiliates and Portfolio Compression Exercises'').

[75] The definition of ''publicly reportable swap transaction'' identifies two examples of transactions that fall outside definition, including ''internal swaps between one-hundred percent owned subsidiaries of the same parent entity.'' 17 CFR 43.2 (adopted by Real-Time Reporting, 77 FR at 1244). The Commission remarks that the list of examples is not exhaustive.

[76] Furthermore, CEA section 8a(5) states that ''in the judgment of the Commission,'' it is authorized to make and promulgate rules ''necessary to

Continued

risk-management conditions include: documentation of swap terms; establishment of centralized risk management, and the posting of variation margin. The Commission also believes that SEC Filer reporting is a prudent practice. As detailed in this preamble and the proposed rule text,[77] SEC Filers are affiliates that meet certain SEC-related qualifications, and their governing boards or equivalent bodies are directly responsible to shareholders for the financial condition and performance of the affiliate. The boards also have access to information that would give them a comprehensive picture of the company's financial condition and risk management strategies. Therefore, any oversight they provide to the affiliate's risk management strategies would likely encourage sound risk management practices. In addition, the condition that affiliates electing the inter-affiliate clearing exemption must report their boards' knowledge of the election is a sound risk management practice.

5. Other Public Interest Considerations

The Commission believes that the proposed exemptive rulemaking would reduce the costs of transacting swaps between majority-owned affiliates. At the same time, the proposed rulemaking would foster the financial integrity of swap markets by mandating that certain conditions be satisfied by affiliates electing the inter-affiliate clearing exemption. The Commission believes that the financial savings by affiliates, and, ultimately, corporate groups would serve public-interest considerations. For example, affiliates and corporate groups could use the cost-savings to provide new services or products for the public. They could also pass-on some or all of the cost-savings through prices they charge the public for their services and products.

G. Request for Public Comment on Costs and Benefits

Q30. The Commission invites public comment on its cost-benefit considerations, including the consideration of reasonable alternatives.

Q31. If the Commission were to propose a clearing exemption limited to 100% owned affiliates, what costs and benefits would affect market participants and the public?

Q32. If the Commission were to propose a clearing exemption with an ownership requirement of greater or less than majority ownership what costs and benefits would affect market participants and the public?

Q33. If the Commission were to issue a proposed clearing exemption limited to those affiliates that file consolidated tax returns, what costs and benefits would affect market participants and the public?

Q34. Do inter-affiliate swaps affect price discovery? To what extent would the inter-affiliate clearing exemption affect price discovery?

Q35. Besides variation margin, is there a less costly risk-management tool that would serve the same risk-management objectives as variation margin?

Q36. Besides affiliates, SDRs, and the Commission, are there any other entities that might bear a direct cost as a result of the proposed inter-affiliate clearing exemption? If so, who and to what extent?

Q37. Commenters are invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

Q38. Commenters are invited to submit any data or other information that they may have quantifying or qualifying start-up and on-going costs and benefits associated with establishing a centralized risk management program.

IV. Administrative Compliance

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the proposed rules will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.

Consistent with other Commission rulemakings, the proposed rules will not have a significant economic impact on a substantial number of small entities. The proposed rules would affect the electing and reporting parties, which could be SDs, MSPs, and Eligible Contract Participants (''ECPs''). The Commission has certified previously that neither category involves small entities for purposes of the RFA in other Commission rulemakings, including those implementing requirements of the Dodd-Frank Act.[78] The Commission is making a similar determination for purposes of this proposal. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed rules will not have a significant economic impact on a substantial number of small entities with respect to SDs, MSPs, and ECPs.

The proposed rules also would affect SDRs, which the Commission has similarly determined not to be small entities for purposes of the RFA.[79] The Commission is making the same determination with respect to the proposed rules. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed regulation would not have a significant economic impact on a substantial number of small entities with respect to SDRs.

Request for Comments

Q39. The Commission invites comments on the impact of this proposed regulation on small entities.

B. Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act (''PRA'')[80] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (''OMB''). Certain provisions of proposed § 39.6(g) would result in new collection of information requirements within the meaning of the PRA. These new reporting requirements are not currently covered by any existing OMB control number and OMB has not yet assigned a control number for this new collection. The Commission therefore is submitting this proposal to the OMB for review in accordance with 44 U.S.C. 3507(g) and 5 CFR 1320.11.

effectuate any'' CEA provisions or to accomplish any CEA purpose. 7 U.S.C. 12a(5).

[77] See pt. II.B.9 and proposed § 39.6(g)(4)(iii).

[78] For SDs and MSPs, *see, e.g.,* ''Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants,'' 77 FR 20128, 20194, Apr. 3, 2012 (SDs and MSPs); ''Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties,'' 77 FR 9803, 9804, Feb. 17, 2012 (SDs and MSPs); ''Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act,'' 47 FR 18618, Apr. 30, 1982 (MSPs). For ECPs, *see, e.g.,* ''Commodity Options,'' 77 FR 25320, 25334, Apr. 27, 2012; ''Swap Data Record Keeping and Reporting Requirements,'' 77 FR 2136, 2171, Jan. 13, 2012; ''Opting Out of Segregation,'' 66 FR 20740, 20743, Apr. 25, 2001.

[79] *See* Swap Data Repositories, 75 FR 80898, 80926, Dec. 23, 2010; Registration of Swap Dealers and Major Swap Participants, 75 FR 71379, 71385, Nov. 23, 2010.

[80] 44 U.S.C. 3501 *et seq.*

The title for this collection of information is ''Rule 39.6(g) Affiliate Transaction Uncleared Swap Notification.'' If adopted, responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

2. Information Provided by Reporting Entities

Proposed § 39.6(g) would set forth certain reporting conditions that must be satisfied for affiliates to elect the inter-affiliate clearing exemption. As described above, these conditions are designed to address Commission concerns regarding inter-affiliate swap risk and to provide the Commission with information necessary to regulate swaps markets. In particular, the reporting conditions in proposed § 39.6(g)(4) and the optional annual report set forth in proposed § 39.6(g)(5) would establish new collection of information requirements within the meaning of the PRA. Additionally, affiliates may be required to update their reporting systems for purposes of complying with the proposed reporting requirement, and non-reporting affiliates electing the proposed exemption may incur costs in transmitting information to their reporting counterparties.

The Commission has estimated the time burden required for entities to comply with the proposed requirements.[81] The Commission has estimated quantifiable costs, including one-time and annual costs per affiliate and costs that are incurred on a swap-by-swap basis. The dollar estimates are offered as ranges with upper and lower bounds, which is necessary to accommodate uncertainty regarding the estimates. The Commission notes that the most likely outcome with respect to each estimate is the average cost. With that in mind, the Commission has included tables that provide the average burden hour and average cost for each of the PRA requirements in the proposed exemption.

The total cost of the inter-affiliate clearing exemption would depend on the number of affiliates electing the proposed exemption, as well as the number of inter-affiliate swaps for which affiliates would elect to use the proposed exemption. To identify the number of affiliates that could elect the proposed exemption, the Commission is relying upon the most recent data collected by the U.S. Bureau of Economic Analysis (''BEA'').[82] The BEA has determined that there are 2,347 U.S. multinational parent companies (''MNCs''),[83] and 25,424 foreign subsidiaries that are majority-owned by such MNCs.[84] Because the BEA does not provide the number of majority-owned U.S. subsidiaries, the Commission has decided to double BEA's foreign-subsidiary total to identify the number of potential U.S. subsidiaries that might elect the proposed inter-affiliate clearing exemption. The result is that there are an estimated 50,848 U.S. and foreign subsidiaries [25,424 × 2], or approximately 22 subsidiaries per MNC [50,848 ÷ 2,347], that is, 11 U.S. subsidiaries and 11 foreign subsidiaries. This total number of U.S. and foreign subsidiaries combined with the total U.S. parent companies equals 53,195 [2,347 + 50,848] affiliates that might elect the inter-affiliate clearing exemption.

To obtain information on the average number of inter-affiliate swaps, the Commission surveyed five corporations.[85] Two corporations were large financial companies and the other three were manufacturing companies. Recognizing that most MNCs are manufacturers as opposed to financial companies, the Commission decided to take a weighted average of the sample and assumed that 95% of MNCs are manufacturers and 5% are financial companies. Based on this weighted average, the Commission estimates that affiliates enter into 2,230 inter-affiliate swaps annually on average.[86]

Using the figures above, namely 2,347 MNCs with 22 subsidiaries each and each affiliate transacting an average of 2,230 swaps, the Commission has estimated that there are approximately 64,768,399 inter-affiliate swaps entered into annually. To make this calculation, the Commission assumed that all U.S. inter-affiliate swaps and most foreign inter-affiliate swaps are with a single U.S. treasury/conduit affiliate. The Commission also assumed that 75% of treasury/conduit affiliates would be subsidiaries and would therefore be subject to this rulemaking. The remaining 25% of treasury/conduit affiliates would be the parent MNC and would not be the subject of this rulemaking because in general such swaps would qualify for the end-user exception.[87] Finally, the Commission assumed that 50% of the inter-affiliate swaps entered into by foreign affiliates would be entered into with a U.S. treasury/conduit affiliate while the remaining swaps would be entered into with foreign affiliates and would not be

[81] *See* 5 CFR 1320.3(b) for the definition of the term ''burden.''

[82] The BEA's Web site is located at *http://www.bea.gov/*. BEA's most recent data on the number of U.S. parent companies of multinational corporations and their affiliates is listed in the ''U.S. Direct Investment Abroad: Preliminary Results from the 2009 Benchmark Survey,'' located at *http://www.bea.gov/international/usdia2009p.htm*.

[83] *See* Table I.A 2., ''Selected Data for Foreign Affiliates and U.S. Parents in All Industries,'' located at *http://www.bea.gov/international/pdf/usdia_2009p/Group%20I%20tables.pdf* . The BEA defines a U.S. Parent of an MNC as a person that is a resident in the United States and owns or controls 10 percent or more of the voting securities, or the equivalent, of a foreign business enterprise. A Guide to BEA Statistics on U.S. Multinational Companies, located at *http://www.bea.gov/scb/pdf/internat/usinvest/1995/0395iid.pdf*.

[84] *See* Table II.A 1., ''Selected Data for Foreign Affiliates in All Countries in Which Investment Was Reported,'' located at *http://www.bea.gov/international/pdf/usdia_2009p/Group%20II%20tables.pdf*. The BEA limited foreign affiliates to those with total assets, sales, or net income of more than $25 million.

[85] The Commission is unable to provide additional information regarding the survey because information was submitted on a confidential basis.

[86] Due to the small sample size and data inconsistencies, this estimate may not provide a complete representation of the affiliate corporate structure or inter-affiliate swaps. For instance, responses were not consistent in format (quarterly figures versus six-month or annual figures) and also provided data for different time periods in 2010 or 2011. To generate its estimates, the Commission had to extrapolate this data by assuming that the amount of inter-affiliate swaps transacted during one quarter would be the same for the remaining three quarters of the year, or that inter-affiliate swap data from 2010 and 2011 are comparable and can be combined for averaging purposes. The Commission also notes that responses regarding the number of inter-affiliate swap transactions varied widely and a much larger sample size would be required to generate a more accurate estimate. The Commission requests comment on the typical annual inter-affiliate swap activity within corporate groups and the total number of affiliates that would potentially elect the proposed inter-affiliate clearing exemption.

[87] As noted above, the Commission assumes that 95% of MNCs are commercial entities and 5% are financial companies. Based on these numbers, the Commission believes that most of the swaps between affiliates are likely to qualify for the end-user exception because in most cases one of the affiliates will be a manufacturer and the inter-affiliate swap will hedge or mitigate the commercial risk of that affiliate. The Commission, however, does not have information as to how many inter-affiliate swaps would qualify for the end-user exception. Accordingly, the Commission has taken a conservative approach and assumed that none of the inter-affiliate swaps would qualify for the end-user exception.

subject to this rulemaking. Table A summarizes the Commission's estimates of the number of MNCs, subsidiaries, affiliates, and annual inter-affiliate swaps.

TABLE A—MNC, AFFILIATE, AND INTER-AFFILIATE SWAP ESTIMATES

Number of MNCs	2,347
Number of Subsidiaries per MNC	22[88]
Total Number of Subsidiaries	50,848
Total Number of Affiliates Potentially Electing the Proposed Exemption	53,195
	[50,848 + 2,347]
Estimated Number of MNCs Subject to Proposed Reporting Requirements	1,760
	[2,347 × 75%]
Estimated Number of Reporting MNCs that Would File Annual Reports[89]	1,584
	[1,760 × 90%]
Average Annual Number of Inter-Affiliate Swaps per Affiliate	2,230
Total Annual Number of Inter-Affiliate Swaps[90]	64,768,399

Request for Comments

Q40. As discussed above, the Commission does not have information as to how many inter-affiliate swaps would qualify for the end-user exception. The Commission invites comments on whether most inter-affiliate swaps would qualify for the end-user exception because one of the affiliates is a commercial entity and the swap hedges or mitigates the commercial risk of that affiliate. The Commission also requests any information that would help to quantify the number of inter-affiliate swaps or the share of inter-affiliate swaps that would qualify for the end-user exception.

a. Proposed § 39.6(g)(4) Reporting Requirements

Proposed § 39.6(g)(4) would require electing entities that are reporting counterparties to notify the Commission each time the inter-affiliate clearing exemption is elected by delivering specified information to a registered SDR or, if no registered SDR is available, the Commission. Except as noted below, the notification would occur only once at the beginning of the swap life cycle.

The reporting counterparty would have to report the information required in proposed § 39.6(g)(4)(i) for each swap. It would also have to report the information required in proposed §§ 39.6(g)(4)(ii)–(iii) for each swap if no annual report had been filed. To comply with proposed § 39.6(g)(4)(i), each reporting counterparty would be required to check one box indicating that both counterparties to the swap are electing not to clear the swap. The Commission expects that each reporting counterparty would likely spend 15 seconds to two minutes per transaction entering this information into the reporting system. Regarding the proposed §§ 39.6(g)(4)(ii)–(iii) information, the Commission expects that it would take the reporting counterparty up to 10 minutes to collect and submit the information for the first transaction and one to five minutes to collect and submit the information for subsequent transactions with that same counterparty. The Commission expects a compliance attorney may be responsible for the collection at $390 per hour, resulting in the following per transaction costs to reporting counterparties: A range of $1.63–$13.00 for proposed § 39.6(g)(4)(i); a cost of $65.00 for complying with proposed §§ 39.6(g)(4)(ii)–(iii) for the first inter-affiliate swap; and range of $6.50–$32.50 for complying with proposed §§ 39.6(g)(4)(ii)–(iii) for subsequent inter-affiliate swaps with the same counterparty. Table B summarizes the estimated average burden hours and costs per reporting entity under proposed § 39.6(g)(4), as follows:

TABLE B—BURDEN AND COST ESTIMATES OF PROPOSED § 39.6(g)(4)

Proposed regulation/requirement description	Average burden hours per transaction	Average cost per transaction	Total average annual burden hours	Total average annual cost
§ 39.6(g)(4)(i)	0.019 hours (1.14 minutes)	$7.41	1,230,600 [64,768,399 × .019]	$479,933,837 [64,768,399 × $7.41][91]
§§ 39.6(g)(4)(ii)–(iii) (costs incurred if no annual report filed under § 39.6(g)(5)[92]).	First Transaction: 0.17 hours (10 minutes).	65.00	648 [(50,848 × 75% × 10% × 0.17]	$247,884 [(50,848 × 75%) × 10% × $65][93]
	Subsequent Transactions: 0.05 hours (3 minutes).	19.50	323,651 [(64,768,399 − 50,848 × 75%) × 10% × .05]	$126,224,013 [(64,768,399 − 50,848 × 75%) × 10% × $19.50][94]

[88] Eleven of the 22 affiliates are assumed to be U.S. affiliates.

[89] The Commission assumed that at least 90% of MNCs would elect to file annual reports, see further discussion below.

[90] The Total Annual Number of Inter-Affiliate Swaps is the total number of inter-affiliate swaps that MNCs, U.S. subsidiaries, and foreign subsidiaries entered into that would be subject to this rule. The total number of inter-affiliate swaps that MNC's entered into that would be subject to this rule is the number of MNCs (2,347) times the number of swaps per MNC (2,230) times 75%, or $0.75 \times 2{,}347 \times 2{,}230$. The total number of inter-affiliate swaps that U.S. subsidiaries entered into that would be subject to this rule is $10 \times (0.75 \times 2{,}230 \times 2{,}347)$. There are 11 U.S. subsidiaries per MNC and each subsidiary enters into as many as swaps as each MNC, on average. However, 1 of the U.S. subsidiaries is the treasury/conduit affiliate and it enters into swaps with every other affiliate, including foreign affiliates. To avoid double counting, that subsidiary is removed from the equation and the number of U.S. subsidiaries is 10. Finally, the total number of inter-affiliate swaps that foreign subsidiaries entered into that would be subject to this rule is $0.5 \times (11 \times 0.75 \times 2{,}230 \times 2{,}347)$. Each foreign subsidiary enters into as many swaps as each U.S. subsidiary, but only 50% of foreign subsidiary swaps would be subject to this rule.

b. Other Costs

i. Updating Reporting Procedures

The Commission believes that companies subject to this rule would have established reporting systems to comply with other Commission rules regarding swap reporting. However, reporting counterparties may need to modify their reporting systems in order to accommodate the additional data fields required by this rule. The Commission estimates that those modifications would create a one-time expense of approximately one to ten burden hours per reporting counterparty. The Commission estimates that the hourly wage for a senior programmer is $341, which means that the one-time, per entity cost for modifying reporting systems to comply with proposed § 39.6(g)(4) would likely be between $341 and $3,410.

ii. Burden on Non-Reporting Affiliates

An affiliate who does not function as the reporting counterparty may need to communicate information to the reporting counterparty after the swap is entered. That information could include, among other things, information to facilitate any due diligence that the reporting counterparty may conduct. These costs would likely vary substantially depending on how frequently the affiliate enters into swaps and the due diligence that the reporting counterparty chooses to conduct. The Commission estimates that a non-reporting affiliate would incur a burden of between five minutes and ten hours annually. The hourly wage for a compliance attorney is $390, which means that the aggregate annual cost for an electing counterparty communicating information to the reporting counterparty would likely be between $33 and $3,900.

iii. Annual Reporting Under Proposed § 39.6(g)(5)

The Commission expects at least 90% of MNCs would choose to file an annual report pursuant to proposed § 39.6(g)(5). This assumption is based on feedback in comment letters submitted in response to other proposed rulemakings, in which commenters proposed an annual reporting requirement in lieu of swap-by-swap reporting. Additionally, the Commission believes that there is an economic incentive for corporate groups to file an annual report because filing annually is less costly and operationally simpler than swap-by-swap reporting. The Commission estimates that it would take an average of 30 minutes to 90 minutes to complete and submit this filing, resulting in 0.5 to 1.5 burden hours per MNC that elects to file the annual report. The average hourly wage for a compliance attorney is $390, which means that the aggregate annual cost for submitting the annual report would likely be approximately $195 to $585. Table C summarizes the estimated average burden hours and costs for modifying the reporting system, for non-reporting affiliates to communicate information to the reporting counterparty after the swap is entered into, and for providing the annual report under proposed § 39.6(g)(5), as follows:

TABLE C—OTHER BURDENS AND COSTS TO REPORTING AND NON-REPORTING AFFILIATES

Proposed regulation/requirement description	Average burden hours per affiliate	Average cost per affiliate	Total average annual burden hours	Total average annual cost
Modifying Reporting System (One-time cost).[95]	5.5 hours	$1,875.50	9,680 [5.5 × 1,760]	$3,300,880 [$1,875.50 × 1,760][96]
Burden on Non-Reporting Affiliates.	5.04 hours	1,966.25	192,205 [5.04 × 38,136]	$74,984,910 [$1,966.25 × 38,136][97]
§ 39.6(g)(5) Annual Report	1 hour	390.00	1,584 [(1,760 × 90%) × 1][98]	$617,760 [$390 × 1,760 * 90%]

c. Total Burden Hours

The Commission estimates that the proposed exemption could result in an average total annual burden of 1,758,369 hours and average total annual costs of $685,309,281.[99] The burden and cost estimates are approximately 1.8 minutes and $10.48 per inter-affiliate swap. Table D provides the total burden hours and costs of the proposed exemption and breaks down the totals into burden hours and costs per MNC, per affiliate, and per inter-affiliate swap.

TABLE D—AVERAGE ANNUAL BURDEN AND COST ESTIMATES OF THE PROPOSED EXEMPTION

	Burden hours	Cost of proposed exemption
Total	1,758,369	685,309,281

TABLE D—AVERAGE ANNUAL BURDEN AND COST ESTIMATES OF THE PROPOSED EXEMPTION—Continued

	Burden hours	Cost of proposed exemption
Total Average Annual per MNC[100]	999	389,380

[91] To derive the annual burden hours and cost for this row, the Commission calculated the following: the average burden hours or cost per transaction times total number of inter-affiliate swaps annually.

[92] The Commission assumes that at least 90% of corporations would elect to file an annual report to supply the information required by proposed § 39.6(g)(4)(ii)–(iii) rather than report the information on a swap-by-swap basis; 10% of affiliates would report the required information on a swap-by-swap basis.

[93] To derive the annual burden hours and cost for this row, the Commission calculated the following: (A) The total number of subsidiaries (see Table A) times 75% to determine the number of affiliates involved in a first transaction subject to reporting; (B) then multiplied that number—38,136—with 10% to determine the number of affiliates that would report swap-by-swap, *i.e.,* 3,813.6, and (C) then multiplied that number by 0.16667, to obtain the average burden hours to report, or $65, to obtain the average cost to report.

[94] To derive the annual burden hours and cost for this row, the Commission calculated following: (A) The total number of subsequent transactions, which is the total number of transactions (64,768,399) minus the total number of first time transactions (0.75 × 50,848); (B) then multiplied that number—64,730,263—by 10% to determine the number of affiliates that would report swap-by-swap, *i.e.,* 6,473,26.3, and (C) then multiplied that number by 0.05, to obtain the average burden hours to report, or $19.50, to obtain the average cost to report.

[95] The Commission assumes that there is only one reporting counterparty at each MNC.

[96] 1,760 represents the 75% of 2,347 MNCs that the Commission estimates would be reporting parties.

[97] 38,136 represents 75% of 50,848, the total number of affiliates potentially electing the proposed exemption.

[98] This calculation represents the total burden hours for the estimated 90% of MNCs—1,584.2—that would file annual reports.

[99] These numbers are obtained by adding all of the burden hours or costs in Tables B and C.

TABLE D—AVERAGE ANNUAL BURDEN AND COST ESTIMATES OF THE PROPOSED EXEMPTION—Continued

	Burden hours	Cost of proposed exemption
Total Average Annual per Affiliate [101]	46	17,970
Total Average per Inter-Affiliate Swap [102]	* 0.03	[103] 10.58

* (1.8 minutes).

3. Information Collection Comments

The Commission invites public comment on any aspect of the reporting burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs (''OIRA'') in OMB, by fax at (202) 395–6566, or by email at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that they can be considered in connection with a final rule. Refer to the **ADDRESSES** section of this release for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting *www.RegInfo.gov.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**. Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication.

[100] Total Hours or Costs divided by 1,760 MNCs, which is equal to 75% × 2,347.

[101] Total Hours or Costs divided by 38,136 affiliates, which is equal to 75% × 50,848.

[102] Total Hours or Costs per Affiliate divided by 64,768,399 inter-affiliate swaps.

[103] The ''Total Average per Inter-Affiliate Swap'' of $10.58 is less than the average transaction costs listed in Table B (i.e., $65 and $19.50) for two reasons. First, $10.58 is the average cost for over 64 million inter-affiliate swaps. Second, the ''average total transaction costs'' in Table B apply only to the assumed ten percent (10%) of reporting counterparties that might choose to report swap-by-swap under §§ 39.6(g)(4)(ii)–(iii).

V. Text of Proposed Rules

List of Subjects in 17 CFR Part 39

Business and industry, Clearing, Cooperatives, Reporting requirements, Swaps.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR part 39 as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

1. The authority citation for part 39 is revised to read as follows:

Authority: 7 U.S.C. 2, 6, 12a, and 24a, 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376 (2010).

2. In § 39.6, add paragraph (g) to read as follows:

§ 39.6 Exceptions to the clearing requirement.

* * * * *

(g) Exemption for swaps between affiliates.

(1) *Affiliate Status.* Counterparties to a swap may elect not to clear a swap subject to the clearing requirement of section 2(h)(1)(A) of the Act if one counterparty directly or indirectly holds a majority ownership interest in the other, or if a third party directly or indirectly holds a majority ownership interest in both counterparties, and the financial statements of both counterparties are reported on a consolidated basis (''eligible affiliate counterparties''). A counterparty or third party directly or indirectly holds a majority ownership interest if it directly or indirectly holds a majority of the equity securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership.

(2) *Conditions.* Eligible affiliate counterparties to a swap may elect the exemption described in paragraph (g)(1) of this section if:

(i) Both counterparties elect not to clear the swap;

(ii)(A) A swap dealer or major swap participant that is an eligible affiliate counterparty to the swap satisfies the requirements of § 23.504; or (B) the swap is, if neither eligible affiliate counterparty is a swap dealer or major swap participant, documented in a swap trading relationship document that shall be in writing and shall include all terms governing the trading relationship between the affiliates, including, without limitation, payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, governing law, valuation, and dispute resolution procedures;

(iii) The swap is subject to a centralized risk management program that is reasonably designed to monitor and manage the risks associated with the swap. If at least one of the eligible affiliate counterparties is a swap dealer or major swap participant, this centralized risk management requirement shall be satisfied by complying with the requirements of § 23.600;

(iv) With the exception of 100% commonly-owned and commonly-guaranteed affiliates where the common guarantor is also 100% commonly-owned, for a swap for which both counterparties are financial entities, as defined in paragraph (g)(6), both parties shall pay and collect variation margin and comply with paragraph (g)(3) of this section;

(v) Each counterparty either:

(A) Is located in the United States;

(B) Is located in a jurisdiction that has a clearing requirement that is comparable and comprehensive to the clearing requirement in the United States;

(C) Is required to clear swaps with non-affiliated parties in compliance with United States law; or

(D) Does not enter into swaps with non-affiliated parties; and

(vi) The reporting counterparty for the swap, as determined in accordance with § 45.8 of this chapter, complies with paragraph (g)(4) of this section with respect to each of the counterparties.

(3) *Variation Margin.* When both counterparties are financial entities each counterparty shall pay and collect any variation margin as calculated pursuant to paragraph (g)(3)(i) for each uncleared swap for which the exemption described in paragraph (1) is elected.

(i) The swap trading relationship documentation required in paragraph (g)(2)(ii) of this section must set forth the methodology to be used to calculate variation margin and describe it with sufficient specificity to allow the counterparties, the Commission, and any appropriate prudential regulator to calculate the margin requirement independently.

(ii) Variation margin calculations and payments shall start on the business day after the swap is executed and continue

each business day until the swap is terminated.

(iii) Each counterparty shall pay the entire variation margin amount as calculated pursuant to paragraph (g)(3)(i) when due.

(iv) The swap trading relationship documentation required in paragraph (g)(2)(ii) of this section shall specify for each counterparty where margin assets will be held and under what terms.

(4) *Reporting Requirements.* When the exemption described in paragraph (g)(1) of this section is elected, the reporting counterparty shall provide or cause to be provided the following information to a registered swap data repository or, if no registered swap data repository is available to receive the information from the reporting counterparty, to the Commission, in the form and manner specified by the Commission:

(i) Confirmation that both counterparties to the swap are electing not to clear the swap and that each of the counterparties satisfies the requirements in paragraphs (g)(1) and (2) of this section applicable to it;

(ii) For each counterparty, how the counterparty generally meets its financial obligations associated with entering into non-cleared swaps by identifying one or more of the following categories, as applicable:

(A) A written credit support agreement;

(B) Pledged or segregated assets (including posting or receiving margin pursuant to a credit support agreement or otherwise);

(C) A written guarantee from another party;

(D) The counterparty's available financial resources; or

(E) Means other than those described in subparagraphs (A), (B), (C) or (D); and

(iii) If a counterparty is an entity that is an issuer of securities registered under section 12 of, or is required to file reports under section 15(d) of, the Securities Exchange Act of 1934:

(A) The relevant SEC Central Index Key number for that counterparty; and

(B) Acknowledgment that an appropriate committee of the board of directors (or equivalent body) of the counterparty has reviewed and approved the decision not to clear the swap.

(5) *Annual Reporting.* An affiliate that qualifies for the exemption described in paragraph (g)(1) of this section may report the information listed in paragraphs (g)(4)(ii) and (iii) of this section annually in anticipation of electing the exemption for one or more swaps. Any such reporting under this paragraph will be effective for purposes of paragraphs (g)(4)(ii) and (iii) of this section for 365 days following the date of such reporting. During the 365-day period, the affiliate shall amend the report as necessary to reflect any material changes to the information reported.

Each reporting counterparty shall have a reasonable basis to believe that the eligible affiliate counterparties meet the requirements for the exemption under this § 39.6(g).

(6) *Financial Entity.* For purposes of this § 39.6(g), the term ''financial entity'' shall have the meaning given such term in section 2(h)(7)(C) of the Act.

Issued in Washington, DC, on August 15, 2012, by the Commission.

Sauntia Warfield,

Assistant Secretary of the Commission.

Appendices to Clearing Exemption for Swaps Between Certain Affiliated Entities—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton and Wetjen voted in the affirmative; Commissioner Sommers and O'Malia voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rules to exempt swaps between certain affiliated entities within a corporate group, known as inter-affiliates, from the clearing requirement in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

One of the primary benefits of swaps market reform is that standard swaps between financial firms will move into central clearing, which will significantly lower the risks of the highly interconnected financial system.

Transactions between affiliates, however, pose less risk to the financial system because the risks are internalized within the financial institution.

The proposed rule would allow for an exemption from clearing for swaps between affiliates under the following limitations.

First, the proposed exemption would be limited to swaps between majority-owned affiliates whose financial statements are reported on a consolidated basis.

Second, the proposed rules would require centralized risk management, documentation of the swap agreement, payment of variation margin and completion of reporting requirements.

Third, the exemption would be limited to swaps between U.S. affiliates and swaps between a U.S. affiliate and a foreign affiliate located in a jurisdiction with a comparable and comprehensive clearing regime.

This approach largely aligns with the Europeans' approach to an exemption for inter-affiliate clearing.

I look forward to the public's comments on this proposal.

Appendix 2—Joint Statement of Commissioners Jill Sommers and Scott O'Malia

We respectfully dissent from the notice of proposed rulemaking to exempt swaps between certain affiliated entities from the clearing requirement. While we wholly support a clearing exemption for swaps between affiliated entities within a corporate group, we cannot support the proposal before the Commission today because in certain instances it imposes an unnecessary requirement for variation margin on corporate entities that engage in inter-affiliate trades.

Inter-affiliate swaps enable a corporate group to aggregate risk on a global basis in one entity through risk transfers between affiliates. Once aggregated, commercial risk of various affiliates is netted, thereby reducing overall commercial and financial risk. This practice allows for more comprehensive risk management within a single corporate structure.

Another benefit to this practice is that it allows one affiliate to face the market and hedge the risk of various operating affiliates within the group. Notably, inter-affiliate swaps between majority owned affiliates do not create external counterparty exposure and therefore do not pose the systemic risks that the clearing requirement is designed to protect against. The practice actually reduces risk and simply allows for more efficient business management of the entire group.

We believe it is entirely appropriate that the Commission exempt inter-affiliate swaps from the clearing mandate. Unfortunately, this proposal inserts a requirement that most financial entities engaging in inter-affiliate swaps post variation margin to one another. It is not clear that this requirement will do anything other than create administrative burdens and operational risk while unnecessarily tying up capital that could otherwise be used for investment.

The variation margin requirement is also largely inconsistent with the requirements included in the European Market Infrastructure Regulation. As we have both made clear during the implementation process, we believe coordination with our global counterparts is critical to the success of this new framework.

Finally, the legislative history on this issue is clear. During the passage of the Dodd-Frank Act many Members' statements directly addressed the concerns regarding inter-affiliate swaps. Additionally, Members of the U.S. House of Representatives passed, by an overwhelming bi-partisan majority, an inter-affiliate swap exemption that does not include a variation margin requirement.

We believe this proposal may have the unintended consequence of imposing substantial costs on the economy and consumers. With this in mind, we welcome comments from the public as to the costs and benefits of the variation margin requirement and hope that we incorporate those views in adopting the final rule.

[FR Doc. 2012–20508 Filed 8–20–12; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0741]

RIN 1625–AA00

Safety Zone, Atlantic Intracoastal Waterway; Carolina Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the waters of the Atlantic Intracoastal Waterway at Carolina Beach, North Carolina. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance on the U.S. 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina. The safety zone will temporarily restrict vessel movement within the designated area starting on December 20, 2012 through October 31, 2013.

DATES: Comments and related material must be received by the Coast Guard on or before September 20, 2012.

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

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email CWO4 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

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

1. Submitting Comments

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

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0741) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0741) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

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

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

The North Carolina Department of Transportation has awarded a contract to American Bridge Company of Virginia Beach, Virginia to perform bridge maintenance on the U.S. 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina. The contract provides for cleaning, painting, and steel repair to commence on December 20, 2012 with a completion date of October 31, 2013. The contractor will utilize a 40 foot by 60 foot sectional barge as a work platform and for equipment staging. The Coast Guard believes that a safety zone is needed to provide a safety buffer to transiting vessels as bridge repairs present potential hazards to mariners and property due to reduction of horizontal clearance.

C. Discussion of Proposed Rule

As a result of the potential hazards, the Coast Guard proposes to establish a temporary safety zone that would encompass the waters directly under the U.S. 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina (34°03′21″ N, 077°53′58″ W). The safety zone would be in effect from 8 a.m.

December 20, 2012 through 8 p.m. October 31, 2013. During this period the Coast Guard would require a one hour notification to the work supervisor for passage through the U.S. 421 Fixed Bridge along the Atlantic Intracoastal Waterway, mile 295.6, Carolina Beach, North Carolina. The bridge notification requirement would apply during the maintenance period for vessels requiring a horizontal clearance of greater than 60 feet.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule does not restrict traffic from transiting the designated portion of the Atlantic Intracoastal Waterway, it imposes a one hour notification to ensure the waterway is clear of impediment to allow passage to vessels requiring a horizontal clearance of greater than 60 feet.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: The owners or operators of commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Atlantic Intracoastal Waterway from 8 a.m. December 20, 2012 through 8 p.m. October 31, 2013.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to this section of the Atlantic Intracoastal Waterway, vessel traffic will be able to request passage by providing a one hour advanced notification to the work supervisor. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway.

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

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–0741 to read as follows:

§ 165.T05–0741 Safety Zone, Atlantic Intracoastal Waterway; Carolina Beach, NC.

(a) Regulated Area. The following area is a safety zone: This zone includes the waters directly under and 100 yards either side of the US 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina (34°03′21″ N, 077°53′58″ W).

(b) Regulations. The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0741. In addition the following regulations apply:

(1) All vessels requiring greater than 60 feet horizontal clearance to safely transit through the US 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina must contact the work supervisor tender on VHF–FM marine band radio channels 13 and 16 or at (410) 320–9877 one hour in advance of intended transit.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(3) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) Definitions.

(1) Captain of the Port North Carolina means the Commander, Coast Guard Sector North Carolina or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to assist in enforcing the safety zone described in paragraph (a) of this section.

(3) Work Supervisor means the contractors on site representative.

(d) Enforcement. The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This section will be enforced from 8 a.m. December 20, 2012 through 8 p.m. October 31, 2013 unless cancelled earlier by the Captain of the Port.

Dated: August 8, 2012.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port Sector North Carolina.

[FR Doc. 2012–20482 Filed 8–20–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0153(b); FRL–9717–4]

Approval and Promulgation of Implementation Plans; Tennessee; Knoxville; Fine Particulate Matter 2002 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the 1997 annual fine particulate matter ($PM_{2.5}$) 2002 base year emissions inventory portion of the State Implementation Plan (SIP) revision submitted by the State of Tennessee on April 4, 2008. The emissions inventory is part of Tennessee's April 4, 2008, attainment demonstration SIP revision that was submitted to meet the section 172(c) Clean Air Act requirements related to the Knoxville nonattainment area for the 1997 annual $PM_{2.5}$ national ambient air quality standards. The Knoxville nonattainment area is comprised of Anderson, Blount, Knox and Loudon Counties in their entireties and a portion of Roane County that includes the Tennessee Valley Authority's Kingston Fossil Plant. This action is being taken pursuant to section 110 of the Clean Air Act.

DATES: Written comments must be received on or before September 20, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0153, by one of the following methods:

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

2. *Email: R4-RDS@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* ''EPA–R04–OAR–2010–0153,'' 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:* 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.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8726. Mr. Wong can also be reached via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: August 7, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–20391 Filed 8–20–12; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–37

[FMR Case 2012–102–2; Docket 2012–0007; Sequence 1]

RIN 3090–AJ26

Federal Management Regulation; Donation of Surplus Personal Property

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration is proposing to amend the Federal Management Regulation (FMR) by changing its personal property policy. The proposed changes will (1) include the addition of certain veterans organizations as eligible donation recipients as authorized by Public Law; (2) update and clarify language regarding the use of The United States Government Certificate to Obtain Title to a Vehicle, Standard Form 97 (SF 97); and (3) make minor clarifying edits to existing policies.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before October 22, 2012 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FMR Case 2012–102–2 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FMR Case 2012–102–2'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''FMR Case 2012–102–2.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FMR Case 2012–102–2'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FMR Case 2012–102–2, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Holcombe, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management (MT), at (202) 501–3828 or by email at *robert.holcombe@gsa.gov* for clarification of content. For information pertaining to status or publication schedules contact the Regulatory Secretariat at (202) 501–4755. Please cite FMR Case 2012–102–2.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed amendment to part 102–37 of the Federal Management Regulation (41 CFR part 102–37) adds as potential recipients of Federal surplus property those organizations whose membership comprises substantially of veterans, as authorized by Public Law 111–338, codified at 40 U.S.C. 549(c)(3)(B)(x). This proposed amendment also adds two new subparts to part 102–37. The first proposed subpart updates and clarifies policy for Federal agencies and donation program customers regarding the use of SF 97, *The United States Government Certificate to Obtain Title to a Vehicle.* This proposed amendment clarifies that the SF 97 itself is not a motor vehicle registration or title; rather, it is only evidence of ownership required for the owner to obtain title to a vehicle. The second proposed subpart clarifies policy for Federal agencies, State Agencies for Surplus Property (SASPs), and donation program customers for insuring donated surplus property for liability or loss. This proposed amendment also contains administrative and minor clarifying changes. One of these administrative changes proposes to remove the policies on how SASPs screen for property at Federal facilities and how SASPs obtain authorizations for screening at these facilities. These sections are deleted as being outdated and unnecessarily prescriptive. Whereas SASP property screeners were previously required to apply to GSA to obtain screening authorization, under the proposed amendment, SASPs no longer need to coordinate with GSA, but instead must coordinate the on-site visit and screening with the individual holding agency or organization. Information related to screening is provided in amended section 102–37.175 and in non-regulatory guidance published by GSA.

B. Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This proposed rule is also exempt from the

Administrative Procedure Act per 5 U.S.C. 553(a)(2) because it applies to agency management and public property. However, this proposed rule is being published to provide transparency in the promulgation of Federal policies.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review under 5 U.S.C. 801 since it does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 41 CFR Part 102–37

Donation of Surplus Personal Property.

Dated: August 6, 2012.

Kathleen M. Turco,

Associate Administrator, Office of Governmentwide Policy.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR part 102–37 as set forth below:

PART 102–37—DONATION OF SURPLUS PERSONAL PROPERTY

1. The authority for part 102–37 continues to read as follows:

Authority: 40 U.S.C. 549 and 121(c).

2. Amend § 102–37.25 by alphabetically adding the definition ''Allocation'' to read as follows:

§ 102–37.25 What definitions apply to this part?

The following definitions apply to this part:

Allocation means the process by which GSA identifies the SASP and/or donee to receive and allow pick up of the surplus property offered under this part.

* * * * *

3. Amend § 102–37.50 by revising paragraph (c) to read as follows:

§ 102–37.50 What is the general process for requesting surplus property for donation?

* * * * *

(c) The American National Red Cross should submit requests to GSA as described in subpart G of this part when obtaining property under the authority of 40 U.S.C. 551.

* * * * *

§ 102–37.60 [Amended]

4. Amend § 102–37.60 in the first sentence by removing the words ''being notified that the property is available for pickup'' and adding the words ''GSA allocation'' in its place.

5. Amend § 102–37.125 by revising paragraph (a)(3) to read as follows:

§ 102–37.125 What are some donations that do not require GSA's approval?

(a) * * *

(3) Donations by the Small Business Administration (SBA) to small disadvantaged businesses under 13 CFR part 124 (although collaboration and agreement between the SBA, SASPs, and GSA is encouraged); and

* * * * *

6. Amend § 102–37.175 by—

(a) Removing ''GSA's system, FEDS)'' and adding ''GSAXcess)'' in its place;

(b) Designating the existing paragraph as paragraph (a); and

(c) Adding a new paragraph (b) to read as follows:

§ 102–37.175 How does a SASP find out what property is potentially available for donation?

* * * * *

(b) For the SASP (or a SASP's representative) to perform onsite screening, the screener must coordinate the onsite visit and screening with the individual holding agency or organization. The screener should ascertain the identification required and any special procedures for access to the facility or location.

§§ 102–37.180 and 102–37.185 [Removed and Reserved]

7. Remove and reserve §§ 102–37.180 and 102–37.185 .

8. Amend § 102–37.380 by adding paragraph (b)(18) to read as follows:

§ 102–37.380 What is the statutory authority for donations of surplus Federal property made under this subpart?

* * * * *

(b) * * *

(18) Organizations whose membership comprises substantially veterans (as defined under 38 U.S.C. 101), and whose representatives are recognized by the Secretary of Veterans Affairs pursuant to the provisions of 38 U.S.C. 5902. In this subsection, ''substantially veterans'' means at least 30 percent of the members of the requesting organization are classified as veterans, as that term is defined by 38 U.S.C. 101. The Department of Veterans Affairs maintains a searchable Web site of recognized organizations. The address is *http://www.va.gov/ogc/apps/accreditation/index.asp.*

* * * * *

9. Amend § 102–37.420 by adding a second and a third sentence to read as follows:

§ 102–37.420 May a SASP grant conditional eligibility to applicants who would otherwise qualify as eligible donees, but have been unable to obtain approval, accreditation, or licensing because they are newly organized or their facilities are not yet constructed?

* * * In situations where there are no approvals, accreditation or licensing entities, the SASP may make a determination on conditional eligibility based on its State Plan and the provisions of this part. Conditional eligibility may be granted for a limited and reasonable time, not to exceed one year.

10. Amend § 102–37.430 by adding a third sentence to read as follows:

§ 102–37.430 What property can a SASP make available to a donee with conditional eligibility?

* * * If property is provided to the donee with conditional eligibility, and the conditional eligibility lapses (see § 102–37.420), the property must be returned to the SASP for redistribution or disposal.

11. Add Subparts I and J consisting of §§ 102–37.585 through 102–37.600 and § 102–37.605 through 102–37.610 respectively to read as follows:

Subpart I—Transfer of Vehicle Title to A Donee

Sec.

102–37.585 In transferring donated surplus vehicles, what is the responsibility of the holding agency?
102–37.590 In transferring donated surplus vehicles, what is the responsibility of the SASP?
102–37.595 When transferring donated surplus vehicles, what is the responsibility of the donee?
102–37.600 When does title to a surplus donated vehicle change hands?

Subpart I—Transfer of Vehicle Title to A Donee

§ 102–37.585 In transferring donated surplus vehicles, what is the responsibility of the holding agency?

The holding agency is responsible for preparing *The United States Government Certificate to Obtain Title to a Vehicle,* (Standard Form 97 (SF 97)) upon notification by GSA that a vehicle has been allocated. The SF 97 may be prepared by GSA if mutually agreed upon by the holding agency and GSA. The holding agency is designated as the ''transferor.'' The SF 97 is a serially numbered, controlled form, stock number 7540–00–634–4047, which can be obtained by Federal agencies from

GSA Global Supply or online at *www.gsaglobalsupply.gsa.gov.*

§ 102–37.590 In transferring donated surplus vehicles, what is the responsibility of the SASP?

The SASP is responsible for facilitating the transfer of the surplus vehicle to the donee in accordance with this part. The SASP should not sign the SF 97 as ''transferee'' unless the vehicle will be used and titled by the SASP.

§ 102–37.595 When transferring donated surplus vehicles, what is the responsibility of the donee?

The donee is responsible for processing the SF 97 in accordance with state licensing and titling authorities. The donee signs the SF 97 as ''transferee.'' The donee is responsible for notifying the SASP if a SF 97 is not provided by the Government within a reasonable time after vehicle transfer.

§ 102–37.600 When does title to a surplus donated vehicle change hands?

Title to the vehicle rests with the holding agency until the SF 97 is signed by the transferee. At that point, the transferee will hold conditional title until the end of the period of restriction, if applicable, under the terms of the donation.

Subpart J—Insuring Donated Surplus Property

Sec.

102–37.605 Is insurance required for liability purposes?
102–37.610 If there is a property loss covered by insurance, who is entitled to reimbursement?

Subpart J—Insuring Donated Surplus Property

§ 102–37.605 Is insurance required for liability purposes?

Yes, for vehicles, the SASP and/or the transferee must follow state laws for insurance requirements of state owned vehicles and state minimum insurance requirements for other than state owned vehicles. For other assets, insurance must be acquired to at least the minimum amount as mandated by applicable law or regulation.

§ 102–37.610 If there is a property loss covered by insurance, who is entitled to reimbursement?

(a) If the loss occurs while the property is insured and in the possession (or under the control) of the SASP, the SASP may retain proceeds to cover the SASP's costs incurred to acquire and rehabilitate the property prior to its loss. GSA is entitled to proceeds in excess of the costs incurred by the state.

(b) If the loss occurs while the property is insured and in the possession (or under the control) of the donee, the donee may retain proceeds to cover the costs that the donee incurred to acquire and rehabilitate the property prior to its loss. Entitlement to insurance proceeds in excess of the costs incurred by the donee depends on the time of the loss in relation to the period of restriction if the loss was incurred:

(1) During the period of restriction imposed by GSA (*e.g.,* typically up to the first year unless otherwise designated), the U.S. Government is entitled to the insurance proceeds, less any interest provided by the Government to the SASP to cover the SASP's expenses in enforcing the restriction up to the time of the loss.

(2) During an additional period of restriction imposed by the SASP (*e.g.,* beyond the one year usually imposed by GSA), the SASP is entitled to the proceeds.

(3) After all periods of restriction imposed by the GSA and/or SASP, the donee is entitled to the proceeds.

12. Amend Appendix C to part 102–37 by alphabetically adding the definition of ''Veterans Organizations'' to read as follows:

Appendix C to Part 102–37—Glossary of Terms for Determining Eligibility of Public Agencies and Nonprofit Organizations

* * * * *

Veterans Organizations means organizations eligible to receive Federal surplus property under Public Law 111–338, as codified at 40 U.S.C. 549(c)(3)(B)(x), whose (1) membership comprises substantially veterans (as defined under 38 U.S.C.101); and (2) representatives are recognized by the Secretary of Veterans Affairs under 38 U.S.C. 5902. The Department of Veterans Affairs maintains a searchable Web site of recognized organizations. The address is *http://www.va.gov/ogc/apps/accreditation/index.asp.*

[FR Doc. 2012–20441 Filed 8–20–12; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3016 and 3052

[Docket No. DHS–2012–0050]

RIN 1601–AA65

Revision of Department of Homeland Security Acquisition Regulation; Contractor Billing and Subcontractor Labor Hour Rates Under Time and Materials Contracts (HSAR Case 2010–001)

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) is proposing to amend its Homeland Security Acquisition Regulation to require contracts for time and material or labor hours to include separate labor hour rates for subcontractors and a description of the method that will be used to record and bill for labor hours for both contractors and subcontractors.

DATES: Comments and related material submitted electronically must be submitted to the Federal eRulemaking Portal *http://www.regulations.gov* on or before October 22, 2012. Comments and related material submitted by mail must reach the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch at the address shown below on or before October 22, 2012 to be considered in the formation of the final rule.

ADDRESSES: You may submit comments identified by DHS docket number DHS–2012–0050, using any one of the following methods:

(1) *Via the Internet at the Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments and use docket number DHS–2012–0050.

(2) By mail to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch, ATTN: Jeremy Olson, 245 Murray Lane, Bldg. 410 (RDS), Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch, (202) 447–5197, or by email at *Jerry.Olson@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Request for Comments
II. Background
III. Discussion of Proposed Rule
IV. Regulatory Requirements

A. Executive Order 12866 (Regulatory Planning and Review)
B. Regulatory Flexibility Act
C. Assistance for Small Entities
D. Collection of Information

I. Request for Comments

Interested persons are invited to participate in this rulemaking by submitting comments and related materials. Comments and related materials should be organized by HSAR Part, and indicate the specific section that is being commented on. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. *See* **ADDRESSES** above for information on how to submit comments. If you submit comments by mail, please submit them in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing. You may submit comments either by mail or via the internet as identified in the **ADDRESSES** section above; but to avoid duplication, DHS requests that you submit comments and materials by only one method. If you would like DHS to acknowledge receipt of comments submitted by mail, please enclose a self-addressed, stamped postcard or envelope. DHS will consider all comments and material received during the comment period.

Viewing comments and documents: To view comments and read background documents related to this rulemaking, go to *http://www.regulations.gov,* which contains relevant instructions under the FAQs tab on the home page.

II. Background

This proposed rule augments two existing Federal Acquisition Regulation (FAR) policies to create a consistent approach within DHS for awarding Time and Materials/Labor Hours (T&M/LH) contracts. Those two augmenting policies include the requirement for separate labor hour rates for T&M/LH subcontractors and the requirement for consistent practices for contractor labor hour records and labor hour billing.

The first of the two existing FAR policies provides the option to require separate labor hour rates for each subcontractor under a T&M/LH contract, in addition to the labor hour rates established for the prime contractor. *See* FAR 16.601(e). The current FAR policy authorizes an agency either to permit individual contracting officers to decide if separate labor hour rates are necessary or to establish an agency procedure making separate rates mandatory. This rule proposes to establish a DHS-wide procedure to make the FAR option for consistent use of separate rates mandatory for DHS T&M/LH contracts.

Federal Acquisition Regulation (FAR) 16.601(e) further authorizes agencies to amend the solicitation provision at FAR 52.216–29, Time-and-Materials/Labor-Hour (T&M/LH) Proposal Requirements-Non-commercial Item Acquisitions With Adequate Price Competition, to require offerors to submit offers that include separate labor hour rates for subcontractors and affiliates. The purpose of requiring offers to include such separate rates is to ensure the resulting contract or order will have individual labor hour rate schedules for each individual subcontractor and affiliate of the prime contractor and not contain only a single set of rates applicable to the prime contractor and all subcontractors.

The second of the two augmenting Homeland Security Acquisition Regulation (HSAR) policies that are included in this proposed rule refines long-established FAR policies on consistency between contractor recordkeeping and contractor proposal and billing practices. The proposed rule establishes policies furthering those existing FAR policies so that DHS contractors will identify their method of accounting for labor hours incurred and agree to a price adjustment if their billing practices under a T&M/LH contract they enter into with DHS results in overbilling because they had not billed consistently with their recordkeeping practices. To minimize the burden of identifying the method of recordkeeping used by a contractor, the proposed rule includes a solicitation provision in which each offeror will check one of two blocks to designate which of the two types of methods its recordkeeping system uses, record only the number of hours in a standard work period (such as a 40 hour workweek) or record all hours worked in a work period. This will apply only to hours incurred by employees who are exempt from the Fair Labor Standards Act (FLSA).

Contractors with a T&M/LH contract would be required to substantiate the number of hours billed in order to support payment of a voucher. There would be no mandatory requirement that a contractor use one method or the other; that would be the contractor's choice. However, the contractor must consistently follow its chosen practice.

III. Discussion of Proposed Rule

The proposed rule would revise 48 CFR part 3016, Types of Contracts and part 3052, Solicitation Provisions and Contract Clauses.

Fixed hourly rates—FAR 16.601(e)(1) allows for three approaches in structuring solicitations for T&M/LH contracts and orders and allows agencies to make mandatory one of the three approaches identified in the solicitation provision at FAR 52.216–29(c). The proposed rule would make the procedure at FAR 52.216–29(c)(1), separate rates for each labor category, mandatory for DHS T&M/LH contracts and orders. The proposed rule provides procedures applicable to solicitations and awards for T&M/LH contracts and orders for non-commercial items using adequate price competition. The proposed rule would require offerors to propose separate, individual labor hour rates for each category of labor to be performed by the prime contractor, each subcontractor, and other divisions or subsidiaries or affiliates of the prime contractor under common control. The procedure would apply only to T&M/LH actions for non-commercial items to be awarded using adequate price competition.

The purpose of these procedures is to ensure appropriate labor hour rates are paid under T&M/LH contracts and orders. The procedures are intended to eliminate unintentional windfall payments to the prime contractor that might otherwise result from work performed by lower labor rate subcontracts or affiliates that is billed at a higher prime contractor labor hour rate.

Recording and billing hours under T&M/LH contracts and orders—The proposed rule would require all offerors seeking a T&M/LH contract or order to include a description of their method and their subcontractors' methods of accounting for uncompensated overtime performed by employees who are exempt from the Fair Labor Standards Act (FLSA). It also includes a requirement that billings and payments under the resulting contracts or orders be made consistent with that description. The procedure would apply to all T&M/LH contracts and orders that exceed the Simplified Acquisition Threshold (SAT).

The purpose of this procedure is to eliminate potential disputes regarding the hours that can be billed under T&M/LH contracts by clearly stating in the contract whether the contractor and each subcontractor will be reimbursed based on recording and billing for only the number of hours worked not in excess of a standard number of hours in a standard work period (such as a 40 hour workweek) or recording all hours worked. This procedure will ensure that billings and payments under T&M/LH contracts do not result in an unintended

windfall to the contractor by ensuring that the contractor does not bill the Government for all hours worked when its established practices are to record only the number of hours in a standard work period (such as a 40 hour workweek).

IV. Regulatory Requirements

A. Executive Order 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review).

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This proposed rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we have considered whether this proposed 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.

This proposed rule, if made final, may impact a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and DHS has thus prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 604 as follows:

1. Description of the Reasons Why the Action Is Being Considered

This proposed rule augments two existing Federal Acquisition Regulation (FAR) policies to create a consistent approach within DHS for awarding Time and Materials/Labor Hours (T&M/LH) contracts. Those two augmenting policies include the requirement for separate labor hour rates for T&M/LH subcontractors and the requirement for consistent practices for contractor labor hour records and labor hour billing.

The first of the two existing FAR policies provides the option to require separate labor hour rates for each subcontractor under a T&M/LH contract, in addition to the labor hour rates established for the prime contractor. *See* FAR 16.601(e). The current FAR policy authorizes an agency either to permit individual contracting officers to decide if separate labor hour rates are necessary or to establish an agency procedure making separate rates mandatory. This rule proposes to establish a DHS-wide procedure to make the FAR option for consistent use of separate rates mandatory for DHS T&M/LH contracts.

Federal Acquisition Regulation (FAR) 16.601(e) further authorizes agencies to amend the solicitation provision at FAR 52.216–29, Time-and-Materials/Labor-Hour (T&M/LH) Proposal Requirements-Non-commercial Item Acquisitions With Adequate Price Competition, to require offerors to submit offers that include separate labor hour rates for subcontractors and affiliates. The purpose of requiring offers to include such separate rates is to ensure the resulting contract or order will have individual labor hour rate schedules for each individual subcontractor and affiliate of the prime contractor and not contain only a single set of rates applicable to the prime contractor and all subcontractors.

The second of the two augmenting Homeland Security Acquisition Regulation (HSAR) policies that are included in this proposed rule refines long-established FAR policies on consistency between contractor recordkeeping and contractor proposal and billing practices. The proposed rule establishes policies furthering those existing FAR policies so that DHS contractors will identify their method of accounting for labor hours incurred and agree to a price adjustment if their billing practices under a T&M/LH contract they enter into with DHS results in overbilling because they had not billed consistently with their recordkeeping practices.

2. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

This proposed rule would establish the DHS procedure to make the FAR option for consistent use of separate rates mandatory for DHS T&M/LH contracts. It would also establish a requirement that a contractor must consistently follow its method of record keeping for labor hours billed to a DHS contract. The legal bases for this rule are 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

3. Description of and, Where Feasible, an Estimate of the Number of Small Entities To Which the Rule Will Apply

This proposed rule would apply to all entities seeking a DHS contract or order that would be either a Time and Material or a Labor Hour type of contract. DHS believes that this proposed rule is not likely to have a significant economic impact on a substantial number of small entities because the rule does not require contractors or subcontractors to make any substantial changes in their normal business practices nor take any substantial actions under a contract beyond previously existing government requirements.

Below are tables showing information on FY 2010 DHS awards, based on data contained in the Federal Procurement Data System, which would have been subject to this proposed rule had it been in effect at the time. These tables give a view into the numbers of entities that would be impacted by this proposed rule if the amount of contracting done by DHS is consistent with the amount performed during FY 2010.

NUMBERS AND DOLLAR VALUES OF AWARDS

FY 2010 DHS awards	Number of awards to other than small entities	Number of awards to small entities
Labor Hours	808 $401,098,840	971 $250,578,045
Time and Materials	2507 $1,399,245,624	1653 $483,677,645
Grand Total	3315 $1,800,344,464	2624 $734,255,690
FY2010 DHS T&M/LH Awards	Numbers of firms other than small entities	Small Entities
	382 $1,800,344,464	261 $734,255,690

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed rule contains no new information collection or reporting requirements. Offerors are already required to provide information in response to DHS solicitations and this is authorized under an existing, approved information collection. OMB Control No. 1600–0005 (Offeror submissions).

5. Identification, to the Extent Practicable, of all Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Rule

The proposed rule would not duplicate, overlap, or conflict with any other Federal rules.

6. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Rule on Small Entities

The requirement proposed in this rulemaking is that the prime contractor will have to calculate and propose separate rates for each such subcontractor or affiliate rather than calculating a single set of rates with all labor hours wrapped into a single set of rates covering labor provided by the prime contractor as well as labor provided by subcontractors and affiliates. The FAR provides the option to make this decision in agency procedures or to leave this decision up to the offeror or to the contracting officer. DHS has chosen to revise its agency-wide procedures and is not aware of an alternative to this proposed requirement that would accomplish the goals of the proposed requirement.

Likewise, the new requirements addressing contractors' duties to record and bill for hours under T&M/LH contracts and orders imposes no new duties or requirements on a contractor other than to identify one of two methods of record-keeping described in a solicitation provision, use its current system of recordkeeping and billing, and agree to a price adjustment if it inappropriately bills for all hours worked when it disclosed that its normal practice is to bill only for a fixed number of hours per employee per period. The only significant alternative options DHS identified were not to issue this portion of the rule or to apply the rule to all actions, rather than applying it only to actions over the SAT. Not issuing the rule was rejected because it would forgo the benefits of the rule. Applying the rule to actions under the SAT was rejected because the benefits would likely not be substantial enough under those lower value contracts to warrant the administrative effort that DHS would have to expend to enforce the clause.

DHS invites comments from small businesses and other interested parties. DHS also will consider comments from small entities concerning the affected HSAR subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite HSAR Case 2010–001.

C. Assistance for Small Entities

Under Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 DHS employees, call 1–888–REG–FAIR (1–888–734–3247). The DHS will not retaliate against small entities that question or complain about this interim rule or any DHS policy.

D. Collection of Information

This proposed rule contains no new information collection requirements for which OMB approval is necessary under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Offerors are already required to provide information in response to DHS solicitations and the burden for this is authorized under an existing, approved information collection. OMB Control No. 1600–0005 (Offeror submissions).

List of Subjects in 48 CFR Parts 3016 and 3052

Government procurement.

Daniel L. Clever,

Deputy Chief Procurement Officer, Department of Homeland Security.

Accordingly, DHS proposes to amend (HSAR) 48 CFR parts 3016 and 3052 as follows:

1. The authority citation for parts 3016 and 3052 are revised to read as follows:

Authority: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

PART 3016—TYPES OF CONTRACTS

2. Add section 3016.601 to subpart 3016.6 to read as follows:

3016.601 Time-and-materials and labor-hour contracts.

(c)(2)(i) *Fixed hourly rates.* Each DHS time and materials and labor hour contract and order for non-commercial items awarded with adequate price competition (FAR 15.403–1(c)(1)) must include individual, separate labor hour rates for each category of labor hours for:

(A) The prime contractor;

(B) Each subcontractor; and

(C) Each division, subsidiary and affiliate of the prime contractor.

In order to require each offeror to propose these separate rates for each of those labor hour categories, the contracting officer shall insert the amended FAR solicitation provision as provided in (e)(1) of this subsection. The contracting officer shall also include such separate labor hour rates for each such category of labor hours in the resulting contract(s) or order(s).

(d)(3) *Limitations regarding recording hours under time-and-material and labor hour contracts and orders.*

(i) Definitions.

Overtime means the number of hours worked in excess of the standard number of hours in a standard work period (such as a 40 hour workweek) by a contractor employee who is exempt from the Fair Labor Standards Act (FLSA).

Standard work period means the minimum number of hours an FLSA exempt employee is required to work per week or some other defined period (e.g., 40 hours per week) in accordance with the contractor's established policies.

(ii) Policy. A time-and-materials and labor hour contract or order exceeding the Simplified Acquisition Threshold may be used only if it includes a description of the method that will be used by the prime contractor and each subcontractor to record and to bill for hours worked by employees exempt from the Fair Labor Standards Act (FLSA) under the contract or order, including overtime. The method used to record and bill for hours worked must be either to record and bill for all hours worked, or to record and bill for only the number of hours worked not in

excess of a standard number of hours in a standard work period (such as a 40 hour workweek). The description of the method of recording and billing for hours worked must be consistent with one of the two descriptions in (HSAR) 48 CFR 3016.601(d)(3)(iii)(A) or (B), and shall be incorporated into the contract or order. Whichever method the contractor states it will employ, those labor hour recording and billing practices must be consistent with the contractor's disclosed or established practices at the time of contract award.

(iii) *Descriptions of acceptable and unacceptable labor hour recording and billing practices.* Paragraphs (A) and (B) of this subsection provide descriptions of acceptable practices that may be incorporated into a covered action. These paragraphs (A) and (B) correspond to paragraphs (b)(i) and (b)(ii) respectively of the clause at (HSAR) 48 CFR 3052.216–76, Offeror Selection of Labor Hour Recording and Billing Practices for Time-and-Materials/Labor-Hour Contracts. Paragraph (C) of this subsection provides a description of an unacceptable practice.

(A) *Record and Bill for All Hours Worked.* It is an acceptable practice for the contractor (subcontractor) providing labor hours of employees exempt from the Fair Labor Standards Act (FLSA) to bill the hours under its contract (or order) based on recording of all hours worked by those employees, including overtime. The contractor must state that its established accounting practice is to record all hours worked by those employees, including overtime.

(1) However, if it is found after award that the contractor's established accounting practices at the time of award were not based on recording all hours worked by employees, the Government shall be entitled to a price adjustment on all payments for labor hours under the contract or order.

(2) The amount of the price adjustment for payments shall be the difference between the number of hours billed based on recording all hours worked and the hours that would have been recorded using the contractor's established accounting practices at the time of award, multiplied by the applicable fixed hourly rates.

(B) *Record and Bill for a Standard Number of Hours per Standard Work Period (e.g., 40 hours per week).* It is an acceptable practice for the contractor (subcontractor) to bill the hours worked by employees exempt from the Fair Labor Standards Act (FLSA) under its contract based on recording and billing for only the number of hours worked not in excess of a standard number of hours in a standard work period (such as a 40 hour workweek). The contractor must state that its established accounting practice is to record only the standard number of hours in a standard work period. The contractor's (subcontractor's) method of recording hours worked must pro-rate the hours among all jobs/functions performed by an employee when an employee works overtime. For example, under a standard 40 hour work period, if an employee worked 25 hours on Contract A and 25 hours on Contract B during a work period, the contractor would pro-rate those hours to record 20 hours on Contract A and 20 hours on Contract B so that the total number of hours for the period did not exceed the number of hours in a standard work period, 40 hours.

(C) *Unacceptable accounting and billing practices.* It is not an acceptable practice for a contractor or subcontractor that accounts for only a standard number of hours worked in a standard work period for employees exempt from the Fair Labor Standards Act (FLSA) (e.g., 40 hours per week), to account for and bill for only the first 8 hours worked each day. All hours worked in excess of the standard number of hours in a standard work period, including overtime hours, must be pro-rated based on the total hours worked for all jobs/functions performed by the employee. If an offeror indicates that this is their established accounting practice, the Contracting Officer shall not award the contract or order, but instead shall notify the Office of the Chief Procurement Officer at *procurement.support@dhs.gov* for guidance on how to proceed. If an offeror provides a clarification to the statement it checks within the provision at (HSAR) 48 CFR 3016.216–75, and it is not clear to the contracting officer that the clarification is consistent with the requirements of the HSAR provision, the contracting officer shall notify the Office of the Chief Procurement Officer at *procurement.support@dhs.gov* for guidance on how to proceed.

(e)(1) *Solicitations and contracts:*

(i) Insert the provision (HSAR) 48 CFR 3052.216–29, Time-and-Materials/Labor-Hour Proposal Requirements-Non-Commercial Item Acquisition With Adequate Price Competition, in the place of the provision at FAR 52.216–29, Time-and-Materials/Labor-Hour Proposal Requirements-Non-Commercial Item Acquisition With Adequate Price Competition, in all solicitations contemplating use of a time-and-materials or labor-hour type of contract for noncommercial items, if the price is expected to be based on adequate competition (FAR 15.403–1(c)(1)). This provision is authorized by Federal Acquisition Regulation (FAR) 16.601(e)(1) which authorizes agency procedures to require modification of the FAR solicitation provision at FAR 52.216–29, Time and Materials/Labor-Hour Proposal Requirements-Non-Commercial Item Acquisitions With Adequate Price Competition. Insert the HSAR provision whole text into the solicitation to require separate proposed rates for all subcontractors and divisions, subsidiaries, and affiliates of the prime contractor.

(ii) Insert the clause (HSAR) 48 CFR 3052.216–75, Offeror Selection of Labor-Hour Recording and Billing Practices for Time-and-Materials/Labor-Hour Contracts, into each solicitation expected to result in a contract or order for (T&M/LH) exceeding the simplified acquisition threshold (SAT).

(iii) Insert the clause (HSAR) 48 CFR 3052.216–76, Time-and-Materials/Labor-Hour Overtime Recording and Billing Practices, (or a clause substantially the same as) into time and material or labor-hour solicitations, contracts and orders exceeding the SAT and include the mark or other indication made by the contractor which of the two methods (recording all hours or prorating the excess over a standard work period) it will use during the performance of the contract/order to record and bill for hours worked.

PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend subpart 3052.2 by adding section 3052.216–29 to read as follows:

3052.216–29 Time-and-Materials/Labor-Hour Proposal Requirements-Non-Commercial Item Acquisition With Adequate Price Competition.

As prescribed in (HSAR) 48 CFR 3016.601(e)(1)(i), insert the following provision:

Time-and-Materials/Labor-Hour Proposal Requirements—Non-commercial Item Acquisition With Adequate Price Competition

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

(1) The offeror;

(2) Subcontractors; and/or

(3) Divisions, subsidiaries, or affiliates of the offeror under a common control;

(c) The offeror must establish fixed hourly rates using separate rates for each category of

labor to be performed by each subcontractor and for each category of labor to be performed by the offeror, and for each category of labor to be transferred between divisions, subsidiaries, or affiliates of the offeror under a common control.

(End of provision)

4. Amend subpart 3052.2 by adding section 3052.216–75 as follows:

3052.216–75. Offeror Selection of Labor Hour Recording and Billing Practices for Time-and-Materials/Labor-Hour Contracts.

As prescribed in (HSAR) 48 CFR 3016.601(e)(1)(ii), insert the following provision:

Labor Hour Recording and Billing Practices for Time-and-Materials/ Labor-Hour Contracts. (XX 2010)

(a) The offeror must identify the practices it intends to employ to record labor hours worked by employees exempt from the Fair Labor Standards Act (FLSA) and to bill for those hours under the prospective contract or order for which it is submitting its offer. The offeror must select one of the two available descriptions of acceptable methods as shown in HSAR 3052.216–76, Time-and-Materials/ Labor-Hour Overtime Recording and Billing Practices-Record. The two available selections are: (i) Record and Bill For All Hours Worked, or (ii) Record and Bill Based on a Standard Number of Hours Per Standard Work Period. Whichever of the two descriptions the offeror selects will be incorporated into any resulting contract or order awarded to the offeror. By making the selection, the offeror is indicating to the Government that the selected description of recording and billing practices is consistent with the contractor's established accounting practices and this same method will be used for billing hours under the contract or order.

(b) The offeror will not be eligible for award if either:

(1) The offeror fails to indicate in its offer which of the two descriptions in paragraphs (c)(i) or (ii) below describe the offeror's method of recording and billing for labor hours to be performed under the contract or order; or

(2) The offeror submits a clarification of the clause 3052.216–76 Time-and-Materials/ Labor-Hour Overtime Recording and Billing Practices, and the Contracting Officer had not agreed prior to submittal of offers that the offeror's clarification of the clause substantially meets the requirements of the clause.

(c) The offeror must select one of the two below descriptions of the offeror's system for recording and billing hours to be worked by employees exempt from the Fair Labor Standards Act (FLSA) under the contract that are included in either paragraph (i) or (ii) of the clause at HSAR 3052.216–76, Time-and-Materials/Labor-Hour Overtime Recording and Billing Practices. If a contract or order is awarded to the offeror, the selected description will be incorporated into the contract or order.

[ ] (Check if the paragraph describes the offeror's system)—Paragraph *(i) Recording and billing Practices—Record and Bill For All Hours Worked.*

[ ] (Check if the paragraph describes the offeror's system)—Paragraph *(ii) Record and Bill For a Standard Number of Hours Per Standard Work Period.*

(End of provision)

5. Amend subpart 3052.2 by adding section 3052.216–76 as follows:

3052.216–76. Time-and-Materials/Labor-Hour Overtime Recording and Billing Practices.

As prescribed in (HSAR) 48 CFR 3016.601(e)(1)(iii), insert the following clause and designate either paragraph (i) or (ii), or insert a paragraph substantially the same as (i) or (ii), in accordance with the successful offeror's selection from (HSAR) 48 CFR 3052.216–75, Offeror Selection of Labor Hour Recording and Billing Practices for Time-and-Materials/Labor-Hour Contracts.

Time-and-Materials/Labor-Hour Overtime Recording and Billing Practices—(Insert Date)

(a) Definitions:

Overtime means the number of hours worked in excess of the number of hours in a standard work period by a contractor employee who is exempt from the Fair Labor Standards Act (FLSA).

Standard work period means the minimum number of hours a FLSA exempt employee is required to work per week or some other defined period (e.g., 40 hours per week) in accordance with the contractor's established policies.

(b) Only the designated paragraph (i) or (ii) applies.

[ ] *(i) Recording and Billing Practices—Record and Bill For All Hours Worked.*

The contractor (subcontractor) providing labor hours will bill the hours worked by employees exempt from the Fair Labor Standards Act (FLSA) under its contract (or order) based on recording of all hours worked by employees, including overtime. The contractor states that its established accounting practices are to record all hours worked.

(1) If it is found after award that the contractor's established accounting practices at the time of award were not based on recording all hours worked by employees, the Government shall be entitled to a price adjustment on all payments for labor hours under the contract or order.

(2) The amount of the price adjustment for payments shall be the difference between the number of hours billed based on recording all hours worked and the hours that would have been recorded using the contractor's established accounting practices at the time of award, multiplied by the applicable fixed hourly rates.

- or -

[ ] *(ii) Record and Bill For a Standard Number of Hours Per Standard Work Period.* The contractor (subcontractor) will bill the hours worked by employees exempt from the Fair Labor Standards Act (FLSA) under this contract based on recording and billing for only the number of hours worked not in excess of a standard number of hours in a standard work period (such as a 40 hour workweek). The contractor states that its established accounting practice is to record only the number of hours worked by such an employee not in excess of a standard number of hours in a standard work period (such as a 40 hour workweek). The contractor (subcontractor) further states that the accounting practices are based on pro-rating the hours among all jobs/functions performed by the employee when the employee works overtime. For example, under a standard 40 hour work period, if the employee worked 25 hours on Contract A and 25 hours on Contract B, the contractor would pro-rate those hours to record 20 hours on Contract A and 20 hours on Contract B so that the total number of hours recorded for the work period does not exceed the number of hours in the 40 hour standard work period.

(c) Flow down to Subcontractors. The contractor and each lower tier subcontractor shall incorporate the substance of this clause, selecting the pertinent paragraph (i) or (ii), into each subcontract that exceeds the Simplified Acquisition Threshold and is either a Time and Materials or a Labor Hour contract/order.

(End of clause)

[FR Doc. 2012–20442 Filed 8–20–12; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE TREASURY

48 CFR Chapter 10

RIN 1505–AC40

Department of the Treasury Acquisition Regulations; Contract Clause on Minority and Women Inclusion in Contractor Workforce

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (the Department) is proposing to amend the Department of the Treasury Acquisition Regulation (DTAR) to include a contract clause on minority and women inclusion, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act).

DATES: *Comment due date:* October 22, 2012.

ADDRESSES: Interested persons are invited to submit comments on all aspects of this proposed rule through one of these methods:

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. Electronic submission of comments allows the commenter maximum time to prepare

and submit a comment, ensures timely receipt, and enables the Department to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public.

Mail: Department of the Treasury, Office of Minority and Women Inclusion, Attention: Contractor Clause, Room 2438, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Fax and email comments will not be accepted.

Instructions: In general, the Department will enter all comments received into the docket and make them available, without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. Properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov*.

You may personally inspect comments at the Department of the Treasury Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC. You can make an appointment to inspect comments by calling (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Lorraine Cole, Director, Office of Minority and Women Inclusion, 202–927–8181 or *lorraine.cole@treasury.gov*.

SUPPLEMENTARY INFORMATION: Section 342 of the Dodd-Frank Act, 12 U.S.C. 5452, establishes an Office of Minority and Women Inclusion (OMWI) in each of certain agencies, including the Departmental Offices of the Department of the Treasury. Section 342(c)(2) provides that covered agencies shall require contractors to provide a written statement that the ''contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor, and as applicable, subcontractors.'' This rule will implement the statement required by the Dodd-Frank Act through a contract clause.

The proposed contact clause, which is similar to those adopted by other OMWI agencies, requires that a contractor make good faith efforts to include minorities and women in its workforce. This standard is derived from section 342(c)(3) of the Dodd-Frank Act, which provides for remedies, including termination, against a contractor who fails to make good faith efforts to include minorities and women in its workforce. Treasury interprets ''good faith efforts'' to mean efforts consistent with the Equal Protection Clause of the Constitution and Title VII of the Civil Rights Act of 1964, such as the identification and elimination of employment barriers, the widespread publication of employment opportunities, and other forms of outreach to minorities and women.

Section 342 applies to ''all contracts * * * for services of any kind,'' but the section does not define the term ''contract.'' Treasury proposes to apply the clause to all service contracts above the simplified acquisition threshold. As noted above, section 342 applies to Treasury Departmental Offices (DO). DO does not currently include an office responsible for operational procurement; acquisitions in support of DO are performed primarily by the Internal Revenue Service Office of Treasury Procurement Services. The clause will be included in all contracts in support of requirements originating from DO, regardless of the Treasury component performing the acquisition.

Procedural Matters

Public Comment

Because this proposed rule relates to public contracts, it is exempt from the requirements of 5 U.S.C. 553. However, it is being published for public comment pursuant to 41 U.S.C. 1707.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires agencies 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. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities and thus no initial regulatory flexibility analysis is required.

First, this rule will not affect a substantial number of small entities. While this rule will affect all contracts for services above the simplified acquisition threshold ($150,000), it will not affect a substantial number of small entities because it will only apply to those entities that actually contract with Departmental Offices. In fiscal year 2011, DO contracted with 370 small businesses.

Additionally, the rule's economic impact is not expected to be significant. The rule satisfies the statutory requirement that contractors affirm a commitment to the fair inclusion of minorities and women in the workforce, but does so in a way that minimizes burden on contractors. The rule provides maximum flexibility for contractors in implementing the statutory requirement because it does not impose any specific requirements on contractor hiring. Further, most contractors are already subject to and have implemented other FAR requirements that will satisfy this rule's requirements. Essentially all contracts to which this requirement applies are subject to FAR Clause 52.222–26, Equal Opportunity, which requires, among other things, that contractors complete the EEO Form 1 containing workforce demographic data. Thus, contractors are already required to compile and retain much of the data required by this clause. Further, contractors with over 50 employees are required by Department of Labor regulations to develop affirmative action plans; development of and compliance with such a plan would normally satisfy the requirements of the clause.

Notwithstanding the certification that this rule, if finalized, would not have a significant economic impact on a substantial number of small entities, the Department invites comments on the rule's impact on small entities.

Executive Order 12866

This proposed rule is not a ''significant regulatory action'' for the purposes of Executive Order 12866.

Paperwork Reduction Act

The information collections contained in the notice of proposed rulemaking have been previously approved by the Office of Management and Budget (OMB) and assigned control number 1505–0080. Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

Lists of Subjects in 48 CFR Parts 1022 and 1052

Government procurement.

Dated: August 8, 2012.

Lorraine Cole,

Director, Office of Minority and Women Inclusion, Department of the Treasury.

For the reasons set forth in the preamble, the Department proposes to amend 48 CFR Chapter 10 as follows:

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1022—MINORITY AND WOMEN INCLUSION

1. Add part 1022 to read as follows:

Subpart 1022.7—Fair Inclusion of Minorities and Women in Contractor's Workforce

Sec.
1022.7000 Contract clause.

Authority: 12 U.S.C. 5452.

Subpart 1022.7—Fair Inclusion of Minorities and Women in Contractor's Workforce

1022.7000 Contract clause.

Insert the clause at 1052.222–70, Minority and Women Inclusion, in all solicitations and contracts in support of Departmental Offices for services that exceed the simplified acquisition threshold.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Add subpart 1052.2 to read as follows:

Subpart 1052.2—Texts of Provisions and Clauses

Sec.
1052.222–70 Minority and Women Inclusion.

Authority: 12 U.S.C. 5452(c)(2).

Subpart 1052.2—Texts of Provisions and Clauses

§ 1052.222–70 Minority and women inclusion.

As prescribed in 1022.7000, insert the following clause:

''Contractor confirms its commitment to equal opportunity in employment and contracting. To implement this commitment, the Contractor shall ensure, to the maximum extent possible consistent with applicable law, the fair inclusion of minorities and women in its workforce. The Contractor shall insert the substance of this clause in all subcontracts under this Contract whose dollar value exceeds $150,000. Within ten business days of a written request from the contracting officer, or such longer time as the contracting officer determines, and without any additional consideration required from the Agency, the Contractor shall provide documentation, satisfactory to the Agency, of the actions it (and as applicable, its subcontractors) has undertaken to demonstrate its good faith effort to comply with the aforementioned provisions. For purposes of this contract, ''good faith effort'' may include actions by the contractor intended to identify and, if present, remove barriers to minority and women employment or expansion of employment opportunities for minorities and women within its workforce. Efforts to remove such barriers may include, but are not limited to, recruiting minorities and women, providing job-related training, or other activity that could lead to those results.

''The documentation requested by the contracting officer to demonstrate ''good faith effort'' may include, but is not limited to, one or more of the following:

1. The total number of Contractor's employees, and the number of minority and women employees, by race, ethnicity, and gender (e.g., an EEO–1);

2. A list of subcontract awards under the Contract that includes: dollar amount, date of award, and subcontractor's race, ethnicity, and/or gender ownership status;

3. Information similar to that required in item 1, above, with respect to each subcontractor; and/or

4. The Contractor's plan to ensure that minorities and women have appropriate opportunities to enter and advance within its workforce, including outreach efforts.

''Consistent with Section 342(c)(3) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203) (Dodd-Frank Act), a failure to demonstrate to the Director of the Agency's Office of Minority and Women Inclusion such good faith efforts to include minorities and women in the Contractor's workforce (and as applicable, the workforce of its subcontractors), may result in termination of the Contract for default, referral to the Office of Federal Contract Compliance Programs, or other appropriate action.

''For purposes of this clause, the terms ''minority,'' ''minority-owned business'' and ''women-owned business'' shall have the meanings set forth in Section 342(g) of the Dodd-Frank Act.''

[FR Doc. 2012–20385 Filed 8–20–12; 8:45 am]

BILLING CODE 4810–25–P

Notices

Federal Register
Vol. 77, No. 162
Tuesday, August 21, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0012]

Secretary's Advisory Committee on Animal Health; Intent To Renew and Request for Nominations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent and request for nominations.

SUMMARY: We are giving notice that the Secretary of Agriculture intends to renew the Secretary's Advisory Committee on Animal Health (Committee). The Secretary has determined that the Committee is necessary and in the public interest. We are also giving notice that the Secretary is soliciting nominations for membership for this Committee.

DATES: Consideration will be given to nominations received on or before September 10, 2012.

FOR FURTHER INFORMATION CONTACT: Mrs. R.J. Cabrera, Designated Federal Official, VS, APHIS, 4700 River Road Unit 35, Riverdale, MD 20737–1231; (301) 8513478 (or 800–877–8339 for the hearing impaired), email: *rj.cabrera@aphis.usda.gov.*

ADDRESSES: Nomination packages may be sent by postal mail or commercial delivery to The Honorable Thomas Vilsack, Secretary, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250, Attn: Secretary's Advisory Committee on Animal Health. Nomination packages may also be faxed to (301) 734–3121.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA, 5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture intends to renew the Secretary's Advisory Committee on Animal Health (the Committee) for 2 years.

The Committee advises the Secretary on strategies, policies, and programs to prevent, control, or eradicate animal diseases. The Committee considers agricultural initiatives of national scope and significance and advises on matters of public health, conservation of national resources, stability of livestock economies, livestock disease management and traceability strategies, prioritizing animal health imperatives, and other related aspects of agriculture. The Committee Chairperson and Vice Chairperson are elected by the Committee from among its members.

A request for nominations for membership was published [1] in the **Federal Register** on May 24, 2012 (77 FR 30993, Docket No. APHIS–2012–0012). In this notice, we are once again soliciting nominations from interested organizations and individuals. An organization may nominate individuals from within or outside its membership; alternatively, an individual may nominate herself or himself. Nomination packages should include a nomination form along with a cover letter or resume that documents the nominee's experience. Nomination forms are available on the Internet at *http://www.ocio.usda.gov/forms/doc/AD-755.pdf* or may be obtained from the person listed under For Further Information Contact.

The Secretary will select up to 20 members from across the agricultural community, including producers, processors, marketers, researchers, State and Tribal agricultural agencies, trade associations, and others, to obtain the broadest possible representation on the Committee, in accordance with the FACA and U.S. Department of Agriculture (USDA) Regulation 1041–1. Equal opportunity practices, in line with the USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

[1] To view the request for nominations, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0012.*

Done in Washington, DC, this 16th day of August 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–20517 Filed 8–20–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—WIC Program Regulations—Reporting and Recordkeeping Burden

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision to a currently approved information collection in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Regulations (7 CFR part 246) for the reporting and recordkeeping burdens associated with the WIC Program regulations.

DATES: Written comments must be received by October 22, 2012.

ADDRESSES: Comments may be sent via email to *wichq-web@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. In all cases, including when comments are sent via email, please label your comments as ''Proposed Collection of Information: WIC Program.''

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instructions should be directed to: Donna Hines, *Donna.Hines@fns.usda.gov* or (703) 305–2714.

SUPPLEMENTARY INFORMATION: 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 will 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 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.

Title: WIC Program Regulations—Reporting and Recordkeeping Burden.

OMB Number: 0584–0043.

Expiration Date: November 30, 2012.

Type of Request: Revision to a Currently Approved Collection.

Abstract: The purpose of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is to provide supplemental foods, nutrition education, and health care referrals to low income, nutritionally at risk pregnant, breastfeeding and postpartum women, infants, and children up to age five. Currently, WIC operates through State health departments in 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, America Samoa, and the Virgin Islands. Additionally, 34 Indian Tribal Organizations (ITOs) serve as WIC State agencies. The Federal regulations governing the WIC Program (7 CFR part 246) require that certain Program-related information be collected and that full and complete records concerning WIC operations are maintained. The information reporting and recordkeeping burdens are necessary to ensure appropriate and efficient management of the WIC Program.

The reporting and recordkeeping burdens covered by this Information Collection Burden (ICB) include requirements that involve the certification of WIC participants; the nutrition education that is provided to participants; the authorization, training and monitoring of vendors; and the collection of vendor pricing information in order to comply with the Federal regulations regarding WIC cost containment. State Plans are the principal source of information about how each State agency operates its WIC Program. Information collected from participants and local agencies is collected through State-developed forms or Management Information Systems. The information collected is used by the Department of Agriculture to manage, plan, evaluate, make decisions and report on WIC Program operations. This information collection is requesting a revision in the burden hours due to program changes that have reduced the frequency of certification requirements for children and due to program adjustments that primarily reflect expected changes in the number of WIC participants, WIC authorized vendors, and WIC local agencies. The revisions increase approved reporting burden by 42,215 hours and increase the total approved recordkeeping burden by 372,489 hours.

Reporting Burden

Affected Public: State, Local and Tribal Government; Individual/Households; and Business or Other for Profit.

Estimated Number of Respondents: 9,011,137 respondents.

Estimated Number of Responses per Respondent: 2.79 responses.

Estimated Total Annual Responses: 25,126,069.

Estimate of Time per Respondent: .13 hours.

Estimated Total Annual Reporting Burden Hours: 3,328,939 hours.

Current OMB Inventory: 3,286,724.

Difference (Burden Revisions Requested): 42,215.

Recordkeeping Burden

Estimated Number of Recordkeepers: 11,929.

Estimated number of records: 3,011.

Total estimated annual records: 35,919,470.

Estimated annual hours per recordkeeper: .02 hours.

Estimated Total Recordkeeping Burden Hours: 695,758 hours.

Current OMB Inventory: 323,269.

Difference (Burden Revisions Requested): 372,489.

Estimated Grand Total for Reporting and Recordkeeping Burden: 4,024,697 hours.

AFFECTED PUBLIC: STATE, LOCAL AND TRIBAL GOVERNMENT, BUSINESS-FOR AND NOT-FOR-PROFIT WIC PROGRAM REGULATIONS—REPORTING BURDEN

Type of respondent	Total number estimated number of respondents (responses)	Frequency of response per respondent	Total estimated annual responses	Estimated time (hours) to complete each application	Estimated burden hours
STATE, LOCAL & INDIAN TRIBAL GOVERNMENTS (90 WIC State agencies; 1,839 WIC local agencies) ..	1,929	6,531	12,598,157	.2	2,516,924
BUSINESS OR OTHER FOR–PROFIT (48,621 WIC authorized vendors)	48,621	2.23	108,302	1.77	191,987
INDIVIDUAL/HOUSEHOLDS (8,960,587 WIC participants)	8,960,587	1.39	12,419,611	.05	620,028
TOTAL	9,011,137		25,126,069		3,328,939

WIC PROGRAM REGULATIONS—RECORDKEEPING BURDEN

Type of respondent	Estimated number recordkeepers	Estimated number of records	Total estimated annual records	Estimated time (hours)	Estimated burden hours
STATE, LOCAL & INDIAN TRIBAL GOVERNMENTS (90 WIC State agencies; 1,839 WIC local agencies, 10,000 clinics)	11,929	3,011	35,919,470	.02	695,758

Dated: August 13, 2012.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2012–20435 Filed 8–20–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Mt. Baker-Snoqualmie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Mt. Baker-Snoqualmie (MBS) Resource Advisory Committee (RAC) will meet in North Bend, Washington on September 7, 2012. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and rank 2013 Title II RAC proposals.

DATES: The meeting will be held on Friday, September 7, 2012 from 8 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Snoqualmie Ranger District office, North Bend Conference Room, located at 902 SE North Bend Way, North Bend, Washington 98045–9545.

FOR FURTHER INFORMATION CONTACT: Jim Franzel, District Ranger, Snoqualmie Ranger District, phone (425) 888–8751, email *jfranzel@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Written comments and requests for time for oral comments must be sent to Snoqualmie Ranger District, 902 SE North Bend Way, North Bend, Washington 98045–9545.

SUPPLEMENTARY INFORMATION: More information will be posted on the Mt. Baker-Snoqualmie National Forest Web site at: *http://www.fs.fed.us/r6/mbs/projects/rac.shtml*.

Comments may be sent via email to *jfranzel@fs.fed.us* or via facsimile to (425) 888–1910. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Snoqualmie Ranger District office (address above), during regular office hours (Monday through Friday 8 a.m.–4:30 p.m.). Please call ahead to (425) 888–1421 to facilitate entry into the building to view comments.

Dated: August 14, 2012.

Jennifer Eberlien,

Forest Supervisor.

[FR Doc. 2012–20471 Filed 8–20–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pike & San Isabel Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Pike & San Isabel Resource Advisory Committee will meet in Pueblo, Colorado. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is for project discussion and recommendation to the Designated Federal Official.

DATES: The meetings will be held on September 5 and September 27, and will begin at 10:00 a.m.

ADDRESSES: The meetings will be held at the Supervisor's Office of the Pike & San Isabel National Forests, Cimarron and Comanche National Grasslands (PSICC) at 2840 Kachina Dr., Pueblo, Colorado. Written comments should be sent to Barbara Timock, PSICC, 2840 Kachina Dr., Pueblo, CO 81008. Comments may also be sent via email to *btimock@fs.fed.us*, or via facsimile to 719–553–1416.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at PSICC, 2840 Kachina Dr., Pueblo, CO 81008. Visitors are encouraged to call ahead to 719–553–1415 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Barbara Timock, RAC coordinator, USDA, Pike & San Isabel National Forests, 2840 Kachina Dr., Pueblo, CO 81008; (719) 553–1415; Email *btimock@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: To recommend project proposals, the PSI–RAC will convene a meeting. Decisions will be made during this meeting and the RAC will report out at the next meeting. The September 5 and September 27 meetings are open to the public. The following business will be conducted: (1) Review project proposals, (2) Vote on and recommend projects to the Designated Federal Official, (3) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 4, 2012 will have the opportunity to address the Committee at those sessions.

Dated: August 15, 2012.

John F. Peterson,

Designated Federal Official.

[FR Doc. 2012–20472 Filed 8–20–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. The purpose of the meeting is for the committee to hear project status, review project proposals, and to vote and make recommendations for funding. Opportunity for public comment will be provided.

DATES: The meeting will be held Monday, September 17, 2012, at 4:00 p.m. and, if needed, the meeting will be continued Monday, September 24, at 4:00 p.m. to recommend projects by the September 30, 2012 deadline.

ADDRESSES: The meeting will be held at the Klamath National Forest Supervisor's Office, main conference room, at 1711 South Main Street in Yreka, CA.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Klamath National Forest Supervisor's Office. Please call ahead to (530) 841–4484 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Kerry Greene, Community Development and Outreach Specialist, phone: (530) 841–4484 or email: *kggreene@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation for access to the facility or proceedings by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Project updates and financial status, and review of project proposals currently under consideration by the RAC. New project proposals are now being accepted. The committee may vote to recommend projects for the funding. A meeting agenda and copies of submitted proposals can be accessed at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Siskiyou+County-CA*.

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in advance to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to the Klamath National Forest, 1711 S. Main Street, Yreka, CA 96097, attention: Kerry Greene or by email to *kggreene@fs.fed.us*, or via facsimile to (530) 841–4571.

A summary of the meeting will be posted at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Siskiyou+County-CA* within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices, or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 15, 2012.

Patricia A. Grantahm,

Forest Supervisor.

[FR Doc. 2012–20475 Filed 8–20–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Cherokee Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Cherokee Resource Advisory Committee will meet in Knoxville, Tennessee. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held September 14, 2012 from 1:00 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the USDA Forest Service—Forest Inventory and Analysis Office at 4700 Old Kingston Pike, Knoxville, TN 37919.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Unaka Ranger District Office at 4900 Asheville Highway SR70, Greeneville, TN 37743. Please call ahead to 423–638–4109 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Terry McDonald, RAC Coordinator, Cherokee National Forest, 423–476–9729, *twmcdonald@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review the status of approved projects for FY08–FY11; Recommend projects for FY12. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. The agenda will include time for people to make oral statements. Individuals wishing to make an oral statement should request in writing by September 7, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to U.S. Forest Service, 2800 Ocoee Street North, Cleveland, TN 37312, ATTN: Terry McDonald, or by email to *twmcdonald@fs.fed.us*, or via facsimile to 423–476–9721. A summary of the meeting will be posted at *http://fs.usda.gov/cherokee* within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices, or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

All reasonable accommodation requests are managed on a case by case basis.

Dated: August 15, 2012.

William P. Lisowsky,

Acting Forest Supervisor, Cherokee National Forest.

[FR Doc. 2012–20474 Filed 8–20–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Rogue-Umpqua Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Rogue-Umpqua Resource Advisory Committee will meet in Roseburg, Oregon. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance

with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held September 18, 2012, 8:30 a.m., and Sept. 19, 2012, 8:30 a.m.

ADDRESSES: The meeting will be held at the Supervisor's Office of the Umpqua National Forest, 2900 NW Stewart Parkway, Roseburg, Oregon, in the Diamond Lake Conference Room.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Supervisor's Office for the Umpqua National Forest. Please call ahead to 541–957–3200 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Caplan, Public Affairs Officer, Umpqua National Forest, 541–957–3270, *ccaplan@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Approval of agenda and minutes, public forum opportunity, election of chair, review of fiscal years 2009 through 2012 projects, and review and recommendation of individual fiscal year 2013 Title II project nominations. The agenda is available at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Rogue+%26+Umpqua?OpenDocument.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 17 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Umpqua National Forest ATTN: Cheryl Caplan, 2900 NW Stewart Parkway, Roseburg, OR 97471, or by email to *ccaplan@fs.fed.us*, or via facsimile to 541–957–3495.

A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Rogue+%26+Umpqua?OpenDocument* within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: August 14, 2012.

Cheryl Caplan,

Acting Umpqua Forest Supervisor.

[FR Doc. 2012–20468 Filed 8–20–12; 8:45 am]

BILLING CODE 3410–11–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: National Oceanic and Atmospheric Administration (NOAA).

Title: Environmental Compliance Questionnaire for National Oceanic and Atmospheric Administration Federal Financial Assistance Applicants.

OMB Control Number: 0648–0538.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 1,000.

Average Hours per Response: 3.

Burden Hours: 3,000.

Needs and Uses: This request is for extension of a currently approved information collection. The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 through 4327) and the Council on Environmental Quality (CEQ) implementing regulations (40 CFR parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies only to the actions of Federal agencies. While those Federal actions may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements, NEPA requires agencies to assess the environmental impacts of actions proposed to be taken by these recipients only when the Federal agency has sufficient discretion or control over the recipient's activities to deem those actions as Federal actions. To determine whether the activities of the recipient of a Federal financial assistance award (i.e., grant or cooperative agreement) involve sufficient Federal discretion or control, and to undertake the appropriate environmental analysis when NEPA is required, NOAA must assess information which can only be provided by the Federal financial assistance applicant. Thus, NOAA has developed an environmental information questionnaire to provide grantees and Federal grant managers with a simple tool to ensure that project and environmental information is obtained. The questionnaire applies only to those programs where actions are considered major Federal actions or to those where NOAA must determine if the action is a major Federal action. The questionnaire includes a list of questions that encompasses a broad range of subject areas. The applicants are not required to answer every question in the questionnaire. Each program draws from the comprehensive list of questions to create a relevant subset of questions for applicants to answer. The information provided in answers to the questionnaire is used by NOAA staff to determine compliance requirements for NEPA and conduct subsequent NEPA analysis as needed. The information provided in the questionnaire may also be used for other regulatory review requirements associated with the proposed project, such as permitting.

Affected Public: Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: August 15, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–20444 Filed 8–20–12; 8:45 am]

BILLING CODE 3510–NW–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–64–2012]

Foreign-Trade Zone 59—Lincoln, NE, Notification of Proposed Production Activity; Novartis Consumer Health, Inc. (Pharmaceutical Products and Related Preparations Production), Lincoln, NE

Novartis Consumer Health, Inc. (Novartis) submitted a notification of proposed production activity for the company's facilities located within Sites 3 and 4 of FTZ 59, in Lincoln, Nebraska. The facilities are used for the production of dosage-form and bulk-quantity mixed medicines, including those containing penicillin, alkaloids, analgesics, antibiotics, antihistamine/decongestants, cold remedies, anti-infectives, dermatological and anesthetic agents, digestive treatments, insulin, vitamins, and hormones; vitamins and provitamins; food preparations, including those containing fiber and various digestive products, lozenges, nicotine gum, and cold symptom products; preparations for skincare; pharmaceutical reference standards; and medicines for veterinary use.

Production under FTZ procedures could exempt Novartis from customs duty payments on the foreign-status components used in export production. On its domestic sales, Novartis would be able to choose the duty rates during customs entry procedures that apply to the finished products (mostly duty-free, but some would be up to 6.4 percent for certain food preparations) for the foreign-status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: Menthol; ibuprofen; sodium salicylate (USP); aspirin; terbinafine; diphenhydramine citrate (USP); diclofenac sodium; acetaminophen; rivastigmine hydrogen tartrate; tolnaftate (USP/EP); lansoprazole; loratadine; pyrilamine maleate (USP); dextromethorphan HBR (USP); clemastine fumarate; clomipramine hydrochloride; acesulfame K; benzalkonium chloride; microcrystalline cellulose; inulin; aloe vera gel; carrageenan (viscarin GP109F); wheat dextrin; insulin; benzyl alcohol NF; camphor USP; synthetic; anhydrous citric acid USP/EP find grain; butylparaben NF; methylparaben NF; diphenhydramine citrate USP; aspartame NF; aspartame; coated acetaminophen crystals; xylometazoline HCL; heterocyclic compounds; dextromethorphan hydrobromide USP; crospovideone NF; polyplasdone xl-10; clomicalm A.S.; isradipine (USP); desiccant; croscarmellose sodium NF; microcellulose; bulk penicillin mixed medicines; bulk mixed drugs; including penicillins; antibiotics; hormones; and alkaloids; caffeine; dextrins and modified starches; gums; guar gum; oleoresins; balsam gum; ginseng; vegetable extracts and similar thickeners; iron oxides and hydroxides; disodium carbonate; carbonates; flavoring compounds; aniline derivative compounds; amino-alcohol-phenols; amino-acid-phenols; other nitrile function compounds; other antihistamine chemicals; other vegetable alkaloids and derivatives; articles of plastic, including bands, bags and fiber drum liners, bottles, plugs, caps, drums, tubes, packaging materials, droppers, stoppers, dispensing tubes, plug dip tubes, dosage cups and syringes; stopper dip tube assemblies; aluminum collapsible tubes; aluminum containers; artificial flavors; pine needle oil; benorilate; and sodium cyclamate (duty rates range from duty free to 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 1, 2012.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary; Foreign-Trade Zones Board; Room 21013; U.S. Department of Commerce; 1401 Constitution Avenue NW., Washington, DC 20230–0002; and in the ''Reading Room'' section of the Board's Web site; which is accessible via *www.trade.gov/ftz.*

For further information; contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: August 14, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–20547 Filed 8–20–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–65–2012]

Notification of Proposed Production Activity; Winnebago Industries, Inc., Subzone 107A (Polyurethane Coated Upholstery Fabric), Forest City and Charles City, IA

Winnebago Industries, Inc. (Winnebago), operator of Subzone 107A, submitted a notification of proposed production activity for their facilities in Forest City and Charles City, Iowa. The notification conforming to the requirements of the regulations of the Board (15 CFR 400.22) was received on July 24, 2012.

The subzone currently has authority to produce and warehouse recreational vehicles under FTZ procedures using certain imported components. The current request is to cut, sew, upholster and warehouse wet coagulation process 100% polyurethane coated fabric for use as upholstery in motor homes. Production under FTZ procedures for this activity could exempt Winnebago from customs duty payments on the foreign status components used in export production. On its domestic sales, Winnebago would be able to choose the duty rate during customs entry procedures that applies to motor homes (duty rate 2.5%) for the foreign status input noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: wet coagulation process 100% polyurethane coated fabric (duty rate 7.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 1, 2012.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For Further Information Contact: Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: August 14, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–20541 Filed 8–20–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry And Security

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on September 6, 2012, 10:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4830, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Agenda

Open Session

1. Opening remarks by the Chairman and Vice Chairman.
2. Export Control Reform Update.
3. Presentation of Papers or Comments by the Public.
4. Working Group Updates.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 25 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than August 30, 2012.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on August 13, 2012, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: August 15, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–20533 Filed 8–20–12; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet September 11, 2012, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Opening remarks by Bureau of Industry and Security.
3. Export Enforcement update.
4. Regulations update.
5. Working group reports.
6. Automated Export System (AES) update.
7. Presentation of papers or comments by the Public.

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 25 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than September 4, 2012.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 11, 2012, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: August 15, 2012.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2012–20530 Filed 8–20–12; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry And Security

Transportation and Related Equipment; Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on September 13, 2012, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

Public Session

1. Welcome and Introductions.

2. Status reports by working group chairs.
3. Public comments and Proposals.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than September 6, 2012.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 21, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: August 15, 2012.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2012–20528 Filed 8–20–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Affirmative Final Determination of Circumvention of Antidumping Duty Order.

SUMMARY: On June 21, 2012, the Department of Commerce (''Department'') published in the **Federal Register** the affirmative *Preliminary Determination* [1] of this anticircumvention inquiry, and determined that blends of honey and rice syrup are subject to the antidumping duty *Order* on honey from the People's Republic of China (''PRC'').[2] We gave interested parties an opportunity to comment on the *Preliminary Determination.* None were submitted. As a result, we are making no changes from the *Preliminary Determination* for this final determination.

DATES: *Effective Date:* August 21, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, telephone: (202) 482–3207, or Josh Startup, telephone: (202) 482–5260; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 2012, the Department published the affirmative *Preliminary Determination* of circumvention of the antidumping *Order* on honey from the PRC. The Department did not receive any comments from interested parties on this determination.

Changes Since the Preliminary Determination

We have not made any changes to the *Preliminary Determination.*

Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, 2106.90.99, 0409.00.0010, 0409.00.0035, 0409.00.0005, 0409.00.0045, 0409.00.0056, and 0409.00.0065 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Merchandise Subject to the Anticircumvention Inquiry

The merchandise subject to the anticircumvention inquiry are blends of honey and rice syrup, regardless of the percentage of honey they contain, from the PRC.

International Trade Commission Notification

In accordance with section 781(d) of the Tariff Act of 1930, as amended (''the Act''), we notified the International Trade Commission (''ITC'') of the proposed inclusion of blends of honey and rice syrup in the antidumping duty order on honey from the PRC.[3] The ITC determined that consultations were not necessary.[4]

Final Affirmative Determination of Circumvention

As there is no basis for the Department to reconsider its decision, we continue to find that blends of honey and rice syrup are later-developed merchandise. As explained in the *Preliminary Determination,* the evidence on the record demonstrates that blends of honey and rice syrup were not commercially available at the time that the investigation was initiated and these blends are materially different from the merchandise under consideration at the time of the investigation and, in particular, different from the honey blends specifically excluded under the *Order.* Additionally, all honey rice syrup blends, regardless of the percentage of honey they contain, meet the criteria under sections 781(d)(1)(A–E) of the Act. Therefore, the Department determines that blends of honey and rice syrup, regardless of the percentage of honey they contain, from the PRC are later-developed merchandise within the meaning of section 781(d) of the Act, and are within the scope of the *Order.*

[1] *See Honey from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 77 FR 37378 (June 21, 2012) (''*Preliminary Determination*'').

[2] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey From the People's Republic of China,* 66 FR 63670 (December 10, 2001) (''*Order*'').

[3] *See* the Department's letter to the ITC dated May 14, 2012, Re: Anticircumvention Inquiry of the Antidumping Duty Order on Honey from the People's Republic of China.

[4] *See* Memorandum To: The File, From: Josh Startup Trade Compliance Analyst, Office 9 Import Administration Re: Letter from the International Trade Commission (''ITC'') Regarding the Anti-circumvention Inquiry, dated July 17, 2012, at Attachment 1.

Continuation of Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(2) and (3), we will instruct U.S. Customs and Border Protection to continue to suspend liquidation of all entries of blends of honey and rice syrup, from the PRC that were entered, or withdrawn from warehouse, for consumption on or after December 7, 2011, the date of initiation of this anticircumvention inquiry.

Administrative Protective Order

In accordance with 19 CFR 351.305(a)(3), this notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under the APO, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination is issued and published in accordance with section 781(d) of the Act and 19 CFR 351.225(j).

Dated: August 14, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–20548 Filed 8–20–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line and pressure pipe from Romania. The review covers one producer/exporter of the subject merchandise, ArcelorMittal Tubular Products Roman S.A. (AMTP). The period of review (POR) is August 1, 2010, through July 31, 2011. We preliminarily determine that AMTP did not sell the subject merchandise at less than normal value during the POR. We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* August 21, 2012.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0410 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2000, the Department published the antidumping duty order on certain small diameter carbon and alloy seamless standard, line and pressure pipe (small diameter seamless pipe) from Romania.[1]

On August 31, 2011, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), AMTP, a Romanian producer and exporter of the subject merchandise, requested an administrative review of itself. On October 3, 2011, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review of the order.[2] We are conducting the administrative review of the order in accordance with section 751(a) of the Act.

On January 30, 2012, the petitioner, United States Steel Corporation (the petitioner) alleged that AMTP made sales of small diameter seamless pipe from Romania at prices below the cost of production (COP) in its home market during the POR.[3] The Department determined that this allegation was timely filed in accordance with 19 CFR 351.301(d)(2)(ii). On February 24, 2012, we initiated a sales-below-cost investigation with respect to AMTP.[4]

Scope of the Order

For purposes of this review, the products covered include small diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the American Society for Testing and Materials (ASTM) A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this review also include all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of this review are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The merchandise subject to this review is typically classified in the HTSUS at subheadings: 7304.10.10.20, 7304.10.50.20, 7304.19.10.20, 7304.19.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania,* 65 FR 48963 (August 10, 2000).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 61076 (October 3, 2011).

[3] *See* letter from the petitioner dated January 30, 2012.

[4] *See* Memorandum to Susan Kuhbach dated February 24, 2012.

liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or ''hollow profiles'' of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications.

The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of these reviews. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this review.

Specifically excluded from the scope of this review are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of this review, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line, or pressure applications.

Fair-Value Comparisons

To determine whether AMTP's sales of small diameter seamless pipe from Romania were made in the United States at less than normal value, we compared the constructed export price (CEP) to the normal value as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.[5]

When making this comparison in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Order'' section of this notice, above, that were in the ordinary course of trade for purposes of determining an appropriate product comparison to the U.S. sale. If an identical home-market model with identical physical characteristics as described below was reported, we made comparisons to weighted-average home-market prices that were based on all sales of the identical product during a contemporaneous month. If there were no contemporaneous sales of an identical model, we identified sales of the most similar merchandise that were most contemporaneous with the U.S. sale in accordance with 19 CFR 351.414(f).

Product Comparisons

In accordance with section 771(16) of the Act, we compared products produced by AMTP and sold in the U.S. and home markets on the basis of the comparison product which was closest in terms of the physical characteristics to the product sold in the United States. In the order of importance, these characteristics are specification/grade, manufacturing process, outside diameter, wall thickness, surface finish, and end finish.

Date of Sale

Section 351.401(i) of the Department's regulations states that, normally, the Department will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.[6]

For all U.S. sales, AMTP reported the date of shipment from the mill in Romania as the date of sale because the date of shipment preceded the invoice date. With respect to AMTP's U.S. sales, price and quantity are subject to change until the merchandise is shipped from the mill in Romania. Because the material terms of sale are established at shipment, prior to invoicing, we have

[5] In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (''*Final Modification for Reviews''*). In particular, the Department compared monthly weighted-average CEPs with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

[6] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany,* 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

used the date of sale as reported by AMTP.

AMTP reported the earlier of shipment date or invoice date for its home market sales. With respect to AMTP's home market sales, price and quantity are subject to change until invoicing, except where invoicing occurs after shipment, in which case the material terms are set when the product is shipped. Accordingly, we have used the date of sale as reported by AMTP.

Constructed Export Price

In accordance with section 772(b) of the Act, we used CEP for AMTP because the subject merchandise was sold in the United States by a U.S. seller affiliated with the producer.

We calculated CEP based on the delivered price to unaffiliated purchasers in the United States. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.,* the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of AMTP's home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise in accordance with section 773(a)(1)(B)(i) of the Act. Based on this comparison, we determined that AMTP had a viable home market during the POR. Consequently, we based normal value on home market sales to unaffiliated purchasers made in the usual commercial quantities in the ordinary course of trade and sales made to affiliated purchasers where we find prices were made at arm's length, described in detail below.

Cost of Production

Based on our analysis of the petitioner's allegation, we found that there were reasonable grounds to believe or suspect that sales of the foreign like product in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether sales were made at prices below their respective COP.[7]

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product plus an amount for general and administrative expenses, and financial expenses. We relied on the COP data submitted by AMTP with one exception: We increased the reported costs using the major-input adjustment for an affiliated-party input pursuant to section 773(f)(3) of the Act.[8] We examined the cost data and determined that our quarterly cost methodology is not warranted, and, therefore, we have applied our standard methodology of using annual costs based on the reported data, adjusted as described above.

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether the sales were made at prices below the COP. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts and rebates, selling and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below cost sales of that product because we determine that the below cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than COP, we determine that such sales have been made in ''substantial quantities'' and, thus, we disregard below cost sales.[9] Further, we determine that the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examine below cost sales occurring during the entire POR. Because we are applying our standard annual-average cost test in these preliminary results, we have also applied our standard cost-recovery test with no adjustments. In such cases, because we compare prices to POR-average costs, we also determine that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

In this case, we found that, for certain specific products, more than 20 percent of AMTP's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. Therefore, we disregarded these sales and used the remaining sales as the basis for determining normal value in accordance with section 773(b)(1) of the Act.

Calculation of Normal Value Based on Home Market Prices

We based normal value on the starting prices to home market customers. We made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made circumstance-of-sale adjustments by deducting home market direct selling expenses from normal value.

Affiliation

The Department may calculate normal value based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.,* sales were made at arm's-length prices.[10] We exclude from our analysis transactions to affiliated customers for consumption in the home market that we determine were not sold at arm's-length prices.

To test whether AMTP's sales to affiliated parties were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties

[7] *See* Memorandum to Susan Kuhbach dated February 24, 2012.

[8] *See* Memorandum to Neal Halper from Kristin Case entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—ArcelorMittal Tubular Products Roman S.A.,'' dated August 14, 2012.

[9] *See* section 773(b)(2)(C) of the Act.

[10] *See* 19 CFR 351.403(c).

for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's-length prices.[11] We preliminarily find that all of AMTP's sales to affiliated parties were made at arm's-length prices and we included them in our calculation of normal value.

Level of Trade

To determine whether home market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

During the POR, AMTP reported that it sold the foreign like product in the home market through a single channel of distribution and that the selling activities associated with all sales through this channel of distribution did not differ. We found no evidence to contradict AMTP's representations. Accordingly, we found that the home market channel of distribution constituted a single level of trade.

All of AMTP's U.S. sales were CEP sales. We identified the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act. Most of the selling activities are performed by the U.S. affiliate and, after eliminating expenses and profit associated with those selling activities, we found that AMTP performed few selling activities and that the intensity levels for these activities were very small in comparison to the intensity levels for activities performed for the home market level of trade. Therefore, we have concluded that CEP sales constitute a different level of trade from the level of trade in the home market and that the home market level of trade was at a more advanced stage of distribution than the CEP level of trade.

We were unable to match CEP sales at the same level of trade in the home market or to make a level-of-trade adjustment because there was no level of trade in the home market equivalent to the CEP level of trade. Because the data available do not provide an appropriate basis to determine a level-of-trade adjustment and the home market level of trade is at a more advanced stage of distribution than the CEP, we made a CEP-offset adjustment to NV for all such sales. The CEP offset was the sum of indirect selling expenses incurred on home market sales up to the amount of indirect selling expenses incurred on the U.S. sales.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that no dumping margin exists for AMTP for the period August 1, 2010, through July 31, 2011.

Disclosure and Comment

We will disclose the calculations used in our analysis to parties to this review within five days of the date of publication of this notice.[12] Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**.[13] If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. Interested parties may submit case briefs within 30 days of the date of publication of this notice.[14] Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice.[15] Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the case briefs, within 120 days after the date on which the preliminary results are published.[16]

Assessment Rates

Upon completion of the administrative review, the Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. If AMTP's weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). If AMTP's weighted-average dumping margin continues to be zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of AMTP's entries in accordance with the *Final Modification for Reviews, i.e.,* ''where the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [17]

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification applies to entries of subject merchandise during the POR produced by AMTP where AMTP did not know that its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this administrative review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for AMTP will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the less-than-fair-value investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 13.06 percent, the all-others rate established in *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania,* 65 FR 48963 (August 10, 2000). These cash deposit requirements, when imposed, shall remain in effect until further notice.

[11] *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (November 15, 2002).

[12] *See* 19 CFR 351.224(b).

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.309(c).

[15] *See* 19 CFR 351.309(d).

[16] *See* 19 CFR 351.213(h)(1).

[17] *See Final Modification for Reviews,* 77 FR at 8102.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 14, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–20537 Filed 8–20–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership Advisory Board

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Manufacturing Extension Partnership (MEP) Advisory Board will hold an open meeting on Wednesday, August 29, 2012, from 8:30 a.m. to 5:00 p.m. Eastern Time.

DATES: The meeting will convene August 29, 2012, at 8:30 a.m. and will adjourn at 5:00 p.m. Eastern Time that day.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Karen Lellock, Manufacturing Extension Partnership, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–4269, email: *Karen.Lellock@nist.gov.*

SUPPLEMENTARY INFORMATION: The MEP Advisory Board (Board) is composed of 10 members, appointed by the Director of NIST. MEP is a unique program consisting of centers across the United States and Puerto Rico with partnerships at the state, federal, and local levels. The Board provides a forum for input and guidance from the MEP program stakeholders in the formulation and implementation of tools and services focused on supporting and growing the U.S. manufacturing industry and provides advice on MEP programs, plans, and policies, assesses the soundness of MEP plans and strategies, and assesses current performance against MEP program plans.

This meeting will focus on (1) a review of MEP's work with several states on the development of plans to support the growth of advanced manufacturing industries, (2) an update on NIST manufacturing initiatives, and (3) an update on MEP centers' implementation of key initiatives. The agenda may change to accommodate other Board business.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda. Approximately 15 minutes will be reserved for public comments at the beginning of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received but is likely to be no more than three to five minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the MEP Advisory Board, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800, or via fax at (301) 963–6556, or electronically by email to *Karen.Lellock@nist.gov.*

All visitors to the NIST site are required to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Karen Lellock by 5:00 p.m. Eastern Time, Wednesday, August 22, 2012. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Ms. Lellock's email address is *Karen.Lellock@nist.gov* and her phone number is (301) 975–4269.

Dated: August 15, 2012.

Kevin Kimball,

Chief of Staff.

[FR Doc. 2012–20529 Filed 8–20–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Public Workshop: ''Designing for Impact III: Workshop on Building the National Network for Manufacturing Innovation''

AGENCY: Advanced Manufacturing National Program Office, National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The Advanced Manufacturing National Program Office (AMNPO), housed at the National Institute of Standards and Technology (NIST), announces the third workshop in a series of public workshops entitled ''Designing for Impact: Workshop on Building the National Network for Manufacturing Innovation.'' This workshop series provides a forum for the AMNPO to introduce the National Network for Manufacturing Innovation (NNMI) and its regional components, Institutes for Manufacturing Innovation (IMIs), and for public discussion of this new initiative that was announced by President Obama on March 9, 2012.[1] The discussion at the workshop will focus on the following topics: Technologies with Broad Impact, Institute Structure and Governance, Strategies for Sustainable Institute Operations, and Education and Workforce Development.

The Designing for Impact workshop series is organized by the federal interagency AMNPO, in cooperation with stakeholders and local organizations. AMNPO partner agencies include the Department of Commerce, National Institute of Standards and Technology (NIST); Department of Defense; Department of Energy's Advanced Manufacturing Office; Department of Labor; National Aeronautics and Space Administration (NASA); and National Science Foundation. Local hosts and co-organizers for the third workshop event include the National Academy of Engineering (NAE), the National Academies of Sciences and Engineering's University-Industry

[1] *http://www.whitehouse.gov/the-press-office/2012/03/09/remarks-president-manufacturing-and-economy.*

Research Roundtable (GUIRR) and University-Industry Demonstration Partnership (UIDP), the University of California (UC) Irvine, and NASA's Jet Propulsion Laboratory (JPL).

DATES: The third public workshop in this series will be held on Thursday, September 27, 2012 from 10:00 a.m. until 5:00 p.m. Pacific time. Event check-in will begin at approximately 9:00 a.m. Pacific time. Please see registration information in the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: The third public workshop in this series will be held at Arnold and Mabel Beckman Center of the National Academies of Sciences and Engineering, 100 Academy, Irvine, CA 92617.

FOR FURTHER INFORMATION CONTACT: Michael Schen, (301) 975–6741, *michael.schen@nist.gov;* or Steven Schmid, (301) 975–8652, *steven.schmid@nist.gov;* or LaNetra Tate, (301) 975–8723, *lanetra.c.tate@nasa.gov.* Additional information may also be found at: *http://manufacturing.gov/amp/event_092712.html.*

SUPPLEMENTARY INFORMATION:

Legal Authority: 15 U.S.C. 272(b)(1).

Members of the public wishing to attend this public workshop are encouraged to register in advance and may do so online through the event Web site: *http://www.manufacturing.gov/amp/event_092712.html.* Space is limited. Registration will be on a first-come first-served basis, with no more than four representatives from the same organization accepted. Advance online registration will close at 11:59 p.m. Pacific time, Tuesday, September 18, 2012, or when all spaces have been filled, whichever occurs first. After advance online registration closes, registration will be permitted only on a first-come, first-served basis on the day of the event, on site, should space become available. Please check the event Web site, *http://www.manufacturing.gov/amp/event_092712.html,* for space availability information. Early registration is encouraged.

The proposed NNMI initiative focuses on strengthening and ensuring the long-term competitiveness and job-creating power of U.S. manufacturing. The constituent IMIs will bring together industry, universities and community colleges, federal agencies, and U.S. states to accelerate innovation by investing in industrially-relevant manufacturing technologies with broad applications to bridge the gap between basic research and product development, provide shared assets to help companies—particularly small manufacturers—access cutting-edge capabilities and equipment, and create an unparalleled environment to educate and train students and workers in advanced manufacturing skills. The President's proposed FY 2013 budget includes $1 billion for this proposed initiative.

Each IMI will serve as a regional hub of manufacturing excellence, providing the innovation infrastructure to support regional manufacturing and ensuring that our manufacturing sector is a key pillar in an economy that is built to last. Each IMI also will have a well-defined technology focus to address industrially-relevant manufacturing challenges on a large scale and to provide the capabilities and facilities required to reduce the cost and risk of commercializing new technologies.

In his March 9, 2012, announcement, President Obama proposed building a national network consisting of up to 15 IMIs.

On December 15, 2011, Commerce Secretary John Bryson announced the AMNPO that is hosted by the NIST.[2] The AMNPO is charged with convening and enabling industry-led, private-public partnerships focused on manufacturing innovation and engaging U.S. universities and designing and implementing an integrated ''whole of government'' advanced manufacturing initiative to facilitate collaboration and information sharing across federal agencies.

The AMNPO has held two prior Designing for Impact workshops as part of its strategy for soliciting nation-wide input on building the NNMI. The first workshop was held on April 25, 2012, at Rensselaer Polytechnic Institute in Troy, New York, and the second on July 9, 2012, at Cuyahoga Community College in Cleveland, Ohio. On May 4, 2012, the AMNPO issued a Request for Information (RFI), seeking public comment on specific questions related to the structure and operations of the NNMI and IMIs. The RFI was published in the **Federal Register** and may be found at: *http://www.gpo.gov/fdsys/pkg/FR-2012-05-04/pdf/2012-10809.pdf.* Comments in response to the RFI are due on or before 11:59 p.m. Eastern time on October 25, 2012.

Announcements of additional workshops may be found at: *http://www.manufacturing.gov/amp/ampevents.html.* Future workshops will also be announced in the **Federal Register**.

Dated: August 14, 2012.

Phillip Singerman,

Associate Director for Innovation and Industry Services.

[FR Doc. 2012–20535 Filed 8–20–12; 8:45 am]

BILLING CODE 3510–13–P

[2] *http://www.commerce.gov/news/press-releases/2011/12/16/commerce-secretary-john-bryson-lays-out-vision-department-commerce.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Recreational Landings Reports

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

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 October 22, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Katie Davis, (727) 824–5399 or *Katie.Davis@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

Recreational catch reporting provides important data used to monitor catches of Atlantic highly migratory species (HMS) and supplements other existing data collection programs. Data collected through this program are used for both domestic and international fisheries management and stock assessment purposes.

Atlantic bluefin tuna (BFT) catch reporting provides real-time catch information used to monitor the

recreational BFT fishery. Under the Atlantic Tunas Convention Act of 1975 (ATCA, 16 U.S.C. 971), the United States is required to adopt regulations, as necessary and appropriate, to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), including recommendations on a specified BFT quota. BFT catch reporting helps the U.S. monitor this quota monitoring and supports scientific research consistent with ATCA and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*). Recreational anglers are required to report specific information regarding their catch after they land a BFT.

Atlantic billfish and swordfish are managed internationally by ICCAT and nationally under ATCA and the Magnuson-Stevens Act. This collection provides information needed to monitor the recreational catch of Atlantic blue and white marlin, which is applied to the recreational limit established by ICCAT, and the recreational catch of North Atlantic swordfish, which is applied to the U.S. quota established by ICCAT. This collection also provides information on recreational landings of West Atlantic sailfish which is unavailable from other established monitoring programs. Collection of sailfish catch information is authorized under the Magnuson-Stevens Act for purposes of stock management.

II. Method of Collection

Respondents reporting BFT landings in states (and the United States Virgin Islands and Puerto Rico) other than Maryland and North Carolina may use either an internet Web site or an interactive voice response (IVR) telephone system. Respondents reporting Atlantic marlin, West Atlantic sailfish, or North Atlantic swordfish in states (and the United States Virgin Islands and Puerto Rico) other than Maryland or North Carolina may use either an internet Web site or a toll-free telephone number to report landings information. In Maryland and North Carolina, a paper reporting system is used for all of the aforementioned species. Under state law, respondents in Maryland and North Carolina must submit a landing card at a state-operated reporting station. States that participate in a landing card program must submit weekly reports and one annual report to NOAA to summarize landings and results to date.

III. Data

OMB Control Number: 0648–0328.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations; individuals or households; and State, Local, or Tribal government.

Estimated Number of Respondents: 11,500.

Estimated Time per Response: 5 minutes for an initial call-in or internet report; 5 minutes for a confirmation call; 10 minutes for a landing card; 1 hour for a weekly state report; and 4 hours for an annual state report.

Estimated Total Annual Burden Hours: 1,440.

Estimated Total Annual Cost to Public: $0.

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: August 15, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–20445 Filed 8–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC161

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Individual Fishing Quota Program Regulations

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

ACTION: Notice of public meeting.

SUMMARY: NMFS, Southeast Region, will hold workshops to discuss administrative changes to the Gulf of Mexico Individual Fishing Quota (IFQ) programs. Workshops will be open to the public. Topics to be discussed during the workshops include: Ex-vessel price reporting, share and allocation price reporting, landing notification and landing transaction procedures, measures to enhance IFQ enforceability, offloading requirements, and other administrative changes.

DATES: The workshop dates are:

1. Wednesday, September 5, 2012, 6 p.m. to 8 p.m., Galveston, TX;

2. Tuesday, September 18, 2012, 6 p.m. to 8 p.m., Madeira Beach, FL; and

3. Wednesday, September 19, 2012, 6 p.m. to 8 p.m., Panama City, FL.

ADDRESSES: The workshop locations are:

1. Galveston—Holiday Inn, 5002 Seawall Boulevard, Galveston, TX;

2. Madeira Beach—City of Madeira Beach, 300 Municipal Drive, Madeira Beach, FL; and

3. Panama City—Courtyard Marriott, 905 East 23rd Place, Panama City, FL.

FOR FURTHER INFORMATION CONTACT: NMFS, Southeast Regional Office, IFQ Customer Service, phone: 866–425–7627; email: *SER-IFQ.Support@noaa.gov*.

SUPPLEMENTARY INFORMATION: The primary purpose of these workshops is to discuss potential changes to Gulf of Mexico IFQ programs. The red snapper IFQ program was implemented in 2007 and the grouper-tilefish IFQ program was implemented in 2010. During this time frame, NMFS has received input and comments from fishermen, dealers, and state and Federal law enforcement agents on potential administrative changes to the IFQ program. Additionally, price reporting problems associated with submission of ex-vessel, share, and allocation price data are hindering NMFS from fully evaluating the economic effects of the IFQ program. NMFS is seeking input from fishermen, dealers, and other constituents on ways to improve price reporting. NMFS is also seeking input on procedural changes to landing notifications, landing transactions, offloading requirements, and other measures intended to enhance IFQ enforcement. No management actions will be decided at the workshops. Constituents will be asked to provide recommendations for further consideration by NMFS.

Special Accomodations

This meeting is physically accessible by people with disabilities. Requests for information packets or other auxiliary equipment should be made at least 5

days prior to the meeting date (see **FOR FURTHER INFORMATION CONTACT**).

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

Dated: August 15, 2012.

Lindsay Fullenkamp,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–20408 Filed 8–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC170

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) VMS/Enforcement Committee and Advisory Panel will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, September 6, 2012 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Plymouth Harbor, 180 Water Street, Plymouth, MA 02360; telephone: (508) 747–4900; fax: (508) 746–2609.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The VMS/Enforcement Committee and Advisory Panel will meet to discuss and make recommendations for NOAA enforcement priorities for 2013. They will provide an open comment period/webinar for the fishing industry, concerning Compliance and Effectiveness of Regulations for New England Fishery Management Plans (FMPs). Also on the agenda will be to make recommendations for changes to gear stowage rules across all New England FMPs, and contact the Mid-Atlantic Fishery Management Council with these recommendations concerning their FMPs. The Committee and Advisory Panel will make recommendations on the Proposed Information Collection, Northeast Region Logbook Family of Forms **Federal Register** (77 FR 153, 8/8/12). Other business may be discussed. The public is invited to participate in the meeting via webinar. For online access to the meeting, please reserve your webinar seat now at *https://www4.gotomeeting.com/register/824208695.*

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: August 16, 2012.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–20515 Filed 8–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA288

Marine Mammals; File No. 15748

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that a major amendment to Permit No. 15748 has been issued to Alaska SeaLife Center (ASLC), Seward, AK.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

FOR FURTHER INFORMATION CONTACT: Joselyd Garcia-Reyes or Tammy Adams, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On May 7, 2012, notice was published in the **Federal Register** (77 FR 26747) that a request for an amendment Permit No. 15748 to conduct research on Weddell seals had been submitted by the above-named applicant. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The amended permit authorizes takes of 35 weaned pups/juveniles over the life of the permit for the deployment of instrumentation; increases the number of annual takes per animal of weaned pups/juveniles and adult females from 2 to 3; adds nasal, oral, and rectal swab collection (one of each per animal) in weaned pups/juveniles and adult females; adds the use of spray lidocaine or similar agent; adds stable isotope analysis to compare stable isotope values of Weddell seals in the Ross Sea in the early 1900s to today; and adds an influenza A analysis using the requested swab collection to understand the exposure of pathogens to Antarctic marine mammals. The amended permit is valid through the expiration date of the original permit, August 30, 2015.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: August 15, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–20516 Filed 8–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA933

Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

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

ACTION: Notice; proposed incidental harassment authorization; request for comments and information.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for an incidental take authorization to take small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, by harassment, incidental to construction activities associated with the East Span of the San Francisco-Oakland Bay Bridge (SF–OBB) in California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to CALTRANS to incidentally take, by harassment, small numbers of marine mammals for a period of 1 year. NMFS is also requesting comments, information, and suggestions concerning CALTRANS' application and the structure and content of future regulations.

DATES: Comments and information must be received no later than September 20, 2012.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *itp.guan@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the renewal request may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for a one-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On October 19, 2011, CALTRANS submitted a request to NOAA requesting an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), harbor porpoises (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) incidental to construction associated with a replacement bridge for the East Span of the SF–OBB, in San Francisco Bay (SFB), California. The proposed construction activities would last for approximately three years, starting 2013. After receiving NMFS comments on the IHA application regarding proposed monitoring measures, CALTRANS submitted a revised IHA application on April 23, 2012. The action discussed in this document is based on CALTRANS April 23, 2012, IHA application.

An IHA was previously issued to CALTRANS for this activity on February 7, 2011 and it expired on February 6, 2012 (76 FR 7156, February 9, 2011). No in-water construction activity was conducted during the period covered by that IHA. CALTRANS' renewal application indicates that the next stage of the construction activities will involve dismantling of the existing bridge, which is expected to start in fall 2013. However, some preparatory construction activities related to the dismantling may take place as early as the summer 2012. CALTRANS also states that the dismantling of the existing east span may take up to five years to complete, therefore, a five-year LOA under a rulemaking may seem to be preferable. However, CALTRANS also indicated that activities involving the existing bridge dismantling are likely to differ from year to year, and the agency may not be able to predict annual construction activities in advance. Therefore, it is most likely that CALTRANS will pursue annual IHAs to take marine mammals incidental to its construction activities. NMFS is requesting public comment on whether issuance of five-year regulations would be preferable to issuance of multiple IHAs. A detailed description of the proposed SF–OBB East Span project is provided in the CALTRANS' IHA application, and is summarized below.

Background and Project History

Construction activities for the replacement of the east span of the SF–OBB commenced in 2002 and are currently ongoing. The new bridge will consist of four structural sections including (1) the Yerba Buena Island (YBI) Transition Structure, (2) the Self-

Anchored Suspension (SAS) Span, (3) the Skyway, and (4) the Oakland Touchdown. Construction of the Skyway was completed in 2007. The remaining three structural sections are currently under construction. The entire Skyway and portions of both the SAS and Oakland Touchdown span the Bay and have required in-water construction.

The foundations for the piers of the new east span consist of large-diameter steel pipe piles driven into the Bay floor. Construction of pier foundations required driving a total of 259 in-Bay large-diameter permanent steel pipe piles. Of these, 189 piles were 2.5 meters (8.2 feet) in diameter and 70 piles were 1.8 meters (5.9 feet) in diameter. The larger 2.5-meter (8.2-foot) diameter piles support the Skyway and SAS sections of the replacement bridge, and were driven to depths ranging from about −66 meters to about −108 meters (about −217 feet to about −354 feet). The smaller 1.8-meter (5.9-foot) diameter piles support the Oakland Touchdown structures, and were driven to tip elevations ranging from about 41 meters to about 65 meters (135 feet to about 213 feet) below the sediment. All in-Bay pier foundations for the new east span have been constructed and the driving of in-Bay large-diameter permanent steel pile piles was complete, as of 2009.

To construct all permanent structures, it was necessary to install temporary piles to support temporary structures, supports, falsework, and trestles. These temporary structures were required to facilitate construction and support the permanent structures until they were self-supporting. Since the temporary structures were contractor-designed, their exact nature (size, type, quantity, etc.) was not known until the contractors submitted their plans to CALTRANS. To date a total of 2,180 temporary piles have been installed. This includes H-piles, cast-in-drill-hole (CIDH) piles and steel pipe piles ranging from 0.61 meter (24 inches) to 1.52 meters (60 inches) in diameter. All in-water temporary pile installation for the construction of the east span was complete, as of 2009.

On November 10, 2003, NMFS issued an IHA to CALTRANS, authorizing the take of a small number of marine mammals incidental to the construction of the SF–OBB Project. The authorization was issued based on information provided in CALTRANS' IHA request submitted in September 2001. CALTRANS was issued four subsequent IHAs for the SFOBB Project to date.

The existing east span connecting YBI and the Oakland shoreline was constructed in 1936. The east span is a double-deck structure 3,696 meters (12,127 feet) in length and approximately 18 meters (58 feet) wide, carrying five traffic lanes in east-and westbound directions. The east span is supported by 22 in-water bridge piers (Piers E2 through E23), as well as land-based bridge piers and bents on both YBI and Oakland. The existing east span can be divided into three major sections.

(1) Cantilever Superstructure—The Cantilever section is comprised of three major elements: two cantilever anchor arm elements that are 154.8 meters (508 feet) long and 156 meters (512 feet) long, respectively; and a 426.7-meter (1,400-foot) long main span over the navigation channel consisting of a suspended segment which is supported on either side by anchor arms. The superstructure of this segment includes the trusses, road deck and steel support towers.

(2) 504′ & 288′ Spans Superstructure—This segment of the bridge is comprised of five 153.6-meter (504-foot) long steel truss spans and fourteen 87.8-meter (288-foot) long steel truss spans. The vertical clearance beneath the 504-foot spans is approximately 50 meters (165 feet) above mean high water levels, while the vertical clearance beneath the 288-foot spans varies greatly as the structure descends towards the Oakland shoreline. The superstructure of this segment includes the trusses, road deck and steel and/or concrete support towers.

(3) Marine Foundations—The in-water or marine foundations vary in type. Piers E2 through E5 consist of concrete caissons founded on deep bedrock. Piers E6 through E23 consist of lightly reinforced concrete foundations that are supported by timber piles.

Remaining Construction Work To Be Completed

1. Completion of New East Span Construction

All in-water pile driving of both permanent and temporary piles for the construction of the new east span is complete. The only remaining in-water work with the potential to result in the incidental take of marine mammals will be the removal of temporary piles. Temporary piles may be cut off 0.46 meter (1.5 feet) below the mud line or completely removed. The removal of piles may employ the use of a vibratory pile driver/extractor.

2. Dismantling of the Existing East Span

East span dismantling activities with the potential to result in incidental take of marine mammals may include: Dredging and dredged material disposal, vibratory and impact driving of temporary piles, and dismantling of marine foundations by mechanical means.

2.1. Dredging and Dredged Material Disposal

Due to shallow water depth near the Oakland shore, dredging may be required to create a barge access channel to dismantle the existing bridge. Dredging will also be required to remove piers from the existing bridge. It is anticipated that 145,785 cubic meters (190,680 cubic yards) of material would be dredged to create the barge access channel for dismantling the existing bridge.

This material may be disposed of at the San Francisco Deep Ocean disposal site, at an upland wetland reuse site, or at a landfill reuse site, as directed by the Dredged Material Management Office (DMMO). For removal of the existing piers, it is anticipated that 17,374 cubic meters (22,724 cubic yards) of material will be dredged. This material may be disposed of at the Alcatraz Island disposal site, or as directed by the DMMO.

2.2. Vibratory and Impact Driving of Temporary Piles

CALTRANS anticipates that two temporary access trestles and in-water falsework may be required to dismantle the existing bridge. These temporary structures, to be designed by the contractor, may be required to facilitate support of the existing east span until it is completely removed and provide for construction access. Since the temporary structures will be contractor designed, their exact nature (size, type, number of piles, etc.) will not be known until the dismantling begins. However, CALTRANS has developed estimates as to the approximate size, location and number of piles needed for these temporary structures. The anticipated temporary structures are described below and the quantity and size of piles needed to support these structures are presented in Table 1.

TABLE 1—ESTIMATE OF NUMBER AND SIZE OF PILES FOR TEMPORARY STRUCTURES

Temporary structure	Pile sizes & type	Maximum Number of piles	Durations of construction contract	Weeks of work (work will be intermittent)
Temporary Supports for the Cantilever Superstructure.	24″ to 36″ pipe piles	440	January 2013–September 2015	20
Temporary Supports for the 504' Superstructure.	24″ to 36″ pipe piles	450	August 2014–August 2016	20
Temporary Supports for the 288' Superstructure.	18″ to 36″ pipe piles	700	August 2014–August 2016	30
Oakland Access Trestle	18″ to 36″ pipe piles	700	August 2014–July 2017	30
YBI Access Trestle	H-piles	100	January 2013–September 2015	4
Other (spud, fender, access, etc.)	18″ to 36″ pipe piles	150	January 2013–July 2017	6

Two trestles may be needed to facilitate construction access and allow for the off-haul of materials. One of the trestles would extend into the Bay from the YBI shoreline (YBI Access Trestle). The other trestle would extend into the Bay from the Oakland shoreline (Oakland Access Trestle).

YBI Access Trestle: It is anticipated that a small, approximately 650 square meters (7,000 square ft), H-pile supported trestle would be constructed on the southeast side of YBI. The YBI Access Trestle would primarily be used for the off-haul of materials during the dismantling of the cantilever superstructure. Installation of the YBI Access Trestle is anticipated as one of the first orders of work for the dismantling and would likely be constructed during summer or fall 2012.

Oakland Access Trestle: It is anticipated that an approximately 8,920 square meters (96,000 square ft) pipe pile-supported trestle will be constructed parallel to the southern side of the existing east span. The trestle would likely have fingers extending under the bridge, perpendicular to the main trestle to allow for access between the foundations. It is anticipated that the trestle would extend westward from the Oakland shoreline, potentially as far as Pier E9 of the existing east span. The trestle would be used for construction access during the dismantling of the superstructure and/or marine foundation removal. The Oakland Access Trestle may be constructed between 2014 and 2017, depending on construction schedules.

Temporary falsework supports would be necessary to ensure the stability of portions of the structure not yet removed. It is anticipated that marine pile-supported falsework would be needed to facilitate the removal of the superstructure.

It is conservatively estimated that a maximum of 2,540 temporary piles may be installed to support all temporary structures, including the two access trestles, and falsework needed to support the structural sections of the existing bridge until completely removed. These piles are expected to be 0.45 meter (18 inches) to 0.91 meter (36 inches) in diameter. When no longer needed, all temporary piles will be retrieved or cut off 0.46 meter (1.5 ft) below the mudline, per US Coast Guard (USCG) requirements.

All pipe piles will be installed with a vibratory hammer. The vibratory hammer will be used to drive the majority of the total pile lengths. The remainder of the pile may be impact-driven with the use of a marine pile driving energy attenuator (i.e., air bubble curtain system), or other equally effective sound attenuation method (e.g., dewatered cofferdam). A maximum of twenty piles may be impact-driven per day.

In the event a pipe pile is entirely installed with a vibratory hammer, it will still be subject to final ''proofing'' with an impact hammer. ''Proofing'' will be accomplished by using a limited number of blows with an impact hammer intended to test integrity and seating of the pile. A maximum of 10% of the piles installed completely with a vibratory hammer may be proofed with an impact hammer, without the use of a marine pile driving energy attenuator. Proofing of piles will be limited to a maximum of two piles per day, for less than 1 minute per pile, administering a maximum of twenty blows per pile.

All H-piles needed for the construction of the YBI Access Trestle will be installed with an impact hammer, without the use of a marine pile driving energy attenuator. Impact driving (with the exception of pile proofing) will be restricted to the period between June 1 and November 30 to avoid the peak migration period for salmonids and spawning adult green sturgeon. Vibratory driving and proofing of piles may be performed year round.

In addition to the temporary pipe piles and H-piles described above, sheet piles would be driven with a vibratory hammer to construct temporary cofferdams. A cofferdam is temporary enclosure, built within a body of water, usually composed of sheet piles welded together. The enclosures are generally water tight allowing them to be pumped dry so that construction may take place in a dry environment. The proposed cofferdams will be contractor-designed; therefore, the exact number and exact nature will be dependent on the contractor's means and methods. It is anticipated that a maximum of 22 cofferdams may be constructed around in-water marine foundations to facilitate the dismantling of the foundations. A typical sheet pile is approximately 0.3 meters (1 foot) long. To construct cofferdams completely surrounding each of the 22 marine foundations a maximum of 7,700 individual sheet piles may be needed. Due to the physical conditions of the project site (e.g., water depths) it is very unlikely that all or even a majority of the cofferdams will be fully dewatered. Some of the cofferdams may be fully dewatered while others may solely be used to isolate the work area; preventing water temporarily impacted by construction activities from mixing with the surrounding waters of the Bay.

2.3. Noise Levels From Pile Driving

To estimate underwater sound pressure levels for the proposed project, measurements from a number of underwater pile driving projects conducted under similar conditions were compiled (see Appendix B: Pile Driving Projects Considered in Development of Underwater Sound level Estimate in CALTRANS' IHA application). Based on this information, CALTRANS' hydroacoustic consultant has provided an estimate of underwater sound levels during vibratory driving, attenuated impact pile driving, and unattenuated proofing of both 0.61-m (24-in) and 0.91-m (36-in) diameter piles and during impact driving of H-piles to

determine the distance at which sound levels may exceed specific thresholds for marine mammal takes (Table 2). The distances from the pile to the sound level threshold represent the respective exclusion zone and zones of influence for Level A and Level B harassment (see below).

Sound level estimates were not prepared for 0.46-m (18-in) diameter piles. Given that estimated sound levels for 0.61-m (24-in) diameter piles are lower than those estimated for the 0.91-m (36-in) diameter piles, it is assumed that sound levels from the vibratory and impact driving of 0.46-m (18-in) diameter piles will be lower than those for the 0.91-m (24-in) diameter piles.

TABLE 2—ESTIMATED DISTANCES WHICH SOUND LEVELS MAY EXCEED SPECIFIC MARINE MAMMAL TAKE THRESHOLDS

Pile installation method	Pile size (m)	Distance to 120 dB re 1 μPa (rms) (m)	Distance to 160 dB re 1 μPa (rms) (m)	Distance to 180 dB re 1 μPa (rms) (m)	Distance to 190 dB re 1 μPa (rms) (m)
Vibratory Driving	24	1,800–2,000	NA	<10*	<10*
36	.....	1,800–2,000	NA	<10*	<10*
Attenuated Impact Driving	24	NA	50	<10	<10
36	.....	NA	65	<10	<10
Unattenuated Proofing	24	NA	385	25	<10
36	.....	NA	500	35	<10
Unattenuated Impact Driving	H-pile	NA	330	25	<10

*Sound pressure levels from vibratory pile driving are not expected to reach 180 dB RMS or 190 dB RMS at any distance from the pile. However, sound level measurements are generally not taken within less than 10 meters (33 ft) of piles and the behavior of sound within the near field is not well documented or reliably predicted.

2.4. Dismantling of Marine Foundations by Mechanical Means

Dismantling of concrete foundations would require reducing the reinforced concrete to pieces small enough to be hauled away, which could be done by mechanical means such as saw cutting, flame cutting, mechanical splitting, drilling, pulverizing and/or hydro-cutting. Dismantling of the marine foundations will be one of the last orders of work, and will not be undertaken until the superstructures and towers are removed.

3. Dates, Duration and Geographic Location of the Activities

Construction activities for the replacement of the east span of the SFOBB commenced in 2002 and are currently ongoing. The majority of the construction activities to build the new east span are now complete. The dismantling of the existing span is anticipated to take place immediately following the opening of the new east span to traffic, currently expected in the fall of 2013.

Dismantling of the existing east span may take up to five years to complete. Some preparatory construction activities related to the dismantling may take place as early as the summer of 2012, with completion of the dismantling targeted for 2017. The actual work schedule will be determined by the contractor.

The SF–OBB Project site is located in central San Francisco Bay, between YBI (which is within the jurisdictional boundaries of the City and County of San Francisco) and the City of Oakland, in Alameda County in California, as indicated in Figure 2–1 of CALTRANS LOA application.

Description of Marine Mammals in the Area of the Specified Activity

General information on the marine mammal species found in California waters can be found in Caretta *et al.* (2011), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2010.pdf.* Refer to that document for information on these species.

The marine mammals most likely to be found in the SF–OBB area are the California sea lion, Pacific harbor seal, and harbor porpoise. From December through May gray whales may also be present in the SF–OBB area. Information on California sea lion, harbor seal, and gray whale was provided in the November 14, 2003 (68 FR 64595), **Federal Register** notice; information on harbor porpoise was provided in the January 26, 2006 (71 FR 4352), **Federal Register** notice.

Potential Effects on Marine Mammals and Their Habitat

CALTRANS and NMFS have determined that open-water pile driving and pile removal, as well as dredging and dismantling of concrete foundation of existing bridge by saw cutting, flame cutting, mechanical splitting, drilling, pulverizing and/or hydro-cutting, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving and removal could potentially harass those few pinnipeds that are in the water close to the project site, whether their heads are above or below the surface.

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that suffer from PTS or TTS will have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise exposure that leads to TTS could cause PTS.

Measured source levels from impact pile driving can be as high as 214 dB re 1 μPa @ 1 m. Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, experiments on a bottlenose dolphin (*Tursiops truncates*) and beluga whale (*Delphinapterus leucas*) showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB (p-p) re 1 μPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here,

animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2 = s) in the aforementioned experiment (Finneran *et al.* 2002).

Noises from dismantling of marine foundations by mechanical means include, but is not limited to, saw cutting, mechanical splitting, drilling and pulverizing. Saw cutting and drilling constitute non-pulse noise, whereas mechanical splitting and pulverizing constitute impulse noise. Although the characteristics of these noises are not well studied, noises from saw cutting and drilling are expected to be similar to vibratory pile driving, and noises from mechanical splitting and pulverizing are expected to be similar to impact pile driving, but at lower intensity, due to the similar mechanisms in sound generating but at a lower power outputs. CALTRANS states that drilling and saw cutting is anticipated to produce underwater sound pressure levels (SPLs) in excess of 120 dB RMS, but is not anticipated to exceed the 180 dB re 1 μPa (RMS). The mechanical splitting and pulverizing of concrete with equipment such as a hammer hoe has the potential to generate high sound pressure levels in excess of 190 dB re 1 μPa (RMS) at 1 m.

However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity noise levels for prolonged period of time. Based on the best scientific information available, these sound levels are far below the threshold that could cause TTS or the onset of PTS.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from in-water pile driving during the SF–OBB construction activities is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by harbor porpoises. However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.* 2009) and cause increased stress levels (*e.g.,* Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking can potentially impact the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessels traffic, pile driving, dredging, and dismantling existing bridge by mechanic means, contribute to the elevated ambient noise levels, thus intensify masking.

Nevertheless, the sum of noise from the proposed SF–OBB construction activities is confined in an area of inland waters (San Francisco Bay) that is bounded by landmass, therefore, the noise generated is not expected to contribute to increased ocean ambient noise. Due to shallow water depth near the Oakland shore, dredging activities are mainly used to create a barge access channel to dismantle the existing bridge. Therefore, underwater sound propagation from dredging is expected to be poor due to the extremely shallowness of the area to be dredged.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping), avoidance of areas where noise sources are located, and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

For example, at the Guerreo Negro Lagoon in Baja California, Mexico, which is one of the important breeding grounds for Pacific gray whales, shipping and dredging associated with a salt works may have induced gray whales to abandon the area through most of the 1960s (Bryant *et al.* 1984). After these activities stopped, the lagoon was reoccupied, first by single whales and later by cow-calf pairs.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007).

The proposed project area is not believed to be a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with SF–OBB construction activities are expected to affect only a small number of marine mammals on an infrequent basis.

Currently NMFS uses 160 dB re 1 μPa (RMS) at received level for impulse noises (such as impact pile driving, mechanic splitting and pulverizing) as the onset of marine mammal behavioral harassment, and 120 dB re 1 μPa (RMS) for non-impulse noises (vibratory pile driving, saw cutting, drilling, and dredging).

As far as airborne noise is concerned, based on airborne noise levels measured and on-site monitoring conducted during 2004 under a previous IHA, noise levels from the East Span project did not result in the harassment of harbor seals hauled out on Yerba Buena Island (YBI). Also, noise levels from the East Span project are not expected to result in harassment of the sea lions hauled out at Pier 39 as airborne and waterborne sound pressure levels (SPLs) would attenuate to levels below where harassment would be expected by the time they reach that haul-out site, 5.7 km (3.5 miles) from the project site. Therefore, no pinniped hauled out would be affected as a result of the proposed pile-driving. A detailed description of the acoustic

measurements is provided in the 2004 CALTRANS marine mammal and acoustic monitoring report for the same activity (CALTRANS' 2005).

Short-term impacts to habitat may include minimal disturbance of the sediment where individual bridge piers are constructed. Long-term impacts to marine mammal habitat will be limited to the footprint of the piles and the obstruction they will create following installation. However, this impact is not considered significant as the marine mammals can easily swim around the piles of the new bridge, as they currently swim around the existing bridge piers.

Estimated Take by Incidental Harassment

For reasons provided in greater detail in NMFS' November 14, 2003 (68 FR 64595) **Federal Register** notice and in CALTRANS' annual monitoring reports (CALTRANS 2007; 2010) and marine mammal observation memoranda under the previous IHAs, the proposed construction activities would result in harassment of only small numbers of marine mammals and would not result in more than a negligible impact on marine mammal stocks and their habitat. This was achieved by implementing a variety of monitoring and mitigation measures including marine mammal monitoring before and during pile driving, establishing exclusion zones, using marine pile driving energy attenuator (i.e., air bubble curtain system) or other sound attenuation method (e.g., dewatered cofferdam), and ramping up pile driving.

Marine mammal take estimates are based on marine mammal monitoring reports and marine mammal observations made during pile driving activities associated with the SF–OBB construction work authorized under prior IHAs. For pile driving activities conducted in 2006, 5 harbor seals and no other marine mammals were detected within the isopleths of 160 dB (rms) re 1 μPa during impact pile driving where air bubble curtains were deployed for mitigation measures (radius of zone of influence (ZOI) at 500 m) (CALTRANS 2007). For pile driving activities conducted in the 2008 and 2009 seasons, CALTRANS monitored a much larger ZOI of 120 dB (rms) re 1 μPa as a result of vibratory pile driving. A total of 11 harbor seals and 1 California sea lion were observed entering the 120 dB (rms) re 1 μPa ZOI (CALTRANS). However, despite the ZOI being monitored extended to 1,900 m for the 120 dB isopleths, CALTRANS did not specify which pile driving activities conducted in 2008 and 2009 used an impact hammer and which ones used a vibratory hammer. Therefore, at least some of these animals were not exposed to received level above 160 dB (rms) re μPa, and thus should not be considered as ''taken'' under the MMPA. No harbor porpoise or gray whale was observed during CALTRANS' pile driving activities since 2006 (CALTRANS 2007; 2010).

Based on these results, and accounting for a certain level of uncertainty regarding the next phase of construction (which would include dismantling of the existing bridge by mechanical means), NMFS proposes that at maximum 50 harbor seals, 10 California sea lions, 10 harbor porpoises, and 5 gray whales could be exposed to noise levels that could cause Level B harassment as a result of the CALTRAN' SF–OBB construction activities.

Marine Mammal Monitoring Report from Previous IHA

As mentioned above, marine mammal monitoring during CALTRANS' pile driving activities and weekly marine mammal observation memorandums (CALTRANS 2007; 2010) indicate that only a small number of harbor seals (a total of 16 individuals since 2006) and 1 California sea lion (a total of 1 individual in 2009) were observed within ZOIs that could result in behavioral harassment. However, the reports state that none of the animals were observed as been startled by the exposure, which could be an indication that these animals were habituated to human activities in San Francisco Bay. In addition, no harbor porpoise or gray whales were observed during pile driving activities associated to CALTRANS' SF–OBB construction work.

Proposed Mitigation Measures

CALTRANS worked with NMFS and proposes the following mitigation measures for its SF–OBB construction activities to reduce adverse impacts to marine mammals to the lowest extent practicable if in-water pile driving would be conducted.

Minimization of Impacts From Pile Driving

To minimize potential impacts to marine mammals, CALTRANS states that it will limit both the size of piles and duration of impact pile driving, to the extent feasible. Larger piles are expected to generate higher sound pressure levels than smaller piles. Limiting the size of piles to 0.91 meter (36 inches) in diameter or smaller will minimize potential noise impacts.

All pipe piles will be initially installed with a vibratory hammer. The vibratory hammer will be used to drive the majority of the total pile lengths. In the event a pipe pile is entirely installed with a vibratory hammer, it will still be subject to final ''proofing'' with an impact hammer. A maximum of 10% of the piles installed completely with a vibratory hammer may be proofed with an impact hammer, without the use of a marine pile driving energy attenuator. Proofing of piles will be limited to a maximum of two piles per day, for less than 1 minute per pile, administering a maximum of twenty blows per pile. While both vibratory and impact pile driving have the potential to affect marine mammals, impact driving is expected to generate higher sound pressure levels. Requiring the use of the vibratory hammer will reduce the duration of impact driving and potential exposure to higher sound pressure levels.

Use of a marine pile driving energy attenuator (i.e., air bubble curtain system), or other equally effective sound attenuation method (e.g., dewatered cofferdam) will be required during impact driving of all pipe piles, with the exception of pile proofing.

Monitoring and Establishment of Exclusion Zones and Zones of Influence

During prior in-water permanent and some temporary pile driving, a preliminary 500-meter (1,640-foot) radius exclusion zone was established prior to the commencement of pile driving. Once pile driving commenced, acoustical monitoring data was used to determine the radii at which underwater sound pressure levels equaled or exceeded 180 dB re 1 μPa (RMS) for cetaceans and 190 dB re 1 μPa (RMS) for pinnipeds.

Based on hydroacoustic sound level measured during previous pile driving events, it is unlikely that sound pressure levels from either vibratory or impact driving of pipe piles will equal or exceed 180 or 190 dB re 1 μPa (RMS) beyond 10 meters (33 feet) from the piles. Therefore, CALTRANS will not establish or monitor an exclusion zone during vibratory or impact driving of pipe piles.

CALTRANS will perform hydroacoustic monitoring during initial impact pile driving events for each of the temporary structures identified in Table 1 to verify estimated underwater sound pressure levels. Should it be determined through monitoring that sound levels from the impact driving of pipe piles have the potential to exceed

180 or 190 dB re 1 μPa (RMS), corresponding exclusion zones will be established and monitored in a manner consistent with CALTRANS' prior IHAs for the SF–OBB Project (see below).

Only the impact driving of H-piles and the proofing of pipe piles is expected to equal or exceed the 180 dB re 1 μPa (RMS) to a distance of 25 to 35 meters (82 to 115 feet) depending on the pile type and size. However, it is not practical to establish and monitor an exclusion zone during the driving of H-pile or proofing of pipe piles.

The proofing of a pipe pile would require less than 1 minute of impact driving. The logistics of scheduling and mobilizing a monitoring team for activities that will last less than one minute is not practical. In addition, considering that it is extremely unlikely that a cetacean would be within 25 to 35 meters (82 to 115 feet) of an H-pile during impact driving or pipe pile during proofing, CALTRANS does not intend to establish an exclusion zone or perform monitoring for cetaceans during these activities. Neither the driving of H-piles or the proofing of pipe piles is expected to equal or exceed the 190 dB re 1 μPa (RMS) beyond 10 meters (33 feet) from the pile. Therefore, a pinniped exclusion zone would not be necessary.

Due to the uncertainty associated with potential sound levels from mechanical means of dismantling marine foundations, CALTRANS will establish a preliminary 500-meter radius exclusion zone around each foundation, prior to splitting or pulverizing concrete via mechanical means. Once removal of concrete foundations commences, acoustical monitoring data will be used to determine the radii at which underwater sound pressure levels equal or exceed 180 dB re 1 μPa (RMS) for cetaceans and 190 dB re 1 μPa (RMS) for pinnipeds. The radii of the exclusion zones will then be adjusted to correspond with noise thresholds.

NMFS-approved marine mammal monitors located on construction barges, trestles, bridge piers, YBI and/or Treasure Island will survey the exclusion zones to ensure that no marine mammals are seen within the zone before activities begin. If marine mammals are found within the exclusion zone, work will be delayed until the monitors are confident the animal has moved out of the area. If a marine mammal is seen above water and then dives below, the contractor will be instructed to wait until enough time has elapsed without a sighting (at least 15 minutes for pinnipeds and 30 minutes for cetaceans) to assume the animal has moved beyond the exclusion zone.

If marine mammals enter the safety zone after the activities have commenced, the operation will continue unabated and marine mammal observers will monitor and record their numbers and behavior. Should the activities stop for a period of 30 minutes or more, then the restart of the activity will be treated in the same manner as described above.

Should it be determined through acoustic monitoring that sound levels from the mechanical splitting and pulverizing of concrete foundations will not have the potential to equal or exceed 180 or 190 dB re 1 μPa (RMS), monitoring of the exclusion zones will be discontinued.

Soft Start

It should be recognized that although marine mammals will be protected from Level A harassment (*i.e.,* injury) through marine mammal observers monitoring a 190-dB safety zone for pinnipeds and 180-dB safety zone for cetaceans, mitigation may not be 100 percent effective at all times in locating marine mammals. Therefore, in order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, CALTRANS would also ''soft start'' the hammer prior to operating at full capacity. CALTRANS typically implements a ''soft start'' with several initial hammer strikes at less than full capacity (i.e., approximately 40–60 percent energy levels) with no less than a 1 minute interval between each strike. Similar levels of noise reduction are expected underwater. Therefore, the contractor would initiate pile driving hammers with this procedure in order to allow pinnipeds or cetaceans in the area to voluntarily move from the area. This should expose fewer animals to loud sounds both underwater and above water noise. This would also ensure that, although not expected, any pinnipeds and cetaceans that are missed during safety zone monitoring will not be injured.

Compliance With Equipment Noise Standards

In addition, CALTRANS will ensure construction equipment complies with noise standards of the US Environmental Protection Agency and that all equipment has noise control devices not less effective than those provided on the original equipment.

Proposed Monitoring Measures

CALTRANS and NMFS worked together and proposed the following monitoring measures for the SF–OBB construction activities.

Proposed Monitoring and Reporting Measures

Visual Monitoring

Exclusion zone monitoring will be conducted during the dismantling of marine foundations by mechanical means having the potential to generate sound levels in excess of 180 dB re 1 μPa (RMS). Monitoring of the pinniped and cetacean exclusion zones will be conducted by a minimum of three qualified NMFS-approved observers. The observers will begin monitoring at least 30 minutes prior to startup of the activity and for at least 30 minutes following the activity. Observers will likely conduct the monitoring from construction barges, trestles, bridge piers, YBI and/or Treasure Island depending on the location of the activity. As discussed above in the proposed mitigation section, the activity will not begin until the exclusion zone is clear of marine mammals.

Observations will be made using high-quality binoculars (*e.g.,* Zeiss, 10×42 power). Monitors will be equipped with radios or cell phones for maintaining contact with other observers and CALTRANS engineers, and range finders to determine distance to marine mammals, boats, buoys, and construction equipment. Data on all observations will be recorded and will include items such as species, age class and gender (if possible), numbers, time of observation, location, direction of travel, and behavior.

Due to the extremely small size of the exclusion zone (zones where SPL reaches 180 and 190 dB) as indicated in Table 2, there is no need to conduct monitoring for these zones during pile driving activities. Should it be determined through hydroacoustic monitoring that sound levels from pile driving have the potential to substantively exceed 180 or 190 dB re 1 μPa (rms), corresponding exclusion zones will be established and monitored.

To document the number of marine mammals exposed to impulse sounds greater than 160 dB re 1 μPa (rms), CALTRANS will monitor marine mammals during at least 20% of attenuated impact driving of pipe piles and 100% of unattenuated impact driving of H-piles. This monitoring will be conducted by a minimum of two qualified NMFS-approved protected species observers (PSOs). The PSOs will begin monitoring at least 30 minutes prior to startup of the activity and for at least 30 minutes following the activity. PSOs will likely conduct the monitoring from construction barges, trestles, bridge piers, YBI and/or Treasure Island

depending on the location of the activity. Data on all observations will be recorded and will include items such as species, age class, and sex (if possible), numbers, time of observation, location, direction of travel, and behavior.

Hydroacoustic Monitoring

The purpose of the underwater sound monitoring during dismantling of concrete foundations via mechanical means is to establish the exclusion zones of 180 dB re 1 µPa (rms) for cetaceans and 190 dB re 1 µPa (rms) for pinnipeds. Monitoring will occur during the initial use of concrete dismantling equipment with the potential to generate sound pressure levels in excess of 180 dB re 1 µPa (rms). Monitoring will likely be conducted from construction barges and/or boats. Measurements will be taken at various distances as needed to determine the distance to the 180 and 190 dB re 1 µPa (rms) contours.

The purpose of underwater sound monitoring during impact pile driving will be to verify sound level estimates and confirm that sound levels do not equal or exceed 180 dB re 1 µPa (rms).

Reporting

CALTRANS will notify NMFS prior to the initiation of the pile driving and dismantling activities for the removal of the existing east span. NMFS will be informed of the initial sound pressure level measurements for both pile driving and foundation dismantling activities, including sound level measurements taken at the 500-meter (1,640-ft) contour and the final exclusion zone radii established for marine foundation dismantling activities.

Monitoring reports will be posted on the SFOBB Project's biological mitigation Web site (*www.biomitigation.org*) on a weekly basis during monitoring. Marine mammal monitoring reports will include species and numbers of marine mammals observed, time and location of observation and behavior of the animal. In addition, the reports will include an estimate of the number and species of marine mammals that may have been harassed as a result of activities. CALTRANS will provide NMFS with a final report detailing: (1) The monitoring protocol; (2) a summary of the data recorded during monitoring; and (3) an estimate of the species and number of marine mammals that may have been harassed due to activities.

Negligible Impact and Small Numbers Analysis and Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS considers other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The CALTRANS' specified activities have been described based on best estimates of the planned SF–OBB construction project within the proposed project area. Some of the noises that would be generated as a result of the proposed bridge construction and dismantling project, such as impact pile driving, are high intensity. However, the in-water pile driving for the piles would use small hammers and/or vibratory pile driving methods, coupled with noise attenuation mechanism such as air bubble curtains for impact pile driving, therefore the resulting exclusion zones for potential TS are expected to be extremely small (< 35 m) from the hammer. In addition, the source levels from vibratory pile driving are expected to be below the TS onset threshold. Therefore, NMFS does not expect that any animals would receive Level A (including injury) harassment or Level B harassment in the form of TTS from being exposed to in-water pile driving associated with SF–OBB construction project.

Based on marine mammal monitoring reports under previous IHAs, only 16 harbor seals and 1 California sea lion were observed within the 120 dB (in 2008 and 2009) or 160 dB (in 2006) ZOIs during in-water pile driving since 2006. NMFS estimates that up to 50 harbor seals, 10 California sea lions, 10 harbor porpoises, and 5 gray whales could be exposed to received levels above 120 dB (rms) during vibratory pile driving or 160 dB (rms) during impact pile driving for the next season of construction activities due to the large numbers of piles to be driven and the extended zones of influence from vibratory pile driving. These are small numbers, representing 0.15% of the California stock of harbor seal population (estimated at 34,233; Carretta *et al.* 2010), 0.00% of the U.S. stock of California sea lion population (estimated at 238,000; Carretta *et al.* 2010), 0.10% of the San Francisco-Russian River stock of harbor porpoise population (estimated at 9,181; Carretta *et al.* 2010), and 0.05% of the Eastern North Pacific stock of gray whale population (Allen and Angliss 2010).

Animals exposed to construction noise associated with the SF–OBB construction work would be limited to Level B behavioral harassment only, i.e., the exposure of received levels for impulse noise between 160 and 180 dB (rms) re 1 µPa (from impact pile driving) and for non-impulse noise between 120 and 180 dB (rms) re 1 µPa (from vibratory pile driving). In addition, the potential behavioral responses from exposed animals are expected to be localized and short in duration.

These low intensity, localized, and short-term noise exposures (*i.e.,* 160 dB re 1 µPa (rms) from impulse sources and 120 dB re 1 µPa (rms) from non-impulse sources), are expected to cause brief startle reactions or short-term behavioral modification by the animals. These brief reactions and behavioral changes are expected to disappear when the exposures cease. Therefore, these levels of received underwater construction noise from the proposed SF–OBB construction project are not expected to affect marine mammal annual rates of recruitment or survival. The maximum estimated 160 dB isopleths from impact pile driving is 500 m from the pile, and the estimated 120 dB maximum isopleths from vibratory pile driving is approximately 2,000 m from the pile. There is no pinniped haul-out area in the vicinity of the pile driving sites.

For the reasons discussed in this document, NMFS has preliminarily determined that the impact of in-water pile driving associated with construction of the SF–OBB would result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and potentially gray whales that inhabit or visit SFB in general and the vicinity of the SF–OBB

in particular. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to preliminarily determine that this action will have a negligible impact on California sea lion, Pacific harbor seal, harbor porpoise, and gray whale populations along the California coast.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

National Environmental Policy Act (NEPA)

NMFS' prepared an Environmental Assessment (EA) for the take of marine mammals incidental to construction of the East Span of the SF–OBB and made a Finding of No Significant Impact (FONSI) on November 4, 2003. Due to the modification of part of the construction project and the mitigation measures, NMFS reviewed additional information from CALTRANS regarding empirical measurements of pile driving noises for the smaller temporary piles without an air bubble curtain system and the use of vibratory pile driving. NMFS prepared a Supplemental Environmental Assessment (SEA) and analyzed the potential impacts to marine mammals that would result from the modification of the action. A Finding of No Significant Impact (FONSI) was signed on August 5, 2009. A copy of the SEA and FONSI is available upon request (see **ADDRESSES**).

Endangered Species Act (ESA)

NMFS has determined that issuance of the IHA will have no effect on listed marine mammals, as none are known to occur in the action area.

Proposed Authorization

NMFS proposes to issue an IHA to CALTRANS for the potential harassment of small numbers of harbor seals, California sea lions, harbor porpoises, and gray whales incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals, California sea lions, harbor porpoises, and possibly gray whales and will have no more than a negligible impact on these marine mammal stocks.

Dated: August 15, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 120509050–2325–02]

RIN 0660–XC001

Development of Programmatic Requirements for the State and Local Implementation Grant Program To Assist in Planning for the Nationwide Public Safety Broadband Network

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The National Telecommunications and Information Administration (NTIA) issues this Notice to announce requirements for the State and Local Implementation Grant Program authorized by section 6302 of the Middle Class Tax Relief and Job Creation Act of 2012 (Act). The Notice describes the programmatic requirements under which NTIA will award grants to assist state, local, and tribal governments with planning for a nationwide interoperable public safety broadband network.

DATES: The programmatic requirements for the State and Local Implementation Grant Program become effective August 21, 2012.

ADDRESSES: The programmatic requirements for the State and Local Implementation Grant Program will be posted to the NTIA Web site at *http://www.ntia.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Laura M. Pettus, Program Specialist, Office of Telecommunications and Information Applications, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4812, Washington, DC 20230; telephone: (202) 482–5802. Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION:

I. Background

On February 22, 2012, President Obama signed into law the Middle Class Tax Relief and Job Creation Act of 2012 (Act).[1] The Act meets a long-standing priority of the Obama Administration to create a single, nationwide interoperable public safety broadband network that will, for the first time, allow police officers, fire fighters, emergency medical service professionals, and other public safety officials to communicate with each other across agencies and jurisdictions. Public safety workers have long been hindered by incompatible, and often outdated, communications equipment and this Act will help them to do their jobs more safely and effectively.

The Act establishes the First Responder Network Authority (FirstNet) as an independent authority within NTIA and authorizes it to take all actions necessary to ensure the design, construction, and operation of a nationwide public safety broadband network (PSBN), based on a single, national network architecture.[2] FirstNet is responsible for, at a minimum, ensuring nationwide standards for use of and access to the network; issuing open, transparent, and competitive requests for proposals (RFPs) to build, operate, and maintain the network; encouraging these RFPs to leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network; and overseeing contracts with non-federal entities to build, operate, and maintain the network.[3]

Additionally, the Act charges NTIA with establishing a grant program to assist state, regional, tribal, and local jurisdictions with identifying, planning, and implementing the most efficient and effective means to use and integrate the infrastructure, equipment, and other architecture associated with the nationwide PSBN to satisfy the wireless broadband and data services needs of their jurisdictions.[4] Up to $135 million in grant money will be available to NTIA for the State and Local Implementation Grant Program.[5]

To implement the new program, NTIA must establish requirements, in

[1] Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (2012) (Act).

[2] 47 U.S.C. 1422 (b), 1426(b)(1).

[3] *Id.*

[4] 47 U.S.C. 1442(a).

[5] 47 U.S.C. 1441(c).

consultation with FirstNet, by August 22, 2012. These requirements include: Determining the scope of eligible activities that the grant program will fund, defining eligible costs, and prioritizing grants for activities that ensure coverage in rural as well as urban areas.[6] The U.S. Secretary of Commerce appointed the FirstNet Board of Directors on August 20, 2012, and NTIA initiated consultations with FirstNet on the requirements for the State and Local Implementation Grant Program. NTIA may refine further the programmatic requirements announced in this Notice based on these ongoing consultations.

II. Overview of Public Comments

On May 16, 2012, NTIA issued a Request for Information (RFI) seeking public comment on various issues related to the development of the State and Local Implementation Grant Program.[7] Specifically, the RFI requested comment on how FirstNet should conduct the consultation process with regional, state, tribal, and local jurisdictions; how to incorporate existing public safety governance and planning authorities into the development of the PSBN; how best to leverage existing infrastructure for use in the PSBN; what state and local actions should be eligible grant activities; and issues related to state funding and performance requirements.[8]

NTIA received approximately 70 comments from a wide range of stakeholders, including states, local and tribal governments, federal and state agencies, trade associations, private companies, consultants, and individuals. The majority of the comments discuss each of the issues identified in the RFI, and NTIA relied on the comments for guidance to frame the requirements of the State and Local Implementation Grant Program, particularly to develop the overarching direction of the program as it relates to the collection of data and the consultation process with FirstNet.

In some cases, the comments address matters not specifically covered in the RFI, such as the need for a web-based repository of information, the need for clarification on the applicability of vendor conflict of interest rules, the importance of developing the PSBN business models, and the necessary considerations for network sustainability.[9] While these comments raise important issues, many of these matters are within the purview of FirstNet and are better left for its consideration as it carries out its responsibilities under the Act. As a result, NTIA has not incorporated these concerns into the requirements for the State and Local Implementation Grant Program, but will pass the information along to FirstNet for its consideration.

A. Data Collection

Overwhelmingly, the commenters agree that FirstNet must establish a standardized process before the states engage in any data collection activities.[10] The state commenters, in particular, point out that it would not be an efficient use of their resources to begin collecting data that might not be useful or necessary during their consultations with FirstNet.[11] Many commenters provide helpful input about the data the states should collect and how they could best identify the assets and infrastructure that FirstNet might leverage for the PSBN.[12] Recommended assets to identify and evaluate include existing radio tower sites, fiber and microwave links, and government-owned properties that might be suitable for new wireless infrastructure, such as building rooftops and water towers.[13] Several commenters also recommend that FirstNet create a standard template, along with a standardized database, for the states to use to collect and submit information on asset inventories.[14]

B. The Consultation Process With FirstNet

Many commenters believe that preparing to consult effectively with FirstNet will require states to dedicate their already limited resources, specifically funds and personnel, to this task.[15] The comments emphasize that effective consultations with FirstNet will require a significant amount of

[6] 47 U.S.C. 1442(c).

[7] Development of the State and Local Implementation Grant Program for the Nationwide Public Safety Broadband Network, Request for Information, 77 FR 28857 (May 16, 2012) (RFI). NTIA has posted all comments received in response to the RFI on its Web site at *http://www.ntia.doc.gov/federal-register-notice/2012/comments-development-state-and-local-implementation-grant-program.*

[8] *Id.* at 28858–59.

[9] *See, e.g.,* State of New York at 2, 4, and 7, *available at http://www.ntia.doc.gov/files/ntia/state_of_new_york_response_to_ntia_grant_rfi_june_15_2012.pdf;* State of Texas at 9, 14, *available at http://www.ntia.doc.gov/files/ntia/ntia_texas_rfi_v10.1_061512.pdf;* Motorola Solutions, Inc. at 2, 7–8, *available at http://www.ntia.doc.gov/files/ntia/final_ntia_rfi_comments.pdf;* Operator Advisory Committee (OAC) at 10–11, 13–14, *available at http://www.ntia.doc.gov/files/ntia/psst-oac_ntia_rfi_response_finalv3.pdf;* Los Angeles Regional Interoperable Communications System Authority (LA–RICS) at 4, *available at http://www.ntia.doc.gov/files/ntia/ntia_rfi_laricscomments_final.pdf;* Mid-Atlantic SWICs at 8–9, *available at http://www.ntia.doc.gov/files/ntia/mid-atlantic_swics_comments_on_ntia_rfi_6-15-2012_final.pdf.*

[10] *See* Arizona Department of Homeland Security at 9, *available at http://www.ntia.doc.gov/files/ntia/azdohs.pdf;* Carlos Delatorre at 9, *available at http://www.ntia.doc.gov/files/ntia/carlos_delatorre_comments.pdf;* National States Geographic Information Council (NSGIC) at 4, *available at http://www.ntia.doc.gov/files/ntia/nsgic_response_061412.pdf;* Michael A. Scales, *available at http://www.ntia.doc.gov/federal-register-notice/2012/comments-development-state-and-local-implementation-grant-program?page=1#comment-29357;* National Governors Association at 2, *available at http://www.ntia.doc.gov/files/ntia/letter_to_ntia_re_state_and_local_implemenation_grant_final_signed.docx.pdf;* National Association of State Chief Information Officers (NASCIO) at 3, *available at http://www.ntia.doc.gov/files/ntia/nascio_response_to_ntia_psbn_grant_program_final.pdf;* FEMA Region 5 Regional Emergency Communications Coordination Working Group (RECCWG) at 6–7, *available at http://www.ntia.doc.gov/files/ntia/fema_region5_reccwg_ntia_rfi_responses_june_2012_ver7.pdf;* Ventera at 4, *available at http://www.ntia.doc.gov/files/ntia/ntia_public_comments_sligp.pdf;* Commonwealth of Kentucky at 1, *available at http://www.ntia.doc.gov/files/ntia/kybroadbandrfi.pdf;* Rhode Island Broadband Program Director at 12, *available at http://www.ntia.doc.gov/files/ntia/ntia_rfi_response_001.pdf;* State of Utah at 5, *available at http://www.ntia.doc.gov/files/ntia/state_of_utah_ntia_rfi_response_final_6-15-12.pdf;* State of North Dakota at 5–6, *available at http://www.ntia.doc.gov/files/ntia/north_dakota_firstnet_planning_rfi_response_120509050-1050-01.pdf;* Raytheon at 2, *available at http://www.ntia.doc.gov/files/ntia/raytheon_rfi_response_to_ntia__15-jun-12.pdf.*

[11] *See* State of California at 5, *available at http://www.ntia.doc.gov/files/ntia/california_state_response.pdf;* State of South Dakota at 1, *available at http://www.ntia.doc.gov/files/ntia/national_public_safety_broadband_public_comments.pdf.*

[12] *See* State of South Dakota at 1; Arizona Department of Homeland Security at 4–5; Carlos Delatorre at 3; State of Oregon at 1, *available at http://www.ntia.doc.gov/files/ntia/oregon_rfi_comments.pdf;* NSGIC at 2; State of Georgia at 1–3, *available at http://www.ntia.doc.gov/files/ntia/state_of_georgia_response_06-14-2012.pdf;* LA–RICS at 3–5; Mid-Atlantic SWICs at 9; FEMA Region 5 RECCWG at 2, 12–13; OAC at 3–5; BayRICS at 3–4, *available at http://www.ntia.doc.gov/files/ntia/bayrics_ntia_rfi_slpgp.pdf;* Motorola Solutions at 3, 7–9; PCIA-The Wireless Infrastructure Association at 5–6, *available at http://www.ntia.doc.gov/files/ntia/ntia_state_and_local_grant_program_rfi_pcia_comments_6-15-12_final.pdf;* Alcatel-Lucent at 5–8, *available at http://www.ntia.doc.gov/files/ntia/alu_comments_on_ntia_ps_rfi.pdf;* Tilson Government Services, LLC at 4, *available at http://www.ntia.doc.gov/files/ntia/tilsonrficomments.pdf;* Raytheon at 6; Connected Nation at 4, *available at http://www.ntia.doc.gov/files/ntia/cn_letter_on_firstnet_rfi_6_15_2012_final.pdf;* Northrop Grumman Information Systems at 2–4, *available at http://www.ntia.doc.gov/files/ntia/northrop_grumman_comments.pdf;* North Central Regional Broadband Data Consortium at 2–4, *available at http://www.ntia.doc.gov/files/ntia/ncrbdc_comments.pdf.*

[13] *See* Mid-Atlantic SWICs at 8; Arizona Department of Homeland Security at 4–5; NSGIC at 2.

[14] *See* Mid-Atlantic SWICs at 8; State of Georgia at 5; State of New Jersey at 5, *available at http://www.ntia.doc.gov/files/ntia/new_jersey_ntia_rfi_sligp_response_6_15_2012.pdf.*

[15] *See* State of Colorado Governor's Office of Information Technology at 2, *available at http://www.ntia.doc.gov/files/ntia/colorado_office_of_information_technology_comments.pdf* (stating that the collection of relevant data ''will take significant effort in both human and capital resources'').

planning and preparation for all stakeholders that could span several months, if not years.[16] The states, in particular, observe that without grant funds to hire staff, conduct meetings with the various stakeholders, and develop the necessary governance structures, the states cannot consult with FirstNet in a meaningful way.[17] Many commenters agree that state, local, and tribal jurisdictions lack the staff and/or technical ability to manage a project of this size without federal support.[18]

NTIA agrees that FirstNet is in the best position to develop standards for the collection of data on assets and infrastructure that might be used or incorporated into the PSBN.[19] As a result, NTIA believes that it would not be a prudent use of grant funds to allow the states to undertake data gathering and collection activities, such as asset inventories, before FirstNet has developed guidance on the information it will need. Additionally, NTIA understands that coordination with FirstNet will involve a substantial amount of time and planning and many states face significant resource constraints, particularly with staffing levels, to participate effectively in this effort.[20]

Based in large part on this feedback, and in keeping with the intent of the Act, NTIA believes that, given the funds available and the need for FirstNet to make initial decisions on the data collection process, it can make the most efficient and effective use of grant dollars by focusing the State and Local Implementation Grant Program on planning and development activities in preparation for consultations with FirstNet.[21]

III. Establishment of Programmatic Requirements for the State and Local Implementation Grant Program

A. Funding Distribution

Consistent with the statutory framework, NTIA plans to design the State and Local Implementation Grant Program as a formula-based, matching grant program to assist states, in collaboration with regional, tribal, and local jurisdictions, with activities related to planning for the establishment of a nationwide public safety broadband network.[22] NTIA is not announcing procedures for the submission of grant applications in this Notice nor is it accepting applications at this time. NTIA intends to release a Federal Funding Opportunity (FFO) notice that will provide information on topics including: The amount of funding available for award and how NTIA will allocate funds to applicants, instructions on the application process, and the evaluation criteria for application review. Subject to activities of FirstNet, NTIA expects to issue a FFO and open the application window during the first quarter of calendar year 2013. This time frame will allow NTIA to complete the administrative functions it must undertake to prepare to award grants under this program.

NTIA plans to distribute the funding available under this grant program in two phases, and will consider the input solicited through the RFI to develop a methodology to distribute the available funds.[23] The commenters suggest numerous factors as relevant to allocating these funds, including: Population;[24] population density;[25] land mass;[26] geography and topography;[27] risk, threat, and vulnerability;[28] probability of disaster;[29] expected level of effort required for completion;[30] existing critical infrastructure;[31] number of highway miles;[32] demand and marketing components;[33] number of regional/local/tribal governmental entities using the network;[34] number of first responders using the network;[35] effective signal propagation;[36] amount of uncovered rural broadband customers;[37] prioritization of rural areas;[38] areas with backhaul deficiencies;[39] length of international borders;[40] and amount of tribal lands.[41] Additionally, some commenters propose that NTIA provide each state with an initial, equal distribution of funds to enable the states to accomplish certain planning tasks.[42] NTIA will take this input into account and consider those factors that can be quantified in developing the formula it will use to allocate the available grant funds among eligible applicants. NTIA will announce this formula when it issues the FFO.

B. Eligible Applicants

The 56 states and territories are eligible for grants under the State and Local Implementation Grant Program. The Act directs NTIA to make grants to states; thus, each state and territory choosing to apply for a grant should

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[16] *See* California Emergency Management Agency at 3, *available at http://www.ntia.doc.gov/files/ntia/california_state_response.pdf.*

[17] *See* State of Nevada at 3, *available at http://www.ntia.doc.gov/files/ntia/state_of_nevada_ntia_docket_no_120509050-1050-01.pdf* (''Implementation and planning grants must be used to fund that data collection and assessment effort in addition to the other tasks required to establish the State's network requirements.''); State of Mississippi at 3, *available at http://www.ntia.doc.gov/files/ntia/state_of_ms_response_to_ntia_rfi_final_6_15_12.pdf* (''Grant funding should also be used to provide the support for dedicated state staff and consultants to develop essential data for FirstNet as well as funding to support outreach and education efforts directly related to the PSBN.'').

[18] *See* State of Georgia at 1 (''Very few, if any, States or locals have the staff and technical expertise to manage a project of this size, complexity and importance on a full time basis.''); State of New York at 2 (''Many states lack the state and local resources to collect this data.''); State of North Dakota at 1–2 (grant funds should be available for staffing requirements and planning activities).

[19] *See* Commonwealth of Massachusetts at 4, *available athttp://www.ntia.doc.gov/files/ntia/mass_eopss_final_june_14_2012-2.pdf;* State of Oregon at 5–6; State of Georgia at 5; APCO International at 5, *available at http://www.ntia.doc.gov/files/ntia/apco_comments_on_ntia_rfi.pdf;* LA–RICS at 9; State of Montana at 3, *available at http://www.ntia.doc.gov/files/ntia/montana_response_ntia_npsbn_rfi_061412.pdf;* OAC at 10; State of Nevada at 2–3; State of Colorado Governor's Office of Information Technology at 2.

[20] *See* South Dakota Bureau of Information & Telecommunications at 1, *available at http://www.ntia.doc.gov/files/ntia/national_public_safety_broadband_public_comments.pdf.*

[21] *See* 47 U.S.C. 1442(a).

[22] *See id.*

[23] *See* RFI, 77 FR at 28859.

[24] *See* State of Georgia at 12; LA–RICS at 20; State of New York at 10.

[25] *See* Commonwealth of Massachusetts at 12; USDA-Rural Utilities Service (USDA–RUS), *available at http://www.ntia.doc.gov/federal-register-notice/2012/comments-development-state-and-local-implementation-grant-program#comment-29426.*

[26] *See* State of South Dakota at 5.

[27] *See* State of Oregon at 16; State of Montana at 8; State of Maine at 3, *available at http://www.ntia.doc.gov/files/ntia/firstnetrfiresponse.pdf;* Florida at 18, *available at http://www.ntia.doc.gov/files/ntia/florida_response_to_ntia_rfi_state_and_local_implementation_grant.pdf;* Tilson Government Services, LLC at 11.

[28] *See* Arizona Department of Homeland Security at 15; State of Georgia at 12; BayRICS at 12–13.

[29] *See* State of Texas at 13.

[30] *See* Carlos Delatorre at 18–19; Florida at 18; State of North Dakota at 13; Washington State Interoperability Executive Committee at 4, *available at http://www.ntia.doc.gov/files/ntia/wa_siec_response_to_ntia_rfi_06152012.pdf.*

[31] *See* State of Georgia at 12; State of Maine at 3; FEMA Region 5 RECCWG at 15; North Central Regional Broadband Data Consortium at 13–14.

[32] *See* State of Nevada at 6–7; State of Utah at 14; State of Mississippi at 20.

[33] *See* APCO International at 7.

[34] *See* Mid-Atlantic SWICs at 11; Florida at 18; OAC at 22.

[35] *See* FEMA Region 5 RECCWG at 15; OAC at 22.

[36] *See* State of Maine at 3.

[37] *See* State of Nevada at 7; State of Mississippi at 20.

[38] *See* Mendocino County, California at 3, *available at http://www.ntia.doc.gov/files/ntia/mendocinocommentsonntiafirstnetrfi.pdf.*

[39] *See* State of Utah at 14.

[40] *See* State of Texas at 14; State of North Dakota at 13; Washington State Interoperability Executive Committee at 3.

[41] *See* State of North Dakota at 13.

[42] *See, e.g.,* Commonwealth of Massachusetts at 2, 4 (proposing that NTIA give each state $500,000 to establish and operate a Public Safety Broadband office).

submit an individual application during the application window. An applicant may decide, however, to collaborate or coordinate with other states and regions in preparing application submissions, as is contemplated in the statute.[43]

NTIA will specify in the FFO the exact contents of the application package that applicants must submit during the application window. There are several items, however, that NTIA will likely require, and applicants may prepare to address them in advance of the FFO's publication. First, the Act directs each state to certify in its application for grant funds that the state has designated a single officer or governmental body to serve as the coordinator of the grant funds.[44] This designated officer or governmental body will also be responsible for determining the method of consultation between FirstNet and the state.[45] Multiple commenters urge NTIA to give the states flexibility in making this decision.[46] Commenters point out that states are best equipped to identify the most appropriate office or governmental body suited to this task, which may vary from state to state, as well as the personnel qualified to act in this capacity.[47] Accordingly, NTIA will give states flexibility in determining which state officer or governmental body to designate as the coordinator of the grant funds.

Second, in response to concerns expressed by some commenters and consistent with the intent of the statute, NTIA will likely ask applicants to describe how they plan to collect input from local and tribal jurisdictions to ensure that their public safety needs are adequately represented during the consultation process with FirstNet and in the coordination of the grant funds.[48]

Third, NTIA requested comment on how the existing public safety governance and planning authorities in each state might be incorporated into the consultations with FirstNet about the PSBN.[49] While each state may be at different stages in their development of their public safety governance structures, the commenters generally agree that the states should use established governing bodies in the PSBN consultations.[50] Because the governance structures tend to vary from state to state, NTIA will likely ask the states to discuss how they will leverage their existing governance structures in the PSBN consultations. Finally, because these public safety governance structures have traditionally focused solely on interoperable Land Mobile Radio (LMR) voice communications, NTIA anticipates asking applicants to describe how they intend to expand the expertise of their governance structures to include representatives with an understanding of broadband and Long Term Evolution (LTE) technology to facilitate their consultations with FirstNet.

C. Allowable Grant Activities

The State and Local Implementation Grant Program will support activities related to planning for the establishment of the nationwide PSBN. NTIA received detailed input from the majority of commenters regarding the types of activities that it should allow under the grant program to accomplish this objective.[51] Some of the activities that commenters identify include ensuring that states have an appropriate framework in place to consult with FirstNet,[52] developing and managing personnel/administrative positions,[53] conducting meetings,[54] arranging travel,[55] and providing public outreach and education as well as internal training.[56] Commenters further note that some states may need to work with their legal teams to evaluate any potential local legal barriers, negotiate necessary agreements, and develop standard Memoranda of Understanding (MOUs) to govern access to assets and infrastructure that may used in the PSBN.[57]

[43] 47 U.S.C. 1442(a).

[44] 47 U.S.C. 1442(d).

[45] 47 U.S.C. 1426(c)(2)(B).

[46] *See* State of Oregon at 2; State of California at 3; Nebraska at 2, *available at http://www.ntia.doc.gov/files/ntia/1399_001.pdf;* Florida at 4.

[47] *See* Minnesota at 4, *available at http://www.ntia.doc.gov/files/ntia/ecn_ntia_rfi_grant_filing_06_15_2012_d4_final.pdf;* State of New York at 3; State of Hawaii at 5–6, *available at http://www.ntia.doc.gov/files/ntia/state_of_hawaii_sligp_rfi_response.pdf;* State of Georgia at 3; State of Texas at 2–3.

[48] *See* 47 U.S.C. 1442(a); *see also* National Congress of American Indians at 2–3, *available at http://www.ntia.doc.gov/files/ntia/ncai_comments_on_sligp_06152012f.pdf* (NTIA and FirstNet must ''institute rules and reporting requirements to ensure that tribal governments are included in the planning and implementation process''); NASCIO at 2–3 (''The State and Local Implementation grant program should encourage states to leverage all pre-existing relationships to ensure coordination and input into the planning process.''); State of Alaska at 1, *available at http://www.ntia.doc.gov/files/ntia/state_of_alaska_response_to_ntia_rfi.pdf* (''Any mechanisms that mandate involvement of federal, local, and tribal users would not be unreasonable to the degree that involvement levels could be determined by the states.''); New Mexico Department of Information Technology at 3, *available at http://www.ntia.doc.gov/files/ntia/rfi_response_final_15jun12.pdf* (suggesting each state ''provide a plan for ensuring inclusion of local and tribal entities via aggregate structure''); LA–RICS at 6 (''NTIA should allow each State to determine the best method for undertaking [involving tribal entities] and include a description and plan in its grant application.''); Commonwealth of Massachusetts at 2–3 (saying that it should be a stipulation for funding that ''the responsible state governing body ensures that local and tribal (if applicable) participation in the planning process is present''); APCO International at 1 (''[S]tates must place the highest priority on establishing or enhancing governance structures that ensure adequate representation of local jurisdictions in their respective [S]tates.'').

[49] RFI, 77 FR at 28858–59.

[50] *See* State of Montana at 3–4 (''[T]o facilitate the planning and deployment [of the PSBN,] an already established governing body and governance structure in each individual [S]tate should be utilized.''); FEMA Region 5 RECCWG at 3 (''[T]here is no need to establish a new governance structure, even though there is now a new technology to govern,'' since the governance structures in place or being developed should already include representatives of multiple disciplines as well as local and tribal responders.); Florida at 7–8 (finding that even though the underlying technology is changing, the mission of the Interoperability Governing Bodies (IGBs) remains, and therefore, ''existing IGBs should continue to have principle [*sic*] responsibility for interoperability within the NPSBN''); Minnesota at 8 (''[E]xisting IGBs should continue to have principle [*sic*] responsibility for interoperability within the NPSBN.''); New Mexico Department of Information Technology at 5–6 (stating that the current governance structures can and should be considered for use with the PSBN); Montgomery County, Maryland at 6, *available at http://www.ntia.doc.gov/files/ntia/comments-montgomerycountymd.pdf* (emphasizing that existing public safety governance and planning authorities' voices must be heard in the program).

[51] *See* RFI, 77 Fed. Reg. at 28859.

[52] Section 6206(c)(2)(A) of the Act directs FirstNet to consult with regional, state, tribal, and local jurisdictions about the distribution and expenditure of any amounts required to carry out the network policies that it is charged with establishing, including (i) construction of a core network and any radio access network build-out; (ii) placement of towers; (iii) coverage areas of the network, whether at the regional, state, tribal, or local level; (iv) adequacy of hardware, security, reliability, and resiliency requirements; (v) assignment of priority to local users; (vi) assignment of priority and selection of entities seeking access to or use of the nationwide public safety interoperable broadband network; and (vii) training needs of local users. 47 U.S.C. 1426(c)(2)(A).

[53] *See* State of South Dakota at 4; Arizona Department of Homeland Security at 13; State of Oregon at 12; State of California at 8; APCO International at 6; LA–RICS at 17; Anjee Toothaker at 2, *available at http://www.ntia.doc.gov/files/ntia/june_15_2012_ltr_to_natl_telecomm_and_info_admin.pdf;* FEMA Region 5 RECCWG at 12; Florida at 14; State of North Carolina at 5, *available at http://www.ntia.doc.gov/files/ntia/ntia_rfi_comments_by_north_carolina.pdf;* Dr. Michael Myers at 14, *available at http://www.ntia.doc.gov/files/ntia/meyers_rfi_response.pdf.*

[54] *See* LA–RICS at 17; Mid-Atlantic SWICs at 10–11; State of Montana at 6; Commonwealth of Kentucky at 2; State of New York at 7; Cheyenne River Sioux Tribe 911 at 3, *available at http://www.ntia.doc.gov/files/ntia/ntia_rfi_comments_from_crst_911_corp_v2.pdf;* State of Texas at 11.

[55] *See* Carlos Delatorre at 15; Michael A. Scales; State of Utah at 11; State of Mississippi at 16; National Congress of American Indians at 6.

[56] *See* State of Oregon at 12; State of California at 8; Commonwealth of Massachusetts at 9; State of Georgia at 9; Florida at 15.

[57] *See* NACo, NLC, USCM & NATOA at 3, *available at http://www.ntia.doc.gov/files/ntia/response_to_rfi_on_grant_structure_final.pdf;* State of South Dakota at 3; State of California at 1–2; LA–

NTIA anticipates structuring the State and Local Implementation Grant Program into two phases of funding for planning activities. The first phase will focus on initial planning and consultation activities, including strategy and timeline development, meetings, governance planning, and outreach and education efforts. The second phase will not begin until FirstNet has consulted with the state-designated contact about the matters listed in the Act, including defining coverage needs, user requirements, and network hardening and resiliency requirements.[58] The second funding phase will address states' needs in preparing for additional consultation with FirstNet and planning to undertake data collection activities.

NTIA will detail the full scope of allowable activities under the grant program in the FFO; however, NTIA will likely require recipients to show that they have accomplished the following activities by the end of the grant period of performance: (1) Established a governance structure, or expanded existing structures, to consult with FirstNet; (2) developed procedures to ensure local and tribal representation and participation in the consultation process with FirstNet; (3) created a process for education and outreach, through program development or through other efforts, among local and tribal officials, public safety users, and other stakeholders about the nationwide public safety broadband network; (4) identified potential public safety users of the public safety broadband network; (5) developed standard MOUs to facilitate the use of existing infrastructure, or identified the legal barriers to creating standard MOUs and described potential remedies; and (6) developed staffing plans that include local and tribal representation to participate in the public safety governance structure and to prepare for data collection activities in consultation with FirstNet. NTIA also will consider having grant recipients prepare a comprehensive plan, similar in concept to their existing Statewide Interoperability Communications Plans (SICPs), describing the public safety needs that they expect FirstNet to address in its design of the nationwide PSBN, as well as how they intend to satisfy each of the elements enumerated above, including milestones that demonstrate their progress.

If sufficient funds are available, NTIA may permit grant recipients that have satisfactorily completed the milestones associated with these initial planning requirements to use funds for supplemental activities related to preparing for any FirstNet data collections, such as determining staffing levels to dedicate to these tasks, designating a state point of contact for data collection, where appropriate, and evaluating the feasibility of using public/private partnerships. At present, NTIA does not expect to include the compiling of asset and infrastructure inventories as an allowable activity until FirstNet has developed a standardized process to govern data collection activities.

D. Funding Restrictions—Eligible and Ineligible Costs

Grantees may only use funds awarded under the State and Local Implementation Grant Program to pay eligible costs. Eligible costs are consistent with the cost principles identified in the applicable Office of Management and Budget (OMB) circulars[59] and in the grant program's authorizing legislation.

Based on input received from multiple commenters, eligible costs under the planning grant program will likely include the following categories of expenses:

1. Hiring staff and consultants required for the planning process (such as project managers, program directors, engineers, grant administrators, financial analysts, accountants, and attorneys);

2. Holding planning meetings with state agencies, local and tribal stakeholders, and regional partners;

3. Covering travel costs for state, local, and tribal representatives to attend planning meetings (such as preparing for FirstNet consultations and attending state, regional, and national meetings that address public safety broadband issues);

4. Developing, modifying, or enhancing state plans and governance structures, including efforts to adapt existing public safety governance authorities, such as the Statewide Interoperability Coordinators (SWIC), Statewide Interoperability Executive Committees (SIEC), and Statewide Interoperability Governing Bodies (SIGB), to include public safety broadband stakeholders and expertise, and determining the role of the state Chief Information Officers (CIO), Chief Technology Officers (CTO), or Chief Budget Officers (CBO);

5. Conducting communications, education, and outreach activities with state, local, tribal, and regional stakeholders;

6. Developing standardized MOUs and other types of agreements to facilitate access to and use of existing infrastructure;

7. Identifying potential public safety users for the public safety broadband network;

8. Administrative services and supplies necessary to prepare for and manage the grant program;

9. Legal services related to the planning process; and

10. Training costs related to the planning process.

NTIA does not envision allowing funds awarded under the State and Local Implementation Grant Program to be used for activities related to site preparation, broadband deployment, installation, construction, or the acquisition of equipment used to provide wireless broadband services, including LTE-related activities.

E. Rural Coverage Prioritization

The Act provides that the State and Local Implementation Grant Program shall include requirements to prioritize grants for activities that ensure coverage in rural as well as urban areas.[60] Some commenters note that states with a higher percentage of rural areas may face unique challenges; thus, designing a one-size-fits-all approach to ensuring rural coverage may not be appropriate for all circumstances.[61]

In designing the formula that it will use to allocate funds under the grant program, NTIA intends to avoid a solely population-based approach and will consider additional factors that affect rural coverage. Additionally, NTIA agrees that the states will need flexibility in determining the most effective means by which FirstNet can provide adequate rural coverage. While the FFO will describe in detail the exact contents of the application package, NTIA anticipates having the states address how they will prioritize their grant activities to ensure coverage in rural areas, including providing specific plans and metrics to demonstrate how they will achieve these requirements.[62]

RICS at 5; State of New Jersey at 4; State of Nevada at 4; State of Texas at 12.

[58] 47 U.S.C. 1426(c)(2)(A).

[59] Allowable costs are determined in accordance with the cost principles applicable to the entity incurring the costs. For example, the allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State, Local and Indian Tribal Governments,'' 2 CFR Part 225.

[60] 47 U.S.C. 1442(c).

[61] *See* State of South Dakota at 4; State of Georgia at 10; Arizona Department of Homeland Security at 13–14.

[62] *See* State of Mississippi at 17; OAC at 20–21.

F. NTIA Consultations With FirstNet on the State and Local Implementation Grant Program Requirements

As previously discussed, the Act directs NTIA to consult with FirstNet to establish the requirements of the State and Local Implementation Grant Program not later than 6 months after the date of the Act's enactment, or by August 22, 2012. The Act also required that FirstNet be established no later than August 20, 2012. The Act's framework, which essentially placed the creation of FirstNet and the development of the grant program requirements on parallel tracks, proved challenging for NTIA as it attempted to fulfill the statutory mandate to consult with FirstNet in establishing the State and Local Implementation Grant Program. As noted, NTIA has only started to consult with the newly-formed FirstNet Board on the grant program requirements outlined in this Notice. NTIA expects these consultations to proceed over the next few months as NTIA continues to prepare the FFO in which the State and Local Implementation Grant Program requirements will be described more fully.

Dated: August 16, 2012.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2012–20502 Filed 8–20–12; 8:45 am]

BILLING CODE 3510–60–P

COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

[OJP (OJJDP) Docket No. 1601]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) announces its next meeting.

DATES: Friday, September 14, 2012 from 10:00 a.m. to 12:30 p.m.

ADDRESSES: The meeting will take place in the third floor main conference room at the U.S. Department of Justice, Office of Justice Programs, 810 7th St. NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Visit the Web site for the Coordinating Council at *www.juvenilecouncil.gov* or contact Robin Delany-Shabazz, Designated Federal Official, by telephone at 202–307–9963 [Note: this is not a toll-free telephone number], or by email at *Robin.Delany-Shabazz@usdoj.gov* or *Geroma.Void@usdoj.gov.* The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2) will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601, et seq. Documents such as meeting announcements, agendas, minutes, and reports will be available on the Council's Web page, *www.juvenilecouncil.gov,* where you may also obtain information on the meeting.

Although designated agency representatives may attend, the Council membership is composed of the Attorney General (Chair), the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Secretary of Health and Human Services (HHS), the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement. The nine additional members are appointed by the Speaker of the House of Representatives, the Senate Majority Leader, and the President of the United States. Other federal agencies take part in Council activities including the Departments of Agriculture, Defense, the Interior, and the Substance and Mental Health Services Administration of HHS.

Meeting Agenda

The agenda for this meeting includes: (a) Presentations on the distinct risk factors, needs and pathways to success for girls and young women ''at the margins'' of society; (b) discussions of potential areas where agency coordination might improve delivery of services and outcomes for girls; and (c) agency updates and announcements.

Registration

For security purposes, members of the public who wish to attend the meeting must pre-register online at *www.juvenilecouncil.gov* no later than Monday, September 10, 2012. Should problems arise with web registration, call Daryel Dunston at 240–221–4343 or send a request to register to Mr. Dunston. Include name, title, organization or other affiliation, full address and phone, fax and email information and send to his attention either by fax to 301–945–4295, or by email to *ddunston@edjassociates.com.* [**Note:** These are not toll-free telephone numbers.] Additional identification documents may be required. Space is limited.

Note: Photo identification will be required for admission to the meeting.

Written Comments: Interested parties may submit written comments and questions by Monday, September 10, 2012, to Robin Delany-Shabazz, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at *Robin.Delany-Shabazz@usdoj.gov.* The Coordinating Council on Juvenile Justice and Delinquency Prevention expects that the public statements presented will not repeat previously submitted statements. Written questions from the public may also be invited at the meeting.

Melodee Hanes,

Acting Administrator.

[FR Doc. 2012–20525 Filed 8–20–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–294–B]

Application To Export Electric Energy; TexMex Energy, LLC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: TexMex Energy, LLC (TexMex) has applied to renew its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests, or motions to intervene must be submitted on or before September 20, 2012.

ADDRESSES: Comments, protests, or motions to intervene 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 email to *Christopher.Lawrence@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On February 22, 2007 the Department of Energy (DOE) issued Order No. EA–294–A, which authorized TexMex to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities. That authority expired on February 22, 2012. On July 23, 2012, TexMex filed an application with DOE for renewal of the export authority contained in Order No. EA–294–A for an additional five-year term.

It is reasonable to presume that all of the electric energy that TexMex proposes to export to Mexico will be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. The existing international transmission facilities to be utilized by TexMex have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the TexMex application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–294–B. An additional copy is to be provided directly to Guillermo Gonzalez G., c/o Protama S.A. de C.V., Tonala 44, Col. Roma, Mexico D.F., Mexico 06700 and Douglas F. John and Matthew T. Rick, John & Hengerer, 1730 Rhode Island Ave. NW., Suite 600, Washington, DC 20036. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR Part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on August 14, 2012.

Jon Worthington,

Deputy Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2012–20487 Filed 8–20–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–328–A]

Application To Export Electric Energy; RBC Energy Services LP

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: RBC Energy Services LP (RBC Energy) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests, or motions to intervene must be submitted on or before September 20, 2012.

ADDRESSES: Comments, protests, or motions to intervene 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 email to *Christopher.Lawrence@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On September 26, 2007, the Department of Energy (DOE) issued Order No. EA–328 authorizing RBC Energy to transmit electric energy from the United States to Canada as a power marketer for a five-year term. The current export authority in Order No EA–328 will expire on September 26, 2012. On July 26, 2012, RBC Energy filed an application with DOE for renewal of that authority for an additional five-year term.

In its application, RBC Energy states that neither it nor its affiliates ''owns, operates or controls any electric power transmission or distribution facilities in the United States.'' RBC Energy states and it is reasonable to presume, that the electric power proposed to be exported to Canada will be purchased from electric utilities and federal power marketing agencies pursuant to voluntary agreements and will be surplus to the system needs of the entities selling the power to RBC Energy. The application also indicates that RBC Energy is a power marketer authorized by the Federal Energy Regulatory Commission (FERC) to sell energy, capacity, and specified ancillary services at market-based rates.

The existing international transmission facilities to be utilized by RBC Energy have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the FERC Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the RBC Energy application to export electric energy to Canada should be clearly marked with OE Docket No. 328–A. An additional copy is to be provided directly to Matthew S. Arnold, Senior Counsel, Royal Bank of Canada, 200 Bay Street, 14th Floor, North Tower, Toronto, Ontario, Canada M5J 2J5 and with

Elizabeth Jordan, Vice President, Compliance, RBC Capital Markets, 200 Bay Street, 9th Floor, South Tower, Toronto, Ontario, Canada M5J 2J5. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR Part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on August 14, 2012.

Jon Worthington,

Deputy Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2012–20489 Filed 8–20–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 6, 2012, 6 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Joel Bradburne, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3822, *Joel.Bradburne@lex.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Approval of July Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments
- Presentations
- Administrative Issues
- Subcommittee Updates
- Public Comments
- Final Comments from the Board
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Joel Bradburne at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Joel Bradburne at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Joel Bradburne at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.energy.gov/.*

Issued at Washington, DC, on August 15, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–20492 Filed 8–20–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee

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

ACTION: Notice of open meeting (Webinar).

SUMMARY: This notice announces an open meeting (Webinar) of the Hydrogen and Fuel Cell Technical Advisory Committee (HTAC). The Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770 requires that agencies publish notice of meetings in the **Federal Register**.

DATES: Wednesday, September 5, 2012; 12 p.m.–2 p.m. To be provided the Webinar's registration information, please email: *HTAC@nrel.gov.*

FOR FURTHER INFORMATION CONTACT: email to: *HTAC@nrel.gov* or at the mailing address: Jason Marcinkoski, Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under Section 807 of the Energy Policy Act of 2005 (EPACT), Public Law 109–58; 119 Stat. 849, to provide advice and recommendations to the Secretary of Energy on the program and activities authorized by Title VIII of EPACT.

Tentative Agenda: (Subject to change; updates will be posted on the Committee's Web site at: *http://hydrogen.energy.gov*).

- Public Comment (10 minutes)
- Discussion of Hydrogen Production Expert Panel report
- Consultation in establishing the criteria for the H-Prize competition, as required by the Energy Independence and Security Act of 2007, in Sec. 654.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the meeting of HTAC and to make oral statements during the specified period for public comment. The public comment period will take place between 12 p.m. and 12:10 p.m. on September 5, 2012. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, please email *HTAC@nrel.gov* at least 5 business days before the meeting. Please indicate if you will be attending the meeting, whether you want to make an oral statement, and what organization you represent (if appropriate). Members of the public will be heard in the order in which they sign up for the public comment period. Oral comments should be limited to two minutes in length. Reasonable provision will be made to include the scheduled oral statements on the agenda. The chair of the committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business. If you would like to file a written statement with the committee, you may do so either by submitting a

hard copy at the meeting or by submitting an electronic copy to via email to: *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at the Committee's Web site at: *http://hydrogen.energy.gov.*

Issued at Washington, DC, on August 15, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–20494 Filed 8–20–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Wind and Water Power Program

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

ACTION: Notice of public meeting.

SUMMARY: The Department of Energy (DOE) Wind and Water Power Program (WWPP) is planning a workshop to exchange information on hydropower's ability to integrate variable renewables into our nation's grid. Some renewable energy resources, such as wind and solar, can stress power systems as their electricity generation varies with fluctuations in their renewable ''fuel'' (i.e. wind speed and sunlight availability). Development of these resources is essential for meeting the President's goal of producing 80% of U.S. electricity from clean energy sources by 2035, but will require grid integration solutions. DOE is seeking individual technical advice with regard to the use of existing hydropower resources and advanced pumped storage technologies for integrating variable renewables.

DATES: DOE will hold a workshop on Tuesday, September 18, 2012, from 8 a.m. to 6 p.m. and on Wednesday, September 19, 2012, from 8 a.m. to 12 p.m. in Portland, OR. RSVP is required by Tuesday, September 4, 2012.

ADDRESSES: The workshop will be held at the Mark Spencer Hotel located at 409 SW. 11th Avenue, Portland, Oregon 97205.

FOR FURTHER INFORMATION CONTACT: Mr. Hoyt Battey, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–0143. Email: *hoyt.battey@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: Hydropower provides a substantial portion of the existing power grid's flexibility and does so without emitting greenhouse emissions. However, the demands on the hydropower fleet's flexibility are growing due to increasing installation of renewables like wind and solar that produce variable power. Simultaneously, the capability to provide this flexibility is diminishing as the hydropower fleet loses efficiency as it ages, and competing water uses such as irrigation and domestic supply take priority over generation capabilities. New advanced pumped storage technologies could add the needed flexibility to integrate variable renewables, but U.S. development of pumped storage has been stalled for the last two decades.

Exchanging information concerning individual experience by industry experts through the DOE sponsored 2010 Pumped Storage Summit was informational and helped DOE to identify a set of key issues preventing the deployment of advanced pumped storage hydropower technologies. DOE was able to utilize the key information obtained at that meeting to carefully target research and development funding towards high-impact projects, such as benefits demonstration and pre-construction support.

DOE is planning a workshop for the exchange of information on hydropower's ability to integrate variable renewables into our nation's grid. Participants at the September workshop should limit information and comments to those based on personal experience, individual advice, information, or facts regarding this topic. It is not the object of this session to obtain any group position or consensus. Rather, this meeting is an opportunity for participants to gain an individual understanding of the cited knowledge, research, and technology needs. To most effectively use the limited time, please refrain from passing judgment on another participant's recommendations or advice, and instead, concentrate on your individual experiences.

Public Participation: This workshop is designed to bring together a multi-disciplinary set of stakeholders—from policymakers to equipment manufacturers, from hydro owner-operators to solar and wind industry experts, to individually identify and address all aspects of highest-leverage barriers to utilizing hydropower and pumped storage to integrate variable renewables. The event is open to the public based on space availability. Participants are required to pre-register and space is limited.

Pre-Registration: To pre-register, please visit *www.yesevents.com/DOE_Hydropower_Integration* or contact Stacey Young via email at *Hydropower_Integration@sra.com* or by telephone at (202) 554–8480 x2924. Participants interested in attending should provide their name, company name or organization (if applicable), telephone number, and email no later than the close of business on Tuesday September 4, 2012. All attendees are required to pre-register.

Agenda: The first day the DOE WWPP will open the workshop with its view of the current landscape of hydropower and pumped storage development and will then provide the opportunity for a variety of experts to describe their perspective on the state of the industry and associated technologies. For the remainder of the day, hydropower technological capabilities, operational constraints, and market barriers will be discussed sequentially. At the end of each workshop session, DOE will seek input from individual participants regarding what they believe are the most significant barriers and issues. The half-day session on the second day will be scheduled in its entirety to allow for comments from participants on how to tackle the high-impact issues identified by DOE from the previous workshop sessions.

Information on Services for Individuals with Disabilities: Individuals requiring special accommodations at the meeting, please contact Ms. Young no later than the close of business on Tuesday, September 4, 2012.

Minutes: A summary report of the meeting will be available for printing at the DOE Water Program Online Publication and Product Library at: *water.energy.gov/publications.html.*

Issued in Washington, DC, on August 15, 2012.

Jose Zayas,

Wind and Water Power Program Manager, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2012–20486 Filed 8–20–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1951–172]

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests; Georgia Power Company

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters

b. *Project No:* 1951–172

c. *Date Filed:* May 29, 2012

d. *Applicant:* Georgia Power Company

e. *Name of Project:* Sinclair Hydroelectric Project

f. *Location:* Lake Sinclair in Baldwin County, Georgia

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r

h. *Applicant Contact:* Joey Charles, Georgia Power Company, Bin 10151, 241 Ralph McGill Blvd. NE., Atlanta, Georgia 30308–3374, (404) 506–2337

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* September 10, 2012

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–1951–172) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* Georgia Power Company requests Commission approval to grant The Legacy at Sinclair, a condominium complex, a permit to use project lands and waters for the construction of residential, multi-slip boat docks inside the project boundary on Lake Sinclair. The proposal includes a total of six boat docks, two of which would accommodate 10 watercraft each, and four of which would accommodate 7 watercraft each. The docks would occupy 2.56 acres of project lands along 2,290.65 feet of shoreline. Concrete walkways and a wooden boardwalk and seawall already exist at the site.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–1951) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: August 10, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–20429 Filed 8–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6597–013]

Notice of Application Tendered for Filing with the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments; Monadnock Paper Mills, Inc.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 6597–013.

c. *Date Filed:* July 31, 2012.

d. *Applicant:* Monadnock Paper Mills, Inc.

e. *Name of Project:* Monadnock Hydroelectric Project.

f. *Location:* The existing project is located on the Contoocook River in the towns of Peterborough, Greenfield, Hancock, and Bennington in Hillsborough County, New Hampshire. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michelle Hamm, Manager, Environmental Services, Monadnock Paper Mills, Inc.; Antrim Road, P.O. Box 339, Bennington, NH 03442; (603) 588–3311 or *mhamm@mpm.com.*

i. *FERC Contact:* Samantha Davidson, (202) 502–6839 or *samantha.davidson@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:*

The existing Monadnock Hydroelectric Project consists of four developments, three of which have generating facilities, with a combined installed capacity of 1,889 kilowatts (kW). The project produces an average annual generation of 6,100 megawatt-hours. All power generated by the Monadnock Project is used by Monadnock Paper Mill, Inc.'s (MPM) paper production facility. The four developments, from upstream to downstream, are described below.

Powder Mill Development

The existing Powder Mill Development is located at river mile 46.08 of the Contoocook River and consists of: (1) A 366-foot-long, 18.6-foot-high dam consisting of a gated 228-foot-long concrete gravity spillway with a crest elevation of 675.44 feet National Geodetic Vertical Datum of 1929 (NGVD) and 2-foot-high seasonal flashboards, an approximately 91-foot-long earth embankment with a concrete core wall on the north side of the spillway, and an approximately 47-foot-long earth embankment with a concrete core wall on the south side of the spillway; (2) a 4-foot-wide sluiceway on the north side of the spillway; (3) a 35-foot-long, 15-foot-wide regulating gatehouse structure with a 4-foot-diameter outlet pipe on the south side of the spillway; (4) a 435-acre impoundment with a storage capacity of 1,940 acre-feet and a normal maximum elevation of 677.44 feet NGVD; and (5) appurtenant facilities.

Monadnock Development

The existing Monadnock Development is located 4,200 feet downstream of Powder Mill Dam and consists of: (1) An approximately 515-foot-long, 22-foot-high dam consisting of a 165-foot-long concrete spillway with a crest elevation of 663.8 feet NGVD and 2-foot-high seasonal flashboards, a 75-foot-long earth embankment with a concrete core wall on the west side of the spillway, a 50-foot-long concrete non-overflow section, a 25-foot-long earth embankment with a concrete core wall, and a 200-foot-long earthen embankment on the east side of the spillway; (2) a 5-acre impoundment with a storage capacity of 240 acre-feet and a normal maximum elevation of 665.8 feet NGVD; (3) a 75-foot-long, 20-foot-wide powerhouse on the west side of the spillway containing two turbine-generating units for a total installed capacity of 423 kW; (4) two 20 to 25-foot-long, 2.3-kV generator leads; (5) a 100-foot-long tailrace; and (6) appurtenant facilities.

Pierce Development

The existing Pierce Development is located 900 feet downstream of the Monadnock Dam and consists of: (1) The 420-foot-long, 28-foot-high dam consisting of a 290-foot-long concrete spillway with a crest elevation of 651.4 feet NGVD and 2-foot-high seasonal flashboards; (2) a 7-acre impoundment with a storage capacity of 51-acre-feet and a normal maximum elevation of 653.4 feet NGVD; (3) a 25-foot-long, 35-foot-wide powerhouse on the east side of the spillway containing two turbine-generating units for a total installed capacity of 770 kW; (4) two 15 to 25-foot-long, 2.3-kV generator leads; (5) a 600-foot-long tailrace; and (6) appurtenant facilities.

Paper Mill Development

The existing Paper Mill Development is located 1,140 feet downstream of the Pierce Dam and consists of: (1) The 280-foot-long, 19-foot-high dam consisting of a 142-foot-long concrete gravity spillway with a crest elevation of 625.6 feet NGVD and 2-foot-high seasonal flashboards; (2) a 5-acre impoundment with a storage capacity of 25-acre-feet and a normal maximum elevation of 627.6 feet NGVD; (3) a 300-foot-long power canal and headgate structure leading to a forebay; (4) an intake structure and a 10-foot-diameter, 200-foot-long steel penstock; (5) a generating room located on the lower level of MPM's paper mill facility containing a 746-kW turbine generating unit; (6) a 150-foot-long, 2.3-kV generator lead; (7) a 800-foot-long tailrace; and (8) appurtenant facilities.

The project also consists of a 2,190-foot-long, 2.3-kV overhead transmission line interconnecting the generator leads to a 200-foot-long, 23-kV supply bus at MPM's paper mill facility.

The Powder Mill Development operates in a seasonal store and release mode to meet downstream demand for hydroelectric generation at MPM's paper mill facility and instream flow requirements, while the Monadnock, Pierce, and Paper Mill developments operate in a run-of-river mode. The existing license requires an instantaneous minimum flow of 13 cubic feet per second (cfs) (or inflow, whichever is less), in the Powder Mill, Monadnock, and Pierce tailraces; and an instantaneous minimum flow of 70 cfs (or the inflow, whichever is less), in the Paper Mill tailrace. MPM proposes to continue operating the project according to the existing minimum flow requirements and restrict the impoundment level at the Powder Mill Development to a maximum drawdown of 3 feet (between elevations 675.44 and 672.44 feet NGVD).

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:*

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis (when FERC approved studies are complete)	September 2012.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	November 2012.
Commission issues Non-Draft EA	March 2013.
Comments on EA	April 2013.
Modified terms and conditions	June 2013.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: August 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–20424 Filed 8–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the Midwest Independent Transmission System Operator, Inc. (MISO):

Order 1000 Right of First Refusal Task Team—August 13, 2012

Order 1000 Right of First Refusal Task Team—August 23, 2012

Mid-Continent Area Power Pool/MISO Order 1000 Interregional Workshop—August 30, 2012

Southwest Power Pool, Inc./MISO Order 1000 Interregional Workshop—September 20, 2012

The above-referenced meeting will be held at: MISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

The above-referenced meeting is open to the public.

Further information may be found at *www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER09–35–001, *Tallgrass Transmission, LLC*

Docket No. ER09–36–001, *Prairie Wind Transmission, LLC*

Docket No. ER09–548–001, *ITC Great Plains, LLC*

Docket No. ER09–659–002, *Southwest Power Pool, Inc.*

Docket No. ER10–1791, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–1179–000, *Southwest Power Pool, Inc.*

Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–2700, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–4081, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–4105–000, *Southwest Power Pool, Inc.*

Docket No. ER11–4514, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–309, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–427, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–715, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–1401–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1415–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1460–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1586–001, *Southwest Power Pool, Inc.*

Docket No. ER12–1610–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1772–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1779–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1835, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–1928, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–2129, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–2216, *Midwest Independent Transmission System Operator, Inc. and Ameren Service Company*

Docket No. ER12–2242, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–2257, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–2366–000, *Southwest Power Pool, Inc.*

Docket No. ER12–2387–000, *Southwest Power Pool, Inc.*

Docket No. EL11–30, *E.ON Climate & Renewables North America, LLC v. Midwest Independent Transmission System Operator, Inc.*

Docket No. EL11–34–001, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL11–56, *FirstEnergy Service Company*

Docket No. EL12–2–000, *Southwest Power Pool, Inc.*

Docket No. EL12–35, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL12–60–000, *Southwest Power Pool, Inc., et al.*

Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*

For more information, contact Jason Strong, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (202) 502–6124 or *jason.strong@ferc.gov.*

Dated: August 10, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–20426 Filed 8–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–23–000]

Notice of Petition for Declaratory Order; Shell Pipeline Company LP

Take notice that on August 10, 2012, pursuant to Rule 207(a)(2), Shell Pipeline Company LP submitted a petition requesting that the Federal Energy Regulatory Commission (Commission) issue a declaratory order approving the overall rate structure and pro-rationing rules and other tariff terms and conditions of service for a new pipeline from St. James LA to Houston TX (Westward HO project) to transport crude petroleum from deepwater Gulf of Mexico wells to Houston and Nederland, Texas area refineries and markets.

Any person desiring to intervene or to protest in this proceedings 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) on or before 5:00 p.m. Eastern time on the specified comment date. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies

of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

DATES: *Comment Date:* 5:00 p.m. Eastern time on Thursday, August 30, 2012.

Dated: August 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–20425 Filed 8–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–22–000]

Notice of Petition for Declaratory Order; Kinder Morgan Cochin LLC

Take notice that on August 9, 2012, pursuant to Rule 207(a)(2), Kinder Morgan Cochin LLC submitted a petition requesting that the Federal Energy Regulatory Commission (Commission) issue a declaratory order approving the overall rate structure and pro-rationing rules and other tariff terms and conditions of service for reversal and expansion of its Cochin pipeline (Cochin Reversal Project) to bring light condensate diluent from Kankakee, IL to Fort Saskatchewan, Alberta.

Any person desiring to intervene or to protest in this proceedings 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) on or before 5:00 p.m. Eastern time on the specified comment date. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on Wednesday, August 29, 2012.

Dated: August 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–20428 Filed 8–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Sam Rayburn Dam Project Power Rate

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of proposed extension.

SUMMARY: The current Sam Rayburn Dam Project rate was approved by the Federal Energy Regulatory Commission (FERC) on March 30, 2009, Docket No. EF09–4021–000. These rates became effective for the period January 1, 2009, through September 30, 2012. The Administrator, Southwestern Power Administration (Southwestern), has prepared Current and Revised 2012 Power Repayment Studies which show the need for an increase in annual revenues of $193,896 (4.9 percent) to meet cost recovery criteria. In accordance with Southwestern's isolated project rate adjustment threshold, signed September 8, 2003, the Administrator, Southwestern, may determine, on a case by case basis, that for a revenue decrease or increase in the magnitude of five percent or less, deferral of a formal rate filing is in the best interest of the Government. The Deputy Secretary of Energy has the authority to extend rates, previously confirmed and approved by FERC, on an interim basis, pursuant to title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR part 903), sections 903.22(h) and 903.23(a)(3) . In accordance with these authorities, Southwestern proposes to defer the rate adjustment and proposes that the current rates be extended for a one-year period effective through September 30, 2013.

DATES: The comment period for the proposed extension ends on September 20, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. James K. McDonald, Assistant Administrator, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6690, *jim.mcdonald@swpa.gov.*

SUPPLEMENTARY INFORMATION: Originally established by Secretarial Order No. 1865 dated August 31, 1943, Southwestern is an agency within the U.S. Department of Energy, created by the Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977. Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2 entitled Power Marketing Administration Financial Reporting. Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions of the Power Marketing Administrations are found at title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR part 903). Procedures for the confirmation and approval of rates for the Federal Power Marketing Administrations are found at title 18, part 300, subpart L of the Code of Federal Regulations (18 CFR part 300).

Southwestern markets power from 24 multi-purpose reservoir projects with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers (Corps). These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these States plus Kansas and Louisiana. The costs associated with the hydropower facilities of 22 of the 24 projects are repaid via revenues received under the Integrated System rates, as are those of Southwestern's transmission facilities, which consist of 1,380 miles of high-voltage transmission lines, 25 substations, and 46 microwave and VHF radio sites. Costs associated

with the Sam Rayburn and Robert D. Willis Dams, two Corps projects that are isolated hydraulically, electrically, and financially from the Integrated System, are repaid by separate rate schedules.

Following Department of Energy guidelines, Southwestern prepared a 2012 Current Power Repayment Study using the existing Sam Rayburn Dam Project rate schedule. The PRS shows the cumulative amortization through FY 2011 at $24,993,504 on a total investment of $30,254,778. The FY 2012 Revised Power Repayment Study indicates the need for an increase in annual revenues of $193,896, or 4.9 percent, to meet repayment criteria.

Southwestern proposes to defer the indicated rate adjustment because it falls within Southwestern's plus-or-minus five percent isolated project rate adjustment threshold and extend the current rate through September 30, 2013. The threshold was developed to add efficiency to the process of maintaining adequate rates and is consistent with cost recovery criteria within DOE Order Number RA 6120.2 regarding rate adjustment plans. The extension is required because the current rate expires September 30, 2012. Southwestern proposes to defer this rate adjustment of 4.9 percent, or $193,896 per year in accordance with Southwestern's isolated project rate adjustment threshold, extend the current rate through September 30, 2013, and reevaluate the ability of the existing rate to provide sufficient revenues to satisfy costs projected in the FY 2013 Power Repayment Studies.

On March 30, 2009, the current rate schedule for the Sam Rayburn Dam Project was confirmed and approved by the FERC on a final basis for a period that ends September 30, 2012. In accordance with title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR part 903) sections 903.22(h) and 903.23(a)(3), the Deputy Secretary may extend existing rates on an interim basis beyond the period specified by the FERC. As a result of the benefits obtained by a rate adjustment deferral (reduced Federal expense and rate stability) and the Deputy Secretary's authority to extend a previously approved rate, Southwestern's Administrator is proposing to extend the current Sam Rayburn Dam Project rate schedule. The schedule is to be effective for the one-year period beginning October 1, 2012, and extending through September 30, 2013.

Opportunity is presented for Southwestern's customers and other interested parties to receive copies of the study data for the Sam Rayburn Dam Project. If you desire a copy of the repayment study data package for the Sam Rayburn Dam Project, submit your request to the Director, Division of Resources and Rates, Office of Corporate Operations, Southwestern Power Administration, One West Third, Tulsa, OK 74103, (918) 595–6680 or via email to *swparates@swpa.gov.*

Following review and consideration of the written comments, Southwestern will submit a rate action proposal for the Sam Rayburn Dam Project to the Deputy Secretary of Energy for confirmation and approval.

Dated: August 9, 2012.

James K. McDonald,

Assistant Administrator.

[FR Doc. 2012–20490 Filed 8–20–12; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0707; FRL 9521–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Data Reporting Requirements for State and Local Vehicle Emission Inspection and Maintenance (I/M) Programs (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 20, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2008–0707 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, EPA West (Air Docket) 1200 Pennsylvania Avenue NW., Room B108; mail Code: 6102T, Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dave Sosnowski, Environmental Protection Agency, Office of Transportation and Air Quality, Transportation and Climate Division, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4823; fax number: 734–214–4052; email address: *sosnowski.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 5, 2012 (77 FR 13122), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 2 comments during the comment period, which are addressed in the supporting statement of this ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2008–0707, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Data Reporting Requirements for State and Local Vehicle Emission Inspection and Maintenance (I/M) Programs (Renewal).

ICR numbers: EPA ICR No. 1613.04, OMB Control No. 2060–0252.

ICR Status: This ICR is scheduled to expire on August 31, 2012. Under OMB

regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: To provide general oversight and support to state and local I/M programs, the Transportation and Climate Division (TCD), Office of Transportation and Air Quality, Office of Air and Radiation, U. S. Environmental Protection Agency, requires that state or local program management for both basic and enhanced I/M programs prepare and submit two varieties of reports to EPA. The first reporting requirement is the submittal of an annual report providing general program operating data and summary statistics, addressing the program's current design and coverage; a summary of testing data, enforcement program efforts, quality assurance and quality control efforts; and other miscellaneous information allowing for an assessment of the program's relative effectiveness. The second reporting requirement is a biennial report on any changes to the program over the two-year period and the impact of such changes, including any weaknesses discovered and corrections made or planned.

General program effectiveness is determined by the degree to which a program misses, meets, or exceeds the emission reductions committed to in the state's approved SIP, which, in turn, must meet or exceed the minimum emission reductions expected from the relevant performance standard, as promulgated under EPA's revisions to 40 CFR part 51, in response to requirements established in section 182 of the Clean Air Act Amendments of 1990. This information will be used by EPA to determine a program's progress toward meeting requirements under 40 CFR part 51, as well as to assess national trends in the area of basic and enhanced I/M programs and to provide background information in support of periodic site visits and evaluations.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 86 hours per response. 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 which have subsequently changed; 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Respondents/Affected Entities:

Estimated Number of Respondents: 28.

Frequency of response: Annual and Biennial.

Estimated Total Annual Hour Burden: 2,408 hours.

Estimated Total Annual Cost: $144,564. This includes an estimated burden cost of $144,564 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Changes in the Estimates: There is a decrease of 482 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to (1) a mathematical error discovered in the previous ICR renewal; and (2) a decrease in the number of respondents due to areas redesignating to attainment for the criteria pollutant(s) that triggered the original I/M program requirement and either dropping the program or converting the program to a maintenance measure.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–20507 Filed 8–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0500; FRL–9719–5]

Agency Information Collection Activities; Proposed Collection; Comment Request; Information Collection Activities Associated With EPA's ENERGY STAR Program in the Residential Sector; EPA ICR No. 2193.03

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on February 28, 2013. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 22, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0500, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mailcode 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0500. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Brian Ng, Energy Star Residential Branch, Mailcode 6202J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9162; fax number: (202) 343–2200; email address: *ng.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0500, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are home builders, modular and manufactured home plants, developers, verification organizations, lenders, energy efficiency program sponsors (e.g., national, regional, state, or local government entities, utilities), architects, home plan designers, retailers, contractors, and homeowners.

Title: Information Collection Activities Associated with EPA's ENERGY STAR Program in the Residential Sector.

ICR numbers: EPA ICR No. 2193.03, OMB Control No. 2060–0586.

ICR status: This ICR is currently scheduled to expire on February 28, 2013. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Improving energy efficiency is one of the easiest, fastest, and most cost-effective solutions for reducing greenhouse gas (GHG) emissions, which contribute to climate change. As one of our nation's important environmental challenges, climate change demands practical, proven solutions that can be implemented today to protect us tomorrow. Under the EPA's leadership many American consumers, businesses, and organizations have already taken action. Their investments in energy efficiency are transforming the market for efficient homes, products, buildings, and practices, creating jobs, and stimulating the economy.

The ENERGY STAR program has been instrumental in identifying cost-effective, innovative solutions for reducing GHG emissions since it was launched by EPA in 1992. This voluntary, market-based, public-private partnership program has boosted the adoption of energy-efficient products, homes, buildings, practices, and services through valuable partnerships, objective measurement tools, and consumer education. ENERGY STAR helps to dismantle barriers to widespread energy efficiency by serving as a trusted source of unbiased information that helps consumers and businesses make choices that are good for the environment and the economy.

Through 2011, nearly 20,000 organizations have partnered with EPA, improved efficiency, and realized

significant financial and environmental benefits. Americans, with the help of ENERGY STAR, prevented 210 million metric tons of GHG emissions in 2011 alone—equivalent to the annual emissions from 41 million vehicles—and reduced their utility bills by $23 billion.

EPA first developed energy efficiency guidelines for new homes in 1995. ENERGY STAR's existing homes effort was rolled out in 2000 to promote cost-effective upgrades in the existing homes market. Both of these efforts promote cost effective, whole house energy efficiency improvements that are independently verified by third parties. Through 2011 there have been more than 1.3 million ENERGY STAR certified new homes built in the U.S., and more than 50,000 existing homes have been improved through the whole house retrofit program, Home Performance with ENERGY STAR.

Since participation in the ENERGY STAR program is voluntary, organizations are not required to submit information to EPA. Information received to date has been submitted voluntarily to EPA and is not of a confidential nature. EPA has developed this ICR to obtain authorization to collect information from the public, including businesses, for the following activities:

ENERGY STAR Partnership and Related Activities: An organization interested in joining ENERGY STAR as a partner is asked to submit a partnership agreement establishing its commitment to ENERGY STAR. Partners agree to undertake efforts such as educating their staff and the public about their partnership with ENERGY STAR, developing and implementing a plan to improve energy performance in homes, and highlighting achievements utilizing the ENERGY STAR brand.

Evaluation: Partners and other program participants are asked to periodically submit information to EPA as needed to assist in evaluating ENERGY STAR's effectiveness in helping organizations promote energy efficiency in homes, to assess partners' level of interest and ability in promoting ENERGY STAR in the residential sector, and to determine the impact that ENERGY STAR has on residential energy use and the supply and demand for energy-efficient homes and home improvement products and services.

Periodic Reporting: Partners are asked to submit information to EPA periodically to assist EPA in tracking and measuring progress in building and promoting ENERGY STAR certified homes and installing and promoting energy-efficient improvements. This includes submitting quarterly updates on partners' level of activity in certifying new homes for the ENERGY STAR label and activity in improving the energy efficiency of existing homes under Home Performance with ENERGY STAR and ENERGY STAR's HVAC Quality Installation program.

ENERGY STAR Awards: Each year, partners are eligible for an ENERGY STAR award, which recognizes organizations demonstrating outstanding support in promoting ENERGY STAR. This award program provides partners public recognition and market differentiation. An application form is submitted to EPA by partners interested in being eligible for an award.

Burden Statement: The annual burden for joining ENERGY STAR and conducting related activities is estimated to range from about 1 to 40 hours per respondent. This includes time for preparing and submitting the Partnership Agreement and related information, if requested. However, the majority of this time is for verification organization partners to verify that site-built, modular, and manufactured homes meet specified energy efficiency standards. The annual burden for partner evaluations is estimated to be about 15 minutes per respondent. This includes time for responding to EPA's questions posed during a phone interview or other method. The annual burden for quarterly reporting is estimated to be about 75 hours per respondent. This includes time for submitting specified information to EPA on a quarterly basis. The annual burden for the annual awards is estimated to be about 13 hours per respondent. This includes time for preparing and submitting the application materials and, if requested, an annual report.

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 which have subsequently changed; 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 56,000.

Frequency of response: Once, quarterly, annually, and occasionally.

Estimated total annual burden hours: 180,958.

Estimated total annual costs: $10.9 million. This includes an estimated cost of approximately $10.9 million for labor and $17,000 for capital investment, operation and maintenance.

Are there changes in the estimates from the last approval?

The burden estimates presented in this notice are from the last approval. EPA is currently evaluating and updating these estimates as part of the ICR renewal process. EPA will discuss its updated estimates, as well as changes from the last approval, in the next **Federal Register** notice to be issued for this renewal.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 13, 2012.

Elizabeth Craig,

Director, Climate Protection Partnerships Division.

[FR Doc. 2012–20512 Filed 8–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2012–0187; FRL–9522–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; General Hazardous Waste Facility Standards (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document

announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 20, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2012–0187, to (1) EPA, either online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB, by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Norma Abdul-Malik, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–8753; fax number: 703–308–8617; email address: *abdul-malik.norma@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 5, 2012 (77 FR 20623), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment, which has been addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No EPA–HQ–RCRA–2012–0187, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at www.regulations.gov as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: General Hazardous Waste Facility Standards (Renewal).

ICR numbers: EPA ICR No. 1571.10, OMB Control No. 2050–0120.

ICR Status: This ICR is scheduled to expire on August 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the EPA develop standards for hazardous waste treatment, storage, and disposal facilities (TSDFs) as may be necessary to protect human health and the environment. Subsections 3004(a)(1), (3), (4), (5), and (6) specify that these standards include, but not be limited to, the following requirements:

- Maintaining records of all hazardous wastes identified or listed under subtitle C that are treated, stored, or disposed of, and the manner in which such wastes were treated, stored, or disposed of;
- Operating methods, techniques, and practices for treatment, storage, or disposal of hazardous waste;
- Location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;
- Contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste; and
- Maintaining or operating such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable.

The regulations implementing these requirements are codified in 40 CFR parts 264 and 265. The collection of this information enables EPA to properly determine whether owners/operators or hazardous waste treatment, storage, and disposal facilities meet the requirements of Section 3004(a) of RCRA.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 359 hours per response. The annual public reporting burden is estimated to average 293 hours per respondent, and the annual public recordkeeping burden is estimated to average 66 hours per respondent. 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 which have subsequently changed; 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.

Respondents/Affected Entities: Businesses and other for-profits, as well as State, Local, and Tribal governments.

Estimated Number of Respondents: 1,872.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 672,417 hours.

Estimated Total Annual Cost: $40,676,696 which includes $40,143,171 annualized labor costs and $533,525 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 94,036 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The reason for this increase is

the inclusion of State Agency hours in this renewal.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–20506 Filed 8–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2012–0227; FRL 9521–6]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request; Servicing of Motor Vehicle Air Conditioners (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Comments must be submitted on or before September 20, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2012–0227, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sally Hamlin, Stratospheric Protection Division, Office of Air and Radiation, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9711; fax number: (202) 343–2338; email address: *Hamlin.Sally@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 4, 2012 (77 FR 26544), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2012–0227, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Servicing of Motor Vehicle Air Conditioners (Renewal).

ICR numbers: EPA ICR No. 1617.07, OMB Control No. 2060–0247.

ICR Status: This ICR is scheduled to expire on August 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 609 of the Clean Air Act Amendments of 1990 (Act) provides general guidelines for motor vehicle air conditioning (MVAC) refrigerant handling and MVAC servicing. It states that ''no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner without properly using approved refrigerant recovery and/or recovery and recycling equipment (hereafter referred to as ''refrigerant handling equipment'') and no such person may perform such service unless such person has been properly trained and certified.''

In 1992, EPA developed regulations under section 609 (57 FR 31242) that were codified at 40 CFR part 82, subpart B. Descriptions of the recordkeeping and reporting requirements mandated by section 609 and delineated in the CFR are summarized below.

Approved Refrigerant Handling Equipment: In accordance with Section 609(b)(2)(A), 40 CFR 82.36 requires that refrigerant handling equipment be certified by EPA or independent standards testing organization.

Approved independent standards testing organizations: Section 609(b)(2)(A) of the Act requires independent laboratory testing of refrigerant handling equipment to be certified by EPA. Independent laboratories must submit an application. EPA does not anticipate that any new organizations will apply to EPA in the future to become approved independent standards testing organizations. Therefore, related annual hours and costs have been eliminated.

Technician training and certification: According to Section 609(b)(4) of the Act, automotive technicians are required to be trained and certified in the proper use of approved refrigerant handling equipment. Programs that perform technician training and certification activities must apply to the EPA for approval by submitting verification that its program meets EPA standards. The information requested is used by the EPA to guarantee a degree of uniformity in the testing programs for motor vehicle service technicians. The Agency requires that each approved technician certification program conducts periodic reviews and updates of test material, submitting a written summary of the review and program changes to EPA every two years.

Certification, reporting and recordkeeping: To facilitate enforcement under Section 609, EPA has developed several recordkeeping requirements. All required records must be retained on-site for a minimum of three years, unless otherwise indicated.

Section 609(c) of the Act states that by January 1, 1992, no person may service any motor vehicle air conditioner without being properly trained and certified, nor without using properly approved refrigerant handling equipment. To this end, 40 CFR 82.42(a) states that by January 1, 1993, each service provider must have submitted to EPA on a one-time basis a statement signed by the owner of the equipment or another responsible officer that provides the name of the equipment purchaser, the address of the service establishment where the equipment will be located, the manufacturer name, equipment model number, date of manufacture, and equipment serial number. The statement must also indicate that the equipment will be properly used in servicing motor vehicle air conditioners and that each individual authorized by the purchaser to perform service is property trained and certified. The information is used to verify compliance.

Any person who owns approved refrigerant handling equipment must maintain records of the name and address of any facility to which refrigerant is sent and must retain records demonstrating that all persons authorized to operate the equipment are currently certified technicians.

Finally, any person who sells or distributes a class I or class II refrigerant that is in a container of less than 20 pounds must verify that the purchaser is a properly trained and certified technician, unless the purchase of small containers is for resale only. In that case, the seller must obtain a written statement from the purchaser that the containers are for resale only, and must indicate the purchaser's name and business address. In all cases, the seller must display a sign where sales occur that states the certification requirements for purchasers.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average less than one hour per response. 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 which have subsequently changed; 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Affected Entities: Motor vehicle dealers, automobile parts stores, general automotive repair shops, and automotive repair shops not elsewhere classified.

Estimated Number of Potential Respondents: 52,614.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 4,523 hours.

Estimated Total Annual Costs: $208,307. This includes $208,307 in labor costs and no capital or operation and maintenance costs.

Changes in the Estimates: There is a decrease of 2,177 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. There are three reasons for this decrease in burden hours. Today, it is estimated that there are only 600 thousand R–12 MVACs on the road, or 80% less than in 2008. Therefore, to account for the decreased market for small containers of CFC–12 refrigerant, this ICR estimates that the number of purchases for resale only by uncertified purchasers of small cans will be 80% less than in 2008. The second reason for the burden hours decrease is that CFC–12 refrigerant sent off-site for reclamation to an approved refrigerant reclaimed by owners of refrigerant recycling equipment certified under 40 CFR 82.36(a) has decreased and is anticipated to continue decreasing due to the significant decline of CFC–12 vehicles on road. The third reason for the burden hours decreased is that there are less approved technician certification programs in business than in the previous ICR. However, EPA anticipates a slow increase of one organization approval per year as new alternative refrigerants become available and new businesses become interested in certifying technicians for MVAC servicing for consideration.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–20505 Filed 8–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL 9716–8]

California State Nonroad Engine Pollution Control Standards; California Nonroad Compression Ignition Engines—In-Use Fleets; Authorization Request; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted additional amendments to its emission standards for fleets that operate nonroad, diesel-fueled equipment with engines 25 horsepower (hp) and greater. EPA previously announced an opportunity for public hearing and written comment on CARB's initial request for an authorization of its original regulations (73 FR 58585 (October 7, 2008) and 73 FR 67509 (November 14, 2008)). EPA announced an additional opportunity for public hearing and written comment on certain CARB amendments to the original regulations (75 FR 11880 (March 12, 2010)). By this notice EPA is announcing a completely new public hearing and written comment period.

DATES: EPA has scheduled a public hearing on CARB's request on September 20, 2012, beginning at 10:00 a.m. The hearing will be held at 1310 L St. NW., Washington, DC 20005. Parties wishing to present oral testimony at the public hearing should provide written notification to David Dickinson at the address noted below. Should you have further questions regarding the hearing, please contact David Dickinson or you may consult the following Web site for any updates: *http://www.epa.gov/otaq/cafr.htm.* Any party may submit written comment by October 22, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0691, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2008–0691, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West

Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0691. 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 information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. 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 email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid 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 FURTHER INFORMATION CONTACT: David Dickinson, Compliance Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Telephone: (202) 343–9256, Fax: (202) 343–2804, email address: *Dickinson.David@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

Background and Discussion: Section 209(e)(1) of the Act addresses the permanent preemption of any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) of the Act requires the Administrator to grant California authorization to enforce state standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a regulation that sets forth, among other things, the criteria, as found in section 209(e)(2), by which EPA must consider any California authorization requests for new nonroad engines or vehicle emission standards (section 209(e) rules).[1]

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to emissions control of new engines not listed under section 209(e)(1). The section 209(e) rule and its codified regulations formally set forth the criteria, located in section 209(e)(2) of the Act, by which EPA must grant California authorization to enforce its new nonroad emission standards and they are as follows:

(a) The Administrator shall grant the authorization if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

(b) The authorization shall not be granted if the Administrator finds that:

(1) The determination of California is arbitrary and capricious;

(2) California does not need such California standards to meet compelling and extraordinary conditions; or

(3) California standards and accompanying enforcement procedures are not consistent with section 209.[2]

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement ''California standards and accompanying enforcement procedures are not consistent with section 209'' to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers.[3] In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from state regulation.[4] California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1).

Finally, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if he finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers of Federal preemption for motor vehicles have stated that State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification procedures.[5]

On August 8, 2008, CARB requested that EPA authorize California to enforce its In-Use Off-Road Diesel-Fueled Fleets regulation adopted at its July 26, 2007 public hearing (by Resolution 07–19) and subsequently modified after supplemental public comment by CARB's Executive Officer by the In-Use Regulation in Executive Order R–08–002 on April 4, 2008 (these regulations are codified at Title 13, California Code of Regulations sections 2449 through 2449.3). CARB's regulations require fleets that operate nonroad, diesel-fueled equipment with engines 25 hp

[1] Section 209(e)(1) states, in part: No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives.

EPA's regulation was published at 59 FR 36969 (July 20, 1994), and regulations set forth therein, 40 CFR part 85, Subpart Q, §§ 85.1601 et seq. A new rule, signed on September 4, 2008, moved these provisions to 40 CFR part 1074.

[2] See 40 CFR Part 85, Subpart Q, § 85.1605. Upon effectiveness of the new rule, these criteria will be codified at 40 CFR 1074.105.

[3] *See* 59 FR 36969, 36983 (July 20, 1994).

[4] *See* 40 CFR 1074.10, 1074.12.

[5] To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and the Federal requirement with the same test vehicle in the course of the same test. *See,* e.g.,43 FR 32182 (July 25, 1978).

and greater to meet fleet average emission standards for oxides of nitrogen and particulate matter. Alternatively, the regulations require the vehicles in those fleets to comply with best available control technology requirements. Based on this request EPA noticed and conducted a public hearing on October 27, 2008, and provided an opportunity to submit written comment through December 19, 2008.[6]

On February 11, 2010 CARB requested that EPA grant California authorization to enforce its In-Use Off-Road Diesel-Fueled Fleets regulation as amended in: December 2008 (and formally adopted in California on October 19, 2009); January 2009 (and formally adopted in California on December 31, 2009); and, a certain subset of amendments adopted by the CARB Board in July 2009 in response to California Assembly Bill 8 2X (and formally adopted on December 3, 2009). In CARB's February 11, 2010 request letter to EPA it also notes additional amendments adopted in July 2009 and not yet formally adopted by California's Office of Administrative Law. Once this last subset of amendments was formally adopted CARB planned to submit them to EPA for subsequent consideration. Based on CARB's February 11, 2010 request, EPA noticed and conducted a public hearing on April 14, 2010, and provided an opportunity to submit written comment through May 18, 2010.[7]

On March 1, 2012 CARB requested that EPA grant California authorization to enforce its In-Use Off-Road Diesel-Fueled Fleets regulation as most recently amended in December 2010 (and formally adopted in California on December 14, 2011).[8]

Based on CARB's March 1, 2012 request and its In-Use Off-Road Diesel-Fueled Fleets regulation, EPA invites comment on whether (a) CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

EPA is requiring that any entity that wishes EPA to consider either oral testimony or written comment provide such testimony or written comment in the context of today's **Federal Register** notice. Therefore, EPA will not be considering oral testimony or written comments based on the prior **Federal Register** notices, since CARB's December 2010 amendments are likely to affect many of these prior comments. To the extent any entity believes that its prior comments remain pertinent then EPA is requiring such comments be resubmitted or incorporated into new comments.

Procedures for Public Participation: In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are not adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as Confidential Business Information (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the pubic docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: August 9, 2012.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2012–20495 Filed 8–20–12; 8:45 am]

BILLING CODE 6560–50–P

[6] 73 FR 58585 (October 7, 2008) and 73 FR 67509 (November 14, 2008).

[7] 75 FR 1180 (March 12, 2010).

[8] See EPA–HQ–OAR–2008–0691. CARB's December 2010 amendments include provisions that delay the original implementation dates of the regulation by requiring large fleets to comply with emission reduction requirements by January 1, 2014, medium fleets by January 1, 2017, and small fleets by January 1, 2019.

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9716–9]

California State Nonroad Engine Pollution Control Standards; In-Use Heavy-Duty Vehicles (As Applicable to Yard Trucks and Two-Engine Sweepers); Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Opportunity for Public Hearing and Comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted and subsequently amended emission standards applicable to yard trucks powered by off-road engines and the auxiliary engines on two-engine sweepers. By letter dated March 2, 2012, CARB submitted a request seeking EPA authorization of these standards under section 209(e) of the Clean Air Act (CAA), 42 U.S.C. 7543(e). This notice announces that EPA has tentatively scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on September 20, 2012 beginning at 10:00 a.m. The hearing will be held at 1310 L St NW., Washington, DC 20005. Parties wishing to present oral testimony at the public hearing should provide written notification to David Dickinson at the address noted below. Should you have further questions regarding the hearing, please contact David Dickinson or you may consult the following Web site for any updates: *http://www.epa.gov/otaq/cafr.htm*. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments by October 22, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0335, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax: (202) 566–1741.*
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2012–0335, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.

• *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0335. 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 information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. 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 email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid 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.*

Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the address noted below. If EPA receives a request for a public hearing, EPA will hold the public hearing at 1310 L St. NW., Washington, DC 20005 at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave NW., Washington, DC 20460. Telephone: (202) 343–9256, Fax: (202) 343–2804, email address: *Dickinson.David@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles.[1] For all other nonroad engines (including any engine that is no longer ''new''), States are preempted from adopting and enforcing standards and other requirements relating to the control of emissions, except that section 209(e)(2) of the Act requires EPA to grant California authorization to adopt and enforce such regulations unless EPA makes one of three specifically enumerated findings. In addition, other States with attainment plans may adopt and enforce such regulations if the standards, and implementation and enforcement, are identical to California's standards. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.[2] EPA revised these regulations in 1997.[3] As stated in the preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(iii) ''consistency'' inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[4]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

CARB has submitted to EPA, for authorization, its yard trucks powered by off-road engines and the auxiliary engines on two-engine sweepers provisions from its ''Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles'' (commonly referred to as the ''Truck and Bus Regulation'') initially adopted by CARB on December 11, 2008 and subsequently amended on September 19, 2011.[5] The Truck and Bus Regulation principally applies to non-new on-road motor vehicles, which is not the subject of this notice. The Truck and Bus Regulation also applies to any nonroad engines used to power yard trucks (which are principally used in off-road agricultural operations) and the

[1] States are expressly preempted from adopting or attempting to enforce any standard or other requirement relating to the control of emissions from new nonroad engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. Such express preemption under section 209(e)(1) of the Act also applies to new locomotives or new engines used in locomotives.

[2] 59 FR 36969 (July 20, 1994).

[3] *See* 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[4] *See* 59 FR 36969 (July 20, 1994).

[5] CARB did not submit the entire Truck and Bus Regulation to EPA for waiver or authorization consideration. The regulation is codified at Title 13, California Code of Regulations, section 2025.

auxiliary engine used to power the broom or vacuum functions on two-engine sweepers.[6]

As stated above, EPA is offering the opportunity for a public hearing, and requesting written comments on issues relevant to a full waiver analysis. Specifically, please provide comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

II. Procedures for Public Participation

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until October 22, 2012. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that he deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the great possible extent and label it as ''Confidential Business Information'' (CBI). If a person making comments want EPA to base its decision in part on a submission labeled CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information in not inadvertently place in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the pubic docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

[6] The definition of yard truck is at section 2025 and two-engine sweeper is defined at 2025(d)(58).

Dated: August 9, 2012.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2012–20499 Filed 8–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket Nos. V–2011–1, FRL9717–8]

Clean Air Act Operating Permit Program; Action on Petition for Objection to State Operating Permit for Georgia-Pacific Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on petition to object to Clean Air Act (Act) Title V operating permit.

SUMMARY: This document announces that the EPA Administrator has denied a petition from the Sierra Club, the Clean Water Action Council and the Midwest Environmental Defense Center asking EPA to object to a Title V operating permit issued by the Wisconsin Department of Natural Resources (WDNR) to Georgia-Pacific Consumer Products (Georgia-Pacific).

Sections 307(b) and 505(b)(2) of the Act provide that a petitioner may ask for judicial review of those portions of the petition which EPA denies in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final Order, the petition, and other supporting information at the EPA Region 5 Office, 77 West Jackson Boulevard, Chicago, Illinois 60604. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final Order for the Georgia-Pacific petition is available electronically at: *http://www.epa.gov/region7/air/title5/petitiondb/petitiondb.htm.*

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch, Air and Radiation Division, EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 353–4761.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and object, as appropriate, to Title V operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of the EPA review period to object to a Title V operating permit if EPA has not done so. A petition must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise issues during the comment period, or the grounds for the issues arose after this period.

On July 23, 2011, EPA received a petition from the Sierra Club, the Clean Water Action Council and the Midwest Environmental Defense Center (Petitioners) requesting that EPA object to the Title V operating permit for Georgia-Pacific. The Petitioners alleged that the permit is not in compliance with the requirements of the Act. Specifically, the Petitioners alleged that: (1) The permit lacks applicable prevention of significant deterioration (PSD) requirements because WDNR erroneously exempted as ''routine maintenance, repair, and replacement'' projects that resulted in a significant net emissions increase based on the applicable ''actual to potential'' emissions test; (2) the permit lacks applicable PSD and new source performance standard requirements that were triggered through non-exempt fuel switching and WDNR improperly deferred addressing this issue; and, (3) the permit lacks applicable requirements ensuring protection of air quality increments which apply pursuant to the Wisconsin state implementation plan and the PSD programs.

On July 23, 2012, the Administrator issued an Order denying the petition. The Order explains the reasons behind EPA's conclusion.

Dated: July 27, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–20519 Filed 8–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9719–3]

Good Neighbor Environmental Board Notification of Public Advisory Committee Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory Committee Teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Good Neighbor Environmental Board (GNEB) will hold a public teleconference on March 22, 2012 from 12 p.m. to 5 p.m. Eastern Standard Time. The meeting is open to the public. For further information regarding the teleconference and background materials, please contact Mark Joyce at the number listed below.

Background: GNEB is a federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92463. GNEB provides advice and recommendations to the President and Congress on environmental and infrastructure issues along the U.S. border with Mexico.

Purpose of Meeting: The purpose of this teleconference is to discuss the Good Neighbor Environmental Board's Fifteenth Report. The report will focus on water infrastructure issues in the U.S.-Mexico border region.

SUPPLEMENTARY INFORMATION: If you wish to make oral comments or submit written comments to the Board, please contact Mark Joyce at least five days prior to the meeting.

General Information: Additional information concerning the GNEB can be found on its Web site at *www.epa.gov/ofacmo/gneb.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at (202) 564–2130 or email at *joyce.mark@epa.gov.* To request accommodation of a disability, please contact Mark Joyce at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: August 8, 2012.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 2012–20520 Filed 8–20–12; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[FRL– 9717–1]

Science Advisory Board Staff Office Request for Nominations of Experts for the SAB Hydraulic Fracturing Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting public nominations for technical experts to form an SAB ad hoc panel to provide advice through the chartered SAB on EPA's research related to hydraulic fracturing.

DATES: Nominations should be submitted by September 11, 2012 per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Mr. Edward Hanlon, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2134; by fax at (202) 565–2098 or via email at *hanlon.edward@epa.gov.* General information concerning the EPA SAB can be found at the EPA SAB Web site at *http://www.epa.gov/sab.* Any inquiry regarding EPA's planned research efforts on the potential public health and environmental protection issues that may be associated with hydraulic fracturing should be directed to Ms. Cindy Roberts, EPA Office of Research and Development (ORD), at *roberts.cindy@epa.gov* or (202) 564–1999. Media inquiries regarding EPA's hydraulic fracturing research results should be directed to Dayna Gibbons, EPA ORD, at *gibbons.dayna@epa.gov* or (202) 564–7983.

SUPPLEMENTARY INFORMATION:

Background: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Over the past few years, the public has expressed concern regarding the potential environmental impacts of hydraulic fracturing. In response, Congress urged EPA to study the potential impacts of hydraulic fracturing on drinking water resources. In February 2011, EPA published its *Draft Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources.* The SAB reviewed this report and provided advice to the EPA Administrator (*SAB Review of EPA's Draft Hydraulic Fracturing Study Plan).* EPA–SAB–11–012, available on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/2BC3CD632FCC0E99852578E2006DF890/$File/EPA-SAB-11-012-unsigned.pdf*).

EPA ORD is currently developing a ''*Progress Report: Potential Impacts of Hydraulic Fracturing on Drinking Water Resources,*'' expected to be released in December 2012, which will describe the status of its research on the potential environmental and human health implications of hydraulic fracturing. EPA is seeking SAB advice on the status of the research described in its Progress Report. EPA plans to use such advice for the development of a report of results, estimated to be released in 2014, which will also be reviewed by the SAB. The SAB Staff Office is establishing an ad hoc advisory panel to provide such advice and review under the auspices of the SAB. In addition, this SAB Panel may also provide advice on other technical documents and issues related to hydraulic fracturing upon further request by EPA.

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists and engineers having experience and expertise related to hydraulic fracturing, including but not limited to the following disciplines or areas of experience: Natural gas and petroleum engineering and geology; natural gas and petroleum well drilling, completion, testing, and closure; hydrology/hydrogeology; groundwater and surface water fate/transport modeling; geochemistry and analytical chemistry; environmental monitoring; conducting laboratory and/or field-based research in hydraulic fracturing; human health effects and risk assessment; civil and environmental engineering; chemical engineering; drinking water and waste water treatment systems; water quality; and statistics.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above. Nominations should be submitted in electronic format (preferred over hard copy) following the instructions for ''Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed,'' *http://www.epa.gov/sab* provided on the SAB Web site. If you wish to nominate yourself or another expert, please follow the instructions that can be accessed through the ''Nomination of Experts'' link on the blue navigational bar at the SAB Web site *http://www.epa.gov/sab.* To *http://www.epa.gov/* receive full consideration, nominations should include all of the information requested below.

EPA's SAB Staff Office requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of

expertise of the nominee; the nominee's resume or curriculum vita; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations. The bio-sketches and resume or curriculum vita of nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be made available to the public upon request.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Mr. Edward Hanlon, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than September 11, 2012. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and bio-sketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the SAB Web site at *http://www.epa.gov/sab.* Public comments on this List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office a review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming this expert panel, the SAB Staff Office will consider public comments on the List of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) skills working in committees, subcommittees and advisory panels; and, (f) for the panel as a whole, diversity of expertise and viewpoints.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which includes membership on an EPA federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by federal regulation. The form may be viewed and downloaded from the following URL address *http://www.epa.gov/sab/pdf/epaform3110-48.pdf.*

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: August 10, 2012.

Thomas Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2012–20521 Filed 8–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9719–8]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address lawsuits filed by the Imperial County Air Pollution Control District and the California Department of Parks and Recreation (together, ''Petitioners'') in the United States Court of Appeals for the Ninth Circuit: *Imperial County Air Pollution Control District* v. *EPA,* No. 10–72709 (9th Cir.) and *California Department of Parks and Recreation* v. *EPA,* No. 10–72729 (9th Cir.). Petitioners filed petitions for review challenging EPA's final rule, approving in part and disapproving in part, a state implementation plan (''SIP'') submission made by the California Air Resources Board on behalf of the Imperial Valley Air Quality Control District. The SIP submission at issue included local pollution control measures intended to address emissions of PM_{10} from sources located within the Imperial Valley Planning Area referred to as Imperial County Air Pollution Control District Rules 800 through 806 (''Regulation VIII''). The proposed settlement agreement establishes deadlines for both the Imperial Valley Air Pollution Control District and EPA to take specified actions to resolve the lawsuits.

DATES: Written comments on the proposed settlement agreements must be received by September 20, 2012.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2012–0644, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–5601; fax number (202) 564–5603; email address: *wilcox.geoffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

The California Air Resources Board (''CARB''), on behalf of the Imperial Valley Air Polluton Control District (the ''District''), made a SIP submission to EPA containing Regulation VIII as a SIP revision intended to address emissions of PM_{10} from certain sources located within the Imperial Valley PM_{10} nonattainment area. EPA approved this submission in part, and disapproved it in part, based upon EPA's evaluation of

the submission itself and evaluation of related claims by the District that monitor data on certain days should be treated as ''exceptional events'' and thus excluded from regulatory determinations. 75 FR 39,366 (July 8, 2010). The District and the California Department of Parks and Recreation (''Parks'') challenged EPA's partial disapproval of the submission and EPA's related actions on the claimed exceptional events. These challenges were filed in the United States Court of Appeals for the Ninth Circuit (the ''Court'') in *Imperial County Air Pollution Control District* v. *EPA,* No. 10–72709 (9th Cir.) and *California Department of Parks and Recreation* v. *EPA,* No. 10–72729 (9th Cir.).

The Court heard oral argument on the consolidated challenges on February 15, 2012. On February 17, 2012, the Court issued an Order that referred the case to mediation and stayed further proceedings on the case pending such mediation. Thus, at the suggestion of the Court, EPA, the District, and Parks engaged in settlement discussions to determine whether the legal and factual disputes at issue in the litigation could be resolved through a settlement agreement. This notice describes and seeks comment on the proposed settlement agreement that the parties have negotiated.

The proposed settlement agreement establishes deadlines for both the District and EPA to take specified actions to resolve the litigation. The objective of the parties in the settlement agreement is to address the underlying legal and factual disputes in a way that will be more effective and efficient to achieve the overarching goals of meeting CAA requirements and improving air quality in the Imperial Valley PM_{10} nonattainment area. Thus, both the District and EPA propose to agree to take a series of actions by set deadlines that will result in a resolution of the legal and substantive concerns with Regulation VIII that were the basis for EPA's partial disapproval. In particular, the District and EPA propose to agree to take actions on an expedited schedule in order to assure that appropriate revisions to Regulation VIII are in place in the SIP quickly.

First, the proposed settlement agreement requires that within ninety (90) days of execution of the agreement, the District must revise Regulation VIII and submit it along with supporting documentation to the District's Governing Board. These revisions must be substantially the same as those set forth in Attachment B to the settlement agreement. Attachment B reflects revisions intended by the parties to resolve the legal and substantive concerns with Regulation VIII that were the basis for EPA's partial disapproval. It is understood that these revisions must still meet all local, state, and federal administrative process and substantive requirements before they are deemed to meet applicable requirements and could be incorporated into the SIP for the Imperial Valley PM_{10} nonattainment area.

Second, the proposed settlement agreement requires that within fourteen (14) days of the Governing Board's adoption of the revised Regulation VIII rules, the District must submit the revised Regulation VIII rules to CARB for expedited submittal to EPA for incorporation into the California SIP.

Third, the proposed settlement agreement requires that within sixty (60) days of submittal by CARB, EPA must sign for publication in the **Federal Register** a notice of proposed rulemaking that proposes taking action on the submission pursuant to CAA section 110(k), 42 U.S.C. 7410(k). If the revised Regulation VIII is substantially the same in substance as set forth in Attachment B, the notice to be signed by EPA must propose full approval of the submission pursuant to CAA sections 110(k) and 189(b)(1)(B), 42 U.S.C. 7410(k), 7513a(b)(1)(B).

Fourth, if EPA proposes full approval, then within the notice of proposed rulemaking EPA must make a statement that EPA's preliminary view is that the revised Regulation VIII will constitute ''reasonable control'' of the sources covered by Regulation VIII for the purpose of evaluating whether an exceedance of the PM_{10} NAAQS is an ''exceptional event'' including reasonable and appropriate control measures on significant contributing anthropogenic sources. This statement will not extend to exceedances of NAAQS other than the PM_{10} NAAQS, or to events that differ significantly in terms of meteorology, sources, or conditions from the events that were at issue in the litigation.

Fifth, if EPA proposes full approval of the revised Regulation VIII, EPA must also sign for publication in the **Federal Register** a notice making an interim final determination to defer imposition of sanctions pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(1) pending public comments on the proposed action.

Sixth, within sixty (60) days of the close of public comment on the proposed action, EPA must sign for publication in the **Federal Register** a notice of final rulemaking that takes final action on the submission containing the revised Regulation VIII pursuant to CAA section 110(k), 42 U.S.C. 7410(k). Thereafter, EPA must promptly deliver the notice of final rulemaking to the Office of Federal Register for review and publication.

The proposed settlement agreement also contains various provisions that will govern what may happen if either the District or EPA fails to meet the terms of the agreement.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if these comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CAA. Unless EPA or the Department of Justice determines that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2012–XXXX) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public

viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 14, 2012.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2012–20518 Filed 8–20–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2012–19772) published on page 48156 of the issue for Monday, August 13, 2012.

Under the Federal Reserve Bank of Minneapolis heading, the entry for MVC, Petroleum Inc., and William Coleman, both of Denver, Colorado; Eugene Nicholas, Cando, North Dakota; Timothy Dodd and Bradley Fey, both of Bismarck, North Dakota; Jeffrey Topp, Grace City, North Dakota; Janet Topp, Grace City, North Dakota; and Roger Kenner, Leeds, North Dakota; as a group acting in concert, is revised to read as follows:

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *MVC; Prairie Petroleum Inc., and William Coleman, both of Denver, Colorado; Eugene Nicholas, Cando, North Dakota; Timothy Dodd, Ottertail, Minnesota; and Bradley Fay, Bismarck, North Dakota; Jeffrey Topp, Grace City, North Dakota; Janet Topp, Grace City, North Dakota; and Roger Kenner, Leeds, North Dakota;* as a group acting in concert, to collectively acquire voting shares of BNCCORP, Inc., Bismarck, North Dakota, and thereby indirectly acquire voting shares of BNC National Bank, Glendale, Arizona.

Comments on this application must be received by August 28, 2012.

Board of Governors of the Federal Reserve System, August 16, 2012.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 2012–20453 Filed 8–20–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 122 3073]

Brain-Pad, Inc; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 17, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Brain-Pad, File No. 122 3073'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/brainpadconsent,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Victor DeFrancis (202–326–3495), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 16, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania

Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 17, 2012. Write ''Brain-Pad, File No. 122 3073'' on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other State identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/brainpadconsent* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Brain-Pad, File No. 122 3073'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 17, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Brain-Pad, Inc. and Joseph Manzo, an officer and director of the corporation (''respondents'').

The proposed consent order (''proposed order'') has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves respondents' advertising and promotion of mouthguards. According to the FTC complaint, respondents did not have a reasonable basis to represent in advertising and on packaging for their mouthguards that they reduced the risk of concussions. The FTC further alleges that the respondents made the false and misleading claim that they possessed scientific studies that proved their concussion-reduction risk claims because, in fact, they did not have such evidence.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the proposed respondents from misrepresenting that any product will reduce the risk of concussions or reduce the risk of concussions from lower jaw impacts.

Part II of the proposed order prohibits proposed respondents from misrepresenting, with respect to any Covered Product, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, including, but not limited to, any misrepresentation that scientific studies prove that such product reduces the risk of concussions or reduces the risk of concussions from lower jaw impacts. The proposed order defines ''Covered Product'' as any (1) mouthguard or (2) equipment used in athletic activities that is intended to protect the brain from injury.

Part III of the proposed order prohibits proposed respondents, in connection with the marketing of any Covered Product, from misrepresenting the health benefits, health-related performance, or health-related efficacy of such product.

Parts IV through VIII of the proposed order require respondents: To keep copies of any documents relating to any representation covered by the order; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; to notify the Commission of changes in corporate business or employment as to proposed respondent Joseph Manzo individually; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission, Commissioner Rosch dissenting.

Donald S. Clark,

Secretary.

[FR Doc. 2012–20513 Filed 8–20–12; 8:45 am]

BILLING CODE 6750–01–P

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Federal Agency Responses to Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) Recommendations on the Usefulness and Limitations of the LUMI-CELL® ER (BG1Luc ER TA) Test Method, An In Vitro Assay for Identifying Human Estrogen Receptor Agonist and Antagonist Activity of Chemicals

AGENCY: Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), HHS.

ACTION: Availability of Agency Responses.

SUMMARY: The NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) announces availability of U.S. Federal agency responses to ICCVAM test method recommendations on the usefulness and limitations of the LUMI-CELL® ER (BG1Luc ER TA) test method to identify human estrogen receptor (ER) agonist and antagonist activity of chemicals. ICCVAM forwarded the recommendations to Federal agencies and made these recommendations available to the public (77 FR 8258). ICCVAM agencies responded with their concurrence on the technical aspects of the BG1Luc ER transcriptional activation (TA) test method recommendations and their agreement that the ICCVAM BG1Luc ER TA test method is a validated screening test to identify substances with *in vitro* ER agonist activity or ER antagonist activity. The U.S. Environmental Protection Agency (EPA) responded that they regard the BG1Luc ER TA test method as an alternative to the Office of Chemical Safety and Pollution Prevention (OCSPP) 890.1300 (Organization for Economic Co-operation and Development [OECD] TG455) test guideline for transcriptional activation currently used in their Endocrine Disruptor Screening Program (EDSP). Several agencies also indicated that they would communicate the ICCVAM recommendations to stakeholders and encourage their appropriate use. Complete Federal agency responses are available at *http://iccvam.niehs.nih.gov/methods/endocrine/end_eval.htm.* The ICCVAM recommendations are provided in the ICCVAM test method evaluation report (ICCVAM, 2011), available at: *http://iccvam.niehs.nih.gov/methods/endocrine/ERTA-TMER.htm.*

FOR FURTHER INFORMATION CONTACT: Dr. Warren M. Casey, Deputy Director, NICEATM, NIEHS, P.O. Box 12233, Mail Stop: K2–16, Research Triangle Park, NC 27709, (telephone) 919–316–4729, (fax) 919–541–0947, (email) *niceatm@niehs.nih.gov.* Courier address: NICEATM, NIEHS, Room 2032, 530 Davis Drive, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background

In 2002, ICCVAM evaluated the validation status of *in vitro* ER and androgen receptor (AR) binding and TA test methods for potential use in the EPA EDSP. The evaluation indicated that no *in vitro* ER- or AR-based test methods were adequately validated for this purpose. In response to an ICCVAM request for nominations, Xenobiotic Detection Systems, Inc. (XDS, Durham, NC) nominated the *in vitro* LUMI-CELL® ER (BG1Luc ER TA) test method for an interlaboratory validation study. ICCVAM and the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) recommended that the nominated method should be considered a high priority based on the lack of adequately validated test methods and the regulatory and public health need for such test methods. NICEATM led the international validation study with its partners in Japan (JaCVAM) and Europe (ECVAM), using laboratories sponsored by each validation organization. ICCVAM also proposed the development of BG1Luc ER TA test method performance standards.

Following completion of the validation study, the ICCVAM Interagency Endocrine Disruptor Working Group, working with NICEATM, prepared a draft background review document (BRD) and draft recommendations for use of the BG1Luc ER TA test method.

The draft BRD and draft ICCVAM recommendations were reviewed in a public meeting (76 FR 4113) of an international independent scientific peer review panel in March 2011. The peer review panel agreed with the draft ICCVAM recommendations that the BG1Luc ER TA test method could be used as a screening test to identify substances with *in vitro* ER agonist activity or ER antagonist activity and that the accuracy of this assay is at least equivalent to that of EPA OCSPP 890.1300, part of the EDSP Tier 1 screening battery.

The final ICCVAM recommendations are included in the *ICCVAM Test Method Evaluation Report: The LUMI-CELL® ER (BG1Luc ER TA) Test Method, An In Vitro Assay for Identifying Human Estrogen Receptor Agonist and Antagonist Activity of Chemicals* (NIH Publication No. 11–7850). The test method evaluation report also includes the updated ICCVAM-recommended BG1Luc ER TA test method protocol and performance standards that are applicable to functionally and mechanistically similar test methods. The final BRD, including the data and analyses on which the recommendations are based, is included as an appendix to the test method evaluation report.

Agency Responses to ICCVAM Recommendations

In February 2012, ICCVAM forwarded final test method recommendations on the BG1Luc ER TA test method to U.S. Federal agencies for consideration (77 FR 8258), in accordance with the ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3). The ICCVAM Authorization Act requires member agencies to review ICCVAM test method recommendations and notify ICCVAM in writing of their findings no later than 180 days after receipt of recommendations. The Act also requires ICCVAM to make ICCVAM recommendations and agency responses available to the public. Agency responses are to include identification of relevant test methods for which the ICCVAM test method recommendations may be added or substituted and indicate any revisions or planned revisions to existing guidelines, guidances, or regulations to be made in response to these recommendations.

ICCVAM agencies responded with their concurrence on the technical aspects of the BG1Luc ER TA test method recommendation and their agreement that the ICCVAM BG1Luc ER TA test method is a validated screening test to identify substances with *in vitro* ER agonist activity or ER antagonist activity. The EPA responded that they regard the BG1Luc ER TA test method as an alternative to the OCSPP 890.1300 test guideline for transcriptional activation currently used in their EDSP. Several agencies also indicated that they would communicate the ICCVAM recommendations to stakeholders and encourage their appropriate use. Complete agency responses are available at *http://iccvam.niehs.nih.gov/methods/endocrine/end_eval.htm.*

Background Information on ICCVAM, NICEATM, and SACATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety

testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological and safety-testing methods that more accurately assess the safety and hazards of chemicals and products and that reduce, refine (enhance animal welfare and lessen or avoid unrelieved pain and distress), or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts independent validation studies to assess the usefulness and limitations of new, revised, and alternative test methods and strategies. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods and strategies applicable to the needs of U.S. Federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies applicable to the needs of Federal agencies. Additional information about NICEATM and ICCVAM can be found on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov*).

SACATM was established in response to the ICCVAM Authorization Act (42 U.S.C. 285*l*–3) and is composed of scientists from the public and private sectors. SACATM advises ICCVAM, NICEATM, and the Director of the NIEHS and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM. SACATM provides advice on priorities and activities related to the development, validation, scientific review, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167.*

References

ICCVAM. 2011. ICCVAM Test Method Evaluation Report: The LUMI–CELL® ER (BG1Luc ER TA) Test Method: An *In Vitro* Assay for Identifying Human Estrogen Receptor Agonist and Antagonist Activity of Chemicals. NIH Publication No. 11–7850. Research Triangle Park, NC: NIEHS. Available: *http://iccvam.niehs.nih.gov/methods/endocrine/ERTA-TMER.htm.*

Dated: August 13, 2012.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2012–20549 Filed 8–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: General notice.

SUMMARY: In this notice, the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces fees for vessel sanitation inspections for Fiscal Year (FY) 2013. These inspections are conducted by HHS/CDC's Vessel Sanitation Program (VSP). VSP helps the cruise line industry fulfill its responsibility for developing and implementing comprehensive sanitation programs to minimize the risk for acute gastroenteritis. Every vessel that has a foreign itinerary and carries 13 or more passengers is subject to twice-yearly inspections and, when necessary, re-inspection.

DATES: These fees are effective October 1, 2012 through September 30, 2013.

FOR FURTHER INFORMATION CONTACT: CAPT Jaret T. Ames, Chief, Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway NE., MS–F–59, Atlanta, Georgia 30341–3717, phone: 800–323–2132 or 954–356–6650, email: *vsp@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose and Background

HHS/CDC established the Vessel Sanitation Program (VSP) in the 1970s as a cooperative activity with the cruise ship industry. VSP helps the cruise ship industry prevent and control the introduction, transmission, and spread of gastrointestinal illnesses on cruise ships. VSP operates under the authority of the Public Health Service Act (42 U.S.C. 264, ''Control of Communicable Diseases''). Regulations found at 42 CFR 71.41 (Foreign Quarantine—Requirements Upon Arrival at U.S. Ports: Sanitary Inspection; General Provisions) state that carriers arriving at U.S. ports from foreign areas are subject to sanitary inspections to determine whether rodent, insect, or other vermin infestations exist, contaminated food or water, or other sanitary conditions requiring measures for the prevention of the introduction, transmission, or spread of communicable diseases are present.

The fee schedule for sanitation inspections of passenger cruise ships by VSP was first published in the **Federal Register** on November 24, 1987 (52 FR 45019). HHS/CDC began collecting fees on March 1, 1988. This notice announces fees that are effective for FY 2013, beginning on October 1, 2012 through September 30, 2013.

The following formula is used to determine the fees:

$$\text{Average cost per inspection} = \frac{\text{Total cost of VSP}}{\text{Weighted number of annual inspections}}$$

The average cost per inspection is multiplied by size and cost factors to determine the fee for vessels in each size category. The size and cost factors were established in the fee schedule published in the **Federal Register** on July 17, 1987 (52 FR 27060). The fee schedule was most recently published in the **Federal Register** on March 2, 2012 (77 FR 12843). The current size and cost factors are presented in Appendix A.

Fee

The fee schedule (Appendix A) will be effective October 1, 2012 through September 30, 2013. The fee schedule has not changed since October 1, 2006. The cruise ship industry should be aware that if travel expenses for VSP increase, the fees may need to be adjusted before September 30, 2013; travel expenses constitute a sizable portion of VSP's costs. If a fee adjustment is necessary, HHS/CDC will publish a notice 30 days before the effective date.

Applicability

The fees will apply to all passenger cruise vessels for which inspections are conducted as part of HHS/CDC's VSP.

Dated: August 14, 2012.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

Appendix A

SIZE/COST FACTOR

Vessel size	GRT [1]	Approximate cost per GRT (in U.S. dollars)
Extra Small	<3,001	0.25
Small	3,001–15,000	0.50
Medium	15,001–30,000	1.00
Large	30,001–60,000	1.50
Extra Large	60,000–120,000	2.00
Mega	>120,001	3.00

FEE SCHEDULE

Vessel size	GRT [1]	Fee (in U.S. dollars)
Extra Small	<3,000	1,300
Small	3,001–15,000	2,600
Medium	15,001–30,000	5,200
Large	30,001–60,000	7,800
Extra Large	60,001–120,000	10,400
Mega	>120,001	15,600

[1] Gross register tonnage in cubic feet, as shown in Lloyd's Register of Shipping. Inspections and re-inspections involve the same procedures, require the same amount of time, and are therefore charged at the same rates.

[FR Doc. 2012–20483 Filed 8–20–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Announcement of Requirements and Registration for Dare To Prepare (D2P) Challenge

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

Award Approving Official: Thomas R. Frieden, M.D., M.P.H., Director, Centers for Disease Control and Prevention, and Administrator, Agency for Toxic Substances and Disease Registry.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) announces challenge contests to improve nationwide preparedness awareness and readiness. HHS/CDC will use social media outlets (blog, Twitter, Facebook) to engage citizens with daily challenges during the month of September 2012. Participants will complete challenges by doing activities, assessing their preparedness needs, and creatively sharing solutions. The challenges will be posted each weekday throughout the month of September. There will be a total of 20 challenges.

DATES: The contest will be held daily (Monday through Friday) September 3–October 1, 2012 with a different challenge each day. Interested persons should consult the contest Web site (*http://www.cdc.gov/phpr/daretoprepare.htm*) for specific submission deadlines.

FOR FURTHER INFORMATION CONTACT: Caitlin Shockley, Office of Public Health Preparedness and Response, Centers for Disease Control and Prevention, 1600 Clifton Road, M.S. D–44, Atlanta, Georgia 30329. Phone (404) 639–7405; email *PHPRCommunications@cdc.gov.*

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity:

(1) Shall be at least 13 years old at the time of entry, and any individual under 18 years of age at the time of entry must have permission from a parent or guardian;

(2) Shall be a citizen or permanent resident of the United States;

(3) Shall comply with all rules set forth herein;

(4) You must use a consistent username throughout the challenge for your submissions to be counted;

(5) Must limit their entry to one per individual or entity per task;

(6) Must submit entries before each challenge submission time period closes;

(7) By submitting a challenge response, participants agree to participate in the competition under the rules developed by Centers for Disease Control and Prevention;

(8) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(9) May not be a Federal entity or Federal employee acting within the scope of their employment.

(10) Shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Registration Process for Participants

This challenge will be internet-based using a variety of social media platforms, including Facebook (*http://www.facebook.com/#!/cdcemergency*); Twitter (*https://twitter.com/#!/CDCReady/*), and the HHS/CDC Public Health Preparedness and Response Web site (*http://www.cdc.gov/phpr/daretoprepare.htm*). The challenge

period will begin September 3, 2012 and will close October 1, 2012.

On each weekday in September, CDC will post a daily challenge that must be completed within 24 hours. On Fridays, challenges will be tougher and the challenge period will be extended to 72 hours. There will be a total of 20 challenges in the month of September.

This contest does not require formal registration. Challenge answers will be submitted through a form on the challenge Web site (*http://www.cdc.gov/phpr/daretoprepare.htm*). The form will ask for basic participant information and will provide an answer text box or photo upload option, depending on the challenge. Participants will enter their name and email each day when submitting a challenge answer.

At the close of each daily challenge, the form will be disabled as the next challenge is posted. This will be a continual process for all 20 challenge prompts.

Amount of the Prize

Prizes for the Dare to Prepare Challenge have been donated. The following prize items are the anticipated prizes and may be subject to change. CDC's (and the Federal Government's) legal obligation extends only to the payment of any Federal share of the prize, and that the private source is therefore liable for the payment of its share of the prize.

Prizes will be as follows:

1st Prize: Zombie Experience Prize Pack (estimated value: $500)

—Likeness in CDC's *Preparedness 101: Zombie Pandemic* animated novella
—Autographed copy of Max Brooks' *World War Z*
—*The Walking Dead,* Season 2
—Zombie prize pack (includes zombie task force shirt, novella, magnet, preparedness checklist, poster, zombie bag)

2nd Prize: Zombie Plus Prize Pack (Estimated Value $100)

—Autographed copy of Max Brooks' *World War Z*
—*The Walking Dead,* Season 2
—Zombie prize pack (includes zombie task force shirt, novella, magnet, preparedness checklist, poster, zombie bag)

3rd Prize: Zombie Prize Pack (Estimated Value $25)

—Zombie prize pack (includes zombie task force shirt, novella, magnet, preparedness checklist, poster, zombie bag)

Payment of the Prize

Prizes awarded under this competition will be mailed to winners and may be subject to Federal income taxes. HHS will comply with the Internal Revenue Service withholding and reporting requirements, where applicable. Winners who receive prizes are subject to any applicable Federal income taxes and to withholding.

Basis Upon Which Winner Will Be Selected

Winners will be selected according to a point-based system. Point value has been assigned to each challenge based on level of difficulty. Incorrect responses will not be awarded points. At the end of the month-long contest, the 3 Contestants who have accumulated the 1st, 2nd, and, 3rd most points will be awarded 1st, 2nd, and 3rd prize, respectively.

In the event multiple Contestants achieve the same high score, the winner will be chosen in a random drawing.

Winners will be announced on October 5, 2012 through the challenge Web site (*http://www.cdc.gov/phpr/daretoprepare.htm*) and Twitter/Facebook channels. Winners will be contacted via the email address provided on challenge submission forms.

Additional Information

Specific guidelines applicants/contestants must follow when submitting their contest entry.

(1) Challenge answers will be submitted through a form on the challenge blog. The form will ask for basic participant information and will provide an answer text box or photo upload option, depending on the challenge.

(2) Points will be awarded based on the correct completion of the task according to the daily challenge task.

(3) At the close of each daily challenge, the form will be disabled as the next challenge is posted. This will be a continual process for all 20 challenge prompts.

(4) Contestants must use a consistent username and email address throughout the challenge for submissions to be counted.

(5) Limited to one entry per person per task.

(6) All submissions must be in English.

(7) Entries must be submitted before each task closes.

(8) All photos must be original content created for this contest. Do not submit a photo that has been submitted elsewhere or previously displayed publicly through any means.

(9) Daily challenge answers must be submitted through the appropriate form available for that day's challenge at *http://www.cdc.gov/phpr/daretoprepare.htm.*

(10) Challenge responses (text or photos) should not include endorsements (names, logos, or slogans), direct or implied, of products, services, or enterprises.

(11) Answers (text or photos) containing profane language, violence or weapons, sexually explicit content, or personal attacks on people or named organizations will result in elimination of the Contestant from the challenge.

(12) Answers (text or photos) containing material that is obscene, offensive, or slanderous will result in elimination of the Contestant from the challenge.

(13) Answers (text or photos) containing material that promotes bigotry, racism, or harm against any group or individual or promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age will result in the elimination of the Contestant from the challenge.

(14) Upon submission, each Contestant warrants that he or she is the sole author and owner of the text/photo submitted; that the submission is wholly original with the Contestant; and that it does not infringe on any copyright or any other rights of any third party of which Contestant is aware.

(15) Contestant warrants and represents that its entry does not contain any viruses, spyware, malware, or other software that could cause harm or damage to government information systems.

(16) Winners who receive prizes are subject to any applicable Federal income taxes and to withholding.

Intellectual Property Rights

HHS/CDC will collect personal information from contestants when they submit each daily challenge. Name information will be requested for each challenge, but further information will not be requested unless the participant is declared a winner. None of the privately submitted information will be used in HHS/CDC or HHS/CDC-affiliated programs without the prior consent of the contestant.

Except where prohibited, participation in the Contest constitutes the winner's consent to use of the winner's name, likeness, photograph, voice, opinions, and/or hometown and state information by the contest's sponsors and/or agents for promotional public health purposes in any media,

worldwide, without further payment or consideration.

HHS/CDC claims an irrevocable, royalty-free, non-exclusive worldwide license to use, copy for use, distribute, display publicly, create derivative works, and license others to do so for the purpose of the Dare to Prepare challenge and/or for the purpose of raising awareness for preparedness.

Compliance With Rules and Contacting Contest Winners

Finalists and the Contest Winners must comply with all terms and conditions of these Official Rules. Winning is contingent upon fulfilling all requirements herein. The finalists will be notified by email after points have been totaled and winners determined. Awards may be subject to Federal income taxes, and the Department of Health and Human Services will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

Privacy

When Contestants provide HHS/CDC with personal information by registering or filling out the submission form through the Challenge.gov Web site, that information is used to respond to Contestants in matters regarding their submission, announcements of entrants, finalists, and winners of the Contest. Information is not collected for commercial marketing. Winners are permitted to cite that they won this contest.

Liability

The Contestant/Submitter agrees to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property (including any damage that may result from a virus, malware, etc. to HHS/CDC systems utilized to upload photos), revenue, or profits, whether direct, indirect, or consequential, arising from their participation in the competition, whether the injury, death, damage, or loss arises through negligence or otherwise. The Contestant/Submitter shall be liable for, and shall indemnify and hold harmless the Government against, all actions or claims for any claim, demand, judgment, or other allegation arising from alleged violation of an individual's trademark, copyright, or other legally protected interest in videos submitted to CDC.

Insurance

Contestants must obtain liability insurance or demonstrate financial responsibility in the amount of $0 for claims by: (1) A third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition, with the Federal Government named as an additional insured under the registered contestant's insurance policy and registered contestants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities; and (2) the Federal Government for damage or loss to Government property resulting from such an activity. Contestants who are a group must obtain insurance or demonstrate financial responsibility for all members of the group.

General Conditions

HHS/CDC reserves the right to cancel, suspend, and/or modify the Contest, or any part of it, for any reason, at HHS/CDC's sole discretion.

Participation in this Contest constitutes a contestants' full and unconditional agreement to abide by the Contest's Official Rules found at *www.Challenge.gov.*

Authority: 15 U.S.C. 3719.

Dated: August 14, 2012.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2012–20485 Filed 8–20–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0891]

Post-Approval Studies 2012 Workshop: Design, Methodology, and Role in Evidence Appraisal Throughout the Total Product Life Cycle; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Post-Approval Studies 2012 Workshop: Design, Methodology, and Role in Evidence Appraisal Throughout the Total Product Life Cycle.'' The topics of discussion will include lessons learned from previous experiences with post-approval studies, improvement of implementation strategies for post-approval studies, best practices, and innovative methodologies for evidence appraisal.

Date and Time: The public workshop will be held on August 30, 2012, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Contact Persons: Nilsa Loyo-Berrios, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3214, Silver Spring, MD 20993, 301–796–8528, email: *Nilsa.Loyo-Berrios @fda.hhs.gov* or Danica Marinac-Dabic, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4110, Silver Spring, MD 20993, 301–796–6689, email: *Danica.Marinac-Dabic@fda.hhs.gov.*

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by 5 p.m. on August 23, 2012. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. Onsite registration will not be available on the day of the public workshop.

If you need special accommodations due to a disability, please contact Cindy Garris, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg., 66, Rm. 4321, Silver Spring, MD 20993, 301–796–5861, email: *Cynthia.garris@fda.hhs.gov.*

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email,

and telephone number. Those without Internet access should contact Nilsa Loyo-Berrios to register (see *Contact Persons*). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by 5 p.m. on August 28, 2012. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Web cast participants will be sent technical system requirements after registration and will be sent connection access information after August 23, 2012. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Comments: FDA is holding this public workshop to provide an update and obtain stakeholders input on post-approval studies ordered at the time of device approval. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public workshop topics. The deadline for submitting comments related to this public workshop is September 30, 2012.

Regardless of attendance at the public workshop, interested persons may submit either written comments regarding this document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II of this document, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (Select this public workshop from the posted events list).

SUPPLEMENTARY INFORMATION:

I. Background

Post-approval studies (PAS) are imposed as conditions of approval for some class III devices regulated under premarket approval (PMA) regulations and are an important public health tool for developing additional evidence on device performance in the postmarket setting. In order for PAS to be most effective, studies must be well-designed, scientifically sound, meaningful and feasible, and must provide complete and timely information. PMA conditions of approval studies are constructed to ask for specific, detailed data in a subsequent PAS relating to unanswered questions in premarket data. However, there are often opportunities for leveraging the design and conduct of PAS, enhancing its utility to other important stakeholders. In addition to the direct role of PMA holders, the role of other public health partners is expanding, as evidenced by a number of efforts external to CDRH that are directly or indirectly involved in collecting and analyzing data relevant to estimating medical device use and risk and in communicating risk to target populations. To ensure a successful PAS program, CDRH, regulated industry, clinical researchers, and other stakeholders must remain well-informed and engaged in continuous dialogue regarding the design, implementation, reporting, and use of PAS and the resultant data. Further, it is the Center's desire to ensure this dialogue results in studies that maximize the public health impact by producing data that is informative to a range of stakeholders.

II. Topics for Discussion at the Public Workshop

We intend to discuss a large number of issues at the workshop, including, but not limited to the following: (1) PAS within the Total Product Life Cycle, (2) best practices and improvement of PAS implementation strategies, (3) PAS impact on public health and medical device innovation, and (4) opportunities for innovative uses of PAS data.

Dated: August 15, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–20469 Filed 8–20–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Translational Research.

Date: September 19, 2012.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Diabetes Ancillary Studies.

Date: October 10, 2012.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: D.G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard,

Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 15, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20560 Filed 8–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel; MSM Program Review.

Date: September 21, 2012.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Suite 951, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging, And Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3397, *sukharem@mail.nih.gov.*

Dated: August 15, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20557 Filed 8–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with 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.

Name of Committee: Recombinant DNA Advisory Committee.

Date: September 12, 2012.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will discuss selected human gene transfer protocols. Please view the meeting agenda at *http://oba.od.nih.gov/rdna_rac/rac_meetings.html* for more information.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Chezelle George, Office of Biotechnology Activities, Office of Science Policy/OD, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *georgec@od.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.

OBA will again offer those members of the public viewing the meeting via webcast (see OBA Meetings Page available at the following URL: *http://oba.od.nih.gov/rdna_rac/rac_meetings.html*) to submit comments during the public comment periods. Individuals wishing to submit comments should use the comment form, which will accommodate comments up to 1500 characters, and will be available on the OBA web site during the meeting (see OBA Meetings Page). Please limit your comment to a statement that can be read in one to two minutes. Please include your name and affiliation with your comment. Only comments submitted through the OBA Web site will be read.

OBA will read comments into the record during the public comment periods as stated on the agenda. It is not unusual for the meeting to run ahead or behind schedule due to changes in the time needed to review a protocol. It is advisable to monitor the webcast to determine when public comments will be read. Each public comment period follows a specific discussion item. OBA will read comments that are related to the protocol or presentation under discussion at that time. General comments unrelated to a specific agenda item will be read at the end of the meeting, time permitting. Comments submitted by email through the OBA Web site will follow any comments by individuals attending the meeting. Comments will be read in the order received and your name and affiliation will be read with the comments. Please note OBA may not be able to read every comment received in the time allotted for public comment. Comments not read will become part of the public record.

Information is also available on the Institute's/Center's home page: *http://oba.od.nih.gov/rdna/rdna.html,* where an agenda and any additional information for the meeting will be posted when available. OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: August 14, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20556 Filed 8–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meetings

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 Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with 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 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/or contract Proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: September 10–11, 2012.

Closed: September 10, 2012, 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals..

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Room B2C03, Bethesda, MD 20892.

Open: September 11, 2012 9:00 a.m. to 3:00 p.m.

Agenda: Discussions will focus on two regional initiatives undertaken by FIC: Enhanced cooperation with the Middle East and North Africa; and current and emerging priorities for the Medical Education Partnership Initiative with Sub-Saharan Africa.

Place: National Institutes of Health, Lawton L. Chiles International House, Bethesda, MD 20892.

Contact Person: Robert Eiss, Public Health Advisor, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892, (301) 496–1415, *eissr@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 photo 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: *www.nih.gov/fic/about/advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health HHS)

Dated: August 15, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20553 Filed 8–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuroimmunity, brain tumors, obesity in aging.

Date: September 6, 2012.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C. Edwards, Ph.D., IRG Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Clinical and Experimental Hematology.

Date: September 18–19, 2012.

Time: 11:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6183, MSC 7804, Bethesda, MD 20892, 301–495–1213, *espinozala@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Aging, Diet and Differentiation.

Date: September 19, 2012.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Raya Mandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Genetics and Epigenetics.

Date: September 19, 2012.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–435–4511, *ronald.adkins@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 15, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20434 Filed 8–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Maximizing Scientific Return on the Women's Health Initiative Biological Resource.

Date: September 7, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 8, Bethesda, MD 20892.

Contact Person: William J Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 15, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20433 Filed 8–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with 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 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 Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 12, 2012.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: September 12, 2012.

Open: 1:00 p.m. to 2:15 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Closed: 2:15 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Diabetes, Endocrinology and Metabolic Diseases Subcommittee.

Date: September 12, 2012.

Open: 1:00 p.m. to 2:15 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 2:15 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Digestive Diseases and Nutrition Subcommittee.

Date: September 12, 2012.

Open: 1:00 p.m. to 2:15 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Closed: 2:15 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.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 photo 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: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 15, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20558 Filed 8–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services (CMHS); Amendment of Meeting

Pursuant to Public Law 92–463, notice is hereby given of an amendment of meeting agenda, date change, and participant link change for the Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services National Advisory Council (CMHS NAC).

Public notice was published in the **Federal Register** on August 3, 2012, Volume 77, Number 150, page 46444 announcing that the CMHS National Advisory Council would be convening on August 24, 2012 at 1 Choke Cherry Road, Rockville, MD. The discussion and evaluation of grant applications will be added to the agenda. Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, § 10(d). Participants can join the event directly at *https://www.mymeetings.com/ss/r.php?c=9819021&h=e&i=123115900816436.* For additional information, contact the CMHS National Advisory Council, Acting Designated Federal Official, Crystal C. Saunders, 1 Choke Cherry Road, Room 6–1063, Rockville, MD 20857, telephone number 240–276–1117, fax number 240–276–1395 and email *crystal.saunders@samhsa.hhs.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.

Summer King,

Statistician.

[FR Doc. 2012–20466 Filed 8–20–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0008]

Agency Information Collection Activities: Forms G–325, G–325A, G–325B, and G–325C; Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Forms G–325, G–325A, G–325B, and G–325C, Biographic Information.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on June 13, 2012, at 77 FR 35418, allowing for a 60-day public comment period. USCIS received a comment in connection with that information collection notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 2012. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the OMB USCIS Desk Officer. Comments may be submitted to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov,* to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov* and via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2005–0024. When submitting comments by email, please make sure to add 1615–0008 in the subject box.

All submissions received must include the agency name, OMB Control Number and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Biographic Information.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms G–325, G–325A, G–325B, and G–325C; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses Forms G–325, G–325A, G–325B, and G–325C, when necessary, to check other agency records on applications or petitions submitted by applicants for certain benefits under the Immigration and Nationality Act (Act).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form G–325—11,066 responses at 15 minutes (.25 hours) per response; Form G–325A—565,180 responses at 15 minutes (.25 hours) per response; Form G–325B—744,942 responses at 25 minutes (.416 hours) per

response; and Form G–325C—100,000 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 478,957.37 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529; Telephone 202–272–1470.

Dated: August 15, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–20523 Filed 8–20–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0061]

Agency Information Collection Activities: Application for Regional Center Under the Immigrant Investor Pilot Program, Form I–924 and Form I–924A; Extension, Without Change, of a Currently Approved Collection

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice allowing for a 60-day public comment period was previously published in the **Federal Register** on May 10, 2012, at 77 FR 27473. USCIS received one submission from one commenter in response to the 60-day notice and acknowledges receipt in item 8 of the supporting statement.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 2012. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the OMB USCIS Desk Officer. Comments may be submitted to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov,* to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov* and via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2007–0046. When submitting comments by email, please make sure to add 1615–0061 in the subject box.

All submissions received must include the agency name, OMB Control Number and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.Regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.Regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection Request:* Extension, without change, of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Regional Center under the Immigrant Investor Pilot Program, and Supplement to Form I–924.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–924 and Form I–924A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Private sector, and state and local governments.* This collection will be used by individuals, for-profit organizations, and not-for-profit organizations to file a request for USCIS approval and designation as a regional center on behalf of an entity under the Immigrant Investor Pilot Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 278 responses filing Form I–924 at 40 hours per response; and 192 responses filing Form I–924A at 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,696 annual burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.Regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020; Telephone 202–272–1470.

Dated: August 16, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–20526 Filed 8–20–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0090]

Agency Information Collection Activities: Under Section 245A of the INA, Form I–687; Extension, Without Change, of a Currently Approved Collection

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on May 10, 2012, at 77 FR 27471, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 2012. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the OMB USCIS Desk Officer. Comments may be submitted to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov,* to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov* and via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2005–0029. When submitting comments by email, please make sure to add 1615–0090 in the subject box.

All submissions received must include the agency name, OMB Control Number and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Status as Temporary Resident under Section 245A of the INA.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–687; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* The collection of information on Form I–687 is required to verify the applicant's eligibility for temporary status, and if the applicant is deemed eligible, to grant the applicant the benefit sought.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 30 responses at 1 hour and 10 minutes (1.166 hours) per response for Form I–687; and 30 responses at 1 hour and 10 minutes (1.166 hours) for biometrics processing.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 70 annual burden hours (35 annual burden hours for Form I–687 and 35 for biometrics processing).

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020; Telephone 202–272–1470.

Dated: August 16, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–20527 Filed 8–20–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0116]

Agency Information Collection Activities: Request for an Individual Fee Waiver, Form Number I–912; Extension of a Currently Approved Collection

ACTION: 60-Day Notice.

SUMMARY: The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review to the Office of Management and Budget (OMB) and clearance in accordance with the Paperwork Reduction Act of 1995. This information collection notice is published in the **Federal Register** to obtain comments from the public and affected agencies.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–912. Should USCIS decide to revise Form I–912 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then

have 30 days to comment on any revisions to the Form I–912.

DATES: Comments are encouraged and will be accepted for sixty days until October 22, 2012.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy, Clearance Office, 20 Massachusetts Avenue, Washington, DC 20529. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov,* and OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov*. When submitting comments by email please make sure to add OMB Control Number 1615–0116 in the subject box. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2010–0008.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Extension of information collection.

(2) *Title of the Form/Collection:* Request for an Individual Fee Waiver.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–912; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The collection of information on Form I–912 is necessary in order for U.S. Citizenship and Immigration Services (USCIS) to make a determination that the applicant is unable to pay the application fee for certain immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 400,000 responses at 1 hour and 10 minutes (1.17 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 468,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–1470.

Dated: August 15, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–20522 Filed 8–20–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Amspec Services LLC, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Amspec Services LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Amspec Services LLC, 1300 North Delaware St., Paulsboro, NJ 08066, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

DATES: The accreditation and approval of Amspec Services LLC, as commercial gauger and laboratory became effective on May 10, 2012. The next triennial inspection date will be scheduled for May 2015.

FOR FURTHER INFORMATION CONTACT: Christopher Mocella, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania

Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 13, 2012.

Ira S. Reese,

Executive Director.

[FR Doc. 2012–20395 Filed 8–20–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Amspec Services LLC, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Amspec Services LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Amspec Services LLC, 100B Redoubt Road, Unit 2, Yorktown, VA 23692, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

DATES: The accreditation and approval of Amspec Services LLC, as commercial gauger and laboratory became effective on May 31, 2012. The next triennial inspection date will be scheduled for May 2015.

FOR FURTHER INFORMATION CONTACT: Christopher Mocella, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 13, 2012.

Ira S. Reese,

Executive Director.

[FR Doc. 2012–20394 Filed 8–20–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–R–2012–N160; FXRS12610200000S3–123–FF02R06000]

Texas Mid-Coast National Wildlife Refuge Complex, Brazoria, Fort Bend, Matagorda, and Wharton Counties, TX; Comprehensive Conservation Plan and Environmental Assessment; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments; correction.

SUMMARY: On August 15, 2012, we, the U.S. Fish and Wildlife Service, published a notice announcing the availability of a draft comprehensive conservation plan (CCP) and an environmental assessment (EA) for public review and comment. The draft CCP/EA describes our proposal for managing the Texas Mid-Coast National Wildlife Refuge Complex for the next 15 years. In that notice, we gave an incorrect comment-period end date. We are now republishing the notice with the correct date. If you already submitted a comment, you need not resubmit it.

DATES: To ensure consideration, please send your written comments by September 20, 2012. We will announce upcoming public meetings in local news media.

ADDRESSES: You may submit comments or requests for copies or more information on the Draft CCP/EA by any of the methods listed below. You may request hard copies or a CD–ROM of the documents. Please contact Jennifer Sanchez, Project Leader, or Carol Torrez, Lead Planner/R2 NWRS NEPA Coordinator.

Email: carol_torrez@fws.gov. Include ''TMC NWR Complex Draft CCP and EA'' in the subject line of the message.

Fax: Attn: Carol Torrez, 505–248–6803.

U.S. Mail: Carol Torrez, Lead Planner/NWRS NEPA Coordinator, U.S. Fish and Wildlife Service, NWRS Division of Planning, P.O. Box 1306, Albuquerque, NM 87103.

In-Person Drop-off, Viewing, or Pickup: You may drop off comments during regular business hours (8 a.m. to 4:30 p.m.) at 500 Gold Street SW., 4th Floor, Room 4336, Albuquerque, NM, 87102.

FOR FURTHER INFORMATION CONTACT: Jennifer Sanchez, Project Leader, Texas Mid-Coast National Wildlife Refuge Complex, CCP—Project, 5247 CR 316, Brazoria, TX, 77422; phone: 979–964–4011; fax: 979–964–4021.

SUPPLEMENTARY INFORMATION: On August 15, 2012, we published a **Federal Register** notice announcing the availability of a draft CCP and EA for the Texas Mid-Coast National Wildlife Refuge Complex. In that notice, we gave an incorrect comment-period end date. We are now republishing the notice with the correct date. If you already submitted a comment in response to our August 15, 2012 (77 FR 49011), notice, you need not resubmit it.

Introduction

With this notice, we continue the CCP process for the Texas Mid-Coast NWR Complex. We started this process through a notice in the **Federal Register** (74 FR 29714; June 23, 2009).

The Complex is located along the upper Texas Gulf Coast, approximately 50 miles south of Houston, Texas. It is comprised of three refuges: Brazoria NWR, which was established in 1966, and encompasses 44,414 acres; San Bernard NWR, which was established in 1968, and encompasses 52,400 acres; and Big Boggy NWR, which was established in 1983, and encompasses 4,526 acres. These lands provide a vital complex of salt and freshwater marshes, sloughs, ponds, coastal prairies, and bottomland hardwood forests that provide habitat for a wide variety of resident and migratory wildlife.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-

dependent recreational opportunities available to the public, including opportunities for wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Public Outreach

Formal scoping began with publication of a notice of intent to prepare a comprehensive conservation plan and environmental assessment (EA) in the **Federal Register** on June 23, 2009 (74 FR 29714). The Refuge solicited comments on issues and concerns to aid in CCP development through three open house meetings held in September 2009.

An ecoregion-wide coordination meeting was held at the Complex's Discovery Center on December 2, 2009, to gain a better understanding of the issues within the Gulf Coast Prairies and Marshes Ecoregion, where the Complex is located, and to determine the Complex's role in addressing issues impacting fish, wildlife, and their habitats within the larger landscape. In February 2010, the Complex met with representatives from the Texas Parks and Wildlife Department to discuss their concerns regarding past management, future management, and issues common to both agencies.

Additional public scoping for the Land Protection Planning process was conducted in January 2012. Three open house meetings were held to provide information on the proposed expansion and respond to questions and concerns.

The feedback received at the conclusion of the public involvement period identified numerous concerns from a variety of stakeholders. These concerns were organized by five broad issue categories and one administrative category: Ecoregion, Habitat, Wildlife, Visitor Services, and Facilities/Infrastructure Management.

CCP Alternatives We Are Considering

During the public scoping process with which we started work on this draft CCP, we, other governmental partners, Tribes, and the public, raised multiple issues. Our draft CCP addresses them. A full description of each alternative is in the EA. To address these issues, we developed and evaluated the following alternatives, summarized below.

Issue topic	Alternative A—No action	Alternative B—Proposed action	Alternative C
Ecoregion Management Issue 1: Climate Change.	Supplement natural forest regeneration with restoration efforts; monitor carbon sequestration; conduct education programs; and use "green" technologies and building products on all new construction.	Same as Alternative A plus increase restoration efforts; utilize exchange of carbon credits; gather baseline data on habitat composition/wildlife diversity; update refuge displays; and increase use of "green" technologies.	Same as Alternative B plus increase restoration efforts above described levels.
Ecoregion Management Issue 2: Erosion/Saltwater Intrusion.	Construct/Use a variety of structural and some restoration techniques at various locations.	Same as Alternative A plus increase the types and amounts of structural and restoration techniques used.	Same as Alternative A plus increase the types and amounts of structural and restoration techniques used.
Ecoregion Management Issue: 3 Wildland Fire Use.	Follow direction of current Fire Management Plan (FMP).	Same as Alternative A	Same as Alternative A.
Ecoregion Management Issue 4: Petroleum Development.	Work cooperatively with companies to minimize impacts to refuge resources.	Same as Alternative A	Same as Alternative A.
Ecoregion Management Issue 5: Land Conservation.	The Complex will continue to acquire lands under the 1997 Austin's Woods Conservation Plan until the 28,000-acre cap is reached.	The Complex will acquire lands under the new Land Protection Plan up to 70,000 acres.	Same as Alternative B.
Habitat Management Issue 1: Gulf Coast Prairie and Marshes—Restoration and Management.	Cooperative haying conducted; wetland and farmland rehabilitation. Native prairie restoration.	Same as Alternative A, plus increase acreage of haying, and increase number of rehabilitation projects. Increase prairie restoration.	Same as Alternative B plus develop seed bank on prairie restoration areas.
Habitat Management Issue 2: Gulf Coast Prairie and Marshes—Management of Invasive Species (Flora).	Mechanical, chemical, and prescribed fire use allowed; grazing not allowed.	Same as Alternative A plus increase the types and amounts of management prescriptions used, including limited livestock grazing.	Same as Alternative B but diversify the types of management prescriptions used, including bison grazing.
Habitat Management Issue 3: Gulf Coast Prairie and Marshes—Prescribed Fire Use.	Allowed Complex-wide to improve habitats and reduce hazardous fuels.	Same as Alternative A	Same as Alternative A.
Habitat Management Issue 4: Gulf Coast Prairie and Marshes—Farming Program.	Cooperative farming and force account farming occur on all three refuges.	Same as A, plus incorporate additional moist soil units into farming rotation at Brazoria NWR.	Reduce cooperative farming acres at Brazoria NWR and eliminate farming at Big Boggy and San Bernard NWRs.
Habitat Management Issue 5: Gulf Coast Prairie and Marshes—Water Management.	Restore prairie pothole hydrology as opportunity arises; use established wells to provide freshwater to moist soil units during drought periods; and purchase water from various water authorities annually.	Same as Alternative A plus drill additional wells, and develop new/rehabilitate existing water control structures.	Same as Alternative B plus increase water availability through the development of partnerships and purchase of water rights; expand wetlands; and rehabilitate marshes.

Issue topic	Alternative A—No action	Alternative B—Proposed action	Alternative C
Habitat Management Issue 6: Bottomland Hardwood Forest—Restoration.	Allow natural regeneration; where appropriate add supplemental planting of hardwood species; treat invasive species.	Same as Alternative A	Same as Alternative A.
Habitat Management Issue 7: Bottomland Hardwood Forest—Water Management.	Restore previously drained wetlands.	Same as Alternative A	Same as Alternative A.
Habitat Management Issue 8: Dune and Beach Management.	Management of beach resources has not been clearly defined due to recent silting in of Cedar Lakes Cut and trespass across upland vegetation on private land to access the Cut.	Cooperatively work with County and General Land Office (GLO) to provide additional protection on San Bernard Beach restricting type of access and activities by visitors that would be compatible with Refuge Purpose.	Same as Alternative B.
Wildlife Management Issue 1: Threatened and Endangered Species.	Implement the Sea Turtle Recovery Plan.	Same as A, plus if reintroduction of APC and whooping crane occur, implement APC and whooping crane recovery plans.	Same as Alternative B.
Wildlife Management Issue 2: Migratory Bird Species and Species of Special Management Concern.	Manage a variety of habitats for resting, feeding, and reproductive purposes.	Same as Alternative A	Same as Alternative A.
Wildlife Management Issue 3: Management of Invasive Species (Fauna).	Hunting and trapping used to control feral hogs. Baiting and broad scale treatments to control ants.	Same as Alternative A plus release natural predators to control ants.	Same as Alternative A, but diversify the types of management prescriptions used for each invasive.
Visitor Services Issue 1: Hunting ...	Allowed in designated areas for waterfowl, youth deer/feral hog hunt on San Bernard NWR, and a youth feral hog hunt. One permit area and ATV use allowed in designated area for disabled hunters.	Same as Alternative A plus provide a youth waterfowl hunt; revise the hunting schedule at two locations.	Same as Alternative B plus provide a population reduction deer hunt.
Visitor Services Issue 2: Fishing ...	Allowed on all navigable waters and from designated locations.	Same as Alternative A	Same as Alternative A.
Visitor Services Issue 3: Wildlife Observation.	Brazoria and San Bernard NWRs open to wildlife observation; visitors directed to designated public use areas.	Same as Alternative A plus construct additional photo blinds, new trails, a boardwalk, and road pull-offs to provide for additional opportunity.	Same as Alternative B.
Visitor Services Issue 4: Wildlife Photography.	Photo blind at Hudson Woods	Same as Alternative A plus develop additional photography opportunities.	Same as Alternative B.
Visitor Services Issue 5: Environmental Education.	Various programs and events conducted.	Same as Alternative A plus increase number of programs conducted and expand programs into additional school districts at San Bernard NWR.	Same as Alternative B.
Visitor Services Issue 6: Interpretation.	One annual 3-day event	Same as Alternative A plus expand organized interpretive programs at a variety of Refuge venues on a monthly basis.	Same as Alternative B.
Visitor Services Issue 7: Preservation of Historic Sites.	Historical sites are identified and interpreted in public use areas when appropriate.	Same as Alternative A	Same as Alternative A.
Visitor Services Issue 8: Entrance Fee.	No entrance fee required	Require entrance fee	Provide donation boxes at various public use areas
Facilities Issue 1: Visitor Orientation.	Visitor contact station located at Brazoria NWR Discovery Center.	Same as Alternative A plus additional Visitor Contact Station at San Bernard NWR.	Same as Alternative A plus construct stand-alone Visitor Center at San Bernard NWR Field Office.
Facilities Issue 2: Visitor Use—Trails.	Hiking trail provided at Brazoria and San Bernard NWRs.	Same as Alternative A plus construct a new trail at Brazoria NWR Field Office; provide bicycle access at Dow Woods Unit.	Same as Alternative B.
Facilities Issue 3: Visitor—Non-Motorized Boat Launches Visitor.	Canoe/Kayak launches provided at San Bernard and Brazoria NWRs.	Same as Alternative A plus construct one additional launch.	Same as Alternative B plus construct two additional launches.
Facilities Issue 4: Visitor—Signs/Exhibits.	Signs and exhibits at Brazoria and San Bernard NWRs.	Construct new exhibits and signs and improve quality and content of existing exhibits and signs.	Same as Alternative B.
Facilities Issue 5 Visitor—Roadways.	Vehicular access allowed on designated refuge roads.	Same as Alternative A	Same as Alternative A.

Issue topic	Alternative A—No action	Alternative B—Proposed action	Alternative C
Facilities Issue 6: Administrative—Volunteer.	Recreation vehicle pads provided at Brazoria and San Bernard NWRs.	Construct new recreation vehicle site at Brazoria NWR, and expand recreation vehicle sites at San Bernard NWR; include additional facilities at both locations.	Same as A, plus construct additional facilities at Brazoria NWR.
Facilities Issue 7: Administrative Facilities.	A variety of administrative/maintenance facilities available at various refuges.	Construct new administrative/maintenance facilities at various refuges.	Same as Alternative B.

Public Availability of Documents

In addition to any methods in **ADDRESSES**, you can view or obtain documents at the following locations:

- Texas Mid-Coast National Wildlife Refuge Complex Headquarters Office, CR 316, Brazoria, TX, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- Our Web site: *http://www.fws.gov/southwest/refuges/Plan/plansinprogress.html.*
- At the following public libraries:

Library	Address	Phone number
Brazoria County Library, City of Lake Jackson Branch	250 Circle Way, Lake Jackson, TX 77566	979–297–1271
Brazoria County Library, West Columbia Branch	518 East Brazos, West Columbia, TX 77486	979–345–3394
Bay City Public Library	1100 7th Street, Bay City, Texas 77414	979–245–6931

Submitting Comments/Issues for Comment

We consider comments substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document;
- Question, with reasonable basis, the adequacy of the environmental assessment (EA);
- Present reasonable alternatives other than those presented in the EA; and/or
- Provide new or additional information relevant to the assessment.

Next Steps

After this comment period ends, we will analyze the comments and address them in the form of a final CCP and finding of no significant impact.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 16, 2012.

David Mendias,

Regional Director, Southwest Region.

[FR Doc. 2012–20611 Filed 8–20–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2012–N181; FXES11120100000F2–123–FF01E00000]

Proposed Safe Harbor Agreement for the Northern Spotted Owl, Skamania, Klickitat, and Yakima Counties, WA, and Hood River and Wasco Counties, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: SDS Company LLC (SDS) and the Broughton Lumber Company (BLC), hereafter referred to as the applicants, have applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit (permit) under the Endangered Species Act of 1973, as amended (ESA). The permit application includes a draft Safe Harbor Agreement (SHA) and a draft Implementing Agreement (IA). Pursuant to the Service's responsibility to comply with the National Environmental Policy Act (NEPA), the application package also includes a draft Environmental Assessment (EA). The Service invites the public to review and comment on the draft SHA, the draft IA, and draft EA.

DATES: To ensure consideration, please send your written comments by September 20, 2012.

ADDRESSES: You may download copies of the draft SHA, draft IA, and draft EA and obtain additional information on the Internet at *http://www.fws.gov/westwafwo/.* You may submit comments or requests for more information by any of the following methods. You may request hard copies or a CD–ROM of the documents.

- *Email: SDSBLCSHA@fws.gov.* Include ''SDS BLC SHA'' in the subject line of the message.
- *U.S. Mail:* Mark Ostwald, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Southeast, Suite 102, Lacey, WA 98503.
- *In-Person Drop-off, Viewing, or Pickup:* Call (360) 753–9440 to make an appointment (necessary for view/pickup only) during regular business hours at Washington Fish and Wildlife Office, 510 Desmond Drive, Southeast, Suite 102, Lacey, WA 98503.

FOR FURTHER INFORMATION CONTACT: Mark Ostwald, U.S. Fish and Wildlife Service (see **ADDRESSES**), telephone (360) 753–9564. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The applicants have applied to the Service for an enhancement of survival permit under section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 et seq.). The permit application includes a draft SHA, draft IA, and draft EA.

The SHA covers about 81,587 acres of managed private forest lands in Washington and Oregon. The proposed term of the permit and the SHA is 60 years. The permit would authorize incidental take of the threatened northern spotted owl (*Strix occidentalis caurina*) at a level that enables the applicants ultimately to return the

enrolled property back to agreed-upon baseline conditions. The permit would also authorize incidental take of the spotted owl as a result of management activities during the term of the permit.

Approximately 16,031 acres of the forest lands covered under the proposed SHA, inclusive of baseline habitat acres, have also been proposed by the Service as critical habitat for the spotted owl (77 FR 14062; March 8, 2012). These lands are being considered for exclusion from the final critical habitat designation based on the anticipated conservation benefits of this SHA (if it is approved) and economic or other relevant factors.

Background

Under a SHA, participating property owners voluntarily undertake management activities to enhance, restore, or maintain habitat benefiting species listed under the ESA. SHAs are intended to encourage private and other non-Federal property owners to implement conservation actions for listed species by assuring the participating property owners that they will not be subject to increased property use restrictions as a result of increasing the abundance of covered (listed) species due to their efforts to improve conditions for covered species on their property. When a participating landowner meets all the terms of an approved SHA, the Service authorizes incidental taking of the covered species at a level that enables the property owner ultimately to return the enrolled property back to agreed-upon baseline conditions. Such authorization is provided under a permit issued pursuant to the provisions of section 10(a)(1)(A) of the ESA.

For an applicant to receive a permit through a SHA, the applicant must submit an application form that includes the following:

1. The common and scientific names of the listed species for which the applicant requests incidental take authorization;

2. A description of how incidental take of the listed species pursuant to the SHA is likely to occur, both as a result of management activities and as a result of the return to baseline; and

3. A SHA that complies with the requirements of the Service's Safe Harbor policy.

The issuance criteria for a permit are as follows:

1. The take of listed species will be incidental to an otherwise lawful activity and will be in accordance with the term of the SHA;

2. The implementation of the terms of the SHA is reasonably expected to provide a net conservation benefit to the covered species by contributing to its recovery, and the SHA otherwise complies with the Service's Safe Harbor policy;

3. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

4. Implementation of the terms of the SHA is consistent with applicable Federal, State, and Tribal laws and regulations;

5. Implementation of the terms of the SHA will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and

6. The applicant has shown capability for and commitment to implementing all of the terms of the SHA.

The Service's Safe Harbor policy (64 FR 32717; June 17, 1999) and Safe Harbor regulations (September 10, 2003, 68 FR 53320; May 3, 2004, 69 FR 24084) provide important terms and concepts for developing SHAs. The Service's Safe Harbor policy and regulations are available at: *http://www.fws.gov/endangered/laws-policies/regulations-and-policies.html.*

Spotted Owl Special Emphasis Areas

In Washington State, ten Spotted Owl Special Emphasis Areas (SOSEAs) have been established under Washington Forest Practices Rules (WAC 222–16–086) to provide for the conservation needs of the spotted owl. Each SOSEA includes land area goals for spotted owl demographic and dispersal support. Different SOSEAs have different biological goals for spotted owls, depending on the geographic location of the SOSEA and the conservation needs of the spotted owl. The covered lands under the proposed SHA include portions of the White Salmon and the Columbia Gorge SOSEAs.

Under Washington Forest Practices Rules, the following amounts of suitable habitat are generally assumed to be necessary to maintain the viability of each spotted owl site center within each SOSEA in the absence of more specific data or a mitigation plan: (a) All suitable spotted owl habitat within 0.7 miles of each spotted owl site center; and (b) a total of 2,605 acres of suitable spotted owl habitat within the median home range circle with a radius of 1.8 miles. Under Washington Forest Practices Rules, proposed forest practices likely to adversely affect spotted owl habitat in either category (a) or (b) above are likely to have significant adverse impacts on the spotted owl, and such activities would require a Class IV special forest practice authorization and an environmental impact statement per the State Environmental Policy Act (SEPA), and likely require an incidental take permit (ITP) under section 10(a)(1)(B) of the ESA.

Outside of SOSEAs, 70 acres of the highest quality suitable spotted owl habitat surrounding a spotted owl site center should be maintained during the nesting season in accordance with Washington Forest Practices Rules (WAC 222–10–041 (5)). Washington Forest Practices Rules also provide for exceptions to operating under the above standard rules. These exceptions include conducting forest management operations under a Service-approved habitat conservation plan and an ITP authorized under section 10(a)(1)(B) of the ESA or a SHA and a permit authorized under section 10(a)(1)(A) of the ESA.

Under Washington Forest Practices Rules, spotted owl habitat is categorized as follows: (1) ''Old forest habitat,'' which provides all of the characteristics of spotted owl nesting, roosting, foraging, and dispersal habitat; (2) ''sub-mature habitat,'' which provides all of the characteristics of spotted owl roosting, foraging, and dispersal habitat; (3) ''young forest marginal habitat,'' which provides some of the characteristics of spotted owl roosting, foraging, and dispersal habitat; and (4) ''dispersal habitat,'' which is not considered suitable for spotted owl nesting, roosting, or foraging, but does provide for spotted owl dispersal (WAC 222–16–085). The proposed SHA relies on these habitat definitions.

Oregon Forest Protection Act

In Oregon, the Oregon Forest Protection Act (OFPA) protects resource sites through a notification process, but the State Forester does not issue permits or approvals. The OFPA protects active spotted owl nesting sites or activity centers occupied by a pair of adult owls capable of breeding by providing for a 70-acre core habitat area around the nest site. The State Forester is required to maintain an inventory of protected resource sites that are used by threatened and endangered species, including the spotted owl. A written plan is required when the State Forester determines a proposed forest management operation will conflict with the protection of a spotted owl nesting site or when the forest management operation is within 300 feet from any nesting site of any threatened or endangered species.

Proposed Action

The applicants have submitted a draft SHA for the spotted owl that covers

approximately 81,587 acres of managed private forest lands in portions of Skamania, Klickitat, and Yakima Counties in Washington, and in portions of Hood River and Wasco Counties in Oregon. All of the covered lands are east of the crest of the Cascade Mountains. The majority of the covered lands have been previously managed, and about 75 percent are younger than 80 years old. The SHA also includes provisions for adding and subtracting lands to the covered area.

The WDNR has mapped spotted owl habitat under Washington Forest Practices Rules only within the 1.8-mile radius home range circle around spotted owl sites within SOSEAs. For purposes of this SHA, the applicants have used the WDNR's spotted owl habitat information whenever possible. However, outside of the SOSEAs and within the SOSEAs, but outside of the 1.8-mile-radius circles, the applicants have used and will continue to use stand age to estimate spotted owl habitat acreage.

In preparing the SHA, SDS hired a contractor to determine what forest age was likely to represent ''young forest marginal habitat'' on the covered lands. The results of this study indicate that while some stands younger than age 60 achieved ''young forest marginal habitat'' characteristics, at age 60 and older the chance of achieving ''young forest marginal habitat'' was highly likely. On that basis, forest stands on the SHA-covered lands that are age 60 or older will be considered to meet the definition of ''young forest marginal habitat.'' Forest stands younger than 60 years may also be considered to meet the definition of ''young forest marginal habitat,'' if the conditions associated with that habitat are verified by surveys using appropriate methods or forest stands are actively managed in a manner that is likely to achieve that outcome by applying specific habitat enhancements. The Service recognizes that the age of a forest stand is one of many ways to describe spotted owl habitat, and while it may not be as precise as some other approaches, with the forest inventory information available for the lands covered under the proposed SHA, it is a reasonable estimate.

Current Conditions in Washington

Survey data for spotted owl site centers on or near the applicants' covered lands suggest that very few of these sites are occupied, or possibly that spotted owls are not responding to traditional survey methods. As of 2011, only one site, within the White Salmon SOSEA, is known to contain a spotted owl pair (T. Fleming, National Council for Stream and Air Improvement, Inc., pers comm.); however, several sites have not been regularly surveyed in recent years. About 62,434 acres, or 77 percent, of SHA-covered lands occur in Washington. Approximately 34,064 acres, or 42 percent, of the SHA-covered lands in Washington occur within the Columbia Gorge and White Salmon SOSEAs. Under Washington Forest Practices Rules, the biological goal of both the Columbia Gorge and White Salmon SOSEAs is to provide for spotted owl dispersal and demographic support by maintaining spotted owl habitat to protect the viability of the owl(s) associated with each spotted owl site center or by providing a variety of habitat conditions that support spotted owl dispersal, foraging, and roosting activities.

Within the Columbia Gorge SOSEA, the covered lands intersect the 1.8-mile radius home range circle of four spotted owl sites. Within the White Salmon SOSEA, the covered lands intersect the 1.8-mile home range radius circle of 14 spotted owl sites. Within these two SOSEAs, the covered lands intersect the 0.7-mile radius home range circle of 8 of the 18 total spotted owl sites. Of these spotted owl sites, only one owl site center is located on the covered lands (in the White Salmon SOSEA).

In the White Salmon SOSEA, the WDNR has identified 3,694 acres of the applicants' covered lands (741 acres of ''sub-mature habitat'' and 2,953 acres of ''young forest marginal habitat'') as part of the highest quality spotted owl habitat within the 1.8-mile-radius home range circles of 14 spotted owl site centers.

In the Columbia Gorge SOSEA, the WDNR has not identified the highest quality habitat acres; however, the WDNR has identified 313 acres of ''sub-mature habitat'' and 690 acres of ''young forest marginal habitat'' occurring on the covered lands within 1.8 miles of the four spotted owl site centers in this SOSEA. Whether or not 1,003 acres of habitat within 1.8 miles of these four site centers is the highest quality habitat, the applicants are treating them as such for purposes of establishing the spotted owl habitat baseline acres for this SHA.

The applicants have used the total of the above spotted owl habitat acreages (4,697 acres) within these two SOSEAs to define the spotted owl habitat baseline for this SHA on the basis that absent this SHA and permit, if these 4,697 acres of habitat were proposed for timber harvest, the applicants would need to file an application for a class IV special forest practices permit, prepare a SEPA environmental impact statement, and also likely obtain an ITP under the ESA from the Service. Conversely, all other acres of spotted owl habitat currently existing on the covered lands were excluded from the baseline on the basis that the proposed harvest of these forest stands would not require a Class IV special forest practice permit, a SEPA environmental impact statement, or an ITP under the ESA. See the SHA for a full description of the baseline and spotted owl habitat current conditions on the covered lands. However, for purposes of this SHA, the applicants and the Service have agreed upon a higher baseline of 9,424 acres (651 acres of submature habitat, 4,061 acres of young forest marginal habitat, and 4,712 acres of dispersal habitat).

Current Conditions in Oregon

Approximately 19,153 acres or 23 percent of SHA-covered lands occur in Oregon. There are no spotted owl site centers on the covered lands in Oregon, thus, there are no harvest restrictions under the OFPA. Since the covered lands in Oregon are not known to intersect a spotted owl 70-acre core, the spotted owl habitat baseline for covered lands in Oregon is considered as 0 acres in the proposed SHA because there are no timber harvest restrictions under the OFPA. There are six spotted owl sites on National Forest lands in proximity to the covered lands. However, none of the 70-acre cores around these sites intersect the covered lands. It is unlikely that timber harvest activities on the covered lands would require an ITP under the ESA.

Spotted Owl Conservation Under the SHA

The applicants have worked closely with the Service to develop their proposed SHA and the voluntary conservation measures that are expected to provide a net conservation benefit to the spotted owl. The Service and the applicants have agreed upon baseline conditions that will provide a net benefit to the spotted owl above the level that would occur by managing the current habitat conditions without the SHA. Under the applicants' proposed SHA, spotted owl habitat on the covered lands would be managed at scales other than the 1.8-mile radius home range circles within each of the two SOSEAs on the covered lands in Washington. Under this approach, the distribution of spotted owl habitat will not remain static on the covered lands for the duration of the SHA. Instead, the SHA provides for a wider distribution of spotted owl habitat across the covered lands, both inside and outside of the SOSEAs, by leaving habitat on the

landscape longer, increasing the timber harvest rotation interval from 45 to 60 years and other habitat enhancements provided by active management.

While SDS and BLC lands intersect a number of spotted owl territories, the WDNR and the Gifford Pinchot National Forest are the majority landowners within these spotted owl territories. The SHA has been developed to manage for spotted owl conservation at a broader scale, similar to that applied by the WDNR and the Gifford Pinchot National Forest. Under this approach, the distribution of spotted owl habitat on the covered lands is intended to be dynamic, shifting across the covered lands over the proposed 60-year duration of the SHA.

Although the baseline condition for spotted owl habitat within the White Salmon SOSEA is 3,694 acres, with implementation of the SHA, a higher baseline of 9,424 acres of spotted owl habitat, consisting of a minimum of 651 acres of ''sub-mature habitat,'' 4,061 acres of ''young forest marginal habitat,'' and 4,712 acres of ''dispersal habitat'' will be maintained within the White Salmon SOSEA for the duration of the SHA. This amount represents a minimum of 5,730 acres of spotted owl habitat above the current conditions of 3,694 acres. Absent this SHA, forest stands on those 5,730 acres would be subject to timber harvest.

At the landscape (i.e., covered lands) scale, the applicants intend to manage the covered lands to provide as much as an additional 12,705 acres of spotted owl ''dispersal habitat'' and ''young forest marginal habitat'' during the proposed 60-year term of the SHA by managing existing forest stands at a 60-year, rather than the current 45-year, harvest rotation interval. However, in some periods during the term of the SHA some of these 12,705 acres may be degraded by disease, windthrow, or fire.

Over the proposed 60-year term of the SHA, spotted owl non-habitat will be allowed to develop into spotted owl habitat within the White Salmon SOSEA. Absent this SHA, that habitat development would not occur under current requirements of Washington Forest Practices Rules or the ESA. In the White Salmon SOSEA, 490 acres of forest within 0.7 miles of spotted owl site centers will be allowed to develop into ''young forest marginal habitat'' and ''dispersal habitat.'' Approximately 8,382 acres of forest in both SOSEAs outside the 0.7-mile radius circle but within the 1.8-mile radius circle around spotted owl site centers will be allowed to develop into ''young forest marginal habitat'' and ''dispersal habitat'' under the SHA. By taking a proactive approach, the applicants will conduct commercial thinning operations, with implementation of their snag retention and creation program, to enhance spotted owl habitat development on the covered lands. Over the first decade of implementing the proposed SHA, within the White Salmon SOSEA, the applicants will thin a minimum of 500 acres of forest to accelerate its development into ''young forest marginal habitat'' to provide for some of the characteristics of spotted owl roosting and foraging habitat.

Under the SHA, the applicants have proposed the following measures to provide a net conservation benefit to the spotted owl: (1) Maintain 33 percent of their collective ownership within the White Salmon SOSEA, or about 9,424 acres, in spotted owl habitat (16.5 percent in ''dispersal habitat'' and 16.5 percent in ''young forest marginal habitat'' or better habitat); (2) maintain 33 percent of their collective ownership in ''young forest marginal habitat'' or better habitat within 0.7 miles of spotted owl site centers located within the White Salmon SOSEA; (3) maintain existing spotted owl habitat on covered lands within the 0.7-mile-radius circles around four spotted owl sites where the applicants have more than 15 percent ownership by deferring any habitat removal for 10 years; (4) manage for an average 60-year timber harvest rotation interval inside and outside of the SOSEAs that is expected to create more spotted owl ''dispersal habitat'' and ''young forest marginal habitat'' across the landscape; (5) provide two habitat set-aside reserves on the covered lands for the term of the SHA: one reserve of approximately 411 acres of spotted owl habitat along the Little White Salmon River and a second reserve of approximately 240 acres of spotted owl habitat around the one spotted owl nest site center on the covered lands; (6) implement a wildlife tree and snag management program that will provide more snags and green trees than required under Washington Forest Practices Rules to improve habitat for spotted owl prey species; (7) not pursue spotted owl circle decertification which, if approved, would remove protections for spotted owl sites under current Washington Forest Practices Rules; and (8) allow spotted owl non-habitat to grow into spotted owl habitat near spotted owl site centers, and accelerate suitable habitat development through active forest management such as commercial thinning. For a full description of the conservation program, see the proposed SHA.

National Environmental Policy Act Compliance

The development of the draft SHA and the proposed issuance of an enhancement of survival permit is a Federal action that triggers the need for compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA). We have prepared a draft EA to analyze the impacts of permit issuance and implementation of the SHA on the human environment in comparison to the no-action alternative.

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, new information, or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested party on our proposed Federal action. In particular, we request information and comments regarding the following issues:

1. The direct, indirect, and cumulative effects that implementation of the SHA or any alternatives could have on endangered and threatened species;

2. Other reasonable alternatives consistent with the purpose of the proposed SHA as described above, and their associated effects;

3. Measures that would minimize and mitigate potentially adverse effects of the proposed action;

4. Identification of any impacts on the human environment that should have been analyzed in the draft EA pursuant to NEPA;

5. Other plans or projects that might be relevant to this action;

6. The proposed term of the Enhancement of Survival Permit and whether the proposed SHA would provide a net conservation benefit to the covered species; and

7. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, 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. All comments received from organizations, businesses, or individuals representing organizations or businesses are available for public inspection in their entirety. Comments and materials we receive will be available for public inspection by appointment, during normal business hours, at our office (see **ADDRESSES**).

Next Steps

The Service will evaluate the permit application, associated documents, and public comments submitted thereon to determine whether the permit application meets the requirements of section 10(a)(1)(A) of the ESA and NEPA regulations. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all comments received during the comment period. If we determine that all requirements are met, we will sign the SHA and issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA to the Applicants for the take of northern spotted owl, incidental to otherwise lawful activities in accordance with terms of the SHA and IA.

Authority

We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR 1506.6).

Dated: August 7, 2012.

Cynthia U. Barry,

Acting Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2012–20479 Filed 8–20–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000 L14200000.BJ0000 241A; 12–08807; MO# 4500037085; TAS: 14X1109]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV 89502–7147, phone: 775–861–6490. 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:

1. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada on May 9, 2012:

A plat, in 5 sheets, representing the dependent resurvey of portions of the east and north boundaries and a portion of the subdivisional lines, the subdivision of sections 14 and 24, and the survey of the meanders of portions of the 4,144-foot contour line, Township 32 North, Range 32 East, of the Mount Diablo Meridian, Nevada, under Group No. 884, was accepted May 3, 2012.

A plat, in 2 sheets, representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, the subdivision of sections 6 and 18, and the survey of the meanders of portions of the 4,144-foot contour line, Township 32 North, Range 33 East, of the Mount Diablo Meridian, Nevada, under Group No. 884, was accepted May 3, 2012. This survey was executed to meet certain administrative needs of the Pershing County Water Conservation District.

A plat, in 3 sheets, representing the dependent resurvey of a portion of the South boundary of Township 32 North, Range 32 East and a portion of the South boundary of Township 32 North, Range 33 East, and the dependent resurvey of a portion of the south boundary, the west boundary, and a portion of the subdivisional lines, the subdivision of sections 8, 18, 20, 30 and 32, and the survey of the meanders of portions of the 4,144-foot contour line, Township 31 North, Range 33 East, of the Mount Diablo Meridian, Nevada, under Group No. 896, was accepted May 3, 2012. This survey was executed to meet certain administrative needs of the Pershing County Water Conservation District.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on May 15, 2012:

A plat, representing the dependent resurvey of the Fourth Standard Parallel North, through a portion of Range 38 East, a portion of the east boundary and a portion of the subdivisional lines, Township 21 North, Range 38 East, of the Mount Diablo Meridian, Nevada, under Group No. 904, was accepted May 10, 2012. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on June 20, 2012:

A plat, in 4 sheets, representing the dependent resurvey of a portion of the present California-Nevada state line, from witness mile post No. 52½ to mile post No. 60, a portion of the south boundary, the east boundary, a portion of the north boundary and the subdivisional lines, and the subdivision of certain sections, Township 38 North, Range 18 East, of the Mount Diablo Meridian, Nevada, under Group No. 872, was accepted June 13, 2012. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

The surveys listed above are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the Bureau of Land Management, Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: August 10, 2012.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 2012–20477 Filed 8–20–12; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1104 (Review)]

Polyester Staple Fiber From China; Scheduling of an Expedited Five-Year Review Concerning the Antidumping Duty Order on Polyester Staple Fiber From China

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine

whether revocation of the antidumping duty order on polyester staple fiber from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 6, 2012, the Commission determined that the domestic interested party group response to its notice of institution (7 FR 25744, May 1, 2012) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on August 30, 2012, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before September 5, 2012 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by September 5, 2012. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 15, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–20447 Filed 8–20–12; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by Auriga Polymers, Inc., DAK Americas LLC, Palmetto Synthetics LLC, and U.S. Fibers to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with 28 CFR 50.7, 38 FR 19029, notice is hereby given that on August 15, 2012, a Consent Decree was lodged with the United States District Court for the District of Massachusetts in *United States* v. *City of Fitchburg, Massachusetts,* Civil Action No. 12-cv-11511. A complaint in the action was also filed simultaneously with the lodging of the Consent Decree. In the complaint the United States, on behalf of the U.S. Environmental Protection Agency (EPA), alleges that the defendant City of Fitchburg (''Fitchburg'') violated Sections 309(b) and (d) of the Clean Water Act (''CWA''), 33 U.S.C. 1309(b) and (d), and applicable regulations relating to Fitchburg's failure to comply with the CWA in the operation of its publicly-owned treatment works (''POTW'') to collect and treat sanitary sewage and industrial wastes. The consent decree requires Fitchburg to pay a civil penalty of $141,000 and to undertake measures to upgrade and adjust its POTW facilities and operations in order to achieve compliance with the above-referenced provisions of the CWA and applicable regulations. Under the consent decree Fitchburg will also undertake a Supplemental Environmental Project to stabilize a portion of a riverbank in Fitchburg.

For a period of thirty (30) days from the date of this publication, the United States Department of Justice will receive comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, and should either be emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, Washington, DC 20044–7611. The comments should refer to *United States* v. *Fitchburg, Massachusetts* D.J. Ref. # 90–5–1–1–07874.

During the public comment period, the proposed Consent Decree may be examined at the office of the United States Attorney, Suite 9200, 1 Courthouse Way, Boston, Massachusetts 02110, and at the Region I office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts 02114. The proposed Consent Decree may also be obtained at the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC

20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.enrd@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $15.75 ($.25 per page of) payable to the U.S. Treasury, or if be email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2012–20509 Filed 8–20–12; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of two currently approved information collections. The first information collection is used when former Federal civilian employees and other authorized individuals request information from or copies of documents in Official Personnel Folders or Employee Medical Folders from the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA). The second information collection is NA Form 6045, Volunteer Service Application, used by individuals who wish to volunteer at the National Archives Building, the National Archives at College Park, regional records services facilities, and Presidential Libraries. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before October 22, 2012 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 the use of information technology; and (e) whether small businesses are affected by these collections. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

1. *Title:* Forms Relating to Civilian Service Records.

OMB number: 3095–0037.

Agency form number: NA Forms 13022, 13064, 13068.

Type of review: Regular.

Affected public: Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 32,060.

Estimated time per response: 5 minutes.

Frequency of response: On occasion, when individuals desire to acquire information from Federal civilian employee personnel or medical records.

Estimated total annual burden hours: 2,671 hours.

Abstract: In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. When former Federal civilian employees and other authorized individuals request information from or copies of documents in OPF or EMF, they must provide in forms or in letters certain information about the employee and the nature of the request. The NA Form 13022, Returned Request Form, is used to request additional information about the former Federal employee. The NA Form 13064, Reply to Request Involving Relief Agencies, is used to request additional information about the former relief agency employee. The NA Form 13068, Walk-In Request for OPM Records or Information, is used by members of the public, with proper authorization, to request a copy of a Personnel or Medical record.

2. *Title:* Volunteer Service Application.

OMB number: 3095–0060.

Agency form number: NA Forms 6045, 6045a, 6045b, and 6045c.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 500.

Estimated time per response: 25 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 208 hours.

Abstract: NARA uses volunteer resources to enhance its services to the public and to further its mission of providing ready access to essential evidence. Volunteers assist in outreach and public programs and provide technical and research support for administrative, archival, library, and curatorial staff. NARA uses a standard way to recruit volunteers and assess the qualifications of potential volunteers. The NA Form 6045, Volunteer Service Application, is used by members of the public to signal their interest in being a NARA volunteer and to identify their qualifications for this work. Once the applicant has been selected, the NA Form 6045a, Standards of Conduct for Volunteers, NA Form 6045b, Volunteer or Intern Emergency and Medical Consent, NA Form 6045c, Volunteer or Intern Confidentiality Statement, are filled out.

Dated: August 13, 2012.

Michael L. Wash,

Executive for Information Services/CIO.

[FR Doc. 2012–20491 Filed 8–20–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education, #9487.

Dates: September 12, 2012, 9 a.m.–5 p.m. September 13, 2012, 9 a.m.–2 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Beth Zelenski, National Science Foundation, Suite 705, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda

September 12, 2012

- Update on NSF environmental research and education activities
- Update on national and international collaborations
- Update on NSF's Science, Engineering and Education for Sustainability portfolio (SEES)

September 13, 2012

- Update on NSF priority areas
- Meeting with the NSF Director, Dr. Subra Suresh

Dated: August 15, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–20446 Filed 8–20–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On July 16, 2012, the National Science Foundation published a notice in the **Federal Register** of a permit applications received. The permits were issued on August 15, 2012 to:

Celia Lang ..... Permit No. 2013–011
Celia Lang ..... Permit No. 2013–012
Celia Lang ..... Permit No. 2013–013
Celia Lang ..... Permit No. 2013–014
Celia Lang ..... Permit No. 2013–015
Celia Lang ..... Permit No. 2013–016

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2012–20437 Filed 8–20–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423; NRC–2012–0197]

Dominion Nuclear Connecticut, Inc.; Millstone Power Station, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

ADDRESSES: Please refer to Docket ID NRC–2012–0197 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0197. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The application for amendment, dated November 17, 2011 is available electronically under ADAMS Accession No. ML11329A003.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from § 50.46 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' and Appendix K to 10 CFR Part 50, ''ECCS [emergency core cooling system] Evaluation Models,'' to allow the use of Optimized ZIRLO™ fuel rod cladding in future core reload applications for Millstone Power Station, Unit 3 (MPS3), for Renewed Facility Operating License No. NPF–49 Dominion Nuclear Connecticut, Inc. (DNC or the licensee), for operation of MPS3 located in the town of Waterford, CT. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

II. Environmental Assessment

Identification of the Proposed Action

The proposed action would add Optimized ZIRLO™ as an acceptable fuel rod cladding material. The proposed action is in accordance with the licensee's application dated November 17, 2011, under ADAMS Accession No. ML11329A003.

The Need for the Proposed Action

The proposed action is needed because the regulation in 10 CFR 50.46 contains acceptance criteria for the ECCS for reactors that have fuel rods fabricated either with Zircaloy or ZIRLO™. Appendix K to 10 CFR Part 50, paragraph I.A.5, requires the Baker-Just equation to be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation for the metal-water reaction. The Baker-Just equation assumed the use of a zirconium alloy different than Optimized ZIRLO™; therefore, an exemption is required.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the exemption does not present undue risk to public health and safety, and is consistent with common defense and security.

The details of the staff's safety evaluation will be provided in the license amendment that will be issued as part of the letter to the licensee approving the license amendment to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents

that may be released offsite. There is no significant increase in the amount of any effluent released offsite. 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 have any foreseeable impacts to land, air, or water resources, including impacts to biota. In addition, there are also no known socioeconomic or environmental justice impacts associated with such proposed action. 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

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the NRC's 1984 ''Final Environmental Statement Related to operation of Millstone Nuclear Power Station, Unit 3,'' and NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' Supplement 22 regarding Millstone Power Station, Units 2 and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on July 30, 2012, the NRC staff consulted with the Connecticut State official, Michael Firsick of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

III. Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated November 17, 2011.

Dated at Rockville, Maryland, this 13th day of August 2012.

For the Nuclear Regulatory Commission.

James Kim,

Project Manager, Plant Licensing Branch 1–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–20540 Filed 8–20–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0193]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 8, 2012 to August 21, 2012. The last biweekly notice was published on August 7, 2012 (77 FR 47123).

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0193. You may submit comments by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0193. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0193 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0193.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0193 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should

inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit 3, New London County, Connecticut

Date of amendment request: July 23, 2012.

Description of amendment request: The proposed amendment would conform the Millstone Power Station Unit 3 (MPS3) licenses to reflect a name change for Central Vermont Public Service Corporation (CVPS) resulting

from a subsequent restructuring in which CVPS will be consolidated with Gaz Métro's other electric utility subsidiary in Vermont, Green Mountain Power Corporation.

Basis for proposed no significant hazards consideration determination: As required in § 50.91(a) of Title 10 of the *Code of Federal Regulations* (10 CFR), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility would not involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This request is for an administrative change only. No actual facility equipment or accident analyses will be affected by the proposed change.

Therefore, this request will have no impact on the probability or consequences of an accident previously evaluated.

2. Operation of the facility would not create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request is for an administrative change only. No actual facility equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created.

Therefore, this request will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility would not involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request is for an administrative change only. No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed change will not relax any criteria used to establish safety limits, will not relax any safety system settings, and will not relax the bases for any limiting conditions of operation.

Therefore, this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: George A. Wilson.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit 3, Westchester County, New York

Date of amendment request: February 6, 2012.

Description of amendment request: The proposed amendment will revise the Updated Final Safety Analysis Report to allow use of the Backup Spent Fuel Pool Cooling System when the Spent Fuel Pool Cooling System is out of service.

Basis for proposed no significant hazards consideration determination: As required in 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes revise the Updated Final Safety Analysis Report (UFSAR) to allow using the Backup Spent Fuel Pool Cooling System (BSFPCS) as a stand-alone system when the Spent Fuel Pool Cooling System (SFPCS) is out of service for maintenance and repair. The SFPCS is allowed to be taken out for maintenance and repairs. The current design, if the SFPCS were out of service due to maintenance, repair or failure, would be to add make up water to the SFP to provide cooling and prevent loss of water level due to boiling. The use of the BSFPCS during times when the SFPCS is out of service for maintenance and repairs provides alternate cooling to limit the SFP temperature during these periods. The failure of the SFPCS and the addition of water is not an accident and consequences are not evaluated. Therefore, the BSFPCS does not mitigate consequences of an accident previously evaluated. Similarly, the BSFPCS is not the initiator of any accident.

Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes revise the UFSAR to allow using the BSFPCS when the SFPCS is out of service for maintenance and repair. The proposed changes involve the use of alternate equipment but failures do not result in different consequences from those of the existing system. The proposed revision to use the BSFPCS as a stand-alone system is not a change to the way that existing equipment is operated. The change involves the use of an alternate cooling system but the design is not associated with accident initiation so no new accident initiators are created. The proposed change involves administrative controls to assure the system capability.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed changes revise the UFSAR to allow using the BSFPCS as a stand-alone system when the SFPCS is out of service for maintenance and repair. The SFPCS is considered more robust than the BSFPCS in terms of its capability to restore operation with a hotter spent fuel pool. However, the BSFPCS will be used as a standalone system only when taking the SFPCS out of service for maintenance and repair. The current allowance is to take the SFPCS out of service for repairs so the BSFPCS will provide margin to reduce the likelihood of SFP boiling. While in service, a postulated moderate energy line break in the BSFPCS can increase the amount of water that can be lost from the SFP. However, the reduced level does not affect the ability to supply makeup water to the SFP to raise the level and provide cooling so there is no significant reduction in the margin for safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: George Wilson.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket No. 50–352 and No. 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of amendment request: July 6, 2012.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) Sections 5.3.1/6.3.1, ''Unit (or Facility) Staff Qualifications,'' for operator license applicants with the current industry standards for education and eligibility requirements. The proposed amendment would permit changes to the unit (or facility) staff qualification education and experience eligibility requirements for licensed operators. The proposal will bring Exelon Generation Company, LLC (Exelon) into alignment with current industry practices.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with the proposed amendment involve significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The NRC considered the impact of previously evaluated accidents during the rulemaking process, and by promulgations of the revised 10 CFR Part 55 rule, determined that this impact remains acceptable when licensees have an accredited licensed operator training program which is based on a system approach to training (SAT). EGC maintains an institute of Nuclear Power Operations (INPO) National Academy for Nuclear Training (NANT) accredited program which is based on a SAT. The NRC has concluded in RIS 2001–01, ''Eligibility of Operator License Applicants,'' and NUREG–1021, ''Operator Licensing Examination Standards For Power Reactors,'' that standards and guidelines applied by INPO in their accredited training programs are equivalent to those put forth by or endorsed by the NRC. Therefore, maintaining an INPO accredited SAT-based licensed operator training program is equivalent to maintaining an NRC approved licensed operator training program which conforms to applicable NRC Regulatory Guidelines or NRC endorsed industry standards. The proposed changes conform to NANT ACAD 10–001 licensed operator education and experience eligibility requirements.

Based on the above, Exelon concludes that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment involves changes to the licensed operator training programs, which are administrative in nature. The EGC licensed operator training programs have been accredited by National Nuclear Accrediting Board (NNAB) and are based on a SAT, which the NRC has previously found to be acceptable.

Based on the above discussion, EGC concludes that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed TS changes are administrative in nature. The proposed TS changes do not affect plant design, hardware, system operation, or procedures for accident mitigation systems. The proposed changes do not significantly impact the performance or proficiency requirements for licensed operators. As a result, the ability of the plant to respond to and mitigate accidents is unchanged by the proposed TS changes. Therefore, these changes do not involve a significant reduction in a margin of safety.

Based on the above, EGC concludes that the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above evaluation of the three criteria, EGC concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Michael Dudek.

Southern Nuclear Operating Company, Inc. Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4, Burke County, Georgia

Date of amendment request: August 1, 2012.

Description of amendment request: The proposed changes would amend Combined License Nos. NPF–91 and NPF–92 for VEGP Units 3 and 4, respectively, in regard to the concrete and reinforcement details specified compressive strength for the nuclear island basemat. The basemat is the common 6-foot-thick, cast-in-place, and reinforced concrete foundation for the nuclear island structures, consisting of the containment, shield building, and auxiliary building. The departure from the Tier 2* information involves changing the concrete specified compressive strength from 4000 psi to 5000 psi for the basemat in the Updated Final Safety Analysis Report (UFSAR) Subsection 3.8.4.6.1.1 and removing the 0″ dimension from the Lower-Section detail that represents the basemat below the exterior wall in UFSAR Figure 3H.5–3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design function of the basemat is to provide the interface between the nuclear island structures and the supporting soil. The basemat transfers the load of nuclear island structures to the supporting soil. The basemat

transmits seismic motions from the supporting soil to the nuclear island.

The change to the concrete/rebar details for the basemat does not have an adverse impact on the response of the basemat and nuclear island structures to safe shutdown earthquake ground motions or loads due to anticipated transients or postulated accident conditions because there is not an adverse change to the seismic floor response spectra and transient and postulated accidents are not affected by seismic motions. The change to the concrete/rebar details for the basemat does not impact the support, design, or operation of mechanical and fluid systems because [the] change in the loads on these systems due to seismic motions is negligible. There is no change to the design of plant systems or the response of systems to anticipated transients and postulated accident conditions. The basemat supports the structures and the mechanical system and component supports. There is no change to this function. Because the change to the concrete/rebar details does not change the response of systems to postulated accident conditions and is unrelated to any accident source term parameters, there is no change to the predicted radioactive releases due to postulated accident conditions. Therefore, there is no change to the consequences of an accident before or after implementation of the proposed amendment. The plant response to previously evaluated accidents or external events is not adversely affected, nor does the change described create any new accident precursors. Therefore, there is no difference between the probability of a seismically induced event before or after the implementation of the proposed amendment. The concrete specified compressive strength and 0″ dimension are not parameters considered as an initiator for any accident previously evaluated. Therefore, there is no difference in the probability or consequences of a seismically induced event before or after implementation of the proposed amendment.

Based on the considerations outlined above, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is an increase in the concrete specified compressive strength for the basemat and a change in the reinforcement details. The change to the concrete/rebar details does not change the design function of the basemat or nuclear island structures. The change to the concrete/rebar details does not change the design function, support, design, or operation of mechanical and fluid systems. Because the basemat will be designed to the American Concrete Institute (ACI) Codes specified in the UFSAR and the concrete will be specified, mixed, batched and placed to the same codes and standards specified in the UFSAR, the change to the concrete/rebar details does not result in a new failure mechanism for the basemat or new accident precursors. As a result, the design function of the basemat is not adversely affected by the proposed change.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety for the design of the seismic Category I structures including the basemat is determined by the use of the ACI 349 code and the analyses of the structures required by the UFSAR. The change to the concrete/rebar details does not have an adverse impact on the strength of the basemat. The change to the concrete/rebar details does not have an adverse impact on the seismic design spectra or the structural analysis of the basemat or other nuclear island structures. The change to the concrete/rebar details does not significantly impact the analysis requirements or results for the nuclear island for bearing, settlement, construction sequence, sliding, or overturning, because there is no change in the analysis assumptions for density, weight, friction, or seismic motions due to the increase in the concrete specified compressive strength. There is no increase in the portions of the basemat subject to predicted lift-off (zero contact force) during seismic motions analyzed for the safe shutdown earthquake. There is minimal change to soil pressures on the basemat due to the change in stiffness of the basemat. As a result, the design function of the basemat is not adversely affected by the proposed change.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Mark E. Tonacci.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: July 21, 2011.

Brief description of amendments: The amendments revised Technical Specifications 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' 3.5.4, ''Refueling Water Storage Tank (RWST),'' and 3.6.6, ''Containment Spray System.''

Date of issuance: July 25, 2012.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–269 and Unit 2–265.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: Amendments

revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: March 20, 2012 (77 FR 16274).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 25, 2012.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (Waterford 3), St. Charles Parish, Louisiana

Date of amendment request: July 20, 2011, as supplemented by letter dated May 10, 2012.

Brief description of amendment: The licensee will be replacing the two Waterford 3 steam generators (SGs) during the 18th refueling outage, which will commence in the fall of 2012. The existing Waterford 3 SG Program under Technical Specification (TS) 6.5.9, ''Steam Generator (SG) Program,'' contains an alternate repair criterion for SG tube inspections that is no longer applicable to the replacement SGs. Additionally, the replacement SGs will contain improved Alloy 690 thermally treated tubing material, which extends the SG tubing inservice inspection frequencies beyond that currently allowed by the Waterford TSs. The amendment modified TS 3/4.4.4, ''Steam Generator (SG) Tube Integrity,'' TS 6.5.9, and TS 6.9.1.5, ''Steam Generator Tube Inspection Report,'' to reflect the above changes.

Date of issuance: July 31, 2012.

Effective date: As of the date of issuance and shall be implemented prior to the first SG tube inservice inspection for the replacement SGs.

Amendment No.: 236.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: October 4, 2011 (76 FR 61395). The supplemental letter dated May 10, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 2012.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: August 10, 2011, as supplemented by letters dated April 30 and June 19, 2012.

Brief description of amendments: The amendments modify Technical Specification Surveillance Requirements 4.8.2.1 pertaining to periodic verification of battery bank capacity and inter-cell and connection resistance.

Date of issuance: August 8, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 3–252 and Unit 4–248.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: October 18, 2011 (76 FR 64392). The supplements dated April 30 and June 19, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 8, 2012.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1 (NMP1), Oswego County, New York

Date of amendment request: May 25, 2011, as supplemented by letter dated June 29, 2012.

Description of amendment request: The proposed amendment deletes an outdated reference to a specific date delineated in License Condition 2.B.(2) to be consistent with the wording found in the corresponding license condition at multiple stations including Nine Mile Point Unit 2 and Calvert Cliffs Units 1 and 2. Specifically, the proposed amendment removes the words, ''as of February 4, 1976,'' from License Condition 2.B.(2). This license condition authorizes NMPNS to ''* * * receive, possess and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Final Safety Analysis Report as supplemented and amended.''

Date of issuance: July 30, 2012.

Effective date: As of the date of issuance to be implemented within 90 days.

Amendment No.: 213.

Renewed Facility Operating License No. DPR–63: The amendment revises the License.

Date of initial notice in ***Federal Register***: June 28, 2011 (76 FR 37849).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 2012.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota (NSPM), Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: February 2, 2012.

Brief description of amendment: The amendment revised the Technical Specifications Surveillance Requirement (SR) 3.4.3.2, SR 3.5.1.12, and SR 3.6.1.5.1 to provide an alternative means for testing of main steam system safety/relief valves during various modes of operation.

Date of issuance: July 27, 2012.

Effective date: This license amendment is effective as of the date of its issuance, to be implemented prior to startup from the 2013 Refueling Outage.

Amendment No.: 168.

Facility Operating License No. DPR–22. Amendment revised the Renewed Facility Operating License and Appendix A, Technical Specifications.

Date of initial notice in ***Federal Register***: March 6, 2012 (77 FR 13373).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 2012.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: September 9, 2011, as supplemented on February 3 and

March 30, 2012.

Brief description of amendment request: The amendments revise Technical Specification (TS) to add Surveillance Requirement 3.3.1.14 to TS Table 3.3.1–1, Function 3, the Power Range Neutron Flux High Positive Rate Trip function.

Date of issuance: August 7, 2012.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: Unit 1–189 and Unit 2–184.

Facility Operating License Nos. NPF–2 and NPF–8: The amendments changed

the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: December 13, 2011 (76 FR 77572).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 7, 2012.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: August 27, 2010, as supplemented on April 11, 2011, and January 13, 2012.

Description of amendment request: The amendments add a new Action to Technical Specification (TS) 3.7.3, ''Control Room Emergency Ventilation (CREV) System,'' to modify the proposed completion time for restoration of inoperable HEPA filters and/or charcoal adsorbers to 7 days to restore an inoperable HEPA filter and 14 days to restore an inoperable charcoal adsorber, provided the flowrate requirements of the Ventilation Filter Testing Program are maintained. Additionally, the amendments correct errors in Unit 2 TS page header information that occurred during issuance of TS pages for a previous amendment.

Date of issuance: July 30, 2012.

Effective date: Date of issuance, to be implemented within 14 days.

Amendment Nos.: Unit 1—282, Unit 2—308, and Unit 3—267.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the licenses and Technical Specifications.

Date of initial notice in ***Federal Register***: November 30, 2010 (75 FR 74097).

The supplements dated April 11, 2011, and January 13, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 2012.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 10th day of August 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–20232 Filed 8–20–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499; NRC–2012–0196]

STP Nuclear Operating Company, South Texas Project, Units 1 and 2; Application for Amendment to Facility Operating License

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (the Commission or NRC) has granted the request of STP Nuclear Operating Company (the licensee) to withdraw its application dated June 2, 2011 (ADAMS Accession No. ML11161A143), as supplemented by letters dated August 1, 2011, March 8, 2012, March 22, 2012, April 3, 2012 (ADAMS Accession Nos. ML11221A230, ML12079A038, ML12089A023, and ML12101A223, respectively), and May 3, 2012,[1] for proposed amendment to Facility Operating License Nos. NPF–76 and NPF–80 for the South Texas Project (STP), Units 1 and 2, located in Matagorda County, Texas.

ADDRESSES: Please refer to Docket ID NRC–2012–0196 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0196. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Balwant K. Singal, Senior Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3016; email: *Balwant.Singal@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The proposed amendment would have revised the facility Fire Protection Program related to the alternate shutdown capability that is documented in the Fire Hazards Analysis Report for STP, Units 1 and 2. The amendments requested approval to perform certain operator actions from the main control room (MCR) before evacuating the MCR to achieve and maintain safe shutdown in the event of a fire in the MCR.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 23, 2011 (76 FR 52702). However, by letter dated July 31, 2012 (ADAMS Accession No. ML12220A509), the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 2, 2011, as supplemented by letters dated August 1, 2011, March 8, 2012, March 22, 2012, April 3, 2012, and May 3, 2012, and the licensee's letter dated July 31, 2012, which withdrew the application for license amendment.

Dated at Rockville, Maryland, this 14th day of August 2012.

For the Nuclear Regulatory Commission.

Balwant K. Singal,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–20542 Filed 8–20–12; 8:45 am]

BILLING CODE 7590–01–P

[1] This document contains security-related information and is not publicly available.

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of August 20, 27, September 3, 10, 17, 24, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 20, 2012

There are no meetings scheduled for the week of August 20, 2012.

Week of August 27, 2012—Tentative

There are no meetings scheduled for the week of August 27, 2012.

Week of September 3, 2012—Tentative

There are no meetings scheduled for the week of September 3, 2012.

Week of September 10, 2012—Tentative

Tuesday, September 11, 2012

9:00 a.m.

Briefing on Economic Consequences (Public Meeting) (Contact: Richard Correia, 301–251–7430).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of September 17, 2012—Tentative

There are no meetings scheduled for the week of September 17, 2012.

Week of September 24, 2012—Tentative

Tuesday, September 25, 2012

9:30 a.m.

Strategic Programmatic Overview of the New Reactors Business Line (Public Meeting) (Contact: Donna Williams, 301–415–1322).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: August 16, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–20630 Filed 8–17–12; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67663]

Public Availability of the Securities and Exchange Commission's FY 2011 Service Contract Inventory

AGENCY: U.S. Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), SEC is publishing this notice to advise the public of the availability of the FY2011 Service Contract Inventory (SCI) and the FY2010 SCI Analysis. The SCI provides information on FY2011 actions over $25,000 for service contracts. The inventory organizes the information by function to show how SEC distributes contracted resources throughout the agency. SEC developed the inventory per the guidance issued on November 5, 2011 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* The Service Contract Inventory Analysis for FY2010 provides information based on the FY 2010 Inventory. The SEC has posted its inventory, a summary of the inventory and the FY2010 analysis on the SEC's homepage at *http://www.sec.gov/about/secreports.shtml or http://www.sec.gov/open.*

FOR FURTHER INFORMATION CONTACT: Direct questions regarding the service contract inventory to Vance Cathell, Director Office of Acquisitions 202.551.8385 or *CathellV@sec.gov.*

Dated: August 15, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20451 Filed 8–20–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7984]

Culturally Significant Objects Imported for Exhibition Determinations: ''New Photography 2012: Michele Abeles, Birdhead (Ji Weiyu and Song Tao), Anne Collier, Zoe Crosher, and Shirana Shahbazi''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''New Photography 2012: Michele Abeles, Birdhead (Ji Weiyu and Song Tao), Anne Collier, Zoe Crosher, and Shirana Shahbazi,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art in New York, New York from on or about October 3, 2012, until on or about February 4, 2013, with a preview on October 2, 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 Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–

5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: August 8, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–20546 Filed 8–20–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7985]

Meeting of Advisory Committee on International Communications and Information Policy

The Department of State's Advisory Committee on International Communications and Information Policy (ACICIP) will hold a public meeting on October 2, 2012 from 9:00 a.m. to 12:00 p.m. in the Loy Henderson Auditorium of the Harry S Truman Building of the U.S. Department of State. The Truman Building is located at 2201 C Street NW., Washington, DC 20520. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country issues.

The meeting will be led by ACICIP Chair Mr. Thomas Wheeler of Core Capital Partners and Ambassador Philip L. Verveer, U.S. Coordinator for International Communications and Information Policy. The meeting will discuss preparations for the World Conference on International Telecommunications to be held in Dubai, UAE, on December 3–14, 2012.

Members of the public may submit suggestions and comments to the ACICIP. Comments concerning topics to be addressed in the agenda should be received by the ACICIP Executive Secretary (contact information below) at least ten working days prior to the date of the meeting. All comments must be submitted in written form and should not exceed one page. Resource limitations preclude acknowledging or replying to submissions.

While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-clearance. For placement on the pre-clearance list, please submit the following information no later than 5:00 p.m. on Thursday, September 27, 2012. (Please note that this information is not retained by the ACICIP Executive Secretary and must therefore be re-submitted for each ACICIP meeting):

I. State That You Are Requesting Pre-Clearance to a Meeting

II. Provide the Following Information

1. Name of meeting and its date and time.

2. Visitor's full name.

3. Date of birth.

4. Citizenship.

5. Acceptable forms of identification for entry into the U.S. Department of State include:

- U.S. driver's license with photo.
- Passport.
- U.S. government agency ID.

6. ID number on the form of ID that the visitor will show upon entry.

7. Whether the visitor has a need for reasonable accommodation. Such requests received after September 20, 2012, might not be possible to fulfill.

Send the above information to Joseph Burton by fax (202) 647–7407 or email *BurtonKJ@state.gov.*

All visitors for this meeting must use the 23rd Street entrance. The valid ID bearing the number provided with your pre-clearance request will be required for admittance. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State–36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

For further information, please contact Joseph Burton, Executive Secretary of the Committee, at (202) 647–5231 or *BurtonKJ@state.gov.*

General information about ACICIP and the mission of International Communications and Information Policy is available at: *http://www.state.gov/e/eb/adcom/acicip/index.htm.*

Dated: August 13, 2012.

Douglas C. May,

Director, EB/CIP/TS, Department of State.

[FR Doc. 2012–20544 Filed 8–20–12; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Third Meeting: RTCA Special Committee 227, Standards of Navigation Performance, (Joint With EUROCAE WG–85)

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

ACTION: Meeting Notice of RTCA Special Committee 227, Standards of Navigation Performance, (Joint with EUROCAE WG–85).

SUMMARY: The FAA is issuing this notice to advise the public of the third meeting of RTCA Special Committee 227, Standards of Navigation Performance, (Joint with EUROCAE WG–85).

DATES: The meeting will be held September 17–21, 2012, from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at EUROCONTROL Headquarters, Rue de la Fusee 96. 1130 Brussels, Belgium.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 227. The agenda will include the following:

September 17–21, 2012

- Welcome/Introduction/ Administrative Remarks
- Agenda Overview
- Review Minutes and Action Items
  - Update/Approve Minutes
- Review of Planned Work Program for the Week, with Plenary Break-out Sessions
- Review/Discussion of MASPS Action Items and Proposed Updates
- Other Business
- Establish Agenda for Next Meeting
- Date, Place, and Time of Next Meeting
- Plenary Adjourns

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral

statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 14, 2012.

David Sicard,

Manager, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2012–20452 Filed 8–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release From Federal Surplus Property and Grant Assurance Obligations at Porterville Municipal Airport, Porterville, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a release of approximately 26 acres of airport property at the Porterville Municipal Airport (Airport), Porterville, California from all conditions contained in the Surplus Property Deed and Grant Assurances because the parcel of land is not needed for airport purposes. The land requested to be released is located at the southwest corner of the airport and distant from the airfield. The land had previously been set aside as mitigation for a kit fox preserve, which prevented any airport activity on the property. The wildlife designation was recently eliminated allowing the City of Porterville (City) to acquire the property at its fair market value, thereby serving the interest of civil aviation. It will be developed for another purpose compatible with the airport and the new use will not interfere with the airport or its operation.

DATES: Comments must be received on or before September 20, 2012.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Robert Lee, Airports Compliance Specialist, Federal Aviation Administration, San Francisco Airports District Office, **Federal Register** Comment, 1000 Marina Boulevard, Suite 220, Brisbane, CA 94005. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Bradley D. Dunlap, Community Development Director, 291 N. Main Street, Porterville, CA 93257.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

The City of Porterville, California requested a release from Federal surplus property and grant assurance obligations for approximately 26 acres of airport land to allow for its sale. The property was originally acquired pursuant to the Surplus Property Act of 1944 and was deeded to the City of Porterville on June 16, 1948. The parcel of land is located some distance from the airfield in the southwest corner of the airport; outside of the airport fence line; east of the secondary access road; and north of Teapot Dome Avenue. Due to its location and undeveloped condition, the property cannot be readily used and will not be needed for airport purposes.

The property had been set aside as part of a 40-acre kit fox preserve and could not be used for any other purpose. Based on biological surveys in 2005 and 2006, the U.S. Fish and Wildlife Service determined that the preserve site was no longer needed. By purchasing conservation credits, the City of Porterville was able to obtain an amendment to the 1990 Biological Opinion that established the kit fox preserve in order to eliminate the wildlife designation. The land was never used for airport purposes and is not needed for future airport use. The City of Porterville will acquire the property and use approximately 16 acres for City related purposes and future development. The City will compensate the Airport fund for the fair market value of the land.

The sale price of the parcel will be based on an appraisal of its fair market value. The sales proceeds are being devoted to airport operations and capital projects. The reuse of the property will not interfere with the airport or its operation, thereby serving the interests of civil aviation.

Issued in Brisbane, California, on August 13, 2012.

Robin K. Hunt,

Manager, San Francisco Airports District Office, Western-Pacific Region.

[FR Doc. 2012–20478 Filed 8–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2012–0069]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before September 20, 2012.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2012–0069] 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. Telephone: 1–800–647–5527.
- *Fax:* 202–493–2251

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Timothy M. Pickrell, NHTSA, 1200 New Jersey Avenue SE., W55–204, NVS–421,Washington, DC 20590. Mr. Pickrell's telephone number is (202) 366–2903.

Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: The National Survey on the Use of Booster Seats.

OMB Control Number: 2127–0644.

Affected Public: Motorists in passenger vehicles at gas stations, fast food restaurants, and other types of sites frequented by children during the time in which the survey is conducted.

Form Number: NHTSA Form 1010.

Abstract: The National Survey of the Use of Booster Seats is being conducted to respond to the Section 14(i) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. The act directs the Department of Transportation to reduce the deaths and injuries among children in the 4 to 8 year old age group that are caused by failure to use a booster seat by 25%. Conducting the National Survey of the Use of Booster Seats provides the Department with invaluable information on who is and is not using booster seats, helping the Department better direct its outreach programs to ensure that children are protected to the greatest degree possible when they ride in motor vehicles. The OMB approval for this survey is scheduled to expire on October 31, 2012. NHTSA seeks an extension to this approval in order to obtain this important survey data, save more children and help to comply with the TREAD Act requirement.

Estimated Annual Burden: 320 hours.

Estimated Number of Respondents: Approximately 4,800 adult motorists in passenger vehicles at gas stations, fast food restaurants, and other types of sites frequented by children during the time in which the survey is conducted.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: August 16, 2012.

Terry Shelton,

Associate Administrator, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, U.S. Department of Transportation.

[FR Doc. 2012–20493 Filed 8–20–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Members of Senior Executive Service Performance Review Boards

AGENCY: Internal Revenue Service (IRS), Department of the Treasury (Treasury).

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the names of those IRS employees who will serve as members on IRS's Fiscal Year 2012 Senior Executive Service (SES) Performance Review Boards.

DATES: This notice is effective September 1, 2012.

FOR FURTHER INFORMATION CONTACT: Debbie Salisbury, IRS, 1111 Constitution Avenue NW., Room 2412, Washington, DC 20224, (202) 622–4116.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members to the IRS's SES Performance Review Boards. The names and titles of the executives serving on the boards are as follows:

Steven T. Miller, Deputy Commissioner for Services and Enforcement

Elizabeth Tucker, Deputy Commissioner for Operations Support

Peggy A. Bogadi, Commissioner, Wage and Investment (W&I)

Lauren Buschor, Associate Chief Information Officer (CIO), Enterprise Operations, Information Technology (IT)

Robin L. Canady, Director, Strategy and Finance (W&I)

Rebecca A. Chiaramida, Director, Privacy, Governmental Liaison and Disclosure (PGLD)

James P. Clifford, Director, Compliance (W&I)

Robert N. Crawford, Associate CIO, Enterprise Services (IT)

Michael Danilack, Deputy Commissioner, International, Large Business and International (LB&I)

Jonathan M. Davis, Chief of Staff/ Executive Director, Strategy and Organizational Development, Office of the Commissioner

Monica H. Davy, Executive Director, Office of Equity, Diversity and Inclusion, Office of the Commissioner

Paul D. DeNard, Deputy Commissioner, Operations (LB&I)

Faris R. Fink, Commissioner, Small Business/Self Employed (SB/SE)

Carl T. Froehlich, Associate CIO, End User and Equipment Services (IT)

Julieta Garcia, Director, Customer Assistance, Relationships and Education (W&I)

Silvana G. Garza, Associate CIO, Affordable Care Act Program Management Office (IT)
David A. Grant, Chief, Agency-Wide Shared Services (AWSS)
Joseph H. Grant, Deputy Commissioner, Tax Exempt and Government Entities (TE/GE)
Rena C. Girinakis, Executive Director, Systemic Advocacy, Taxpayer Advocate Service (TAS)
Patricia J. Haynes, Director, Investigative and Enforcement Operations, Criminal Investigation (CI)
Shenita L. Hicks, Director, Examination (SB/SE)
Debra S. Holland, Deputy Commissioner for Support (W&I)
Robert L. Hunt, Director, Collection (SB/SE)
Robin DelRey Jenkins, Director, Office of Business Modernization (SB/SE)
Michael D. Julianelle, Director, Enterprise Collection Strategy (SB/SE)
Gregory E. Kane, Deputy Chief Financial Officer, Chief Financial Office (CFO)
Sheldon M. Kay, Deputy Chief, Appeals (AP)
Frank M. Keith, Jr., Chief, Communications and Liaison (C&L)
David A. Krieg, IRS Human Capital Officer, Human Capital Office (HCO)
Pamela J. LaRue, Chief Financial Officer (CFO)
Heather C. Maloy, Commissioner, LB&I
Stephen L. Manning, Associate CIO, User and Network Services (IT)
Rosemary D. Marcuss, Director, Research, Analysis and Statistics (RAS)
C. Andre Martin, Director, Investigative and Enforcement Services (CI)
Rajive K. Mathur, Director, Online Services (OLS)
Gretchen R. McCoy, Associate CIO, Modernization Program Management Office (IT)
James M. McGrane, Deputy CIO for Strategy/Modernization (IT)
Terence V. Milholland, Chief Technology Officer/Chief Information Officer (IT)
Katherine M. Miller, Associate CIO, Applications Development (IT)
Debra L. Nelson, Director, Management Services (IT)
Nina E. Olson, National Taxpayer Advocate (TAS)
Jodell L. Patterson, Director, Return Integrity and Correspondence Services (W&I)
Ruth Perez, Deputy Commissioner, SB/SE
Julie Rushin, Deputy CIO for Operations (IT)
Melissa R. Snell, Deputy National Taxpayer Advocate (TAS)
David W. Stender, Associate CIO, Cybersecurity (IT)
Peter J. Stipek, Director, Customer Accounts Services (W&I)
Kathryn D. Vaugh, Director, Campus Compliance Services (SB/SE)
Jennifer L. Vozne, Director, International Operations (CI)
Peter C. Wade, Business Modernization Director (W&I)
Christopher Wagner, Chief, Appeals (AP)
Richard Weber, Chief, CI
Matthew A. Weir, Executive Director, Case Advocacy (TAS)

This document does not meet the Treasury's criteria for significant regulations.

Dated: August 14, 2012.

Beth Tucker,

Deputy Commissioner for Operations Support, Internal Revenue Service.

[FR Doc. 2012–20439 Filed 8–20–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-New (VA Form 10–0534)]

Agency Information Collection: Emergency Submission for OMB Review (CEPACT (Center for Evaluation of PACT) Demographic Questionnaire and Patient Focus Group); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the United States Department of Veterans Affairs (VA), has submitted to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). An emergency clearance is being requested for information needed to focus on patient experiences with and views on barriers and facilitators to specific aspects of the Patient-Aligned Care Team (PACT) care model: High risk care management, telemedicine and shared medical appointments.

DATES: Comments must be submitted on or before August 31, 2012.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316 or Fax (202) 395–6974. Please refer to ''2900–New (VA Form 10–0534).

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, Fax (202) 632–7583 or email: *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–New (VA Form 10–0534).

SUPPLEMENTARY INFORMATION:

Title: CEPACT (Center for Evaluation of PACT) Demographic Questionnaire, VA Form 10–0534 and Patient Focus Group.

OMB Control Number: 2900–New (VA Form 10–0534).

Type of Review: New data collection.

Abstract: The data collected on VA Form 10–0534 will be used to implement the PACT model that will in turn improve health care for Veterans and sustain VA's leadership in health care quality. This will be done to evaluate the effectiveness of various types of care delivered to patients throughout the PACT model.

Affected Public: Individuals or households.

Estimated Annual Burden: 226.

Estimated Average Burden per Respondent: 85 minutes for focus group; 5 minutes for questionnaire.

Frequency of Response: One-time.

Estimated Number of Respondents: 150.

Estimated Number of Responses: 300.

Dated: August 16, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst Director, Enterprise Records Service.

[FR Doc. 2012–20454 Filed 8–20–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 10–0536)]

Agency Information Collection: (PACT Patient Experiences Survey); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Department of Veterans Affairs (VA), will submit to the

Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). An emergency clearance is being requested for information needed to improve patient care through specific mechanisms. VA has undertaken an initiative to implement a patient-centered medical home model, ''Patient Aligned Care Team'' or PACT at all Veterans Health Administration (VHA) Ambulatory Primary Care sites. This initiative supports the VHA's Universal Health Care Services Plan to redesign VHA healthcare delivery through increasing access, coordination, communication, and continuity of care. The patient experiences from this data collection are intended to help form future national VA policy.

DATES: Comments must be submitted on or before August 31, 2012.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316 or Fax (202) 395–6974. Please refer to ''2900–New (VA Form 10–0536).''

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, Fax (202) 632–7583 or email: *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–New (VA Form 10–0536).

SUPPLEMENTARY INFORMATION:

Title: PACT Patient Experiences Survey, VA Form 10–0536.

OMB Control Number: 2900—New.

Type of Review: New data collection.

Abstract: The data collected on VA Form 10–0536 will be used to implement a patient-centered medical home at all Veterans Health Administration Ambulatory Primary Care sites. The medical home provides accessible, coordinated, comprehensive, patient-centered care, and is managed by primary care providers with the active involvement of other clinical and non-clinical staff. The medical home allows patients to have a more active role in their health care and is associated with increased quality improvement, patient satisfaction, and a decrease in hospital costs due to fewer hospital visits and readmissions. The information collected will be used by the VAAAHS PACT Demonstration Laboratory and the Ambulatory Care Service to evaluate the universal VHA PACT Systems Redesign, document patient experiences over time, and improve patient care through specific mechanisms.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,400 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,400.

Estimated Number of Responses: 4,800.

Dated: August 16, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst Director, Enterprise Records Service.

[FR Doc. 2012–20455 Filed 8–20–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New VA Form (VA Form 10–0532a–k)]

Agency Information Collection: Emergency Submission for OMB Review (PACT: Clinical Innovation Study—Helping Veterans Manage Chronic Pain); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501–3521), this notice announces that the Department of Veterans Affairs (VA), will submit to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). An emergency clearance is being requested for information needed to assess the effectiveness of pain care management provided to veterans.

DATES: Comments must be submitted on or before August 31, 2012.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316 or Fax (202) 395–6974. Please refer to ''2900—New VA Form (VA Form 10–0532a–k).

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, Fax (202) 632–7583 or email: *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900—New VA Form (VA Form 10–0532a–k).''

SUPPLEMENTARY INFORMATION:

Titles: Clinical Innovation Study—Helping Veterans Manage Chronic Pain.

a. Pain Care Management Tracking Tool, VA Form 10–0532.

b. Pain Care Management Self Monitoring Form (unpublished), VA Form 10–0532a.

c. Pain Outcomes Questionnaire (Clark, Gironda, & Young, 2003), VA Form 10–0532b.

d. The Multidimensional Pain Inventory (MPI; Kearns, Turk, & Rudy, 1985), VA Form 10–0532c.

e. Pain Catastrophizing Scale (Osman, Barrios, Gutierrez, Kopper, Merrifield, & Grittmann, 2000), VA Form 10–0532d.

f. The Oswestry Disability Index (Fairbank & Pynsent, 2000), VA Form 10–0532e.

g. Brief Pain Inventory—Short Form (BPI; Cleeland, 1991). Administered at baseline and each follow-up, VA Form 10–0532f.

h. Fear-Avoidance Beliefs Questionnaire (FABQ; Waddell, Newton, et al., 1993), VA Form 10–0532g.

i. The Brief COPE (Carver, 1997), VA Form 10–0532h.

j. Depression and Anxiety Stress Scales (DASS–21; Lovibond & Lovibond, 1995), VA Form 10–0532i.

k. Patient Health Questionnaire (PHQ–9; Kroenke, Spitzer, & Williams, 2001), VA Form 10–0532j.

l. Generalized Anxiety Disorder (GAD–7); Spitzer, Kroenke, Williams, & Lowe, 2006), VA Form 10–0532k.

OMB Control Number: 2900–New.

Type of Review: New data collection.

Abstract: The data collected on VA Forms VA Form 10–0532a–k will be used to: (1) Assess the effectiveness of patient care management (PCM) in increasing patients' functionality, improving quality of life, and improving paint control relative to usual care and (2) to assess the impact of PCM on depression and anxiety relative to usual care. This data collection's model has been designed to serve patients by augmenting existing pain management interventions (e.g., medications, physical therapy) by teaching pain care management skills that patients can incorporate into their daily activities. VA will use the information to evaluate the effectiveness of the intervention so that it can most effectively be applied to future patients with chronic pain problems.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 10–0532—67 hours.
b. VA Form 10–0532a—80 hours.
c. VA Form 10–0532b—200 hours.
d. VA Form 10–0532c—80 hours.
e. VA Form 10–0532d—53 hours.
f. VA Form 10–0532e—53 hours.
g. VA Form 10–0532f—133 hours.
h. VA Form 10–0532g—19 hours.
i. VA Form 10–0532h—27 hours.
j. VA Form 10–0532i—93 hours.
k. VA Form 10–0532j– 67 hours.
l. VA Form 10–0532k—67 hours.

Estimated Average Burden per Respondent:

a. VA Form 10–0532—5 minutes.
b. VA Form 10–0532a—10 minutes.
c. VA Form 10–0532b—15 minutes.
d. VA Form 10–0532c—15 minutes.
e. VA Form 10–0532d—10 minutes.
f. VA Form 10–0532e—10 minutes.
g. VA Form 10–0532f—10 minutes.
h. VA Form 10–0532g—7 minutes.
i. VA Form 10–0532h—10 minutes.
j. VA Form 10–0532i—7 minutes.
k. VA Form 10–0532j—5 minutes.
l. VA Form 10–0532k—5 minutes,

Frequency of Response: Monthly.

Estimated Number of Respondents:

a. VA Form 10–0532—800.
b. VA Form 10–0532a—480.
c. VA Form 10–0532b—800.
d. VA Form 10–0532c—320.
e. VA Form 10–0532d—320.
f. VA Form 10–0532e—320.
g. VA Form 10–0532f—800.
h. VA Form 10–0532g—160.
i. VA Form 10–0532h—160.
j. VA Form 10–0532i—800.
k. VA Form 10–0532j—800.
l. VA Form 10–0532k—800

Dated: August 16, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst Director, Enterprise Records Service.

[FR Doc. 2012–20457 Filed 8–20–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (Patient & Caregiver)]

Agency Information Collection: (PACT Qualitative Evaluation: Patient & Caregiver Interviews); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501–3521), this notice announces that the Department of Veterans Affairs (VA), will submit to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). An emergency clearance is being requested for information needed to evaluate the universal Patient Aligned Care Teams (PACT) Systems Redesign, document patients' and their informal caregivers' experience.

DATES: Comments must be submitted on or before August 31, 2012.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316 or FAX (202) 395–6974. Please refer to ''2900–New (Patient & Caregiver).

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 632–7583 or email: *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–New (Patient & Caregiver).

SUPPLEMENTARY INFORMATION:

Title: PACT Qualitative Evaluation: Patient & Caregiver Interviews.

OMB Control Number: 2900—New

Type of Review: New data collection.

Abstract: The information collected will be used assess patients' and caregivers' experiences with the PACT Systems Redesign and the PACT Demo Lab innovations and will inform the redesign and demo lab innovations in real time. It will also gather information on patient characteristics and their experiences with self-managing chronic conditions, using technology to care for their health, and involving friends and family members in their health care. The information collected will be used by the PACT Demonstration Laboratory and the Ambulatory Care Service to evaluate the universal VHA PACT Systems Redesign, document patients' and their informal caregivers' experiences over time, and improve patient care through specific mechanisms.

Affected Public: Individuals or households.

Estimated Annual Burden: 50 burden hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 100.

Dated: August 16, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst Director, Enterprise Records Service.

[FR Doc. 2012–20462 Filed 8–20–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-New (VA Form 10–0537)]

Agency Information Collection: (PACT Clinical Innovation Study: Engaging Caregivers in the Care of Veterans With Dementia); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501–3521), this notice announces that the Department of Veterans Affairs (VA), will submit to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). An emergency clearance is being requested for information needed to improve dementia care for patients and care givers.

DATES: Comments must be submitted on or before August 31, 2012.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316 or Fax (202) 395–6974. Please refer to ''2900—New (VA Form 10–0537).

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, Fax (202) 632–7583 or email: *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900—New (VA Form 10–0537).

SUPPLEMENTARY INFORMATION:

Title: PACT Clinical Innovation Study: Engaging Caregivers in the Care of Veterans with Dementia, VA Form 10–0537, Appendices a–u.

OMB Control Number: 2900—New.

Type of Review: New data collection.

Abstract: The data collected on VA Form 10–0537, Appendices a–u, will be used to examine the feasibility and extent to which a patient-centered and dementia care management program for veterans and their caregivers facilitates access to and use of medical and social services. The information will help VA develop and test a care management intervention that will improve dementia care for patients and family caregivers.

Affected Public: Individuals or households.

Estimated Annual Burden: 704 hours.

Estimated Average Burden per Respondent: 88 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 160.

Estimated Number of Responses: 480.

Dated: August 16, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst Director, Enterprise Records Service.

[FR Doc. 2012–20461 Filed 8–20–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (VA Form 10–0533a–c)]

Agency Information Collection: Emergency Submission for OMB Review (Telehealth in the Parkinson's Disease Research, Education and Clinical Center (PADRECC): The Key to the Patient-Centered Medical Home?); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501–3521), this notice announces that the United States Department of Veterans Affairs (VA), will submit to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). An emergency clearance is being requested for information needed to improve the care and clinical outcomes of patients with Parkinson's disease.

DATES: Comments must be submitted on or before August 31, 2012.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316 or FAX (202) 395–6974. Please refer to ''2900—New (VA Form 10–0533a–c).

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 632–7583 or email: *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900—New (VA Form 10–0533a–c).''

SUPPLEMENTARY INFORMATION:

Titles:

a. PACT ''Telehealth in the Parkinson's Disease Research, Education and Clinical Center (PADRECC): The Key to the Patient-Centered Medical Home?'', VA Form 10–0533.

b. Geriatric Depression Scale (GDS) Short Form, VA Form 10–5033a.

c. Quality of Life in Parkinson's Disease, VA Form 10–0533b.

d. Cost and Patient Outcomes Questions, VA Form 10–0533c.

OMB Control Number: 2900—New (VA Form 10–0533a–c).

Type of Review: New data collection.

Abstract: The data collected on VA Forms 10–0533a-c will be used to obtain data on the cost, clinical outcomes, and patient satisfaction associated with expanded access to PADRECC care through the use of telehealth. VA will use the information to assess whether or not the use of telehealth is feasible, cost-effective, and clinically equivalent alternative to routine face-to-face care for patients with Parkinson's disease.

Affected Public: Individuals or households.

Estimated Annual Burden: 116 burden hours.

Estimated Average Burden per Respondent: 4.4 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400.

Estimated Number of Responses: 1,600.

Dated: August 16, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst Director, Enterprise Records Service.

[FR Doc. 2012–20456 Filed 8–20–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (VA Form (10–0530a–b)]

Agency Information Collection: Emergency Submission for OMB Review (VISN 23 PACT Demonstration Lab: Patient Care Preferences Surveys); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Department of Veterans Affairs (VA), will submit to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). An emergency clearance is being requested for information needed to improve health care for veterans.

DATES: Comments must be submitted on or before August 31, 2012.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316 or Fax (202) 395–6974. Please refer to ''2900—New (VA Form 10–0530a–b).

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 632–7583 or email: *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900—New VA Form (10–0530a–b).

SUPPLEMENTARY INFORMATION:

Title: VISN 23 PACT Demonstration Lab: Patient Care Preferences Survey.

a. Multidimensional Health Locus of Control, VA Form 10–0530.

b. General Adherence Scale, VA Form 10–0530a.

c. Demographic Data: Patient Background Information, VA Form 10–0530b.

OMB Control Number: 2900–New.

Type of Review: New data collection.

Abstract: This patient self-assessment of health study and patient satisfaction questionnaire seek to collect individual, primary data from patients concerning attitudes toward healthcare. The VHA PACT Demo Lab is a new grant-funded project. No existing information can be

used to adequately evaluate the VHA PACT, evaluate patient experiences with PACT over time, and inform improvements to the redesign and its newly implemented innovations.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 10–0530—25 hours.
b. VA Form 10–0530a—17 hours.
c. VA Form 10–0530b—17 hours.

Estimated Average Burden Per Respondent:

a. VA Form 10–0530—3 minutes.
b. VA Form 10–0530a—2 minutes.
c. VA Form 10–0530b—2 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents:

a. VA Form 10–0530—500.
b. VA Form 10–0530a—500.
c. VA Form 10–0530b—500.

Dated: August 16, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst Director, Enterprise Records Service.

[FR Doc. 2012–20458 Filed 8–20–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-New (VA Form 10–0529a–f)]

Agency Information Collection: Emergency Submission for OMB Review (PACT: Clinical Innovation Study—Helping Veterans Manage Chronic Pain); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501–3521), this notice announces that the Department of Veterans Affairs (VA), will submit to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). An emergency clearance is being requested for information needed to develop and evaluate a patient-centered model of care for OEF/OIF veterans with PTSD.

DATES: Comments must be submitted on or before August 31, 2012.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316 or FAX (202) 395–6974. Please refer to ''2900–New (VA Form 10–0529a–f).

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 632–7583 or email: *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–New VA Form (10–0529a–f).''

SUPPLEMENTARY INFORMATION:

Title: Clinical Innovation Study—Helping Veterans Manage Chronic Pain.

a. Pain Care Management Tracking Tool, VA Form 10–0532.
b. Pain Care Management Self Monitoring Form (unpublished) 10–0532a.
c. Pain Outcomes Questionnaire (Clark, Gironda, & Young, 2003)10–0532b.
d. The Multidimensional Pain Inventory (MPI; Kearns, Turk, & Rudy, 1985) 10–0532b.
e. Pain Catastrophizing Scale (Osman, Barrios, Gutierrez, Kopper, Merrifield, & Grittmann, 2000) 10–0532d.
f. The Oswestry Disability Index (Fairbank & Pynsent, 2000) 10–0532e.
g. Brief Pain Inventory—Short Form (BPI; Cleeland, 1991). Administered at baseline and each follow-up. 10–0532f.
h. Fear-Avoidance Beliefs Questionnaire (FABQ; Waddell, Newton, et al., 1993) 10–0532g.
i. The Brief COPE (Carver, 1997) 10–0532h.
j. Depression and Anxiety Stress Scales (DASS–21; Lovibond & Lovibond, 1995) 10–0532i.
k. Patient Health Questionnaire (PHQ–9; Kroenke, Spitzer, & Williams, 2001) 10–0532j.
l. Generalized Anxiety Disorder (GAD–7); Spitzer, Kroenke, Williams, & Lowe, 2006) 10–0532k.

OMB Control Number: 2900-New.

Type of Review: New data collection.

Abstract: The data collected on VA Forms 10–0532a–k will be used to: (1) Assess the effectiveness of patient care management (PCM) in increasing patients' functionality, improving quality of life, and improving paint control relative to usual care and (2) to assess the impact of PCM on depression and anxiety relative to usual care. This data collection's model has been designed to serve patients by augmenting existing pain management interventions (e.g., medications, physical therapy) by teaching pain care management skills that patients can incorporate into their daily activities. VA will use the information to evaluate the effectiveness of the intervention so that it can most effectively be applied to future patients with chronic pain problems.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 10–0532—67 hours.
b. 10–0532A—80 hours.
c. 10–0532B—200 hours.
d. 10–0532C—80 hours.
e. 10–0532D—53 hours.
f. 10–0532E—53 hours.
g. 10–0532F—133 hours.
h. 10–0532G—19 hours.
i. 10–0532H—27 hours.
j. 10–0532I—93 hours.
k. 10–0532J—67 hours.
l. 20–0532K—67 hours.

Estimated Average Burden per Respondent:

a. VA Form 10–0532—5 minutes.
b. 10–0532A—10 minutes.
c. 10–0532B—15 minutes.
d. 10–0532C—15 minutes.
e. 10–0532D—10 minutes.
f. 10–0532E—10 minutes.
g. 10–0532F—10 minutes.
h. 10–0532G—7 minutes.
i. 10–0532H—10 minutes.
j. 10–0532I—7 minutes.
k. 10–0532J—5 minutes.
l. 20–0532K—5 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents:

a. VA Form 10–0532—800.
b. 10–0532A—480.
c. 10–0532B—800.
d. 10–0532C—320.
e. 10–0532D—320.
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g. 10–0532F—800.
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i. 10–0532H—160.
j. 10–0532I—800.
k. 10–0532J—800.
l. 20–0532K—800.

Dated: August 16, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst Director, Enterprise Records Service.

[FR Doc. 2012–20459 Filed 8–20–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 10–0535)]

Agency Information Collection: Emergency Submission for OMB Review (PACT VISN20 Health Care Experiences of Patients With Congestive Heart Failure, Patient Needs Assessment for Clinical Innovations); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501–3521), this notice announces that the Department of Veterans Affairs (VA), will submit to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). An emergency clearance is being requested for information needed to improve the care and clinical outcomes of patients with congestive heart failure (CHF).

DATES: Comments must be submitted on or before August 31, 2012.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316 or FAX (202) 395–6974. Please refer to ''2900—New (VA Form 10–0535).

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–7479, FAX (202) 632–7583 or email: *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–New (VA Form 10–0535).

SUPPLEMENTARY INFORMATION:

Title: PACT VISN20 Health Care Experiences of Patients with Congestive Heart Failure, Patient Needs Assessment for Clinical Innovations, VA Form 10–0535.

OMB Control Number: 2900—New.

Type of Review: New data collection.

Abstract: The data collected on VA Form 10–0535 will be used to identify strengths and weaknesses in the current care delivery system for patients with congestive heart failure.

Affected Public: Individuals or households.

Estimated Annual Burden: 100 burden hours.

Estimated Average Burden per Respondent: 75 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 80.

Dated: August 16, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst Director, Enterprise Records Service.

[FR Doc. 2012–20460 Filed 8–20–12; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 77 Tuesday,
No. 162 August 21, 2012

Part II

Department of Commerce

International Trade Administration

Fresh Tomatoes from Mexico: Notice of Initiation of Changed Circumstances Review; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Fresh Tomatoes from Mexico: Notice of Initiation of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 22, 2008, the Department of Commerce (the Department) signed the current antidumping suspension agreement on fresh tomatoes with growers/exporters of Mexican tomatoes accounting for substantially all (*i.e.,* not less than 85 percent) of Mexico's tomato exports to the United States. The agreement covers all fresh or chilled tomatoes of Mexican origin, except tomatoes that are for processing. On June 22, 2012, the U.S. petitioners in the underlying suspended antidumping duty investigation (*i.e.,* the Florida Tomato Exchange, the Florida Tomato Growers Exchange, the Florida Fruit and Vegetable Association, the Florida Farm Bureau Federation, the Gadsen County Tomato Growers Association, Inc., the South Carolina Tomato Association, Inc., and the Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee, and Virginia Tomato Growers (collectively, the petitioners)) filed a request for withdrawal of the petition and termination of the investigation and the suspension agreement.[1] For the reasons stated in this notice, the Department is initiating a changed circumstances review of the suspended investigation. Interested parties are invited to submit comments for the Department's consideration.

DATES: *Effective Date:* August 21, 2012.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or Anne D'Alauro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington DC 20230; telephone (202) 482–0192 or (202) 482–4830, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1996, the Department initiated an antidumping investigation to determine whether imports of fresh tomatoes from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV). See *Initiation of Antidumping Duty Investigation: Fresh Tomatoes From Mexico,* 61 FR 18377 (April 25, 1996). On May 16, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination. *See Fresh Tomatoes From Mexico; Import Investigation,* Investigation No. 731–TA–747 (Preliminary), 61 FR 28891 (June 6, 1996).

On October 10, 1996, the Department and Mexican tomato growers/exporters initialed a proposed agreement to suspend the antidumping investigation. On October 28, 1996, the Department preliminarily determined that imports of fresh tomatoes from Mexico were being sold at LTFV in the United States. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes from Mexico,* 61 FR 56608 (November 1, 1996) (*Preliminary Determination*). On the same day that the *Preliminary Determination* was signed, the Department and certain growers/exporters of fresh tomatoes from Mexico signed an agreement to suspend the investigation. *See Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico,* 61 FR 56618 (November 1, 1996) (1996 Suspension Agreement).

On May 31, 2002, Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of their withdrawal from the 1996 Suspension Agreement, effective July 30, 2002. Because the 1996 Suspension Agreement would no longer cover substantially all imports of fresh tomatoes from Mexico, effective July 30, 2002, the Department terminated the 1996 Suspension Agreement, terminated the five-year sunset review of the suspended investigation, and resumed the antidumping investigation. *See Notice of Termination of Suspension Agreement, Termination of Sunset Review, and Resumption of Antidumping Investigation: Fresh Tomatoes from Mexico,* 67 FR 50858 (August 6, 2002).

On November 8, 2002, the Department and Mexican tomato growers/exporters initialed a proposed agreement suspending the resumed antidumping investigation on imports of fresh tomatoes from Mexico. On December 4, 2002, the Department and certain growers/exporters of fresh tomatoes from Mexico signed a new suspension agreement (2002 Suspension Agreement). *See Suspension of Antidumping Investigation: Fresh Tomatoes From Mexico,* 67 FR 77044 (December 16, 2002). On November 3, 2003, the Department published the *Final Results of Analysis of Reference Prices and Clarifications and Corrections; Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico,* 68 FR 62281 (November 3, 2003).

On November 26, 2007, Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of their withdrawal from the 2002 Suspension Agreement, effective 90 days from the date of their withdrawal letter (*i.e.,* February 24, 2008), or earlier, at the Department's discretion.

On November 28, 2007, the Department and certain Mexican tomato growers/exporters initialed a new proposed agreement to suspend the antidumping investigation on imports of fresh tomatoes from Mexico. On December 3, 2007, the Department released the initialed agreement to interested parties and provided them an opportunity to comment on the initialed agreement. On December 17 and 18, 2007, several interested parties filed comments in support of the initialed agreement.

Because the 2002 Suspension Agreement would no longer cover substantially all imports of fresh tomatoes from Mexico, the Department published a notice of intent to terminate the 2002 Suspension Agreement, intent to terminate the five-year sunset review of the suspended investigation, and intent to resume the antidumping investigation. *See Fresh Tomatoes from Mexico: Notice of Intent to Terminate Suspension Agreement, Intent to Terminate the Five-Year Sunset Review, and Intent to Resume Antidumping Investigation,* 72 FR 70820 (December 13, 2007). On January 16, 2008, the Department published a notice of termination of the 2002 Suspension Agreement, termination of the five-year sunset review of the suspended investigation, and resumption of the antidumping investigation, effective January 18, 2008. *See Fresh Tomatoes from Mexico: Notice of Termination of Suspension Agreement, Termination of Five-Year Sunset Review, and*

[1] Letters were filed from all of the petitioners listed in Exhibit 5 of the April 11, 1996, supplement to the petition, except for Landseidel Farms, Inc., Byrd Foods, Inc., and J&B Tomato, Inc. The petitioners' June 22, 2012, filing included statements from the Executive Vice President of the Florida Tomato Exchange explaining that multiple attempts had been made to contact these three companies and attesting that there is no indication that these companies are still producing tomatoes.

Resumption of Antidumping Investigation, 73 FR 2887 (January 16, 2008).

On January 22, 2008, the Department signed a new suspension agreement (2008 Suspension Agreement) with certain growers/exporters of fresh tomatoes from Mexico. *See Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico,* 73 FR 4831 (January 28, 2008).

On June 22, 2012, the U.S. petitioners in the suspended antidumping investigation filed a request for withdrawal of the petition and termination of the investigation and the suspension agreement (see footnote 1 above). Subsequent to their initial submission, the petitioners filed additional information supporting their request on July 11 and 23, and August 6 and 10, 2012, and additional letters of support on July 2, 19, 24, 26, and 30, and August 14, 2012. To date, the petitioners have submitted on the record of the 2008 Suspension Agreement proceeding letters of support from other tomato growers in California, Maryland, Virginia, Georgia, South Carolina, New York, Pennsylvania, North Carolina, Florida, and Arizona. The petitioners have also filed letters of support on the same record from the Certified Greenhouse Farmers Association and the Coalition of Immokalee Workers, as well as letters of support from the Florida Department of Agriculture and Consumer Services, the Virginia Secretary of Agriculture and Forestry, the Texas Department of Agriculture, the Alabama Department of Agriculture and Industries, the Georgia Department of Agriculture, the North Carolina Department of Agriculture, and the California Department of Food and Agriculture.

The Mexican tomato grower/exporter signatories to the agreement oppose terminating the antidumping proceeding and the suspension agreement. The Mexican tomato grower/exporter signatories filed comments opposing the petitioners' request for terminating the proceeding and the suspension agreement on July 5, 17, and 30, and August 13, 2012, and letters of opposition from numerous parties on July 19, 25, 26, 27, 30, and 31, and August 1, 2, 3, 7, 8, 10, 13, and 14, 2012. To date, the Mexican tomato growers/exporters have filed letters on the record of the 2008 Suspension Agreement proceeding opposing withdrawal of the petition and termination of the agreement from the Fresh Produce Association of the Americas, based in Nogales, Arizona, numerous U.S. importers, several members of Congress, and several Mexican government officials.

These filings are on the public record of the 2008 Suspension Agreement in Import Administration's Central Records Unit, room 7046 of the main Department of Commerce building. These filings are also available to registered users via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) at *http://iaaccess.trade.gov.*

Scope of the Suspended Investigation

The merchandise subject to the suspended investigation is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this suspended investigation, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. Fresh tomatoes that are imported for cutting up, not further processing (*e.g.,* tomatoes used in the preparation of fresh salsa or salad bars), are covered by this Agreement.

Commercially grown tomatoes, both for the fresh market and for processing, are classified as Lycopersicon esculentum. Important commercial varieties of fresh tomatoes include common round, cherry, grape, plum, greenhouse, and pear tomatoes, all of which are covered by this investigation.

Tomatoes imported from Mexico covered by this Agreement are classified under the following subheadings of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702 and 9906.07.01 through 9906.07.09. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of the suspended investigation is dispositive.

Initiation of Changed Circumstances Review

Based on the information contained in the petitioners' June 22, 2012, request, and following a review of the statute, our regulations and precedent, the Department has determined to conduct a changed circumstances review pursuant to section 751(b)(1)(B) of the Act. Although the petitioners request that the Department immediately terminate the suspended investigation without further comment or consideration based on their withdrawal of the petition, the Department has determined that a changed circumstances review is warranted. The Tariff Act of 1930, as amended (the Act), explicitly provides separate and distinct mechanisms for termination of an ongoing investigation (by withdrawal of the petition or indication of lack of interest) and a suspended investigation (through an administrative review or changed circumstances review). Compare section 734(a)(1)(A) of the Act with sections 751(d) and 782(h)(2) of the Act. The Department's regulations (both those currently in effect and those in effect in 1996) [2] mirror this distinction. Compare 19 CFR 351.222(g) and 19 CFR 353.25(d)(1)(1996) with 19 CFR 351.207(b) and 19 CFR 353.17(a)(1)(1996). Further, both the Act and the regulations (in effect currently and in 1996) contemplate treating termination of a suspended investigation like revocation of an order, and provide for termination of a suspended investigation through a changed circumstances review (or an annual administrative review) if substantially all of the domestic producers express a lack of interest in the suspended investigation. This distinction was made clearer in an amendment to the statute by the 1994 Uruguay Round Agreements Act (URAA), which added section 782(h) of the Act. This section, which clarifies that ''no interest'' revocations and terminations are permissible, also clearly distinguished between termination of investigations and termination of suspended investigations. This provision addresses the termination of suspended investigations and the revocation of orders together in paragraph (h)(2), while the termination of an investigation is addressed separately in paragraph (h)(1). *See* section 782(h) of the Act.

Although the petitioners cite three cases as support for their request to immediately terminate the suspended investigation (Axle and Brake Assemblies from Hungary,[3] EPROMs from Japan,[4] and Typewriters from

[2] Matters related to the conduct of the underlying investigation are governed by the regulations in effect in 1996. *See San Vicente Camalu SPR de RI* v. *United States,* 491 F. Supp. 2d 1186, 1203–04 (CIT 2007). The Department's current regulations are effective for segments of proceedings initiated after June 18, 1997. *Id.;* 19 CFR 351.701(2012). Accordingly, because this changed circumstances review is a new segment of the proceeding, it is governed by the regulations currently in effect.

[3] *Truck Trailer Axle and Brake Assemblies from Hungary; Termination of Antidumping Duty Investigation,* 61 FR 13481 (March 27, 1996) (Axle and Brake Assemblies from Hungary).

[4] *Erasable Programmable Read Only Memories From Japan: Termination of Suspended*

Continued

Singapore [5]), the Department disagrees that this precedent governs the instant proceeding. Each of these cases is distinguishable from the present circumstances. Among other things, the agreements in the cited cases predate the URAA (effective January 1, 1995), and thus were not subject to the same statutory provisions that apply to the tomatoes suspension agreement, *e.g.,* section 782(h) of the Act, which clarified that ''no interest'' revocations and terminations were permissible and clearly distinguishes between termination of an ongoing investigation and a suspended investigation. Further, in the cited cases, termination occurred with the agreement of or absence of objection from the signatories to the agreement in each of these cases. No such agreement or lack of objection from the Mexican signatories exists in this case. Further, notwithstanding the fact that the agreement in EPROMs from Japan predates the URAA, the termination in that case appears to fulfill the requirements of a changed circumstances review, even though the termination process was not labeled as such. In addition, the Department specifically stated in that case that a changed circumstances review pursuant to section 751(b) of the Act is ''normally the mechanism for the termination of a suspended investigation.'' *See* EPROMs from Japan, 68 FR at 28671.

In light of the distinct statutory and regulatory provisions governing termination of an ongoing investigation and termination of a suspended investigation, and consistent with our statement in EPROMs from Japan, the Department has determined that a changed circumstances review is the expected mechanism by which the Department will examine a request to terminate a suspended investigation. Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review.

Both the Act and the Department's current regulations require that ''substantially all'' domestic producers express a lack of interest in the order or suspension agreement in order for the Department to revoke an order or terminate a suspended investigation. *See* 782(h) of the Act and 19 CFR 351.222(g). The Department has interpreted ''substantially all'' to represent producers accounting for at least 85 percent of U.S. production of the domestic like product. *Certain Orange Juice from Brazil: Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent Not to Revoke, In Part,* 73 FR 60241, 60242 (October 10, 2008), unchanged in *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Changed Circumstances Review,* 74 FR 4733 (January 27, 2009). Interested parties are, therefore, requested to address the issue of industry support in their comments.

Public Comment

Interested parties are invited to comment on the initiation of this changed circumstances review and the issue of industry support. Parties who submit comments or information in this proceeding are requested to include with their submission (1) a statement of the issue; and (2) a brief summary of the comments or information. All written comments may be submitted by interested parties not later than 14 days after the date of publication of this notice, in accordance with 19 CFR 351.303 of the Department's regulations, and shall be served on all interested parties on the Department's service list. As noted above, in the time since the petitioners requested to withdraw the petition and terminate the suspended investigation, there have been numerous comments on this request filed on the record of the 2008 Suspension Agreement. If interested parties would like those comments to be considered for purposes of this changed circumstances review, they are requested to file the comments on the record of this proceeding.

As soon as practicable following the receipt of any submissions from interested parties during the comment period, the Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results.

This notice is published in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: August 14, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–20552 Filed 8–20–12; 8:45 am]

BILLING CODE 3510–DS–P

Antidumping Duty Investigation, 62 FR 28670 (May 27, 1997) (EPROMs from Japan).

[5] *Portable Electric Typewriters from Singapore, Termination of Suspended Antidumping Duty Investigation,* 59 FR 22592 (May 2, 1994) (Typewriters from Singapore).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Correction: Fresh Tomatoes From Mexico: Notice of Initiation of Changed Circumstances Review and Consideration of Termination of Suspended Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 21, 2012.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or Anne D'Alauro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 482–0192 or (202) 482–4830, respectively.

SUPPLEMENTARY INFORMATION: On August 14, 2012, the Department of Commerce (the Department) issued *Tomatoes from Mexico: Notice of Initiation of Changed Circumstances Review* for publication in the **Federal Register**. In accordance with 19 CFR 351.222(g)(3)(i), the title of the notice of initiation of the changed circumstances review and consideration of termination of the suspended investigation should have included the phrase ''Consideration of Termination of Suspended Investigation.'' Thus, the title of the notice should have read ''Fresh Tomatoes from Mexico: Notice of Initiation of Changed Circumstances Review and Consideration of Termination of Suspended Investigation.'' The Department is correcting the title of the notice of initiation with this notice of correction. All other aspects of the notice issued on August 14, 2012, remain unchanged.

This notice is published in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216, 351.221(c)(3), and 351.222(g)(3)(i).

Dated: August 15, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–20555 Filed 8–20–12; 8:45 am]

BILLING CODE 3510–DS–P



FEDERAL REGISTER

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Part III

The President

Presidential Determination No. 2012–13 of August 10, 2012—Continuation of U.S. Drug Interdiction Assistance to the Government of Colombia

Federal Register
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Presidential Documents

Title 3—

The President

Presidential Determination No. 2012–13 of August 10, 2012

Continuation of U.S. Drug Interdiction Assistance to the Government of Colombia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me as President by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. 2291–4), I hereby certify, with respect to Colombia, that: (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary, because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) Colombia has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register* and to notify the Congress of this determination.



THE WHITE HOUSE,
Washington, August 10, 2012.

[FR Doc. 2012–20736
Filed 8–20–12; 2:15 pm]
Billing code 4710–10–P

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H.R. 1402/P.L. 112–170

To authorize the Architect of the Capitol to establish battery recharging stations for privately owned vehicles in parking areas under the jurisdiction of the House of Representatives at no net cost to the Federal Government. (Aug. 16, 2012; 126 Stat. 1303)

H.R. 3670/P.L. 112–171

To require the Transportation Security Administration to comply with the Uniformed Services Employment and Reemployment Rights Act. (Aug. 16, 2012; 126 Stat. 1306)

H.R. 4240/P.L. 112–172

Ambassador James R. Lilley and Congressman Stephen J. Solarz North Korea Human Rights Reauthorization Act of 2012 (Aug. 16, 2012; 126 Stat. 1307)

S. 3510/P.L. 112–173

To prevent harm to the national security or endangering the military officers and civilian employees to whom internet publication of certain information applies, and for other purposes. (Aug. 16, 2012; 126 Stat. 1310)

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